
Chapter 3 ELIGIBILITY

INTRODUCTION

The WMHA is responsible for ensuring that every individual and family admitted to the HCV program meets all program eligibility requirements. This includes any individual approved to join the family after the family has been admitted to the program. The family must provide any information needed by the WMHA to confirm eligibility and determine the level of the family's assistance.

In the case of disputes on eligibility/ineligibility criteria that are pending the outcome of legal proceedings (i.e., currently under appeal in a court of law), the WMHA will determine the family to be ineligible at that time. If the legal decision is rendered that the person did meet the eligible factors, the WMHA shall restore the application to the original date and time, and reinstate the applicant to any other preference factors that the WMHA has adopted. If the legal decision is rendered that the person did not meet the eligibility factors, the WMHA shall only provide the applicant with access to the grievance process in accordance with applicable requirements.

To be eligible for the HCV program:

- The applicant family must:
 - Qualify as a family as defined by HUD and the WMHA.
 - Have income at or below HUD-specified income limits.
 - Qualify on the basis of citizenship or the eligible immigrant status of family members.
 - Provide social security number information for family members as required.
 - Consent to the WMHA's collection and use of family information as provided for in WMHA-provided consent forms.
 - Not be ineligible due to criminal or other ineligible conduct.
 - Not be ineligible for assistance in accordance with the restrictions on assistance to students enrolled in an institution of higher education status (24 CFR 5.612)*.
- The WMHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the WMHA.

***Restrictions on Assistance to Students Enrolled in Institution of Higher Education**

No assistance shall be provided under Section 8 of the 1937 Act to any individual who:

- Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965;
- Is under 24 years of age;

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- Is not a veteran of the United States military;
 - Is not a person with disabilities and was not receiving assistance as of November 30, 2005
 - Does not have a dependent child; and
 - Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under Section 8 of the 1937 Act.

See Exhibit 3-2: Detail on Student Eligibility for further clarification

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and WMHA definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

Part II: Basic Eligibility Criteria. This part discusses income eligibility, and rules regarding citizenship, social security numbers, ineligible student and family consent.

Part III: Denial of Assistance. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the WMHA to deny assistance.

PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. In addition, some requirements apply to the family as a whole and others apply to individual persons who will live in the assisted unit. This part provides information that is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

3-I.B. FAMILY AND HOUSEHOLD [24 CFR 982.201(c), FR Notice 2-3-12 and PIH Notice 2014-20]

The terms *family* and *household* have different meanings in the HCV program.

Family

To be eligible for assistance, an applicant must qualify as a family. *Family* as defined by HUD includes, but is not limited to the following, regardless actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, disabled person, near-elderly person, or any other single person; or a group of persons residing together. Such group includes, but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, or the remaining

member of a tenant family. The PHA has the discretion to determine if any other group of persons qualifies as a family.

The applicant must qualify as a Family. A family may be a single person or a group of persons. Discrimination on the basis of familial status is prohibited, and a group of persons may not be denied solely on the basis that they are not related by blood, marriage or operation of law. For occupancy standards purposes, the applicant may claim a spousal relationship.

A group of persons is defined by WMHA as two or more persons who intend to share residency, and whose income and resources are available to meet the family's needs, and will live together in WMHA housing.

Gender Identity means actual or perceived gender characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

Family includes, but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, the following:

- (1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or
- (2) A group of persons residing together, and such group includes, but is not limited to:
 - (a) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
 - (b) An elderly family;
 - (c) A near-elderly family;
 - (d) A disabled family;
 - (e) A displaced family; and
 - (f) The remaining member of a tenant family.

A single person who is not elderly, displaced, or a person with disabilities, or the remaining member of a tenant family;

Two or more elderly or disabled persons living together, or one or more elderly or disabled persons living with one or more live-in aides is a family;

Two or more near-elderly persons living together, or one or more near-elderly persons living with one or more live-in aides.

An expectant mother with no children will qualify for assistance as a *family*.

WMHA Policy

A family also includes two (2) or more persons who intend to share residency whose income and resources are available to meet the family's needs and who have a history as a family unit or show evidence of a stable family relationship for at least one year.

Evidence of a stable family relationship may include any of the following: birth certificates of the children indicating common children, joint tax returns, prior lease (held jointly), joint bank accounts, insurance policies indicating common status.

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.

Each family must identify the individuals to be included in the family at the time of application, and must notify the PHA if the family's composition changes.

Children temporarily absent from the home due to placement in foster care are considered family members. This provision only pertains to the foster child's temporary absence from the home, and is not intended to artificially enlarge the voucher size for other family members.

At the time of admission, children in the process of being adopted are considered family members for the purpose of determining bedroom size, but not considered family members for determining income limit.

3-I.C. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY

Family Break-up [24 CFR 982.315]

Except under the following conditions, the WMHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up:

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the WMHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, and stalking, see section 16-IX.D of this plan.)
- In accordance with Notice PIH 2017-08, for HUD-Veterans Affairs Supportive Housing (HUD-VASH) vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, or stalking, the victim must continue to be assisted. Upon termination of the perpetrator's HUD-VASH voucher, the victim should be given a regular HCV if one is available, and the perpetrator's HUD-VASH voucher should be used to serve another eligible family. If a regular HCV is not available, the victim will continue to use the HUD-VASH voucher, which must be issued to another eligible family upon the voucher's turnover.

- If a court determines the disposition of property between members of the assisted family in a divorce or separation decree, the PHA is bound by the court's determination of which family members continue to receive assistance.

Remaining Member of a Tenant Family [24 CFR 5.403 and PIH 2010-50]

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of an assisted family who remains in the unit when other members of the family have left the unit. Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family.

If dependents are the only "remaining members of a tenant family" and there is no family member able to assume the responsibilities of the head of household, see Chapter 6, Section 6-I.B, for the policy on "Caretakers for a Child."

For deceased single member households or a household where the remaining household member is a live-in aide, WMHA is required to discontinue HAP to the owner no later than the first of the following month after the month in which the death occurred. WMHA is required to immediately terminate program assistance for deceased single member households which will result in termination of the HAP contract and HAP to the owner in accordance with the aforementioned provisions. The owner is **not** entitled to HAP for any month following the month in which the death occurred. There are no exceptions to this policy.

When the HOH dies and the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy in a subsidized unit. By definition, the live-in aide would not be living in the subsidized unit except to provide the necessary supportive services on behalf of the elderly or disabled HOH. The WMHA may not designate the live-in aide as the new HOH or change the relation code (line item 3h on the form HUD-50058) of the live-in aide to make him or her an eligible household member (eligible for assistance) nor pay HAP on behalf of the live-in aide for any month after the month in which the HOH died.

If the HOH is deceased and the remaining household members are minors, the WMHA has an established policy for dealing with situations when the HOH dies during tenancy and the remaining household members are minors. They will use a common practice of PHAs that includes (but is not limited to) allowing a temporary adult guardian to reside in the unit until a court-appointed guardian is established.

In accordance with its screening policies, the WMHA may add the new guardian as the new HOH and will work with the local Department of Social Services to ensure that the best interests of the residuals are addressed.

The live-in aide or live-in aide's members can never be considered a residual.

3-I.D. HEAD OF HOUSEHOLD [24 CFR 5.504(b)]

Head of household means the adult member of the family who is considered the head for purposes of determining income eligibility and rent. The head of household is responsible for ensuring that the family fulfills all of its responsibilities under the program, alone or in conjunction with a cohead or spouse.

WMHA Policy

The family may designate any qualified family member as the head of household.

The head of household must have the legal capacity to enter into a lease under state and local law. A minor who is emancipated under state law may be designated as head of household.

3-I.E. SPOUSE, COHEAD, AND OTHER ADULT

A family may have a spouse or cohead, but not both [HUD-50058 IB, p. 13].

Spouse means the marriage partner of the head of household.

WMHA Policy

A *marriage partner* includes the partner in a "common law" marriage as defined in state law. The term "spouse" does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

A *cohead* is an adult individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can have only one cohead.

WMHA Policy

Minors who are emancipated under state law may be designated as a cohead.

Other adult means a family member, other than the head, spouse, or cohead, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults.

3-I.F. DEPENDENT [24 CFR 5.603]

A *dependent* is a family member who is under 18 years of age or a person over 18 who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, cohead, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 6.

Joint Custody of Dependents

WMHA Policy

When both parents are assisted under the Section 8 Rental Assistance Programs and both parents are trying to claim the child, the parent whose address is listed in the school records will be

allowed to claim the school-age child as a dependent.

Children who are not registered in a school program, including preschool, who are subject to a joint custody agreement but live in the unit at least 51% of the time will be considered members of the household. "51% of the time" is defined as 183 days of the year, which do not have to run consecutively.

For children who are not registered in school, the custodial parent for tax purposes will be considered the custodial parent in determining which family claims the child as a dependent for purposes of household composition, subsidy standards and total tenant payment calculation.

3-I.G. FULL-TIME STUDENT [24 CFR 5.603, HVC GB p. 5-29]

A *full-time student* (FTS) is a person who is attending school or vocational training on a full-time basis. The time commitment or subject load that is needed to be full-time is defined by the educational institution.

Identifying each FTS is important because (1) each family member that is an FTS, other than the head, spouse, or cohead, qualifies the family for a dependent deduction and (2) the earned income of such an FTS is treated differently from the earned income of other family members.

3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [24 CFR 5.100 and 5.403]

Elderly Persons

An *elderly person* is a person who is at least 62 years of age.

Near-Elderly Persons

A *near-elderly person* is a person who is at least 50 years of age but below the age of 62.

For Admission purposes as defined- *Near elderly* households are families whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aide.

Elderly Family

An *elderly family* is one in which the head, spouse, co-head, or sole member is an elderly person; two or more individuals above the age of 62 that are residing together, or one or more persons above the age of 62 residing with one or more live-in aides. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403]

Persons with Disabilities

Disabled Household

For the purposes of the WMHA, the term "disabled household" will mean a household where the head of household, spouse or co-head has a disability and is:

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- (a) *Disabled* with a physical impairment which is expected to be of a long continuous and indefinite duration and is of such nature that such ability could be improved by more suitable housing conditions;
- (b) *Disabled* within the meaning of Section 223 of the Social Security Act or Section 102(7) or 6001(7) of the Developmentally Disabled Act; or
- (c) "An inability to engage in any substantial gainful activity because of any physical or mental impairment that is expected to result in death, or has lasted, or is expected to continue to last, continuously for at least twelve (12) months; or, for a blind person at least 55 years old, inability, because of blindness to engage in any substantial gainful activities comparable to those in which the person was previously engaged with some regularity and over a substantial period.
- (d) "A developmental disability is a severe, chronic disability which:
- Is attributable to a mental and/or physical impairment;
 - Was manifested before the age of 22;
 - Is likely to continue indefinitely;
 - Results in substantial functional limitations in three or more of the following areas: capacity for independent living; self-care; receptive and expressive language; learning; mobility; self-direction; and economic self-sufficiency, and
 - Requires special interdisciplinary, or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated."

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities.

Disabled Family

A *disabled family* is one in which the head, spouse, or cohead is a person with disabilities as defined by the occupancy criteria. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the WMHA from denying assistance for reasons related to alcohol and drug abuse following policies found in Part III of this chapter, or from terminating assistance following the policies in Chapter 12.

Live-In Aide

A Family may include a live-in aide provided that such live-in aide:

Is determined by WMHA to be essential to the care and well-being of an elderly person, a near-elderly person, or a person with disabilities,

Is not obligated for the support of the person(s), and

Would not be living in the unit except to provide care for the person(s).

A live-in aide is not considered to be an assisted family member and has no rights or benefits under the program:

Income of the live-in aide will not be counted for purposes of determining eligibility or level of benefits.

Live-in aides are not subject to Non-Citizen Rule requirements.

Live-in aides may not be considered as a remaining member of the tenant family.

Relatives are not automatically excluded from being live-in aides, but they must meet all of the elements in the live-in aide definition described above.

Family members of a live-in aide may also reside in the unit, providing doing so does not increase the subsidy by the cost of an additional bedroom and that the presence of the family member(s) does not overcrowd the unit. The family will be eligible to increase the bedroom size by one bedroom to accommodate the live-in aide status.

A Live-in Aide may only reside in the unit with the approval of WMHA. Written verification will be required from a reliable, knowledgeable medical professional, such as a doctor, social worker, or caseworker. The verification provider must certify that a live-in aide is needed for the care of the family member who is elderly, near elderly, or disabled.

WMHA will screen and qualify the live-in aide and the live-in aide must be eligible under non-criminal background requirements, not owe money to the PHA, not previously been terminated by a PHA, and must also have the necessary skills to meet the needs of the individual requesting the reasonable accommodation.

WMHA has the right to disapprove a request for a live-in aide based the "suitability criteria".

3-I.J. GUESTS [24 CFR 5.100]

A *guest* is a person temporarily staying in the unit with the consent of a member of the household who has express or implied authority to so consent.

WMHA Policy

A guest can remain in the assisted unit no longer than three (3) consecutive days.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside

of the assisted household more than 50 percent of the time, are not subject to the time limitations of guests as described above.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure is expected to last 40 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

3.I.K. FOSTER CHILDREN AND FOSTER ADULTS

Foster adults are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609].

The term *foster child* is not specifically defined by the regulations.

Foster children and foster adults that are living with an applicant or assisted family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for the \$480 dependent deduction [24 CFR 5.603 and HUD-50058 IB, p. 13]. Foster children and foster adults that are permitted to occupy the dwelling unit will be used to determine the voucher size for assistance.

WMHA Policy

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 CFR 982.401.

A *foster child* is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

With the prior written consent of the WMHA, a foster child/adult may be added to the Section 8 participant family. The factors considered by the WMHA in determining whether or not consent is granted may include:

- A. Whether the addition of a new occupant may require the issuance of a new voucher, and whether such voucher subsidy is available.
- B. The Section 8 landlord's written approval of the additional persons being added to the lease.

Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3-I.L.

3-I.L. ABSENT FAMILY MEMBERS

Individuals may be absent from the family, either temporarily or permanently, for a variety of reasons including educational activities, placement in foster care, employment, illness, incarceration, and court order.

Definitions of Temporarily and Permanently Absent

WMHA Policy

Generally, an individual who is or is expected to be absent from the assisted unit for 1 consecutive months or 30 calendar days in a 12-month period or less is considered temporarily absent and continues to be considered a family member. Generally, an individual who is or is expected to be absent from the assisted unit for more than 3 consecutive months or 90 calendar days in a 12-month period is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

Absent Students

WMHA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the WMHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

Absences Due to Placement in Foster Care [24 CFR 5.403]

Children temporarily absent from the home as a result of placement in foster care are considered members of the family.

WMHA Policy

In instances in which the children have been removed from the home by a social service agency, the agency will be contacted to determine the approximate length of time the children are expected to be away from the home.

If a child has been placed in foster care, the WMHA will verify with the appropriate agency whether and when the child is expected to return to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

If the agency indicates that the children are expected to return to the home at some point, the children will remain a part of the family composition and will be counted toward the family's subsidy standard, but will not be counted as dependents until they return to the home.

If the children are not ever expected to be returned to the home, the children will be removed from the family composition and the family's subsidy standard will be reduced accordingly at the next annual review.

If the agency indicates that it is unknown whether the children will be returned to the home, the children will remain a part of the family composition. Failure, by the family, to report the absence of the children may result in termination from the program.

Absent Head, Spouse, or Cohead

WMHA Policy

An employed head, spouse, or cohead absent from the unit more than 90 consecutive days due to employment will continue to be considered a family member.

When a single parent is absent from the household for an extended period (30 days) as a result of imprisonment, etc. and another adult moves into the home to care for the remaining members, the rental assistance may be terminated. In extenuating cases where the WMHA approves the temporary absence, the family composition may be modified to include the name of the temporary guardian as temporary head of household. The WMHA shall screen the guardian under the same criteria that it screens a live-in aide. The temporary guardian's income will not be included in the family income. The single parent's name as head of household shall be temporarily removed and the file documented to explain the circumstances.

When the single parent returns to the unit, the guardian will vacate the unit, unless further documentation of need is verified. If the guardian remains after the return of the head of household and does not become a live-in aide, his/her income will be included in the calculation of family income. In addition to all the above, the guardian will be responsible for obtaining the owner's/landlord's approval before occupying the unit.

WMHA will review the reason why the head of household is no longer present and may make a determination to cancel the assistance.

If all members of the household are absent for thirty (30) cumulative days during a calendar year, but have not moved from the unit, assistance will be terminated. In order to determine if the family is absent from the unit, WMHA may secure various forms of verification including but not limited to: notice and letters to the family at the unit, telephone the family at the unit, interview the owner/landlord and neighbors, social media posts and/or verify if utilities are in service. In cases where the family has moved from the unit, assistance will be terminated in accordance with the procedures set forth further in this plan.

When the family consists of only one member and that person vacates the unit to go into a hospital or nursing home for a period of more than two (2) months, the assistance will be terminated, if the person will not be returning within 60 days. If a medical source documents that the person is expected to return to the unit in 180 days or less, the person shall continue to receive assistance. If the person is not back in the unit within 180 days, assistance will be terminated.

