

RESOLUTION NO. \_\_\_\_\_

**APPROVAL OF REVISIONS TO THE PUBLIC HOUSING ADMISSIONS AND  
CONTINUED OCCUPANCY POLICY**

**Item No. 5c**

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) requires that Public Housing providers adopt an Admissions and Continued Occupancy Policy (ACOP) to set local policies for the administration of the program in accordance with HUD requirements and local priorities; and

WHEREAS, the ACOP and any revisions to said document must be formally adopted by the Louisville Metro Housing Authority (LMHA) Board of Commissioners; and

WHEREAS, LMHA finds it necessary to revise the existing ACOP to administer the program in a more effective and efficient manner and to remain in compliance with HUD rules and regulations; and

WHEREAS, the LMHA is proposing revisions to the following sections of the LMHA ACOP: "Eligibility for Admission: Suitability" (Section 8.2) "Eligibility for Admission: Grounds for Denial" (Section 8.3); "Eligibility for Admission: Informal Review" (Section 8.4) "Recertifications: Effective Date of Rent Changes for Annual and Biennial Reexaminations" (Section 15.5); "Repayment Agreements" (Section 19); "Policy Against Trespassing" (Appendix C); and "Protections for Victims of Domestic Violence, Dating Violence , Sexual Assault, or Stalking Policy (Appendix F); and

WHEREAS, the full text of the proposed revisions is given as an attachment to this resolution; and

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WHEREAS, these proposed revisions were made available for public comment from June 12, 2020 through July 11, 2020 and a public hearing was held on June 23, 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE LOUISVILLE METRO HOUSING AUTHORITY BOARD OF COMMISSIONERS that the Public Housing Program Admissions and Continued Occupancy Policy for LMHA owned properties revisions are adopted.

## RESOLUTION BACKGROUND STATEMENT

### APPROVAL OF REVISIONS TO THE PUBLIC HOUSING ADMISSIONS AND CONTINUED OCCUPANCY POLICY

#### Item No. 5c

#### I. STATEMENT OF FACTS:

LMHA reviews its Public Housing Admissions and Continued Occupancy Policy (ACOP) to ensure that the admissions and occupancy policies described therein are compliant with the latest rules and regulations issued by HUD and that the Public Housing Program is operated in a manner that is effective, efficient, and beneficial to residents. To that end, LMHA is now proposing the following changes to its ACOP:

- “Eligibility for Admission”
  - Section 8.2 – Replace “Suitability” with the rewritten section entitled “Standards for PHA Tenant Selection Criteria”. The rewritten section will align LMHA policies with HUD requirements. Policies regarding admissions and background checks have previously been more restrictive than the minimum Federal requirements for applicants.
  - Section 8.3 – Replace “Grounds for Denial” with the rewritten section entitled “Denial of Admission for Criminal Activity or Drug Abuse by Household Members”. The rewritten section will align LMHA policies with HUD requirements. Policies regarding admissions and background checks have previously been more restrictive than the minimum Federal requirements for applicants.
  - Section 8.4 – Add references to HUD regulations in footnotes. No change to text.
- “Recertifications”
  - Section 15.5 – State the postmark date of the notification letter is the established defining cut-off date for reported income for consideration during a recertification period.
- “Repayment Agreements”
  - Add language to allow extension of repayment agreement if payment exceeds 40% of adjusted income.
- “Appendix C: Policy Against Trespassing”
  - Establishes that a person on the trespass/ban list will remain so for a period of one year.
  - The Director of Property Management will give authorization to remove a person from the trespass/ban list.
- “Appendix F: Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Policy”
  - Update locally revised HUD Form 5380 with current staff numbers and job titles.

## RESOLUTION BACKGROUND STATEMENT

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#### II. ALTERNATIVES:

- A. Approve the revisions to the ACOP in full.
- B. Approve the revisions to the ACOP in part.
- C. Do not approve the revisions to the ACOP.

#### III. RECOMMENDATION:

Staff recommends Alternative "A".

#### IV. JUSTIFICATION:

HUD requires that Public Housing providers adopt a written Admissions and Continued Occupancy Policy that establishes local policies for administration of the program. This document guides staff in administering the Public Housing Program and informs residents and the general public of the Housing Authority's admissions and occupancy policies.

Submitted by: Heath Rico-Storey  
Compliance Manager  
July 21, 2020

# PROPOSED CHANGES TO ACOP FOR JULY 21, 2020

## 8.0 ELIGIBILITY FOR ADMISSION

[...]