Family Members Permanently Confined for Medical Reasons [HCV GB, p. 5-22]

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

WMHA Policy

The WMHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. If temporarily absent, the income of the person will be included. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member and be removed from the lease.

Return of Permanently Absent Family Members

WMHA Policy

The family must request WMHA approval for the return of any adult family members that the WMHA has determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed elsewhere in this chapter.

3-I.M. LIVE-IN AIDE (PIH 2010-51 and PIH 2013-13)

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403]. It should be noted that the definition applies to a specific person (i.e., identified live-in aide).

The WMHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR 8, to make the program accessible to and usable by the family member with disabilities.

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [24 CFR 5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, current members of the family cannot be reclassified as a live-in aide to have the income excluded. A relative or any other live-in aide or live-in aide's family who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family or have any rights to the program.

WMHA Policy

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or

case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. Although a health care provider must document the need for a live-in aide (which would result in the issuance of an additional bedroom size voucher), the live-in aide must be identified by the family and approved by the WMHA first. For continued approval, the family must submit a new, written request-subject to WMHA verification-at each annual reexamination.

The WMHA may only approve one additional bedroom for a live-in aide. Although a live-in aide may have WMHA-approved family member/s live with him/her in the assisted unit, no additional bedrooms will be provided for the family members of the live-in aide. The WMHA must ensure that housing quality standards (HQS) will not be violated and that there will be no more than two people per bedroom or living/sleeping space in the unit in accordance with 24 CFR § 982.401(d)(2)(ii). If the approval of additional family members of a live-in aide would result in the violation of HQS, the additional family members of the live-in aide may not be approved.

A live-in aide may only reside in the unit with pre-approval from the WMHA, after proper documentation of need is verified, screening and approval has been completed.

The approval of a live-in aide shall increase the maximum permitted voucher size by 1-bedroom to accommodate the need for a live-in aide.

In addition, the family and live-in aide will be required to submit a certification stating that the live-in aide is (1) not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services. The live-in aide and family will execute an acknowledgement that they are a live-in aide and they have no rights to the program.

The WMHA will not approve a particular person as a live-in aide, and may withdraw such approval if [24 CFR 982.316(b)]:

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

- The person commits drug-related criminal activity or violent criminal activity; or

- The person currently owes rent or other amounts to the WMHA or to another HA in connection with Section 8 or public housing assistance under the 1937 Act.

- The person has violated any family obligations under the program as published under CFR 982.551;

- The person has been convicted of manufacturing or producing methamphetamine, on the premises of an assisted housing project;

- The person has been evicted from any federally subsidized housing program for any reason;

- The person has been identified as someone who has to register as a sex offender.

- The person cannot provide a current valid social security number, if needed.

The person fails to provide documentation to permit the WMHA to conduct the required screening.

The person is not qualified to provide the needed care.

Within 15 business days of receiving a request for a live-in aide, including all required documentation related to the request, the WMHA will be required to screen the live-in aide in accordance with the federal regulations and upon final determination will notify the family of its decision in writing.

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

HUD is required by law to set income limits that determine the eligibility of applicants for HUD's assisted housing programs, including the housing choice voucher program. The income limits are published annually and are based on HUD estimates of median family income in a particular area or county, with adjustments for family size.

Types of Low-Income Families [24 CFR 5.603(b)]

Low-income family. A family whose annual income does not exceed 80 percent of the median income for the area, adjusted for family size.

Very low-income family. A family whose annual income does not exceed 50 percent of the median income for the area, adjusted for family size.

Extremely low-income family. A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Using Income Limits for Eligibility [24 CFR 982.201]

Income limits are used for eligibility only at admission. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a family must be one of the following:

- *A very low-income family*
- *A low-income family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4]*

PHA Policy

The PHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were issued a voucher by the PHA.

- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173
- A low-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101
- A low-income family that is used for determining eligibility for a student under the student rule provisions.
- A low-income family for determining eligibility under the VASH Program.
- For Project-based units that converted through RAD.
- In the case of PBV, the Housing Agency may use the Low-income for eligibility
- In the case of LIHTC PBV, the person must meet the 60% of median income limit.

HUD permits the WMHA to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the WMHA plan and the consolidated plans for local governments within the WMHA's jurisdiction.

WMHA Policy

The WMHA has established any additional categories of eligible low-income families through PBV. In the case of PBV LIHTC, the family must also meet the eligibility of the LIHTC program to be eligible for the PBV unit.

Using Income Limits for Targeting [24 CFR 982.201]

At least 75 percent of the families admitted to the WMHA's program during a WMHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the WMHA demonstrates that it has made all required efforts, but has been unable to attract an adequate number of qualified extremely low-income families.

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not subject to the 75 percent restriction.

Extremely low-income family. A very low-income family whose annual income does not exceed the higher of:

The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or

Thirty (30) percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E]

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance. The eligible individual on a mixed family does not need to be an adult.

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the WMHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English, or oral interpretation may be required.

Declaration [24 CFR 5.508]

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. (HUD-214) Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, cohead, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

U.S. Citizens and Nationals

In general, citizens and nationals are required to submit only a signed declaration that claims their status. However, HUD regulations permit the WMHA to request additional documentation of their status, such as a passport or birth certificate.

WMHA Policy

Family members who declare citizenship or national status will be required to provide additional documentation such as a birth certificate or other legal document.

Eligible Non-citizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with WMHA efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

Lawful residents of the Marshall Islands, the Federated States of Micronesia, and Palau, together known as the Freely Associated States, or FAS, are eligible for housing assistance under section 141 of the Compacts of Free Association between the U.S. Government and the Governments of the FAS [Public Law 106-504].

Residents that received immunity under the Presidential Declarations

Ineligible Non-citizens

Those non-citizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The WMHA is not required to verify a family member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

Providing housing assistance to noncitizen students is prohibited [24 CFR 5.522]. This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

Mixed Families

A family is eligible for assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 16 for a discussion of informal hearing procedures.

Ineligible Families [24 CFR 5.514(d), (e), and (f)]

WMHA may elect to provide assistance to a family before the verification of the eligibility of citizenship of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the WMHA that the individual or at least one family member is eligible [24 CFR 5.512(a)].

WMHA Policy

The WMHA will not provide assistance to a family before the verification of at least one family member. The eligible member does not have to be an adult in order for the WMHA to assist the family.

When a WMHA determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice within 15 business days of the determination.

The notice will explain the reasons for the denial of assistance, that the family may be eligible for pro-ration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with the WMHA. The informal hearing with the WMHA may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 16.

Timeframe for Determination of Citizenship Status [24 CFR 5.508(g)]

For new occupants joining the assisted family citizenship status will be verified at the time they are added to the household.

If an individual qualifies for a time extension for the submission of required documents, the WMHA must grant such an extension for no more than 30 days [24 CFR 5.508(h)].

Each family member is required to submit evidence of eligible status only one time during continuous occupancy, provided the verification on file is not one for temporary status to be in the country.

WMHA Policy

The WMHA will verify the status of applicants at the time other eligibility factors are determined.

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218] and PIH 2010-3 and PIH 2011-2, and PIH 2012-10 and streamlining]

Families are required to provide verification of Social Security Numbers for all family members if they have been issued a number by the Social Security Administration. This requirement also applies to persons joining the family after admission to the program.

Failure to furnish verification of social security numbers is grounds for denial of admission or termination of tenancy.

The WMHA must request the applicant and participant (including each member of the household), who are not exempt under **SSN Disclosure**, to provide documentation of each disclosed SSN. Acceptable evidence of the SSN consists of:

- An original SSA-issued document, which contains the name and SSN of the individual; or
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

Note: These requirements do not apply to noncitizens who do not contend eligible immigration status.

SSN Disclosure

In accordance with 24 CFR 5.216, applicants and participants (including each member of the household) are required to disclose his/her assigned SSN, with the exception of the following individuals:

- Those individuals who do not contend to have eligible immigration status (individuals who may be unlawfully present in the United States). These individuals in most instances would not be eligible for a SSN.
 - A family that consists of a single household member (including a pregnant individual) who does not have eligible immigration status is **not eligible** for housing assistance and cannot be housed.
 - A family that consists of two or more household members **and at least one** household member that has eligible immigration status, is classified as a mixed family, and **is eligible** for prorated assistance in accordance with 24 CFR 5.520. The WMHA may **not** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend to have eligible immigration status.
- Existing program participants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined the SSN to be valid. The WMHA may confirm HUD's validation of the participant's SSN by viewing the household's **Summary Report** or the **Identity Verification Report** in the EIV system.
- Existing program participants as of January 31, 2010, who are 62 years of age or older, and had not previously disclosed a valid SSN. This exemption continues even if the individual moves to a new assisted unit.

Disclosure of SSNs is considered information subject to the Federal Privacy Act (5 USC 552a, as amended). In accordance with 24 CFR 5.212, the collection, maintenance, use, and dissemination of SSNs, any information derived from SSNs and income information must be conducted, to the

extent applicable, in compliance with that Act and all other provisions of Federal, State, and local law.

There is no provision under HUD regulations which prohibit an individual (head of household with other eligible household members) with ineligible immigration status from executing a lease or other legally binding contract. However, some state laws prohibit an individual with ineligible immigration status from executing a contract (i.e. lease or other legal binding documents). If this is the case in your state, the family must **not** be admitted into the program.

Penalties for Failure to Disclose and/or Provide Documentation of the SSN

In accordance with 24 CFR 5.218, the following penalties apply for noncompliance with the SSN disclosure and documentation requirements:

- a. **Applicants.** The WMHA must deny the eligibility of an assistance applicant if s/he (including each member of the household required to disclose his/her SSN) does not disclose a SSN and/or provide documentation of such SSN. However, if the family is otherwise eligible to participate in the program, the family may maintain his/her position on the waiting list for a period of time as determined by the WMHA. The WMHA should prescribe in its policies, the maximum time the family may remain on the waiting list, pending disclosure of requested information. If all household members have not disclosed their SSN at the time a unit becomes available, the WMHA must offer the available unit to the next eligible applicant family on the waiting list.

If the WMHA determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the documentation to verify the SSN of each member of the household.

If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household's date of admission (or, for the HCV program, the date of voucher issuance), the assistance applicant may become a participant, so long as the documentation required is provided to the WMHA within 90 calendar days from the date of admission into the program (or, for the HCV program, the effective date of the Housing Assistance Payment contract). The WMHA must grant an extension of one additional 90-day period if the WMHA determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation required within the required time period, the processing entity must follow the provisions of § 5.218 which includes termination of the family from the program.

- b. **Participants.** The WMHA must terminate the assistance of Section 8 program participants (the entire household) and terminate the tenancy of Public Housing

participants (the entire household) if s/he (including each member of the household required to disclose his/her SSN) does not disclose his/her SSN and provide the required documentation.

However, if the family is otherwise eligible for continued assistance or tenancy in the program, the WMHA, at its discretion, may defer the family's termination and provide the family an opportunity to comply with the requirement within a period **not to exceed** 90 calendar days from the date the WMHA determined the family noncompliant with the SSN disclosure and documentation requirement, if the PHA determines:

1. The failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside the control of the family; and
2. There is a reasonable likelihood that the family will be able to disclose the SSN and provide such documentation of the SSN by the deadline.

If the family is unable to comply with the requirements by the specified deadline, the PHA must terminate the tenancy or assistance, or both of the entire family.

3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612, FR Notice 4/10/06]

Section 327 of Public Law 109-115 and the implementing regulation at 24 CFR 5.612 established new restrictions on the eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from his/her parents in accordance with WMHA policy, the income of the student's parents will not be considered in determining the student's eligibility.

The law does not apply to students who reside with parents who are applying to receive HCV assistance. It is limited to students who are seeking assistance on their own, separately from their parents.

Definitions

In determining whether and how the new eligibility restrictions apply to a student, the WMHA will rely on the following definitions [FR 4/10/06, p. 18148].

Dependent Child

In the context of the student eligibility restrictions, *dependent child* means a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* in 24 CFR 5.603, which states that the dependent must be a member of the assisted family, other than the head of household or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

Independent Student

WMHA Policy

The WMHA will consider a student “independent” from his or her parents and the parents’ income will not be considered when determining the student’s eligibility if the following four criteria are all met:

1. The individual is of legal contract age under state law.
2. The individual has established a household separate from his/her parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education’s definition of independent student.

To be considered an *independent student* according to the Department of Education, a student must meet one or more of the following criteria:

Be at least 24 years old by December 31 of the award year for which aid is sought

Be an orphan or a ward of the court through the age of 18

Be a veteran of the U.S. Armed Forces

Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)

Be disabled

Be a graduate or professional student

Be married

3. The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents’ most recent tax forms.
4. The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

The WMHA will verify that a student meets the above criteria in accordance with the policies in Section 7-II.E.

Institution of Higher Education

The WMHA will use the statutory definition under section 102 of the Higher Education Act of 1965 to determine whether a student is attending an *institution of higher education* (see Exhibit 3-2).

Parents

WMHA Policy

For purposes of student eligibility restrictions, the definition of *parents* includes biological or adoptive parents, stepparents (as long as they are currently married to the biological or adoptive parent), and guardians (e.g., grandparents, aunt/uncle, godparents, etc.).

Person with Disabilities

The WMHA will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a *person with disabilities* (see Exhibit 3-1).

Veteran

WMHA Policy

A *veteran* is a person who served in the active military, naval, or air service and who was discharged or released from such service under conditions other than dishonorable.

Determining Student Eligibility

If a student is applying for assistance on his/her own, apart from his/her parents, the WMHA must determine whether the student is subject to the eligibility restrictions contained in 24 CFR 5.612. If the student is subject to those restrictions, the WMHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from his/her parents or the student's parents are income eligible for the program, and (3) the "family" with which the student is applying is collectively eligible for the program.

WMHA Policy

For any student who is subject to the 5.612 restrictions, the WMHA will:

Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program

Determine whether the student is independent from his/her parents in accordance with the definition of *independent student* in this section

Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program

If the WMHA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, the WMHA will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16-III.B.

Determining Parental Income Eligibility

WMHA Policy

For any student who is subject to the 5.612 restrictions and who does not satisfy the definition of *independent student* in this section, the WMHA will determine the income eligibility of the student's parents as follows:

If the student's parents are married and living together, the WMHA will obtain a joint income declaration and certification of joint income from the parents.

If the student's parent is widowed or single, the WMHA will obtain an income declaration and certification of income from that parent.

If the student's parents are divorced or separated, the WMHA will obtain an income declaration and certification of income from each parent.

If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, the WMHA will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent. The WMHA will then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

In determining the income eligibility of the student's parents, the WMHA will use the low-income limits for the jurisdiction in which the parents live.

PART III: DENIAL OF ASSISTANCE

3-III.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for the WMHA, and those in which denial of assistance is optional for the WMHA.

In addition, HUD requires or permits the WMHA to deny assistance based on certain types of current or past behaviors of family members.

Forms of Denial [24 CFR 982.552(a)(2); HCV GB, p. 5-35]

Denial of assistance includes any of the following:

- Not placing the family's name on the waiting list,
- Denying or withdrawing a voucher,

- Not approving a request for tenancy or refusing to enter into a HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.

Prohibited Reasons for Denial of Assistance [24 CFR 982.202(b) 24 CFR 5.2005(b)]

HUD rules prohibit denial of assistance to the program based on any of the following criteria:

- Age, disability, race, color, religion, sex, sexual orientation, or national origin. (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the WMHA's jurisdiction (See Chapter 10, Portability.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children
- Whether a family decides to participate in a family self-sufficiency or homeownership program
- Whether or not a qualified applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant is otherwise qualified for assistance (See section 3-III.G.)
- Sexual Orientation

3-III.B. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING [VAWA 2013 and PIH 2017-08]

On March 7, 2013, the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4) (VAWA 2013) was signed into law. VAWA 2013 implemented several key changes related to housing protections for victims of domestic violence, dating violence, sexual assault, and stalking. HUD published a notice in the *Federal Register* on August 6, 2013 describing HUD's programs. (See 78 FR 47717.) HUD also sought comments on certain provisions through the notice to aid in the development of regulations and program guidance. Following the Federal Register Notice, PIH issued a letter to PHA Executive Directors on September 30, 2013, summarizing the August 6 Federal Register Notice.

On April 1, 2015, HUD published its proposed rule that provided amendments to HUD's existing regulations that HUD determined necessary to fully implement VAWA 2013. On November 16, 2016, HUD published its VAWA Final Rule implementing the requirements of

VAWA 2013 through HUD regulations (81 FR 80724). Implementing regulations for the Public Housing and HCV programs can be found at Code of Federal Regulations (CFR) Part 5, Subpart L, Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, as well as various subparts of 24 CFR Parts 905, 960, 966, 982, and 983.

3-III.B.1 Definitions

This Section includes definitions of terms most frequently referred to in PIH Notice 2017-08 that are included in the VAWA Final Rule. For the full list of terms defined in the VAWA Final Rule see 24 CFR 5.2003.

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:

- a. 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
- b. 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.