### ~~8.2—SUITABILITY~~

~~THIS SECTION TO BE REPLACED WITH BELOW:~~

### ~~8.2 STANDARDS FOR PHA TENANT SELECTION CRITERIA~~

- A. The tenant selection criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member.<sup>1</sup> This policy takes into account the importance of screening to public housing communities and program integrity, and the demand for assisted housing by families who adhere to lease responsibilities<sup>2</sup>.
- B. Applicant families will be evaluated to determine whether, based on their recent behavior, such behavior could reasonably be expected to result in compliance with the public housing lease. LMHA will not deny admission to individuals because of one or more prior arrests (without any conviction) as prior arrests cannot satisfy the burden of showing such use is necessary to achieve a substantial, legitimate, nondiscriminatory interest. An arrest is not a reliable basis upon which to assess the potential risk to resident safety or property posed by a particular individual<sup>3</sup>. LMHA will utilize a policy that accurately distinguishes between criminal conduct because of prior convictions that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not. While certain convictions and criminal actions require denial as per HUD regulation outlined in Section 8.3, LMHA will take into account the nature, severity, and recency of criminal conduct of an individual's conviction record<sup>4</sup>. Individualized assessment of relevant mitigating information beyond that contained in an individual's criminal record is likely to have a less discriminatory effect. Relevant individualized evidence may include facts or circumstances surrounding the criminal conduct, the age of the individual at the time of the conduct, evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation efforts.<sup>5</sup>
- C. In selection of families for admission to its public housing program, or to occupy a public housing development or unit, LMHA is responsible for screening family behavior and suitability for tenancy. LMHA adheres to HUD regulations and considers all relevant information, which may include, but is not limited to<sup>6</sup>:
1. An applicant's past performance in meeting financial obligations, especially rent<sup>7</sup>;

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<sup>1</sup> 24 CFR §960.203(a)

<sup>2</sup> 24 CFR §960.203(b)

<sup>3</sup> April 4, 2016. "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions," Section III.B.1.

<sup>4</sup> Ibid, Section III.B.2.

<sup>5</sup> Ibid, Section III.C.

<sup>6</sup> 24 CFR §960.203(c)

<sup>7</sup> 24 CFR §960.203(c)(1)

- a. LMHA will not accept applicants who currently owe rent or other amounts to any housing authority in connection with the public housing or Section 8/Housing Choice Voucher programs<sup>8</sup>;
  - b. LMHA will verify debts owed through EIV<sup>9</sup>.
2. A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety or welfare of other tenants and<sup>10</sup>;
3. A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants<sup>11</sup>. With respect to criminal activity described in Section 8.3 of this plan:
  - a. LMHA may require an applicant to exclude a household member in order to be admitted to the housing program where that household member has participated in or been culpable for actions described in Section 8.3 that warrants denial<sup>12</sup>.
  - b. LMHA reserves the authority to conduct a background check on all adult household members who are 18 years of age and older, including live-in aides at no cost to the applicant<sup>13</sup>. This check will be made through State or local law enforcement or court records for the last *three* years<sup>14</sup>. This background check will proceed after each adult household member has signed a consent form designed by LMHA. LMHA will take under consideration a household member's history of convictions for a period of *three years from the date of the conviction*.<sup>15</sup>
  - c. The information received as a result of the background check shall be used solely for screening, lease enforcement, and eviction purposes. The information derived from the background check shall be shared only with employees of LMHA who have a job-related need to have access to the information. The information shall be maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose(s) for which it was requested has been accomplished and the period for filing a challenge to the Housing Authority's action has expired without a challenge or final disposition of any litigation has occurred<sup>16</sup>;
  - d. In most cases, LMHA will consider self-certification of criminal conduct as verification of initial screening. As per 18 U.S. Code §1001, intentional misrepresentation of information will result in committing fraud against LMHA and will result in denial of admission.
4. The LMHA tenant selection criteria are subject to VAWA protection.<sup>17</sup> In cases of requests for emergency transfers under VAWA, with the written consent of the victim of domestic violence, dating violence, sexual assault, or stalking, LMHA may accept and

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<sup>8</sup> HUD Notice PIH 2018-18, "Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System".

<sup>9</sup> As per 24 CFR §5.233, LMHA will verify debts owed through EIV.

<sup>10</sup> 24 CFR §960.203(c)(2)

<sup>11</sup> 24 CFR §960.203(c)(3)

<sup>12</sup> 24 CFR §960.203(c)(3)(i)

<sup>13</sup> 24 CFR §5.903(a)

<sup>14</sup> 24 CFR §5.903(a)-(c) and 24 CFR §960.204

<sup>15</sup> 24 CFR §960.203(c)(3) and PIH 2015-19. Guidelines for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions.

<sup>16</sup> 24 CFR §5.903(e)

<sup>17</sup> 24 CFR part 5, subpart L

use the prior covered housing provider's determination of eligibility and tenant screening and all related verification information, including form HUD 50058 (Family Report).