Covered housing provider refers to the individual or entity under a covered housing program, and as defined by each program in its regulations, that has responsibility for the administration and/or oversight of VAWA protections and includes WMHA, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities.

Dating violence means violence committed by a person:

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

Domestic violence includes felony or misdemeanor crimes of violence committed by:

- a. a current or former spouse or intimate partner of the victim,

-
- b. by a person with whom the victim shares a child in common,
 - c. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
 - d. 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
 - e. 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.

3-III.B.2 Eligible for VAWA

Who is Eligible?

VAWA protections cover tenants and assisted families, as defined under applicable program regulations. VAWA protections also cover applicants when they are applying for admission to a covered housing program.

VAWA protections are not limited to women. Victims of domestic violence, dating violence, sexual assault, or stalking are eligible for protections without regard to sex, gender identity, or sexual orientation. Victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age, and HUD programs must also be operated consistently with HUD’s Equal Access Rule, which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

WMHA or owner may find instances of domestic violence, dating violence, sexual assault, or stalking against youth (those under the age of 18 years old) living in an assisted household for which the family may need to exercise VAWA protections to protect the youth victim. WMHA and owners should exercise the same documentation and confidentiality procedures in assisting a family in this situation.

Note: Un-emancipated minors would not be eligible to sign leases under HUD programs. Housing providers may consider contacting child welfare or child protective services, or law

enforcement, when a minor claims to be a victim of domestic violence, dating violence, sexual assault, or stalking.

Who is Ineligible?

Guests, unassisted members, and live-in aides of the family are ineligible for VAWA protections that are available only to tenants and participants.

As a reasonable accommodation, a tenant/participant can request VAWA protections based on the grounds that the live-in aide is a victim of domestic violence, dating violence, sexual assault or stalking. In addition, other reasonable accommodations may be needed on a case-by-case basis.

In cases where a guest or unassisted member is a victim of domestic violence, dating violence, sexual assault or stalking, a tenant/participant cannot be evicted or have assistance terminated on the basis of the domestic violence, dating violence, sexual assault or stalking of the guest or unassisted member.

Unassisted members who are also on the lease may qualify by way of the lease for VAWA protections at 24 CFR 5.2005(c).

3-III.B.3 Determination of Protections Under VAWA

Determining VAWA protections, including whether an adverse factor is a “Direct Result” of domestic violence, dating violence, sexual assault, or stalking

The VAWA Final Rule provides that an applicant for assistance or a tenant/participant receiving assistance under a covered housing provider may not be denied admission to, denied assistance under, terminated from participation in, or evicted from housing on the basis or as a *direct result* of the fact that the applicant or tenant/participant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy. (See 24 CFR 5.2005(b)(1).)

In addition to prohibiting a denial, termination, or eviction based on the fact that the applicant or tenant/participant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, the VAWA Final Rule prohibits covered housing providers from denying assistance or admission, terminating participation in, or evicting a tenant based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

For the programs covered by VAWA, an adverse factor refers to any factor that can be used as a basis for denying admission, terminating assistance, or evicting a tenant. However, if a denial or termination of assistance or eviction is required by a federal statute, based on a particular adverse factor, the WMHA must comply with that statute, even if the adverse factor is a direct result of domestic violence, dating violence, sexual assault or stalking. For example, if the applicant is subject to a lifetime registration requirement under a State sex offender registration program, the WMHA must comply with section 578 of the Quality Housing and

Work Responsibility Act of 1998 and deny the applicant admission, even if the sex offense(s) were a direct result of the fact that the applicant was a victim of domestic violence, dating violence, sexual assault or stalking.

Examples of When Adverse Factors Might Be Direct Results of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking

On the surface, adverse factors may appear unrelated to domestic violence, dating violence, sexual assault, or stalking and may present legitimate reasons for denial, termination, or eviction. However, the presence of an adverse factor may be due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking. An adverse factor may be present during much of an abusive relationship, or it may present itself only when a victim is attempting to leave, or has left, the abusive relationship. The following examples are provided to give WMHA and owners a sense of the many instances in which adverse factors might be the “direct result” of domestic violence, dating violence, sexual assault, or stalking. Please note that this list is neither exhaustive nor definitive.

Poor credit history. Depending on the circumstances, poor credit history may be a direct result of domestic violence, dating violence, sexual assault, or stalking when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Forcing a victim to obtain credit, including credit cards for the perpetrator’s use.
- Using a victim’s credit or debit card without permission, or forcing them to do so.
- Selling victims’ personally identifying information to identity thieves.
- Running up debt on joint accounts.
- Obtaining loans/mortgages in a victim’s name.
- Preventing a victim from obtaining and/or maintaining employment.
- Sabotaging work or employment opportunities by stalking or harassing a victim at the workplace, or causing a victim to lose their job by physically battering the victim prior to important meetings or interviews.
- Placing utilities or other bills in a victim’s name and then refusing to pay.
- Forcing a victim to work without pay in a family business, or forcing them to turn their earnings over to the abuser.
- Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking.
- Job loss or lost wages due to missed work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime.
- Hospitalization and medical bills the victim cannot pay or cannot pay along with other bills.

Poor rental history. Depending on the circumstances, poor rental history may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Property damage;
- Noise complaints;
- Harassment;
- Trespassing;

- Threats; Criminal activity;
- Missed or late utility payments(s);
- Missed or late rental payment(s);
- Writing bad checks to the landlord; or
- Early lease termination and/or short lease terms.

Criminal record. Depending on the circumstances, a criminal record may be a direct result of domestic violence, dating violence, sexual assault, or stalking when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Forcing a victim to write bad checks, misuse credit, or file fraudulent tax returns;
- Property damage;
- Theft;
- Disorderly conduct;
- Threats;
- Trespassing;
- Noise complaints;
- Family disturbance/trouble;
- 911 abuse;
- Public drunkenness;
- Drug activity (drug use and the selling of drugs);
- Crimes related to sex work;
- “Failure to protect” a child from a batterer’s violence and/or abuse;
- Crimes committed by a victim to defend themselves or in defense of third parties from domestic violence, dating violence, sexual assault, or stalking; or
- Human trafficking.

Failure to pay rent. Depending on the circumstances, temporary failure to pay rent may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when domestic violence, dating violence, sexual assault, or stalking results in, for example:

- The victim’s injury or temporary incapacitation;
- The arrest of the only wage-earning member of the household;
- Preventing the victim from obtaining and/or maintaining employment;
- Sabotaging work or employment opportunities by stalking or harassing the victim at the workplace;
- Causing the victim to lose the victim’s job by physically battering prior to important meetings or interviews;
- Placing utilities or other bills in the victim’s name and then refusing to pay;
- Forcing the victim to turn their earnings over to the abuser;
- Forcing the victim to work without pay in a family business;
- Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking;
- Losing wages or a job due to missing work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime can result in loss wages and unemployment; or

-
- Inability to pay bills after significant medical expenses resulting from the victim's hospitalization

3-III.B.4 How to Determine if an Adverse Factor is a Direct Result of Domestic Violence, Dating Violence, Sexual Assault or Stalking

To trigger the direct result analysis, it is the responsibility of the applicant or tenant to:

1. Inform the WMHA or owner that they are a victim of domestic violence, dating violence, sexual assault, or stalking; and
2. Provide enough information for the WMHA or owner to make a determination regarding the adverse factor they are claiming was a direct result of domestic violence, dating violence, sexual assault, or stalking.

After the WMHA or owner receives this information, the WMHA or owner should consider the individual's statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking. If further information is necessary for this determination, the WMHA or owner may request additional supporting documentation from the applicant or tenant. However, any request for additional documentation must:

- a. Be in accordance with the WMHA or owners' policies or practices,
- b. Not require evidence of the domestic violence, dating violence, sexual assault, or stalking other than as specified in 24 CFR 5.2007, and
- c. Not violate the VAWA Final Rule's confidentiality requirements or any other laws.

Note: Where an applicant, tenant or participant fails to request VAWA protections, the WMHA or owner is not independently required to identify whether adverse factors are the direct result of domestic violence, dating violence, sexual assault, or stalking. The WMHA and owners may seek training, where available, from a trained third-party (such as an expert victim service provider) on reviewing VAWA documentation. Any communications with a third party must be done consistent with the VAWA rule's confidentiality requirements.

If the WMHA or owner believes any information is not clear, it should speak to the victim and try to clarify the information. After the WMHA or owner has received the information from the tenant or applicant, and if necessary, clarified this information with the tenant or applicant, the WMHA or owner must make an objectively reasonable determination, based on all the circumstances, whether the adverse factor is a direct result of the fact that the applicant or tenant/participant is a victim of domestic violence, dating violence, sexual assault, or stalking.

Notification and Other Considerations

WMHA and owners must notify the applicant or tenant if the WMHA or owner finds that the denial, termination, or eviction is not on the basis or as a "direct result" of being a victim of domestic violence, dating violence, sexual assault, or stalking, and the applicant or tenant is thus denied admission to, denied assistance under, terminate from participation in, or evicted from the housing. (See 24 CFR 5.2005(b)(1).) An applicant or tenant that disagrees with the finding should use the program's appeal procedures.

In the case of a termination or eviction, PHAs and owners must comply with the prohibition in 5.2005(d)(2), which provides:

The covered housing provider must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.

Therefore, even if the direct result prohibition does not apply, the WMHA or owner cannot use that violation to terminate or evict a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, if the covered housing provider does not ordinarily terminate or evict tenants for that violation.

3-III.B.5 Certification and Documentation of Domestic Violence, Sexual Assault, Dating Violence, or Stalking

Certification of domestic violence, dating violence, sexual assault, dating violence, or stalking

VAWA 2013 required that HUD create a certification form that serves as a means of documenting the incident or incidents of domestic violence, dating violence, sexual assault, or stalking. (See 24 CFR 5.2005(a).) The VAWA Final Rule transmitted this certification form, *Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation*, form HUD-5382. The WMHA must include form HUD-5382 with the VAWA Notice of Occupancy Rights (form HUD-5380). These forms are available at hud.gov/hudclips.

Note: Under the Mod Rehab program, the WMHA may provide form HUD-5382 to owners, and charge owners with distributing it to tenants along with the VAWA Notice of Occupancy Rights as described above. (See 24 CFR 882.102.)

Form HUD-5382 is for use by all HUD-covered programs, including Public Housing and HCV programs (e.g., WMHA or owner may receive this form) and it must be publicly available and provided upon request.

The form HUD-5382:

- Provides that VAWA 2013 protects applicants, tenants, and program participants from being evicted, denied assistance, or terminated from housing assistance based on act of domestic violence, dating violence, sexual assault, or stalking.
- Is an optional way for victims to comply with a written request for documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking for persons seeking VAWA protections.
- Provides that the victim or someone on the victim's behalf may complete the form.
- Provides a list of alternative third-party documentation to satisfy a request by a WMHA or owner for documentation. (See below regarding requests for documentation.)

- Explains the time period for responding to a written request for documentation.
- Describes the confidentiality protections under VAWA.
- Requires that the victim or someone filling out the form on the victim's behalf must answer questions and provide a brief description of the incident(s).
- Clarifies that the name of the accused perpetrator does not have to be provided if it is unknown to the victim or it cannot be provided safely.
- Clarifies that the date and time of incident should be completed only if known by the victim.
- Requires the victim or someone filling out the form on the victim's behalf to certify to the truth and accuracy of the information being provided, and explains that false information could be the basis for denial of admission, termination of assistance, or eviction.
- Includes required public reporting burden information.

When practicable, HUD encourages WMHA and owners to advise applicants, tenants, and program participants that when the WMHA or owner receives a form submitted on their behalf, such submission will take the place of the applicants, tenants, or program participants submitting their own statement. Thus, applicants, tenants, or program participants should ensure, to the extent possible, that the information is accurate and comprehensive.

The form HUD-5382, as required by 24 CFR 5.2005(a)(1)(ii), must be made available by the WMHA in multiple languages, consistent with HUD's LEP Guidance. (See 24 CFR 5.2005(a)(3).) In addition, consistent with civil rights requirements, when obtaining information through the form, WMHA must take appropriate steps to ensure effective communication with applicants, tenants, and participants with disabilities through the use of appropriate auxiliary aids and services, such as large print and braille documents, readers, interpreters, and accessible electronic documents. WMHA must also provide reasonable accommodations when necessary to allow applicants, tenants, and participants with disabilities to equally benefit from VAWA protections; such as providing individualized assistance in completing forms.

Certification or Documentation

The VAWA Final Rule clarified several aspects of VAWA's certification or documentation process. (See 24 CFR 5.2007.) The information below discusses some of the clarifying changes made in the VAWA Final Rule, and provides additional guidance on the processing of this documentation.

a. Acceptance of Verbal Statement

The VAWA Final Rule clarifies that WMHA and owners are not required to ask for documentation when an individual presents a claim for VAWA protections; the WMHA or owner may instead choose to provide benefits to an individual based solely on the individual's verbal statement or other corroborating evidence. HUD recommends that

WMHA and owners develop written policies for how and under what circumstances a verbal statement will be accepted (e.g., the WMHA was aware of the abuse and encouraged the victim to request VAWA protections). It is recommended that in cases where WMHA or owner decides to rely on such information, the WMHA or owner document, in a confidential manner, the individual's verbal statement or other corroborating evidence.

b. Requesting Documentation

If the WMHA or owner chooses to request an individual to document their claim of domestic violence, dating violence, sexual assault, or stalking, the WMHA or owner must make such request in writing. Simply providing the victim the form HUD-5382 does not constitute a written request for documentation, unless the form HUD- 5382 is accompanied by a dated letter requesting documentation. (See 24 CFR 5.2007(a)(1).)

The individual may satisfy this request by providing **any** one of the following documents as described under 24 CFR 5.2007(b)(1):

- a. Form HUD-5382; 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 the VAWA Final Rule, 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 (may include a police report), 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 WMHA or owner must accept any of the above items (a – c), as provided under 24 CFR 5.2007. For example, form HUD-5382 must be accepted in lieu of any of the third-party documents outlined above (b or c), if the individual chooses to self-certify to satisfy the WMHA or owner's request for documentation; and the submitted documentation does not contain conflicting information.

The WMHA or owner has discretion to accept a statement or other evidence (d). WMHA is encouraged to develop written policies as to whether they will exercise discretion as provided for under (d). WMHA is encouraged to note whether a statement **or** other evidence will be accepted. If other evidence will be accepted, HUD recommends that the WMHA or owner define acceptable evidence.

The WMHA or owner is prohibited from requiring third-party documentation of victim status, except as outlined in Section 8.2(e) of PIH 2017-8.

Given the possible consequences to both the victim and the alleged perpetrator of domestic violence, dating violence, sexual assault, or stalking, it is important that any allegations made by one individual against another are made with the understanding that there are consequences if the allegations are false. In this regard, form HUD-5382 advises that the submission of false information may be a basis for denial of admission, termination of assistance, or eviction.

c. Time to Submit Documentation

The WMHA or owner may require submission of documentation within 14 business days after the date that the individual received the written request for documentation. (See 24 CFR 5.2007(a)(2).) However, the WMHA, or 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 eviction or termination, can be taken against the individual requesting VAWA protection. For example, WMHA must not schedule an eviction, grievance hearing, informal review, or informal hearing to take place during this time frame.

In determining whether to extend the 14-business day period, WMHA and owners are encouraged to consider factors that may contribute to the victim's inability to provide the documentation in a timely manner. These factors may include, but are not limited to: cognitive limitations, disabilities, limited English proficiency, absence from the unit due to hospitalization or time in an emergency shelter, administrative delays in obtaining police or court records, the danger of further violence, and the victim's need to address health or safety issues. WMHA and owners must also grant reasonable accommodations for persons with disabilities. Please also note that because of these factors, the WMHA or owner might not be contacted by the victim with a request to extend the 14-business day period until after the 14-day period has passed.

d. Acknowledging Receipt of Documentation; Failure to Provide Documentation in a Timely Manner

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the WMHA or 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 15 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:

- e. Deny admission by the applicant or tenant to the housing or program;
- f. Deny assistance under the covered housing program to the applicant or tenant;
- g. Terminate the participation of the tenant in the covered housing program; or
- h. 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. If the WMHA denies VAWA protections, it must still follow its established procedures for grievance hearings, informal hearings, or informal reviews.

i. Requests for Third-Party Documentation of Victim Status

When an applicant or tenant requests protection under VAWA, the VAWA Final Rule allows but does not require the covered housing provider to require the applicant or tenant to submit documentation of victim status, i.e., documentation showing the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault or stalking. However, the VAWA Final Rule prohibits a covered housing provider from requiring the victim to provide third-party documentation of victim status, unless:

- More than one applicant or tenant provides documentation to show they are victims of domestic violence, dating violence, sexual assault or stalking, and the information in one person's documentation conflicts with the information in another person's documentation; or
- Submitted documentation contains information that conflicts with existing information already available to the WMHA or owner.

In these circumstances, the regulations at 24 CFR 5.2007(b)(2), allow WMHA or owner to require the applicant(s) or tenant(s) to submit third-party documentation that meets the criteria in 24 CFR 5.2007(b)(1)(ii), (b)(1)(iii), or (b)(1)(iv). According to the criteria, the applicant or tenant may submit any of the following to meet the third-party documentation request:

- a. A document:
 - 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;
 - Signed by the applicant or tenant; and
 - 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 the VAWA Final Rule, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or
- b. A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency (for example, a police report) that documents the incident of domestic violence, dating violence, sexual assault, or stalking.
- c. At the discretion of the covered housing provider, a statement or other evidence provided by the applicant or tenant.

The applicant(s) or tenant(s) must be given 30 calendar days from the date of the request to provide such documentation. If an applicant or tenant responds with third-party documentation that meets the criteria above and supports the applicant or tenant's VAWA request, the WMHA or owner is prohibited from requiring further documentation of the applicant or tenant's status as a victim of domestic violence, dating violence, sexual assault, or stalking. However, if an applicant or tenant does not submit any third-party documentation within the required time period or submits documentation that does not meet the criteria above, the WMHA or owner may, but is not required to, accept that applicant or tenant's assertion of victim status for the purpose of the VAWA protections.

For purposes of providing VAWA protections, satisfying the documentation requirements in section 24 CFR 5.2007(b) resolves the question of whether the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking.

Note: In the case of conflicting documentation between two tenants, if one tenant submits a court order addressing rights of access or control of the property (such as a protection order granting the victim exclusive possession of the unit), the WMHA or owner must honor this court order.

When requesting third-party documentation, the WMHA is encouraged to provide contact information for local domestic violence agencies so that the applicant(s) or tenant(s) can seek services and plan for their safety. The WMHA may also provide the applicant(s) or tenant(s) with contact information for local legal aid offices, which may be able to assist in providing appropriate referrals, obtaining restraining orders, and preparing for grievance hearings.

If the WMHA or owner requests, but does not receive third-party documentation, the WMHA or owner has the option to deny VAWA protections and must notify the applicant or tenant. If this results in a tenant(s) being terminated from assistance, the WMHA must hold a separate informal hearing (HCV) or grievance hearing (public housing) for the tenant. When denying VAWA protections, the WMHA or owner must ensure that it complies with PIH Notice 2015-19.

Alternatively, the WMHA may have a family break-up policy allowing for assistance to be provided to both persons seeking VAWA protections.

Example: A two-person household was notified by an owner that they were being evicted from their unit due to a history of neighbors having to call the police for loud disturbances coming from the tenant-household's unit in violation of the noise provision in their lease. Each member of the tenant-household provides certification to the owner that they are a victim of domestic violence, and the disturbances arose from their partner's abuse.

The owner has a policy of requesting third party documentation when there are conflicting certifications. Thus, the owner requests third party documentation individually from both members of the household. Within 30 calendar days the owner receives third-party certification from only one member of the household. The owner treats the household member that submits third party documentation as a victim of domestic violence for purposes of VAWA and notifies the other household member, who

did not submit third party documentation, that the owner has denied VAWA protections for the other household member. The owner must notify the household member being terminated from assistance and hold the appropriate hearing.

Note: Perpetrators sometimes obtain temporary restraining orders or file police reports against victims as a form of retaliation. Further, many victims are unable to timely access the courts or law enforcement due to the language barriers, disabilities, cultural norms, or fear for their safety. As a result, the fact that only one party submitted third-party documentation is not always a reliable indicator of domestic violence, dating violence, sexual assault, or stalking.

f. Documentation Conflicts with WMHA or Owner Information

An individual may satisfy a request for victim status documentation by submitting any document that meets the criteria for a document type under 24 CFR 5.2007(b)(1). The WMHA or owner must accept the submitted documentation and is prohibited from seeking additional documentation of victim status, unless the submitted documentation does not meet the criteria in the VAWA Final Rule or the submitted documentation contains conflicting information, including conflicting claims between two parties, as described above.

WMHA and owners are prohibited from conducting further fact finding for the purpose of trying to verify the “validity” of an applicant or tenant’s victim status. For example, WMHA and owners are prohibited from conducting interviews with neighbors or employers to determine if the applicant or tenant is “really” a victim of domestic violence, dating violence, sexual assault or stalking. Doing so would be in violation of the documentation requirements of the VAWA Final Rule and may result in a violation of the victim confidentiality requirements of the VAWA Final Rule.

However, if the WMHA or owner already has or regularly receives reliable information that conflicts with the submitted documentation the WMHA may require third-party documentation of victim status, based on information outside of the submitted documentation. Examples of reliable information include surveillance footage, police report(s), and other verifiable information. This information must not be collected for the purpose of discrediting claims for VAWA protections, but may be collected for other legitimate reasons; such as addressing safety in the community. If the applicant or tenant subsequently does not submit third-party documentation, or only submits third-party documentation that contains conflicting information, the WMHA or owner has the option to deny VAWA protections and must notify the applicant or tenant.

Given the possible consequences to both the victim and the alleged perpetrator of domestic violence, dating violence, sexual assault, or stalking, it is important that any allegations made by one individual against another are made with the understanding that there are consequences if the allegations are false. In this regard, form HUD-5382 advises that the submission of false information may be a basis for denial of admission, termination of assistance, or eviction.

3-III.B.6 WMHA Documentation Requirements

The VAWA regulations and requirements require that updates be made to applicable plans. There are also several discretionary areas where WMHA needs to implement policies explained in their Administrative Plans and Admissions and Continued Occupancy Policy (ACOP), as applicable. Below is a summary of the requirements and a sample list of policy questions for the various WMHA documents.

5-Year Plan

WMHA is required to include a brief description in their 5-Year Plan of goals, activities, objectives, policies, programs, or services for child and adult victims of domestic violence, dating violence, sexual assault, or stalking, as required in 24 CFR 903.6(a)(3) and 24 CFR 903.7(m)(5) and described below. The availability of new 5- Year PHA Plan templates that include the provisions of VAWA 2013 were first made available through Notice PIH 2015-18 (HA). HUD encourages reference to the WMHA's Emergency Transfer Plan. WMHA is required to submit a 5-Year Plan for HUD's approval (MTW PHAs excepted).

Annual PHA Plan Templates requires WMHA to report any changes to Plan elements, which include VAWA provisions at 24 CFR 903.7(m)(5), under the safety and crime prevention element. The following information must be included:

- A statement of any domestic violence, dating violence, sexual assault, and stalking prevention programs;
- A description of any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;
- A description of any activities, services, or programs provided or offered by WMHA that help child and adult victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing; and
- A description of any activities, services, or programs provided or offered by WMHA to prevent domestic violence, dating violence, sexual assault, or stalking, or to enhance victim safety in assisted families.

When WMHA first adopts policy changes in accordance with the VAWA Final Rule, WMHA must report those changes in their next Annual Plan submission cycle. However, if the policy changes trigger a significant amendment to the WMHA Plan based on the WMHA's significant amendment definition, then a Significant Amendment to the current annual plan must be submitted. In subsequent Annual Plan submission cycles, WMHA is only required to report changes, if any, to the VAWA policies they have adopted.

While WMHA is not required to provide services or activities beyond the victim protections and remedies included in the VAWA Final Rule, HUD encourages WMHA to develop strategies and relationships with community organizations, domestic violence victim advocates, and local law enforcement to provide services and resources to victims of domestic violence, dating violence, sexual assault, or stalking. For example, WMHA may partner with a local domestic violence service provider to offer a workshop to educate tenants/participants about their VAWA rights or other rights available to tenants/participants under state and local

domestic violence laws or programs. If the WMHA so chooses to partner with a local domestic violence service provider, HUD recommends that these services and activities should be included in the Annual Plan (as applicable) and 5-Year Plan.

Nothing in the Annual Plan submission requirement at 24 CFR 903.7 requires WMHA to undertake activities, services, or programs beyond the victim protections and remedies included in the VAWA Final Rule, although HUD encourages WMHA to do so.

Qualified PHAs must comply with 5 Year Plan submission requirements: Nothing in VAWA 2013 or the VAWA Final Rule supersedes Section 2702 of Title VII—Small Public Housing Authorities Paperwork Reduction Act of the Housing and Economic Recovery Act of 2008 exemption of qualified PHAs from preparing and submitting an Annual Plan. As such, Qualified PHAs are not required to comply with the Annual Plan submission requirements of VAWA. Qualified PHAs are required to comply with the 5-Year Plan

3-III.B.7 HCV Program Documents

Administrative Plan: The administrative plan states WMHA policy on matters for which the WMHA has discretion to establish local policies (24 CFR 982.54). WMHA must include in the administrative plan any local WMHA policies regarding domestic violence, dating violence, sexual assault or stalking that are not already explicitly required by the VAWA Final Rule and this implementing guidance.

HCV Tenancy Addendum and Housing Assistance Payments Contract: The VAWA Final Rule retains the provisions of HUD's regulations implementing VAWA 2005, which requires that a description of specific protections afforded to victims of domestic violence, dating violence, or stalking must be included in the HCV tenancy addendum and Housing Assistance Payments (HAP) contract. (See 24 CFR 5.2005(a)(4).)

The HCV tenancy addendum (form HUD-52641-A for tenant-based assistance; form HUD-52530-C for project-based assistance); the HAP Contract for tenant-based assistance (form HUD-52641); and the PBV HAP Contract (form HUD-52530A and 52530B) will be revised to include the updated provisions of 24 CFR Part 5, Subpart L. The HAP Contract for manufactured home space rental (form HUD-52642) does not currently include VAWA provisions and will be revised at a later date to include the provisions of 24 CFR Part 5, Subpart L. WMHA continues to use the current version of these forms until the HUD update is complete. WMHA does not alter these forms or add their own addendum to the HAP contract or tenancy addendum in the interim.

3-III.B.8 Notice of Occupancy Rights

The VAWA Final Rule revises the requirements for notice of VAWA rights at 24 CFR 5.2005(a). VAWA 2013 requires that HUD create a notice of VAWA rights. The VAWA Final Rule includes a Notice of Occupancy Rights under the Violence Against Women Act; VAWA Notice of Occupancy Rights, form HUD-5380. HUD's VAWA Notice of Occupancy Rights is available at hud.gov/hudclips. The VAWA Notice of Occupancy Rights is for use

by all HUD-covered programs, including Public Housing, HCV, and PBV. However, WMHA, not owners, is the covered housing provider responsible for this activity.

Note: Under the Mod Rehab program, the WMHA may provide the VAWA Notice of Occupancy Rights to owners, and charge owners with distributing the notice and form to tenants. (See 24 CFR 882.102.)

WMHA must issue the VAWA Notice of Occupancy Rights without changes to the core protections and confidentiality rights in the Notice. WMHA must customize the Notice to reflect the specific assistance provided under the particular covered housing program, and to their program operations that may pertain to or affect the VAWA Notice of Occupancy Rights.

For example, WMHA must add to the VAWA Notice of Occupancy Rights information that identifies the covered program at issue (e.g., public housing), the name of the PHA (e.g., the Housing Authority of Any Town), and any additional information and terminology that is used in the program and makes the VAWA Notice of Occupancy Rights more meaningful to the applicants, and tenants/participants that receive the Notice (e.g., use of “apartment” or “housing” in lieu of “unit”). This may include additional language in places other than where the VAWA Notice of Occupancy Rights provides instructions to do so, so long as the language does not make changes to the core protections and confidentiality rights as noted above. For example, the additional language cannot add additional requirements to receive VAWA protections, but additional language may be provided to better explain VAWA.

The VAWA Notice of Occupancy Rights must be provided to:

- Adult applicants of public housing, HCV, and PBV; and
- Each adult tenant of public housing, HCV and PBV adult participant.

The VAWA Notice of Occupancy Rights must be provided no later than each of the following times:

For applicants:

- At the time the individual is provided assistance or admission; and
- At the time the applicant is denied assistance or admission.

For tenants/participants:

- With any WMHA notification of eviction or termination of assistance; and
- By December 16, 2017, either during the WMHA annual recertification or lease renewal process (as applicable). If there will be no recertification or lease renewal during the first year, through other means within the first year as determined by the WMHA.

The VAWA Notice of Occupancy Rights must be made available in multiple languages, consistent with guidance issued by HUD in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency, signed August

11, 2000, and published in the Federal Register on August 16, 2000 (at 65 FR 50121) (HUD's LEP Guidance) (24 CFR 5.2005(a)(3)).

3-III.B.9 Victim Confidentiality

Given the significant safety issues faced by victims of domestic violence, dating violence, sexual assault, or stalking, it is critical that covered housing providers establish or update existing policies to maintain the confidentiality and privacy of victims who seek protections under the VAWA Final Rule.

The VAWA Final Rule clarified that 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 confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

- a. Employees of the WMHA or owner (or those who administer assistance on their behalf, (e.g., contractors) must not have access to the information unless explicitly authorized by the WMHA or owner for reasons that specifically call for these individuals to have access to such information under applicable Federal, State, or local law (e.g., the information is needed by a WMHA employee to provide the VAWA protections to the victim); and
- b. The WMHA or owner must not enter this information into any shared database, or disclose this information to any other entity or individual (e.g. a prospective owner of participant's unit), except to the extent that disclosure is:
 - 1) Requested or consented to in writing by the individual (victim) in a time-limited release;
 - 2) Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
 - 3) Otherwise required by applicable law.

The prohibition against entering this information into any shared database does not preclude WMHA or owner from entering this information into a database system used by the WMHA or owner that meets all requirements for securing sensitive personally identifiable information (PII), including the Privacy Act of 1974 (5 U.S.C. § 552a), as long as the requirements listed above and provided at 24 CFR 5.2007(c) are also met (e.g. the victim consents to in in writing in a time-limited release). For additional guidance on maintaining confidentiality, see Notice PIH-2015-06, HUD Privacy Protection Guidance for Third Parties.

Communicating with the Victim

When communicating with an applicant, participant, or tenant who has requested VAWA protections, the covered housing provider must take precautions to avoid inadvertent disclosure of confidential information to another individual or entity in violation of 24 CFR 5.2007(c). Unless given permission from the victim to do so, the WMHA or owner must not leave messages that contain confidential information or refer to VAWA, the VAWA protections, or the domestic violence, dating violence, sexual assault, or stalking (e.g., asking

the victim to come to the WMHA office to pick up the form HUD-5382) on the victim's voicemail system or with other individuals, including members of the victim's household. Leaving a voicemail requesting that the victim contact the WMHA or owner without referencing VAWA, VAWA protections, or the domestic violence, dating violence, sexual assault, or stalking, is not prohibited. Best practice is for WMHA or owners not to send mail regarding the domestic violence, dating violence, sexual assault, or stalking (e.g., a written request to complete form HUD-5382, or written extension of the 14-business day timeframe to respond to the WMHA's request for documentation) to the victim's address if the perpetrator may have access to the victim's mail (e.g. the perpetrator is the co-head of household, or the perpetrator is employed at the residency of the victim).

The VAWA Final Rule is silent on how a WMHA or owner is to balance the confidentiality requirement at 24 CFR 5.2007(c) with the requirement at 24 CFR 5.2007(a) when requesting documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking in writing. WMHA and owners may determine the procedures for requesting documentation in writing on a case-by-case basis, or adopt general policy guidelines for how to handle these requests. For example, requiring the individual requesting VAWA protections to come to an office or other space that may be safe for the individual to receive the written request, making reasonable accommodations as necessary.

If the victim gives the WMHA or owner permission to contact them about the domestic violence, dating violence, sexual assault, or stalking via mail, voicemail system, electronic mail, or other method approved by the victim, best practice would be to ensure this permission is in writing. If it is not feasible for the victim to provide the permission in writing, the WMHA or owner may make a note in the victim's file about which forms of communication with the victim have been approved by the victim. The written permission or other notation must be kept confidential.

When discussing these matters directly with the victim, WMHA and owners must take reasonable precautions to ensure that no one can overhear the conversation. For example, WMHA employees are encouraged to make the documentation request in a private room; not in an open space at the WMHA. WMHA and owners may require that the victim come into the office to pick up the certification form and are encouraged to work with tenants to make delivery arrangements that do not place the victim at risk.

The covered housing provider must comply with all nondiscrimination and civil rights statutes and requirements in implementing their policies. This includes, for example, providing reasonable accommodations to permit individuals to follow or access any rules, policies, practices, or services, such as modifying a policy requiring that the victim come into the office to pick up the certification form to instead deliver the form to the victim.

This also includes ensuring effective communication with persons with disabilities, e.g., providing sign language interpreters for persons who are deaf, accessible documents and assistance filling out forms for persons who are blind or have low vision, and providing language assistance for persons with limited English proficiency.

WMHA and owners may suggest, but cannot require, that the victim designate an attorney, advocate, or other secure contact for communications regarding the request of VAWA protections. This may reduce the WMHA's or owner's burden in ensuring confidentiality in communications with the victim.

Best Practices to Collect Information and Avoid Unintentional Disclosure

The following best practices are designed to address the challenges of collecting information from and communicating with a victim of domestic violence, dating violence, sexual assault, or stalking while meeting the confidentiality requirements in the rule.