- a. LMHA requires verification in all cases where an applicant claims VAWA protection. See Section 23.2 of this ACOP for detail.
- D. In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense)<sup>18</sup>.
1. In a manner consistent with LMHA's policies, procedures and practices, consideration may be given to factors which might indicate a reasonable probability of favorable future conduct<sup>19</sup>. For example:
    - a. Evidence of rehabilitation<sup>20</sup>; and
    - b. Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs<sup>21</sup>;
  2. Consideration of rehabilitation<sup>22</sup>.
    - a. In determining whether to deny admission for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, LMHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully<sup>23</sup>. For this purpose, LMHA may 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.<sup>24</sup>

### ~~8.3—GROUNDS FOR DENIAL~~

~~THIS SECTION TO BE REPLACED WITH BELOW:~~

### **8.3 DENIAL OF ADMISSION FOR CRIMINAL ACTIVITY OR DRUG ABUSE BY HOUSEHOLD MEMBERS<sup>25</sup>**

#### A. Required denial of admission<sup>26</sup>

1. **Persons evicted for drug-related criminal activity:** LMHA will prohibit admission of an applicant to the public housing program for three years from the date of the eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity<sup>27</sup>.

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<sup>18</sup> 24 CFR §960.203(d)

<sup>19</sup> 24 CFR §960.203(d)(1)

<sup>20</sup> 24 CFR §960.203(d)(1)(i)

<sup>21</sup> 24 CFR §960.203(d)(1)(ii)

<sup>22</sup> 24 CFR §960.203(d)(2)

<sup>23</sup> 42 U.S.C. 13661

<sup>24</sup> 24 CFR §960.203(d)(2)(i)

<sup>25</sup> 24 CFR §960.204

<sup>26</sup> 24 CFR §960.204(a)

<sup>27</sup> 24 CFR §960.204(a)(1)

However, LMHA may admit the household if:

- a. The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by LMHA; or
  - b. The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).
  - c. LMHA will consider self-certification and/or background checks for verification. As per 18 U.S. Code §1001, intentional misrepresentation of information will result in committing fraud against LMHA and will result in denial of admission.
2. **Persons engaging in illegal use of a drug:** LMHA must establish standards that prohibit admission of a household to the public housing program<sup>28</sup> if:
- a. LMHA determines that any household member is currently engaging in illegal use of a drug (For purposes of this section, a household member is “currently engaged in” the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current)<sup>29</sup>; or
  - b. LMHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.<sup>30</sup>
  - d. LMHA will consider self-certification and/or background checks for verification. As per 18 U.S. Code §1001, intentional misrepresentation of information will result in committing fraud against LMHA and will result in denial of admission.
3. **Persons convicted of methamphetamine production:** LMHA must establish standards that permanently prohibit admission to the public housing program if any household member has ever been *convicted* of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing<sup>31</sup>. LMHA will consider self-certification and/or background checks for verification. As per 18 U.S. Code §1001, intentional misrepresentation of information will result in committing fraud against LMHA and will result in denial of admission.
4. **Persons subject to sex offender registration requirement:** LMHA must establish standards that prohibit admission to the public housing program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, LMHA must perform necessary background checks in the State where the housing is located and in other States where household members are known to have resided.<sup>32</sup> LMHA will conduct a check of state sex offender registration programs for each adult household member 18 years of age and older, including live-in aides. LMHA will utilize the US Department of Justice’s Dru Sjodin National Sex Offender website to check for sex offender registration in any US state or territory (<https://www.nsopw.gov>). 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. Any sex offender registration entries found in the Dru Sjodin Database will be verified with the jurisdiction that posted the entry data.

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<sup>28</sup> 24 CFR §960.204(a)(2)

<sup>29</sup> 24 CFR §960.204(a)(2)(i)

<sup>30</sup> 24 CFR §960.204(a)(2)

<sup>31</sup> 24 CFR §960.204(a)(3)

<sup>32</sup> 24 CFR §5.905 (a) and §960.204(a)(4)



5. **Persons that abuse or show a pattern of abuse of alcohol:** LMHA must establish standards that prohibit admission to the public housing program if LMHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.<sup>33</sup> LMHA will consider self-certification and/or background checks for verification. As per 18 U.S. Code §1001, intentional misrepresentation of information will result in committing fraud against LMHA and will result in denial of admission.
- B. **Use of criminal records.** Before LMHA denies admission to the public housing program on the basis of a criminal record, LMHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record<sup>34</sup>.
- C. **Cost of obtaining criminal record.** LMHA will not pass along to the applicant the costs of a criminal records check.<sup>35</sup>

#### ~~8.4 DENIAL OF ADMISSIONS FOR ADDITIONAL CRITERIA~~

~~The LMHA is not required or obligated to assist families where applicants or members of the applicant's household:~~