- Conduct the intake session in a private room, where the individual and staff person can talk without the risk of other staff or clients overhearing.
- Explain the WMHA's information sharing policies.
- Communicate to the individual who in the WMHA is responsible for handling questions or complaints about confidentiality.
- Provide adequate time for the individual to review and sign forms.
- Post confidentiality notices in the intake room and around the WMHA.
- Ensure relevant staff understand confidentiality policies and procedures through regular staff training.
- Post notices about the importance of maintaining confidentiality throughout the office.
- Direct staff to respond to third-party inquiries only after verifying that written client consent has been obtained.
- Clarify information sharing policies with referring/referral agencies and other service and business partners.
- Maintain distinct phone lines for certain purposes.
- Avoid using language referencing domestic violence or sexual assault in agency names, program names, organization names, and staff titles.
- Use WMHA post office box to receive written correspondence.
- Serve individuals off-site as needed or when appropriate.
- Provide interpretation and/or documents translated into the appropriate language when necessary.
- Provide accessible documents or assistance filling out forms for individuals with disabilities.

3-III.B.10 Emergency Transfers

The VAWA Final Rule requires WMHA to adopt an Emergency Transfer Plan, based on HUD's model Emergency Transfer Plan (form HUD-5381). HUD's model Emergency Transfer Plan is available at [hud.gov/hudclips](https://www.hud.gov/hudclips). (See 24 CFR 5.2005(e).) Owners of assisted housing or HCV (including project-based voucher) properties that are not WMHA's property or considered "WMHA-Owned" are not the covered housing provider under this provision, and therefore, are not required to adopt an Emergency Transfer Plan. If an owner receives a request for an emergency transfer, the owner is encouraged to explain to the victim that the WMHA is the covered housing provider for this activity, and that the WMHA should be contacted directly.

WMHA has adopted an Emergency Transfer Plan no later than June 14, 2017.

WMHA administering Public Housing, HCV (including PBV), and Section 8 Mod Rehab must ensure that their Emergency Transfer Plan covers these programs.

The Emergency Transfer Plan must:

- Define tenants/participants eligible for an emergency transfer;
- List documentation needed to request an emergency transfer;
- Outline confidentiality protections; and
- Describe how an emergency transfer may occur.

The Emergency Transfer Plan may require documentation from a tenant seeking emergency transfer, pursuant to 24 CFR 5.2005(e)(10) and 24 CFR 5.2007 and further explained in Section 8 of this Notice. However, a tenant is not required to provide documentation other than that which is specified in 5.2005(e)(10). (See 24 CFR 5.2005(e)(10)(iii).)

The WMHA's Emergency Transfer Plan must allow tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to make an internal emergency transfer under VAWA when a safe unit is immediately available. A victim determines whether the unit is safe. (See 24 CFR 5.2005(e)(1)(iii)). The VAWA Final Rule does not define immediately available. A best practice would be to define immediately available as a vacant unit, ready for move-in within a reasonable period of time as defined in the WMHA's Emergency Transfer Plan, where the WMHA also defines reasonable period of time based on local factors. HUD encourages WMHA to engage the victim in a conversation as to what they may consider safe or what factors the victim considers unsafe. This may allow the WMHA to better tailor its emergency transfer response.

The Emergency Transfer Plan must describe policies for assisting a tenant in making an internal emergency transfer when a safe unit is not immediately available, and describe reasonable efforts the WMHA will take to assist a tenant who wishes to make an external emergency transfer when a unit that meets the victim's safety standard is not available. The Emergency Transfer Plan must also incorporate strict confidentiality measures. (See 24 CFR 5.2005(e)(4).)

In developing their Emergency Transfer Plans, WMHA is encouraged to review their admissions and transfer policies to determine if revisions are necessary to facilitate emergency transfers. In determining whether changes to the existing policies are necessary, WMHA may want to consider the following:

- Availability and location of units administered by the WMHA;
- Demand by applicants for assistance under the program;
- Frequency of mandatory or emergency transfers; and
- Availability of alternative housing opportunities.

Eligibility for Emergency Transfers

The Emergency Transfer Plan must provide that tenant/participant receiving rental assistance through, or residing in a unit subsidized under, a covered housing program who is a victim of domestic violence, dating violence, sexual assault, or stalking qualifies for an emergency transfer if:

- a. The tenant/participant expressly requests the transfer; and
- b. Either:
 1. The tenant/participant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit; or
 2. In the case of sexual assault, the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premise during the 90-day period preceding the date of the request for transfer. (See 24 CFR § 5.2005(e)(2).)

A tenant's reasonable belief that there is a threat of imminent harm from further violence may stem from an incident of domestic violence, dating violence, sexual assault, or stalking of a household member.

The Emergency Transfer Plan should also make clear that qualifying for an emergency transfer does not guarantee continued assistance under the program or a transfer to another covered housing program. The emergency transfer requirements do not supersede any eligibility or occupancy requirements that may apply under a covered housing program. (See 24 CFR 5.2005(e)(13).) For example, if a tenant qualifies for an emergency transfer to escape an abusive partner, but the tenant would not meet the program eligibility requirements, the tenant cannot be rehoused under that program.

Emergency Transfer Request

The WMHA's Emergency Transfer Plan must indicate how a tenant/participant requests an emergency transfer. WMHA may either allow for a verbal self-certification, or require a written request before any transfer occurs. WMHA should include in its Emergency Transfer Plan and related VAWA policies whether verbal self-certification is sufficient to initiate an emergency transfer.

The verbal self-certification, if permitted, or the written request must include:

- c. A statement that the tenant requests an emergency transfer because the tenant/participant 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 the WMHA; or
- d. A statement that the tenant requests an emergency transfer because the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the tenant's request for an emergency transfer.

HUD has created a model Emergency Transfer Request document that WMHA used requiring written request for emergency transfer may use (form HUD-5383). WMHA using the emergency transfer request document must make it available to the tenant/participant. HUD's model Emergency Transfer Request document is available at [hud.gov/hudclips](https://www.hud.gov/hudclips).

The model Emergency Transfer Request document:

- Provides that victims of domestic violence, dating violence, sexual assault, or stalking may use this form to request an emergency transfer;
- May be used to certify that the victim meets the requirements of eligibility for an emergency transfer under VAWA;
- Defines the qualifications for an emergency transfer;
- Advises that victims that have third-party documentation that demonstrates why they are eligible for an emergency transfer should submit this information to the housing provider (WMHA) if it is safe to do so;
- Describes the confidentiality protections under VAWA;
- Provides examples of third-party documentation;
- Requires that the victim answer 11 numbered questions, and provides the option to list any third-party documentation that may be voluntarily submitted;
- Clarifies that the name of the accused perpetrator does not have to be provided if it is unknown to the victim or it cannot be provided safely, as determined by the victim; and
- Requires the victim to certify to the truth and accuracy of the information being provided, and explains that false information could be the basis for denial of admission, termination of assistance, or eviction.

WMHA is encouraged to customize the model Emergency Transfer Request document to reflect the specific assistance provided under the particular covered housing program, and to their program operations that may pertain to or affect the emergency transfer provisions. For example, the model Emergency Transfer Request document does not include details about a WMHA's emergency transfer policy because it is incumbent on the housing provider to provide such information in its Emergency Transfer Plan.

WMHA may also request in writing that the victim provide documentation of an occurrence of domestic violence, dating violence, sexual assault, or stalking in accordance with the regulation at 24 CFR 5.2007. However, no other documentation may be required to qualify the tenant for an emergency transfer.

Emergency Transfer Policies and the Housing Choice Voucher and PBV Program

HCV

The VAWA Final Rule included a requirement that the Emergency Transfer Plan must describe policies for a tenant who has tenant-based assistance and who meets the requirements for an emergency transfer. (See 24 CFR 5.2005(e)(9).) As vouchers are inherently mobile, a victim who wants to move may request an emergency transfer under the Emergency Transfer

Policy. If the victim requests to move outside of the WMHA's jurisdiction, the portability regulations apply. (See Notice PIH 2016-09.)

WMHA is strongly encouraged to consider the following policies for inclusion in their Emergency Transfer Plan for participants with tenant-based assistance:

- Expediting administrative processes for participants who wish to move with their tenant-based assistance, including when the victim and perpetrator are members of the same household.
- References to the following:
 - WMHA's family break-up policy. (See 24 CFR 982.315.)
 - Where a family can move with tenant-based assistance. (See 24 CFR 982.353.)
 - Moves with continued tenant-based assistance. (See 24 CFR 982.354.)
 - Preferences in other housing programs administered by the WMHA.

HUD encourages WMHA to detail in their Emergency Transfer plan not only how vouchers will be provided to HCV participants seeking emergency transfers under VAWA, but also what transfer or referral options may be available if the family needs a temporary place to stay while conducting their housing search for a new unit to lease under the HCV program.

HUD notes that many of the policies noted above are features of the HCV program already in place that may be used by participants to move from their current unit to another unit that may provide for victim safety (e.g., moving with continued assistance, and portability.)

Project-Based Voucher (PBV)

Because owners receiving HAP on behalf of an HCV participant in PBV are not required to establish an Emergency Transfer Plan, it is the WMHA that must have emergency transfer policies for PBV participants.

Unlike families receiving tenant-based assistance under the HCV program, PBV families cannot move with their project-based assistance, as the assistance is tied to the unit. Nonetheless, if a victim makes an emergency transfer request and has been living in the PBV unit for one year or more, the WMHA must give the victim priority to receive the next available opportunity for continued tenant-based rental assistance. (See 24 CFR 983.261.)

A family or member of the family is not required to give advanced written notice, with a copy to the WMHA, of intent to vacate the PBV unit if the family moved to protect the health or safety of the victim.

WMHA must include in their Emergency Transfer Plan policies that address when:

- The victim has been living in a unit for less than one year; or
- The victim seeks to move sooner than a tenant-based voucher will be available.

The WMHA should refer the victim to other housing opportunities in the community as described in the WMHA's Emergency Transfer Plan if:

- The WMHA does not offer other assistance to the victim (because the victim has not lived in the PBV unit for one year);
- Tenant-based assistance is not immediately available; or
- Another safe PBV unit is not immediately available.

WMHA is strongly encouraged to consider the following policies for inclusion in their Emergency Transfer Plan for participants with project-based assistance:

- Expediting administrative processes for participants who wish to move to another available PBV unit administered by the WMHA.
- Expediting administrative processes for participants wishing to move with tenant-based assistance.
- Establishing preferences in other housing programs administered by the WMHA.

As noted above, WMHA must include in their Emergency Transfer Plan policies for when the victim has been living in a PBV unit for less than one year. This is because the requirement that the WMHA offer the family the opportunity for continued tenant-based rental assistance applies only when the family terminates the assisted lease after the first year of occupancy. (See 24 CFR 983.261.) This requirement does not apply to families within the first year of the lease. WMHA may have a policy to provide continued tenant-based rental assistance to victims making an emergency transfer request that have lived in a PBV unit for less than one year. Such families must be selected off the waiting list for the applicable program.

Note: The examples below include scenarios that are fact-intensive and are intended to be illustrative. Real- world cases of victims seeking VAWA protections must be approached in a way that takes in consideration the specifics of each case, and addressed pursuant to program requirements and WMHA policy.

Handling Moves with Continued Tenant-Based Assistance

Victims of domestic violence, dating violence, sexual assault, or stalking, may need to move to protect their health or safety. The VAWA Final Rule provides several exceptions for such victims to enable them to move with continued assistance in the tenant-based voucher program.

In accordance with 24 CFR 982.354(c)(2)(iii), the WMHA's policies on restricting timing and number of moves do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member.

The VAWA Final Rule at 24 CFR 982.354 (HCV) and 24 CFR 983.261(c)(1) (PBV) provides that a WMHA may not terminate assistance if the family, with or without prior notification to the WMHA, has already moved out of a unit in violation of a lease, if such a move occurred to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking; and who reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit, or if

any family member has been the victim of sexual assault that occurred on the premises during the 90- calendar-day period preceding the family's request to move.

Emergency Transfer Example – HCV

Scenario: Participant approaches WMHA informing them that they are a victim of domestic violence and fearful for their safety if they remain in their current home. The victim and perpetrator are co-head members of the household.

Step 1: The WMHA provides the victim with the WMHA's VAWA Notice of Occupancy Rights, when requested, so to ensure that they understand the rights and protections afforded them. If the WMHA previously has not provided notification to the family members of their VAWA rights, then, in accordance with 24 CFR 5.2005(a)(2), the WMHA must provide notice to the victim of their rights WMHA provides victim with VAWA Notice of Occupancy Rights.

Step 2: The WMHA can decide to accept the victim's verbal statement, or request documentation per 24 CFR 5.2007.

Step 3: The WMHA accepts the documentation (if requested and provided as specified under 24 CFR 5.2007) or verbal statement for VAWA protections.

Step 4: The victim informs the WMHA that they are seeking an emergency transfer. See the requirements for an emergency transfer at Section 12.2.

Step 5: The WMHA can decide to accept the victim's statement, if it meets the requirements, or request a written request for an emergency transfer.

Step 6: The WMHA accepts the written request (if requested and provided as specified in 24 CFR 5.2005(e)(10)) or verbal statement.

Step 7: The WMHA refers to their Emergency Transfer plan to work with the victim and inform them of their options. Because the victim and perpetrator are co-head members of the household, the WMHA refers to its family break-up policy. When a family break-up results from the occurrence of domestic violence, the WMHA must ensure that the victim retains assistance. (See 24 CFR 982.315(a).)

As part of a WMHA's Emergency Transfer Plan, the WMHA may choose to provide a voucher to facilitate the emergency transfer without having first terminated assistance to the perpetrator.

Step 8: The WMHA informs the victim that local victim service providers may be able to assist them with identifying temporary shelter. The providers may have resources such as: safety planning, counseling, and emergency funding. The WMHA provides the victim with contact information.

Step 9: The WMHA issues a voucher to the victim.

Step 10: The WMHA expedites the administrative process, consistent with due process protections, for carrying out the family break-up policies, and terminates the assistance of the perpetrator. The HAP contract is terminated automatically when program assistance for the family has been terminated. The lease terminates as a result of the HAP contract being terminated.

Step 11: The victim identifies a safe home and the WMHA expeditiously inspects the unit, conducts a rent reasonableness determination, approves subsidy, prepares HAP contract, and the WMHA and owner execute HAP contract. The victim moves into the new home.

Emergency Transfer Example – PBV

Scenario: Participant approaches WMHA informing them that they are a victim of stalking and fearful for their safety if they remain in their current home. The victim is the head of household, and has lived in the PBV unit for more than one year.

Step 1: The WMHA provides the victim with the WMHA’s VAWA Notice of Occupancy Rights, when requested, so to ensure that they understand the rights and protections afforded them. If the WMHA previously has not provided notification to the family members of their VAWA rights, then, in accordance with 24 CFR 5.2005(a)(2), the WMHA must provide notice to the victim of their rights.

Step 2: The WMHA can decide to accept the victim’s statement, or request documentation per 24 CFR 5.2007.

Step 3: The WMHA accepts the documentation (if requested and provided as specified under 24 CFR 5.2007) or verbal statement for VAWA protections.

Step 4: The victim informs the WMHA that they are seeking an emergency transfer. See the requirements for an emergency transfer at Section 12.2.

Step 5: The WMHA can decide to accept the victim’s statement, if it meets the requirements discussed in Section 12.2, or request a written request for an emergency transfer.

Step 6: The WMHA accepts the written request (if requested and provided as specified in 24 CFR 5.2005(e)(10),) or verbal statement.

Step 7: The WMHA refers to their Emergency Transfer plan to work with the victim and inform them of their options. Because the victim has lived in the PBV unit for more than one year, the victim may exercise their right to move per 24 CFR 983.261.

A voucher is not currently available.

The WMHA follows its Emergency Transfer Plan for what actions it will take when a voucher is not immediately available. Based on its Emergency Transfer Plan, the WMHA may:

- Offer to allow the tenant to move to another PBV unit at the same site if the individual deems the unit safe, or to a unit in another PBV project under the WMHA.
- Offer to place the victim on their Public Housing waiting list.
- Provide the victim with a list of housing providers in the community for which the WMHA has partnered to serve victims of domestic violence, dating violence, sexual assault, and stalking.

Step 8: Using the list of housing providers provided by the WMHA, the victim reaches out to other housing providers in the community. Two housing providers that the WMHA has partnered with have a waiting list preference for victims seeking emergency transfers from the WMHA, and the WMHA places the victim on the respective waiting lists.

Step 9: The WMHA informs the victim that local victim service providers may be able to assist them with identifying temporary shelter while they await a housing offer if they choose not to remain in their PBV unit. The providers may have resources such as: safety planning, counseling, and emergency funding. The WMHA provides the victim with contact information.

Step 10: The victim moves out of their current home to stay at a domestic violence shelter.

Step 11: After moving, the victim notifies the owner of their previous home that they moved out of the unit as a result of domestic violence by the other member of the household.

Step 12: The initial PHA does not yet have a voucher available. One of the two partnering housing providers notifies the victim that they have a unit available.

Step 13: The victim visits the unit and determines that it is safe. The victim chooses to move into their new project-based assisted unit instead of waiting for the next available voucher. As a result, the PHA does not provide tenant-based rental assistance to the family under 24 CFR 983.261.

3-III.B.11 Family Break-up

The occurrence of domestic violence, dating violence, sexual assault, or stalking may lead to the break-up of the assisted family in many instances. Family break-up involves terminating the assistance of the perpetrator while continuing the assistance to the victim, ensuring that the victim understands his or her rights, documenting the abuse, maintaining the confidentiality of the victim, and ensuring the safety of the victim. WMHA, not owners, is the covered housing provider for this activity. To help WMHA understand each of the steps involved with this process, PIH Notice 2017-8 presents the following scenarios.

Note: The examples below include scenarios that are fact-intensive. Real-world cases of victims seeking VAWA protections must be approached in a way that takes into consideration the specifics of each case, and addressed pursuant to program requirements and WMHA policy.

HCV Scenario

Scenario: The victim informs the WMHA that their family member is committing domestic violence, dating violence, sexual assault, or stalking against them, and the victim wishes to retain assistance. The victim may choose to inform the WMHA of the abuse after the owner has notified the household that they are being evicted (due to criminal activity), or at any other point.

Step 1: The WMHA provides the victim with the WMHA's VAWA Notice of Occupancy Rights, after requested, so to ensure that the victim fully understands the rights and the protections afforded to them. If the WMHA previously has not provided notification to the family members of their VAWA rights, e.g., an annual recertification or lease renewal has not occurred since the effective date of the VAWA Final Rule, then the WMHA must provide the VAWA Notice of Occupancy Rights. In accordance with 24 CFR 982.315(a)(2), the WMHA must ensure that the victim retains the assistance if a family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking.

Step 2: The WMHA can decide to accept the victim's statement, or request documentation per 24 CFR 5.2007.

Step 3: Upon provision of documentation (if requested and provided as specified in 24 CFR 5.2007), the WMHA is encouraged to ensure the victim knows of the upcoming notification of termination of the perpetrator, including the exact date the notification will take place. As part of this notification to the victim, the WMHA is encouraged to provide the victim with contact information of local victim service providers – providing the victim an opportunity to create a safety plan (e.g., even if the victim does not wish to move out of the unit, the victim may need to leave the unit temporarily and stay in a domestic violence shelter until the termination takes place, and/or obtain a protection order giving the victim possession of the apartment, and change the locks; and/or ask the owner to bifurcate the lease to remove the perpetrator from the lease).

Step 4: The WMHA begins the process to terminate the perpetrator for violation of family obligations, 24 CFR 982.551(l), *Crime by household members*.

Step 5: The WMHA must provide the perpetrator prompt written notice of termination (24 CFR 982.555(c)(2)). If the perpetrator requests an informal hearing, the WMHA must proceed with the hearing in a reasonably expeditious manner upon request of the perpetrator (24 CFR 982.555(d)). The perpetrator has a right to examine the WMHA's documentation directly relevant to the hearing (24 CFR 982.555(e)(2)(i)). Per 24 CFR 5.2007(c)(2)(ii) the WMHA may disclose documentation required for use in an eviction or hearing regarding termination of assistance. The WMHA must remove or otherwise withhold information that may place the victim at risk of further violence. For example, if the victim has secured a temporary living situation and the location is included in the documentation, the WMHA must remove or otherwise hide this information (i.e. blackout or redact).

WMHA is encouraged to consult a local domestic violence expert or victim service provider that has not worked with either the victim or perpetrator, to be on the informal hearing panel. The hearing officer or hearing panel provides the victim and the perpetrator with a written decision.

Step 6: If the victim wishes to move, the WMHA is encouraged to assist the victim in negotiating a mutual rescission of the lease, if needed. If the victim moves out of the unit in violation of the lease (in order to protect the health or safety of the victim), the WMHA must allow the victim in the tenant-based voucher program to move with continued tenant-based assistance (24 CFR 982.314(b)(4), 982.353(b)). Termination of the HAP for the family results in the termination of the lease.

HUD-VASH

In HUD-Veterans Affairs Supportive Housing (HUD-VASH), when a veteran's family member is receiving protection as a victim of domestic violence, dating violence, sexual assault, or stalking, and the veteran is the perpetrator of such violence, the victim must continue to be assisted.

Upon termination of the perpetrator's HUD-VASH voucher due to the perpetrator's acts of domestic violence, dating violence, sexual assault, or stalking, the victim receiving protections under 24 CFR part 5, subpart L should be given a regular HCV if one is available, and the perpetrator's HUD-VASH voucher should be used to serve another eligible veteran family. If a regular HCV is not available for the victim, the perpetrator must be terminated from assistance, and the victim will continue to utilize the HUD-VASH voucher. In the case of the victim utilizing the HUD-VASH voucher upon termination of the perpetrator, this HUD-VASH voucher must be issued to another eligible veteran family upon the voucher's turnover.

3-III.B.12 Record Keeping and Reporting Requirements

The VAWA Final Rule requires WMHA to keep confidential records of all emergency transfers requested under its Emergency Transfer Plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. (See 24 CFR 5.2005(e)(12).)

The VAWA Final Rule further requires that these requests and outcomes of such requests be reported to HUD annually. The requirement to report this information to HUD is not in effect until:

- a. WMHA begins to provide emergency transfers, and
- b. HUD completes the Paperwork Reduction Act requirements.

HUD will communicate additional details about the record keeping requirement at a later date. Until such time, WMHA is not required to report this information to HUD. HUD notes that it would be beneficial for WMHA to maintain this information to facilitate future reporting to HUD.

3-III.B.12 Developing Partnerships with Victim Service Providers

HUD encourages ongoing WMHA efforts to strengthen access to supportive services for victims of domestic violence, dating violence, sexual assault, or stalking. These relationships have bolstered WMHA awareness of domestic violence, dating violence, sexual assault, and stalking. Most importantly, these efforts have saved lives and resulted in victims accessing critical supportive services to rebuild their lives.

HUD also encourages WMHA to share their best practices in developing a strong domestic violence, dating violence, sexual assault, or stalking education and service program. Such practices have included:

- Participating in regular domestic violence working groups with domestic violence victim advocates, legal aid services, and law enforcement agencies;
- Inviting domestic violence victim advocates to speak to resident groups, WMHA governing board, and employees;
- Providing easy-to-access and easy-to-understand information pamphlets;
- Facilitating counseling and support groups through available community space;
- Working with domestic violence victim advocates to make policy changes to better protect victims; and
- Establishing tenant admission preferences to prioritize victims for housing assistance, including victims referred through the local Continuum of Care (CoC).

These efforts can also help WMHA identify local domestic violence experts for participation in grievance hearings, informal hearings, or informal reviews.

The U.S. Department of Justice Office on Violence Against Women maintains resources that may be of assistance to communities seeking to learn more about domestic violence, dating violence, sexual assault, and stalking, or those seeking contact information for national advocacy groups. This information is available at <https://www.justice.gov/ovw>.

3-III.B.14 Lease Bifurcation

In accordance with 24 CFR 5.2009(a), PHAs or owners may choose to bifurcate a lease, or remove a household member or lawful occupant from a lease to evict, remove, terminate occupancy rights, or terminate assistance to such member who engage in criminal activity

directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual. Bifurcation must be consistent with the regulations.

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. For example, some jurisdictions may prohibit partial or single tenant evictions.

Court-ordered eviction of the perpetrator pursuant to applicable laws results in the underlying lease becoming null and void once the WMHA regains possession of the unit. The WMHA or owner would then execute a new lease with the victim. HUD also encourages WMHA and owners to simultaneously attempt to reach agreement to the mutual termination of the lease, if it is safe to do so.

Owner Lease Bifurcation

In instances where the owner allows for lease bifurcation as remedy to an incident of domestic violence, dating violence, sexual assault, or stalking, the owner may (but is not required to) bifurcate the lease, which evicts or removes the perpetrator from the unit without evicting or removing the victim from the unit. (See 24 CFR 5.2009(a).) If the owner does bifurcate the lease, the owner must immediately notify the WMHA of the change in the lease and provide a copy of all such changes to the WMHA. (See 24 CFR 982.308(g) for tenant-based HCV and 24 CFR 983.256(e) for PBV.) Except for WMHA-owned units, the WMHA is not a party to the lease and therefore cannot bifurcate a lease agreement between an owner and a tenant. It is up to the owner to bifurcate the family's lease to evict or remove the perpetrator from the unit.

Bifurcating the lease and evicting certain family members may have consequences for both the owner and the family. For example, a change in family size and composition may impact the determination of the appropriate number of bedrooms and the amount of subsidy paid by the WMHA to the owner. To the extent that the change would adversely impact the subsidy standard for the family, WMHA may grant an exception to its established subsidy standards if the WMHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members, or other personal circumstances. (See 24 CFR 982.402(b)(8).) WMHA may adopt a policy to include an instance of domestic violence, dating violence, sexual assault, or stalking under other personal circumstances.

A best practice in the event an owner will bifurcate the lease as a result of domestic violence, dating violence, sexual assault, or stalking, is for the owner to refer the family to the WMHA in advance of the bifurcation. This may allow the WMHA to offer assistance or otherwise provide service referrals to the victim in advance of the bifurcation.

3-III.B.15 Reasonable Time to Establish Eligibility Following Bifurcation of a Lease.

The VAWA Final Rule at 24 CFR 5.2009(b) establishes a reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation in situations where the individual who was evicted or whom assistance was

terminated was the eligible tenant. This would only be an issue for mixed families, where assistance is being provided to the perpetrator and the victim is a member of the household who hasn't contended eligible immigration status.

If WMHA or owner exercises the option to bifurcate a lease, and the individual who was evicted or for whom assistance was terminated was the eligible tenant, the covered housing provider must provide to any remaining tenant or tenants that were not already eligible a period of 30 calendar days from the date of bifurcation of the lease to:

- a) Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease;
- b) Establish eligibility under another covered housing program; or
- c) Find alternative housing.

The VAWA Final Rule allows for 90 days except where prohibited by statute. HUD clarified in the VAWA Final Rule that the 90-day time period does not apply to the HCV and Public Housing programs. **Assistance is limited to 30 days if the remaining family member has not submitted documentation evidencing a satisfactory immigration status or a pending appeal of a verification determination of the family member's immigration status.** This is because Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a(d)(4)(A)) requires that assistance under these programs be terminated after 30 days if the remaining family members cannot indicate they have a satisfactory immigration status.

HCV – The WMHA must not stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The WMHA may pay HAP for the full month if the 30-day period will end mid-month. If the victim requests to move, the WMHA should not issue a new voucher until eligibility has been determined.

For the HCV program, the victim and WMHA do not have to wait for an owner to bifurcate the lease for the WMHA to offer continued assistance for the unit (where victim is planning to stay in the unit). While the family would not have to wait for bifurcation to occur, it would have to wait for eligibility to be determined if the victim was planning on moving with the assistance.

3-III.B.16 Termination of the Victim Due to “Actual and Imminent Threat” and Any Violation Not Premised on an Act of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

The VAWA Final Rule at 24 CFR 5.2005 prohibits denial of admission or assistance, termination from participation, or 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.

However, the VAWA Final Rule does not prohibit WMHA or owner from evicting or terminating assistance 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. (See 24 CFR 5.2005(d)(2).)

The rule does not prohibit the WMHA or owner from terminating assistance or evicting a tenant if the WMHA or owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to the property would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 24 CFR 5.2005(d)(3).) In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the WMHA 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.

Eviction or termination of assistance should only be used by WMHA or owner when there are no other actions or remedies to reduce or eliminate the threat, including when actions or remedies are unavailable. This is the case even when time periods could reasonably be called “immediate.” Some possible actions for WMHA or owner to take to reduce or eliminate the threat are listed at 24 CFR 5.2005(d)(4). HUD encourages WMHA and owners to work with local law enforcement to prevent or remedy instances where a threat may occur to better protect the victim and other tenants in the community.

WMHA may consider the following actions to reduce or eliminate an “actual and imminent” threat:

- a) Barring the perpetrator from the property;
- b) Changing the victim’s locks;
- c) Installing basic security features (e.g., better lighting or an alarm);
- d) Encouraging the victim to seek an emergency transfer;
- e) Allowing an early lease termination;
- f) Allowing the victim temporary absence from the assisted unit;
- g) Helping the victim access available services and support (e.g., providing information for a local victim service provider and civil legal assistance providers, to help the victim get any necessary court orders); and/or
- h) Working with police and victim service providers to develop a safety plan for the property and victim.

3-III.B.17 Establishing Waiting List Preferences

The VAWA Final Rule clarifies that WMHA may establish preference for victims of dating violence, sexual assault, and stalking, in addition to domestic violence. (See 24 CFR 960.206(b)(4), 982.207(b)(4).) WMHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence, dating violence, sexual assault, or stalking.

WMHA's system of local preferences must be based on local housing needs and priorities by using generally accepted data sources and information obtained through the PHA Plan public comment process. HUD encourages WMHA to work collaboratively with health care providers, social service providers, homeless services providers, Continuums of Care (CoCs), and local offices of government and community organizations to establish a system of preferences based on local housing needs collectively identified by the community.

HUD recommends that WMHA's local housing needs assessment specifically include people experiencing domestic violence, dating violence, sexual assault, and stalking.

WMHA may create a preference or limited preference specifically for people who are referred by a partnering service organization or consortia of organizations. The WMHA may not limit the source of referrals to an agency, organization, or consortia that denies its services to members of any Federally protected class under fair housing laws, e.g., race, color, religion, national origin, sex, disability, or familial status. For example, WMHA may not limit the source of referrals to only service providers of female victims of domestic violence, dating violence, sexual assault, or stalking.

WMHA Policy

Referral by an agency (10 points): Referred by a partnering service organization.

Domestic Violence

This is defined by the VAWA rules by HUD. Families that can demonstrate they have been victims of domestic violence and defined by the Act will be eligible for this preference. Victims must present the following at a minimum

The documentation must include at least one of the two elements:

A signed statement by the victim that provides the name of the perpetrator (if known and no fear of retaliation) and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking. and;

One of the following:

- A police or court record documenting the actual or threatened abuse
- A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

3-III.B.18 Homeownership: Move with Continued Tenant-Based Assistance

The VAWA Final Rule introduced two new protections under the Homeownership Voucher Program at 24 CFR 982.637.

1. An exception was created to the prohibition of PHAs offering continued tenant-based assistance for occupancy of a new unit so long as any family member owns any title or other interest in the prior home. (See 24 CFR 982.637(a)(2).) When a family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, and the move is needed to protect the health or safety of the family or family member (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move), such family or family member may be assisted with continued tenant-based assistance even if such family or family member owns any title or other interest in the prior home.
2. An exception was created to the flexibility PHAs have to establish policies that prohibit more than one move by the family during any one-year period. A PHA must make an exception to its policy on number of moves for when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. (See 24 CFR 982.637(a)(3).)

A PHA must not continue homeownership assistance to a participant after commencing tenant-based rental assistance. Per 24 CFR 982.352(c)(2), a family may not receive the benefit of tenant-based assistance while receiving the benefit of other Section 8 assistance (including other tenant-based assistance). Additionally, per 24 CFR 982.633(a), if the family moves out of the home, the PHA may not continue homeownership assistance after the month when the family moves out.

Once a PHA has commenced tenant-based rental assistance and the participant is no longer a participant in the homeownership program, the participant's sale of the home or the participant's potential loss of the home due to foreclosure must not affect the participant's continued participation in the HCV program. Specifically, PHA's obligation under 24 CFR

982.638(d) to terminate voucher homeownership assistance upon mortgage foreclosure only applies while the participant is still in the homeownership program and does not apply to the termination of tenant-based rental assistance for a participant who is no longer in the homeownership program. Additionally, 24 CFR 982.625(h) requires that the PHA must not recapture voucher homeownership assistance on the sale or refinancing of a home purchased with assistance under the homeownership option.

3-III.B.19 Owners in the HCV Program

Notification to Owners

Educating owners on their rights and responsibilities under VAWA may lead to greater compliance, resulting in increased victim safety. HUD encourages PHAs to identify opportunities to provide notice and/or training to owners participating in the HCV program of their rights and obligations under VAWA.

WMHA is encouraged to attach the WMHA's Emergency Transfer Plan, and form HUD-5382 to the notice they provide to owners. To assist the efforts of WMHA in providing notice to owners, a template that can be amended to reflect local needs and protections has been attached to PIH 2017-8. The use of this template is entirely optional and HUD encourages WMHA that choose to issue notice to owners to determine what is most appropriate for their community. WMHA may also choose not to provide notice, instead relying on the VAWA information contained in the HAP contract.

Mandatory Owner Obligations Under VAWA

The following chart lists mandatory obligations of owners under VAWA. The chart references the section of this Notice that describes in more detail the specific obligation.

Activity	Description
Tenancy Screening and Eviction	An Owner must not deny the tenancy of an applicant, or evict a tenant on the basis or as a <i>direct result</i> of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation or occupancy.

<p>Certification or Documentation</p>	<p>Owners are not required to ask for documentation when an individual presents a claim for VAWA protections. If the owner chooses to request an individual to document their claim of domestic violence, dating violence, sexual assault, or stalking, 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). Exceptions to this provision in cases of conflicting documentation.</p>
<p>Victim Confidentiality</p>	<p>Information submitted to an owner, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in confidence.</p>

Lease Revision Resulting from Domestic Violence, Dating Violence, Sexual Assault, or Stalking

WMHA may encourage owners to allow tenants out of their lease if a family member is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and the family needs to move out to protect the health or safety of the victim. The WMHA may not terminate assistance if the family moves out of the unit with or without prior notification as required by 24 CFR 982.354, in violation of the lease in order to protect the health or safety of the victim, as the victim reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit. Similarly, if the family moves out of the assisted unit in violation of the lease in order to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit, and has otherwise complied with all other obligation under the HCV program, the family may receive a voucher from the WMHA and move to another jurisdiction. (See 24 CFR 982.353(b).) However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family’s move or request to move is not required to believe that they were threatened with imminent harm from further violence if they remained in the dwelling unit.

State or local law may have protections for victims beyond those in VAWA or HUD regulations. Nothing in VAWA should be construed to supersede any provision of any Federal, State, or local law that provides greater protection than VAWA for victims of domestic violence, dating violence, sexual assault, or stalking; as such, owners in jurisdictions that provide greater protections for victims must grant those protections for victims.

When the entire family moves from the contract unit for any reason, including to protect the health or safety of the family member that is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, the HAP contract terminates automatically. The WMHA must not pay HAP to the owner of the previously occupied unit once the family moves out.

If the perpetrator remains in the unit, the WMHA continues to pay the owner until the WMHA terminates the perpetrator from the HCV program.

If the HAP contract terminates for any reason, the lease terminates automatically. (See forms HUD-52641, 52642, and 52530(c).) If a family moves out of the property at any time during the month, the owner may keep the housing assistance payment (HAP) for the month when the family moves out of the unit (24 CFR 982.311(d)(1)).

In the event the WMHA executes a new HAP contract with a new owner after the victim moves out of the original unit to protect his or her health or safety, the WMHA must not disclose the victim's new address (or any other information collected on the new HAP contract) to the original owner, as the information collected in the HAP contract is protected by the Privacy Act.

3-III.B.20 Assistance Under More Than One Covered Housing Program

When assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

Where housing is covered under multiple HUD programs, the responsible housing provider under each program will provide the required VAWA Notice of Occupancy Rights and certification form, and tenants may request emergency transfers or lease bifurcation under any applicable program, unless prohibited from doing so because of statutory constraints.

3-III.B.21 Fair Housing and Nondiscrimination

Housing providers must comply with all applicable fair housing and civil rights laws and requirements in the implementation of VAWA requirements. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. (See 24 CFR 5.105(a).) For example, housing providers must provide reasonable accommodations for individuals with disabilities, such as a reasonable accommodation to any requirement that the emergency transfer request be in writing, and must help certain individuals put their request in writing, if requested or where the need for such assistance is obvious. Individuals with disabilities may request a reasonable accommodation at any time to any program rules, policies, or practices that may be necessary. Housing providers must meet physical accessibility requirements when making emergency and

other transfers, which may include making physical modifications to dwelling units and common use areas.

Housing providers must also ensure that communications and materials are provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and their implementing regulations.

Housing providers must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed, e.g., Braille, audio, large type, assistive listening devices, and sign language interpreters. Housing providers must also take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals. Please see the Department's Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance), http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.

3-III.C. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.553(a)]

HUD requires the WMHA to deny assistance in the following cases:

Any member of the household has been evicted from federally assisted housing in the last 5 years for drug-related criminal activity. HUD permits but does not require the WMHA to admit an otherwise-eligible family if the household member has completed a WMHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).

The WMHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the WMHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the WMHA, or the person who committed the crime, is no longer living in the household.

- The WMHA determines that any household member is currently engaged in the use of illegal drugs.

WMHA Policy

Currently engaged in is defined as any use of illegal drugs during the previous six months.

- The WMHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

WMHA Policy

In determining reasonable cause, the WMHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. The WMHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program
- If a family member has been convicted of manufacturing or producing methamphetamine (speed) on an assisted housing site, Section 8 housing, or in Public Housing.
- Denied if convicted for murder, rape, and/or other sex-related crimes, kidnapping, arson, production or manufacturing of methamphetamine, or lifetime sex offenders.

WMHA Policy

Any person who, within five (5) years of the date of application for assistance with the Authority, has previously been evicted from any assisted rental housing program because of criminal activity, or drug-related criminal activity shall not be eligible for assistance with the Authority.

The WMHA finds that those persons who have demonstrated a history of criminal activity involving certain crimes of physical violence, certain crimes relating to personal property, certain crimes relating to illegal narcotics activity, and certain other criminal acts, present a significant danger to the current law-abiding residents of the community, as such criminal activity represents a clear and immediate threat to their health, safety and continued well-being. Accordingly, any person who has committed one or more of the following specified criminal offenses, as evidenced by arrest, formal charge, conviction or other competent evidence, and has not thereafter demonstrated complete rehabilitation by remaining conviction-free or arrest-free for a period of at least three (3) years after the date of the most recent occurrence, arrest, formal charge, conviction, release from imprisonment, or the successful termination of probation, community control or parole, whichever shall occur later, *shall be denied* consideration for tenancy with WMHA assistance.

For the purposes of this policy, an “arrest” shall include an actual physical arrest by a law enforcement officer, a notice-to-appear issued by a law enforcement officer, an information, indictment or other charging document. A “conviction” shall include either a formal adjudication of guilt or a withholding of adjudication of guilt by a court of competent jurisdiction, whether or not such finding is predicated upon a jury verdict or plea of guilty or nolo contendere.

3-III.D. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE

HUD permits, but does not require the WMHA to deny assistance for the reasons discussed in this section.

Criminal Activity [24 CFR 982.553]

HUD permits, but does not require, the WMHA to deny assistance if the WMHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the family would receive assistance, certain types of criminal activity.

WMHA Policy

If any household member is currently engaged in or has engaged in any of the following criminal activities, within the past three years, the family will be denied assistance.

Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].

Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

Criminal activity that may threaten the health or safety of property owners, management staff, and persons performing contract administration functions or other responsibilities on behalf of the WMHA (including a WMHA employee or a WMHA contractor, subcontractor, or agent).

Evidence of such criminal activity includes, but is not limited to:

Conviction for drug-related or violent criminal activity within the past 3 years.

Circumstantial evidence, a preponderance of evidence, or any arrests for drug-related or violent criminal activity within the past 3 years.

Any record of eviction from federally assisted housing as a result of criminal activity within the past 3 years.

If on probation or parole for any conviction, assistance will be denied until discharged from probation or parole.

Convictions of any household member for crimes of physical violence including but not limited to intentionally or recklessly causing another's death, arson, rape, sexual assault and convictions which require one to register as a sex offender.

In making its decision to deny assistance, the WMHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the WMHA may, on a case-by-case basis, decide not to deny assistance.

Previous Behavior in Assisted Housing [24 CFR 982.552(c)]

HUD authorizes the WMHA to deny assistance based on the family's previous behavior in assisted housing:

WMHA Policy

The WMHA **will not** deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program or the Welfare to Work voucher program.

The WMHA **will** deny assistance to an applicant family if the family was a previous participant in a Section 8/Housing Choice Voucher or other federally assisted housing program and violated their family obligations.

If the family's assistance was terminated for the following reasons the family will be denied assistance:

The family failed to provide information that the WMHA or HUD determines is necessary in the administration of the program.

The family failed to provide complete and true information to the WMHA.

The family failed to disclose and verify social security numbers and submit and sign consent forms for obtaining information.

The family failed to allow WMHA to inspect the unit at reasonable times and after reasonable notice.

The family failed to keep scheduled appointments with WMHA staff.

The family failed to notify WMHA and the owner before the family moved out of the unit or terminated the lease on notice to the owner (skip).

The family failed to promptly notify inform WMHA of the birth, adoption, or court-awarded custody of a child.

The family failed to promptly notify WMHA if any family member no longer resides in the unit.

The family failed to obtain WMHA approval prior to having a foster child or live-in aide reside in the unit.

The family failed to supply any information or certification requested by WMHA to verify that the family is living in the unit, or relating to family absence from the unit, including any WMHA-requested information or certification of the purpose of family absences. Failure of the family to cooperate with WMHA for this purpose. Failure to promptly notify WMHA of absence from the unit.

If the family's assistance was terminated for the following reasons the family will be denied assistance:

The family failed to request WMHA approval prior to adding family members to the household (other than additions by birth, adoption, or court-awarded custody).

The family failed to primarily use the assisted unit for residence by the family and the unit was not the family's only residence (except owner-approved legal profit-making activities incidental to the use of the unit).

If any family member owned or had any interest in the assisted unit (other than in a cooperative, or the owner of a manufactured home leasing a manufactured home space).

If any family member committed any serious and/or repeated violation of the lease and the lease violation(s) resulted in termination of housing assistance.

If the family subleased or left the unit or assigned the lease or transferred the unit.

If any family member received Housing Choice Voucher tenant-based program assistance while receiving another housing subsidy, for the same unit or a different unit under any Federal, state or local housing assistance program.

If any family member damaged the unit or premises (other than damage from ordinary wear and tear) or permitted any guest to damage the unit or premises, and such damage resulted in termination of assistance due to family's failure to repair the damages.

Any family member has been evicted from federally assisted housing in the last five years.

Any PHA has ever terminated assistance under the program for any member of the family subject to timeframes as provided in this section.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program in the last five years.

The family owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs, unless the family repays the full amount or entered in a repayment agreement of the debt prior to being selected from the waiting list.

If the family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.

The family has breached the terms of a repayment agreement entered into with the WMHA or other PHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.

A family will be given the opportunity to pay the monies owed within thirty days of the eligibility interview. If the family fails to meet their obligation to repay the debt, the applicant will be denied assistance.

A family member has engaged in or threatened violent or abusive behavior toward WMHA personnel in the last five years.

Abusive or violent behavior towards WMHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to deny assistance for all the above-noted timeframes, the WMHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the WMHA may, on a case-by-case basis, decide to reduce the period of ineligibility.

Owning Real Property Suitable for Occupancy [24 CFR 5.618 (a)(ii)]

A family cannot receive benefits if they have “present ownership interest in, a legal right to reside in, and the effective legal authority to sell, based on state or local laws of the jurisdiction where the property is located, real property that is suitable for occupancy by the family as a residence.”

The restriction on owning real property does not apply to:

- A family that receives assistance for the property under the Housing Choice Voucher Program for:
 - » Manufactured home (24 CFR 982.620)
 - » Homeownership Option • Property jointly owned with someone else, and occupied by the other owner who is not a member of the household receiving benefits.
- A victim of domestic violence, dating violence, sexual assault, or stalking.
- • A family that is offering the property for sale.

A family that owns a property may show it is not “suitable for occupancy” if it:

- Does not meet the disability-related needs for all members of the family.
 - » Examples: Physical needs, proximity to transit, need for additional bedrooms or space, etc.
- Is not sufficient for the size of the family.
- Is located so as to be a hardship for the family.
 - » Example: the location would be a hardship for the family’s commute to work or school
- Is unsafe because of physical condition.
 - » Unless issues can be “easily remedied”
- Cannot be a residence per local or state laws.

» Example: a storefront zoned for commercial use only

3-III.E. SCREENING

Screening for Eligibility

WMHA is authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists the WMHA in complying with HUD requirements and WMHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records the WMHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

WMHA Policy

The WMHA will perform a criminal background check through local law enforcement and/or online search engines such as, but not limited to, County Court Dockets, for every adult household member.

The WMHA will perform a check on the National Sex Offenders web site for every adult household member.

The WMHA may require a criminal background check through other law enforcement entities if local information is not available.

WMHA is required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553(a)(2)(i)].

WMHA will verify the information provided by the applicant by searching the Dru Sjodin National Sex Offender Database. The Dru Sjodin National Sex Offender Database is an online, searchable database, hosted by the Department of Justice, which combines the data from individual state sex offender registries. The website for the database is located at: <http://www.nsopw.gov>. A record of this screening, including date performed, will be retained. WMHA must destroy the results of the search in accordance with 24 CFR 5.903 (g) unless required by other provisions of the law to retain the documents used to determine eligibility. If required to retain, WMHA must retain the results of the search, along with the application, for a period of three years if the applicant is denied housing or, if the applicant is admitted to the program, for the term of tenancy plus three years.

If the WMHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the WMHA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information **prior to a denial of admission**. The family will be given 10 business days to dispute the accuracy and relevance of the information. [24 CFR 5.903(f) and 5.905(d)]. The record will be provided to the applicant in person upon presentation of valid government-issued photo identification. The family must be given the opportunity and may remove the life-time sex offender to gain eligibility status for the other

members. WMHA will require documentation of the removal in accordance with verification requirements.

Screening for Suitability as a Tenant [24 CFR 982.307]

The WMHA has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The WMHA may opt to conduct additional screening to determine whether an applicant is likely to be a suitable tenant.

WMHA Policy

The WMHA will not conduct additional screening to determine an applicant family's suitability for tenancy.

Criminal background checks will be performed at the following points:

A. Final Eligibility Determination

When the family's name comes to the top of the wait list, before the family is offered a voucher, a criminal background screening will be completed to determine whether any violent criminal activity or drug-related criminal activity has occurred between wait listing and final eligibility determination.

B. Investigation Initiated by a Tip, Referral, or Complaint

Upon receiving a tip, referral, or complaint, a criminal background screening may be performed if it is possible that the screening may provide information pertinent to the investigation.

The owner is responsible for screening and selection of the family to occupy the owner's unit. The WMHA must inform the owner that screening and selection for tenancy is the responsibility of the owner. An owner may consider a family's history with respect to factors such as: payment of rent and utilities, caring for a unit and premises, respecting the rights of other residents to the peaceful enjoyment of their housing, criminal activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy.

HUD requires the WMHA to provide prospective owners with the family's current and prior address (as shown in WMHA records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits the WMHA to provide owners with additional information, as long as families are notified that the information will be provided, and the same type of information is provided to all owners.

The WMHA may not disclose to the owner any confidential information provided to the WMHA by the family in response to a WMHA request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

WMHA Policy

The WMHA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information if requested.

The WMHA will not provide any additional information to the owner, such as tenancy history, criminal history, credit background, etc.

3-III.F. CRITERIA FOR DECIDING TO DENY ASSISTANCE

Evidence [24 CFR 982.553(c)]

WMHA Policy

The WMHA will use the concept of the preponderance of the evidence as the standard for making all admission decisions.

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 show that the fact sought to be proved is more probable than not.

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Consider all evidence. In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence, regardless of who produced it.

Equally balanced. If the weight of the evidence is equally balanced, or if you are unable to determine which side of an issue has the preponderance, the party who has the burden of proof has not established such issue by a preponderance of the evidence.

Consideration of Circumstances [24 CFR 982.552(c)(2)]

HUD authorizes the WMHA to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandated (see Section 3-III.B).

WMHA Policy

The WMHA will consider the following factors prior to making its decision:

The seriousness of the case, especially with respect to how it would affect other residents

The effects that denial of assistance may have on other members of the family who were not involved in the action or failure

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

The WMHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

VASH will only consider over-income and lifetime sex-offender for ineligibility.

Removal of a Family Member's Name from the Application [24 CFR 982.552(c)(2)(ii)]

Should the PHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must deny admission to the family [Notice PIH 2012-28].

For other criminal activity, the PHA may permit the family to exclude the culpable family members as a condition of eligibility. [24 CFR 982.552(c)(2)(ii)].

WMHA Policy

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the assisted unit.

The WMHA may terminate assistance or an owner/manager may bifurcate the lease to terminate assistance to remove a lawful occupant or tenant who engages in criminal acts of violence to family members or others without terminating assistance/evicting victimized lawful occupants.

Before admission to the program, the family must present evidence of the former family member's current address upon WMHA request.

Other Changes in Family Composition and Fraud Reduction

If the family reports the loss of a child family member, either in foster care or in the care of another guardian, court or legal documentation is needed. Families that remove children from their household composition will have their unit size reduced and WMHA will move families with a higher amount of family members into the larger units as a reasonable accommodation. If it is found the child is living in the household that had the child removed, it will be grounds for fraud and termination from the program.

The WMHA may waive this requirement at the PHA's discretion.

Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]

If the family includes a person with disabilities, the WMHA’s decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

WMHA Policy

If the family indicates the behavior of a family member with a disability is the reason for the proposed denial of assistance, the WMHA will determine whether the behavior is related to the disability. If so, upon the family’s request, the WMHA will determine whether alternative measures are appropriate as a reasonable accommodation. The WMHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

3-III.G. NOTICE OF ELIGIBILITY OR DENIAL

Eligible for Assistance

If the family is eligible for assistance, the WMHA will notify the family when it extends the invitation to attend the voucher briefing appointment, as discussed in Chapter 5.

If the WMHA determines that a family is not eligible for the program for any reason, the family must be notified promptly. The notice must describe (1) the reasons for which assistance has been denied (2) the family’s right to an informal review, and (3) the process for obtaining the informal review [24 CFR 982.554 (a)]. See Chapter 16, for informal review policies and procedures.

WMHA Policy

The family will be notified of a decision to deny assistance in writing within 15 business days of the determination.

If a WMHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the WMHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. The WMHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)]

WMHA Policy

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible the WMHA will notify the family in writing of the proposed denial and, upon request, will provide a copy of the record to the applicant and to the subject of the record. The record will be provided to the applicant in person upon

presentation of valid government-issued photo identification. The family will be given 15 business days to dispute the accuracy and relevance of the information. If the family does not contact the WMHA to dispute the information within that 15-business day period, the WMHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

Notice requirements related to denying assistance to noncitizens are contained in Section 3-II.B.

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

The term *person with disabilities* means a person who has any of the following types of conditions:

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:

Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; *or*

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.
- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C.6001(8)], which defines developmental disability in functional terms as:

A severe, chronic disability of a person 5 years of age or older which:

 - Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - Is manifested before the person attains age twenty-two;
 - Is likely to continue indefinitely;
 - Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and responsive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; *and*
 - Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or

extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.”

- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.

A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program.

For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term person with disabilities refers to an individual with handicaps.

Individual with Handicaps [24 CFR 8.3]

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

- (1) Physical or mental impairment includes:
 - (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; Genito-urinary; hemic and lymphatic; skin; and endocrine; or
 - (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.
- (2) *Major life activities* mean functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- (3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means:

- (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
- (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
- (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

Exhibit 3-2: HCV STUDENT ELIGIBILITY CRITERIA
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Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937

Summary

On December 30, 2005, HUD published a final rule (FR-5036-F-01), entitled, “Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937,” implementing section 327 of the Appropriations Act of Fiscal Year (FY) 2006.

In brief, the law and final rule require that if a student is enrolled at an institution of higher education, is under the age of 24, is not a veteran, is unmarried and does not have a dependent child, is not disabled, is individually ineligible for section 8 assistance, or the student’s parents are, individually or jointly, ineligible for assistance, no section 8 assistance can be provided to the student.

To assist public housing agencies (PHAs) in implementing the new law and final rule, and to ensure that section 8 assistance is provided to those truly in need of and eligible for assistance, the Department issued supplement guidance on April 10, 2006, entitled, “Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplemental Guidance.”

Following are two groups of questions and answers: Group I and Group II concerning Section 327 of the Act and the implementing final rule. Group III is definitions.

Group I:

- Section 8 eligibility
- Income determinations
- Rent

Group II:

- Applicability
- Agency policies
- Reexamination of Family Income
- Reexamination of Family Income and Termination of Assistance
- Pro-ration of Assistance

Group III:

- HCV Student Rule Definitions

Group I: Section 8 Eligibility, Income Determinations, and Rent

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
1	Sections 327(a) and (b)	Section 5.612 and 5.609(b)(9)	Do the Act and final rule apply to the Public Housing program?	No. The Act and the implementing final rule (FR-5036-F-01) do not apply to the Public Housing program. The Act and final rule apply only to Section 8 programs.
2	Sections 327(a) and (b)	Section 5.612 and 5.609(b)(9)	Do the Act and final rule apply to students that currently reside with parents in a section 8 rental assisted unit or students applying for section 8 assistance with their parents?	No. The new law and final rule do not apply to these students. The law and final rule focus on students who are under the age of 24, are not veterans, are unmarried, or are without children who seek or receive section 8 assistance separate from their parents.
3	Section 327(a)(1)	Section 5.612(a)	Do the student eligibility requirements apply to full and part-time students who are enrolled at an institution of higher education?	Yes. The eligibility requirements apply to both full and part-time students enrolled at an institution of higher education, as defined under 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).
4	Section 327(a)(1)-(6)	Section 5.612(a)-(f)	Do the Act and final rule provisions mean that a student enrolled at an institution of higher education who is under the age of 24, not a veteran, unmarried, and does not have any dependent children applying for Section 8 assistance in the Section 8 program is ineligible for Section 8 assistance?	Yes. The Act and final rule provisions mean that a student enrolled at an institution of higher education who is under the age of 24, not a veteran, unmarried, and does not have any children IS NOT ELIGIBLE for Section 8 programs, jointly, are income eligible for Section 8 assistance.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
5	Section 327(a)(6)	Section 5.612(f)	Concerning the eligibility of parents, individually or jointly, do parents have to meet all HUD program eligibility requirements in order for the student to be eligible for Section 8 housing assistance?	No. Since Section 327 is focused on income eligibility of a higher education student, the Department interprets the section's reference to the eligibility of the parents to also refer to income eligibility.

6	Section 327(a)(6)	Section 5.612(f)	Also concerning the eligibility of parents, individually or jointly, how does the PHA know whether to determine the eligibility of the parents “individually” or “jointly”? Are there any established criteria a PHA may use in making this determination?	<p>PHAs may adopt and implement the following criteria for determining whether to obtain the declaration and certification of income from parents, individually or jointly.</p> <ul style="list-style-type: none"> • If the student’s parents are married and living with each other, obtain the declaration and certification of income from each parent. • If he student’s parent is widowed or single, obtain the declaration and certification of income from that parent. • If the student’s parents are divorced or separated, obtain the declaration and certification of income from each parent. • If the student has been living with one of his or her parents and has not had contact with or does not know where to contact his or her other parent, obtain from the student a certification under penalty of perjury, addressing the circumstances (including a statement hat the student has not received financial assistance from the parent) and obtain from the parent whom the student has been living or has contact with the declaration and certification of income.
7	Section 327(a)(6)	Section 5.612(f)	In determining the eligibility of the parent(s) to receive assistance, which HUD Income	The PHA should use the Income Limit for the area where the parent(s) resides (24 CFR

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
			Limit area should the PHA use: the income limit for the area where the student intends to reside, or the income limit for the area where the parent(s) currently resides? For example, if the student is applying for Section 8 housing assistance in Johnson City, Tennessee, but the parent(s) lives in New York City, New York, which HUD Income Limit area should be used in determining the parent(s) program eligibility?	982.201(b)(4)). In the example provided, the PHA should use the income limit for the area in New York where the parent(s) lives.
8	Section 327(a)(6)	Section 5.612(f)	Which income limit (i.e., extremely low income, very-low income, or low income) should a PHA use in determining the income eligibility of the parent(s)?	Both students and parents must meet the low-income limit.
9	Section 327(a)(6)	Section 5.612(f)	How should the PHA define parents? What if the student lives with a grandparent, aunt, uncle, guardian, etc., do they have to meet the qualifications also?	For purposes of the student eligibility restrictions, and consistent with longstanding HUD policy regarding eligibility for the section 8 programs, the term “parents” means the biological or adoptive parents, or guardians (e.g., stepparents, grandparents, aunt/uncle, godparents, etc.), or such other definition as may be adopted by the PHA, Owner, or Manager through appropriate amendment to its admissions policies.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
10	Section 327(a)(6)	Section 5.612(f)	<p>In admitting college students to Section 8 rental programs, it appears that the PHA will now have to determine the eligibility of the:</p> <ol style="list-style-type: none"> 1. Student 2. Parent(s), unless the income of demonstrate to the absence of, or his or her independence from Parents 3. Student family household 	<p>Correct. The PHA will have to determine the eligibility of each student family member, parents (in cases where the student has not established independence from parents), and the student family household as a unit. For example, three college students applying for Section 8 rental housing assistance, as a family unit, would have to be income eligible for Section 8 assistance (24 CFR 982.201). Also, under 5.612(f), each student individually would have to be eligible and the parent(s) of each student would have to be the student's parents is not relevant or the student can eligible for Section 8 rental assistance, unless the student can show the income of the student's parents is not relevant or the student can demonstrate to the absence of, no financial support from parent(s) or his or her independence from, parents.</p>

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
11	Section 327(b)	Section 5.609(b)(9)	What exactly are the types of “financial assistance” under the Higher Education Act of 1965 that must be considered as income under Section 327?	Types of financial assistance under the Higher Education Act of 1965 would include: the Pell Grant, the Federal Supplemental Educational Opportunity Grant (FSEOG), Academic Achievement Incentive Scholarships, State assistance under the Leveraging Educational Assistance Partnership Program, the Robert C. Byrd Honors Scholarship Program, and federal Work-Study (FWS) programs. Although considered “financial assistance” under the Higher Education Act of 1965, Perkins loans, Stafford loans, and Plus loans are not considered income for purposes of determining student eligibility for Section 8 housing assistance. For complete information, see Title IV, Part A, under the Higher Education Act of 1965, as amended, located at: http://www.ed.gov/policy/highered/leg/hea98/index.html
12	Section 327(b)	Section 5.609(b)(9)	Is the income students receive from federal Work-Study (FWS) programs considered earned income for purposes of determining income eligibility?	Yes. It is considered financial assistance under the Higher Education Act of 1965. If its financial assistance under the Act, then it is counted as income under 327.

Group II: Applicability, Agency Policies, Verifications/Reexaminations, Continuation and Termination of Assistance (24 CFR 982.552(b)(5)).

	Category	Question	Answer
13	Applicability	Will the students currently participating in HUD's Section 8 program be grandfathered into the program? Does the rule apply to existing Section 8 student participants?	No. Neither section 327 nor the final rule provides for a grandfathering clause for current Section 8 student participants. Therefore, section 327 and the final rule apply to existing Section 8 student participants. However, as previously stated, the law and final rule do not focus on students residing with their parents in a section 8 assisted unit or students who reside with their parents who are applying to receive section 8 assistance. Rather, it focuses on certain students who seek or receive Section 8 assistance separate from their parents.
14	Agency Policies	Do PHAs have to update their Administrative Policies (24 CFR 982.54) before implementing Section 327 and final rule?	Yes. PHAs must immediately update their Administrative Plans to reflect discretionary policies concerning the new income eligibility restrictions for students (24 CFR 982.54).
15	Verifications	Will PHAs now be required to obtain income information on the parents, in determining the eligibility of parents for Section 8 rental assistance?	Yes. To satisfy this requirement, PHAs may accept from a parent (s) a declaration <and> certification of income, which includes a penalty of perjury. The PHA retains the right to request and review, supporting documentation at any time the PHA determines the declaration, certification, and eligibility are in question. Supporting documentation includes, but is not limited to: IRS tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, Temporary Assistance to Needy Families (TANF) award letter, Social Security Administration (SSA) award letter, other official and authentic documents from a federal, State, or local agency.

	Category	Question	Answer
16	Verifications	Since Section 8 assistance can no longer be provided to certain students (24 CFR 5.612), and this may include a parent's income reexamining eligibility test, does this mean that PHAs will have to verify the parent's income eligibility annually, during reexamination, to determine whether the student continues to be eligible for the program after admissions? Prior to the effective date of the final rule, PHAs administering Section 8 programs did not have to verify the income of eligibility (i.e., family meets income limits) of the family after admissions.	PHAs administering the Section 8 program will have to verify the income eligibility of the parent(s), at least annually, to determine whether the student remains eligible for the Section 8 program. In accordance with 24 CFR 982.552(b)(5), if after the parent's income, the student is determined to be ineligible for Section 8 assistance, as specified in 24 CFR 5.612, the PHA must terminate assistance to that family member (i.e., student). Again, the family is entitled to an informal hearing to discuss the termination of assistance.
17	Reexamination of Family Income	The preamble of the final rule "strongly encourages PHAs, Owners, and Management Agents administering Section 8 programs to, as soon as it is practicable, recertify existing Section 8 participants that have family members that may meet the requirements of Section 327 of the Act." What does this mean? What happens if the PHA cannot recertify Section 8 participants until the family's next annual recertification? Will the PHA be penalized?	HUD understands that some PHAs may not have the resources or the capability to recertify participant family income until the family's next annual recertification. However, in order to remedy the problem of ineligible college students participating in HUD's Section 8 rental assistance programs, as quickly as possible, the Department recommends recertification sooner rather than later (i.e., as soon as it is practicable). If a PHA is unable to recertify family income until the next annual reexamination, that PHA will not be penalized. The latest time, however, that the eligibility and income requirements can be implemented is at the time of annual reexamination.
18	Reexamination of Family Income and Termination of Assistance	As it concerns 24 CFR 982.552(b)(5) of the final rule, if after reexamining a student household's income (the student's or parent(s) income), the PHA determines the student is no longer eligible for Section 8 rental assistance, is the student family entitled to a grievance hearing?	Yes. Applicant and participant student households are entitled to request and receive an informal hearing to discuss the reasons for the denial or termination of assistance, in accordance with established program procedures and requirements (See 24 CFR 982.554 and 24 CFR 982.555, respectively).

	Category	Question	Answer
19	Continuation and Termination of Assistance	Scenario I: Three full-time college students apply for Section 8 housing. Two are eligible under Section 327(a) of the Act and 24 CFR 5.612 of the final rule, and one student is ineligible. Does the PHA deny Section 8 rental housing assistance to the entire family—all three students—or can the student family choose to remove the ineligible student from the family application so the two eligible students can be admitted to the program?	In scenario I described, the PHA will notify the applicant student family of its decision to deny assistance to the student household because of one of the student's ineligibility for Section 8 assistance. The notice will state that the student household may request an informal review of the PHA's decision and how to obtain the review (24 CFR 982.554). During the informal review, the student family may choose to remove the ineligible student from the family application for assistance so that the two eligible students may be admitted to the program. The PHA must notify the student household of the PHA's final decision after the informal review, including a brief statement of the reasons for the final decision.
20	Continuation and Termination of Assistance	Scenario II: Three full-time college students are residing in a Section 8 rental assistance unit. Two are eligible under Section 327(a) of the Act and 24 CFR 5.612 of the final rule, and one student is ineligible. Does the PHA terminate the Section 8 rental assistance to the entire family—all three students—or can the student family choose to remove the ineligible student from the student household so the two eligible students can continue to be assisted under the program.	In scenario II described, the PHA will notify the student household of its decision to terminate Section 8 rental assistance to the family. The notice will contain a brief reason for the PHA's decision (i.e., ineligibility of a college student 24 CFR 5.612) and inform the student household of its right to an informal hearing. For the housing choice voucher (HCV) program, eligible students residing in households with ineligible students shall not have their assistance terminated, but shall be issued a voucher to move with continued assistance in accordance with program regulations or shall be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit. HUD will issue separate guidance for PHAs administering the Moderate Rehabilitation, Project-Based Certificate, and Project- Based Voucher programs.
21	Pro-ration of Assistance	Can the PHA prorate the student household's assistance, based on a percentage of the total number of members of the family household that are eligible for assistance?	No. PHAs may not prorate assistance to family households composed of eligible and ineligible students.

Group III: HCV Student Rule Definitions

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
22	Section 327(a)(1)	Section 5.612(a)	What is the definition of an institution of higher education under section 102 of the Higher Education Act of 1965?	Also provided in Appendix A of the supplemental guidance, a complete definition of an institution of higher education under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) can be found on GPO Access, United States Code Main Page at: http://www.gpoaccess.gov/uscode/index.html .
23	Section 327(a)(3)	Section 5.612(c)	What is the definition of a “veteran”?	For purposes of administering the student eligibility restrictions, PHAs may find it useful to adopt the term “veteran” as used by the Department of Veterans Affairs (38 U.S.C. 101(2)): (2) the term “veterans” means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable. A complete definition of veteran (38 U.S.C. 101) can be found on GPO Access, United States Code Main Page at: http://www.gpoaccess.gov/uscode/index.html .

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
24	Sections 327(a) and (b)	Sections 5.612(e) and 5.609(b)(9)	As used in the Act and final rule, how are the terms “dependent child” and “dependent children” defined?	“Dependent child” and “dependent children,” as used in the Act and final rule, have the same meaning as provided at 24 CFR 5.603: Dependent: A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or a person with a disability, or is a full-time student. To be sure, the child or children must reside in the student family household.
25	Section 327(b)	Section 5.609(b)(9)	Does financial assistance include federal, State, and local grants, scholarships, and loans? Section 327(b) states: “any financial assistance (in excess of amounts received for tuition) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.”	Student financial assistance, as used in the Act and final rule, means any assistance (in excess of amounts received for tuition) that an individual receives: <ol style="list-style-type: none"> (1) Under the Higher Education Act of 1965 (2) From private sources (3) From an institute of higher education Such financial assistance may include federal, State, and local grants and scholarships (athletic and academic), fellowships and student educational financial assistance from parents, guardians, or other persons residing outside of the student family household. HUD has interpreted the term “financial assistance,” as used in Section 327(b) to not include loan proceeds for the purpose of determining income.
26	Section 327(b)	Section 5.609(b)(9)	In the new law, how is student to be defined?	Student means all students enrolled either full-time or part-time at an institution of higher education. The new law does not exempt part-time students.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F- 01	Question	Answer
27	Section 327(b)	Section 5.609(b)(9)	What is included in tuition? Does it include other fees charged by the educational institution?	Tuition shall have the meaning given this term by the institution of higher education in which the student is enrolled.