- ~~A. Have net assets that are the over-income limit of 100,000 or who have ownership interest and legal rights in real property suitable for occupancy. This limitation does not apply to~~
- ~~1. Victims of domestic violence covered under VAWA; OR~~
  - ~~2. Families offering the real property for sale;~~
- ~~B. LMHA will also deny admission for evictions from federally assisted housing within the past three years for cause.~~
- ~~C. Do not supply information or documentation required by the application process<sup>36</sup>;~~
- ~~D. Have failed to respond to a written request for information or a request to declare their continued interest in the program;~~
- ~~E. Currently owe rent or other amounts to any housing authority in connection with their public housing or Section 8/Housing Choice Voucher programs<sup>37</sup>;~~
- ~~F. Have committed fraud, bribery, or any other corruption in connection with any Federal housing assistance program, including the intentional misrepresentation of information related to their housing application or benefits derived there from<sup>38</sup>;~~
- ~~G. Have engaged in or threatened abusive or violent behavior towards any LMHA staff member or resident;~~
- ~~H. Fugitive felons, parole violators, persons on home incarceration, persons under supervised probation, and persons fleeing to avoid prosecution or custody or confinement after~~

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<sup>33</sup> 24 CFR §960.204(b)

<sup>34</sup> 24 CFR §960.204(c)

<sup>35</sup> 24 CFR §960.204(d)

<sup>36</sup> 24 CFR §960.259(a)

<sup>37</sup> HUD Notice PIH 2018-18, "Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System". As per 24 CFR §5.233, LMHA will verify debts owed through EIV.

<sup>38</sup> 18 U.S. Code §1001

~~conviction for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees.~~

#### **8.4 INFORMAL REVIEW<sup>39</sup>**

- A. Applicant denials will be reviewed by the Executive Director. Should LMHA deny admission to the Public Housing Program on the basis of a criminal record, LMHA must provide the applicant with notification and an opportunity to dispute the accuracy and relevance of a criminal record before admission is denied on the basis of such record<sup>40</sup>. Applicants are also afforded the right to request an informal hearing or review after an application for housing assistance is denied<sup>41</sup>. The applicant will have thirty calendar days to dispute the accuracy and relevance of the record in writing. If the Housing Authority does not receive the dispute within the allotted time, the applicant will be denied.
- B. If the LMHA determines that an applicant does not meet the criteria for receiving public housing assistance, the Housing Authority will promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reason(s) for the decision and state that the applicant may request in writing an informal review of the decision within thirty calendar days of the denial. The LMHA will describe how to obtain the informal review.
- C. The informal review may be conducted by any person designated by the LMHA, other than a person who made or approved the decision under review or a subordinate of this person. The applicant must be given the opportunity to present written or oral objections to the Housing Authority's decision. The LMHA must notify the applicant of the final decision within fourteen calendar days after the informal review, including a brief statement of the reasons for the final decision.
- D. The applicant may request that the LMHA provide for an Informal Hearing after the family has notification of an Immigration and Naturalization Service (INS) decision on their citizenship status on appeal, or in lieu of request of appeal to the INS. The applicant must make this request within thirty calendar days of receipt of the Notice of Denial or Termination of Assistance, or within thirty calendar days of receipt of the INS appeal decision

## **15.0 RECERTIFICATIONS<sup>42</sup>**

[...]

### **15.5 EFFECTIVE DATE OF RENT CHANGES FOR ANNUAL AND BIENNIAL REEXAMINATIONS**

The new rent will generally be effective upon the anniversary date with thirty calendar days' notice of any rent increase to the family. The thirty-calendar day notice will begin from the postmark date of the notification letter. **Should the household experience an increase or decrease**

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<sup>39</sup> 24 CFR §966 Part B.

<sup>40</sup> 24 CFR §5.903(f), §5.905(d), §960.204(c), §960.208(a)

<sup>41</sup> HUD Notice PIH 2015-19, "Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Record  
s in Housing Decisions"

<sup>42</sup> PIH 2020-05, "COVID-19 Statutory and Regulatory Waivers for the Public Housing, Housing Choice Voucher..." temporarily alters the administration and policies of this section. See Page 1 of this plan.

in the household income that was reported at the time of the initial recertification appointment but prior to receiving their thirty-calendar day notice, this change must be reported. Any increase in income occurring after the postmark date of the thirty-day notification letter will not be considered until the next scheduled reexamination.

[...]

## 19.0 REPAYMENT AGREEMENTS<sup>4344</sup>

When a resident owes the LMHA retroactive rent or back charges and is unable to pay the balance by the due date, the resident may request that the Housing Authority allow them to enter into a Repayment Agreement. The LMHA has the sole discretion of whether to accept such an agreement. All Repayment Agreements must assure that the full payment is made within a period not to exceed twenty-four months. **If payments—retroactive rent payments plus current rent payment—within 24 months would exceed 40% of adjusted income, the repayment agreement may be extended.** All Repayment Agreements must be in writing and signed by both parties. They must include the following elements:

- A. Reference to the paragraphs in the Public Housing lease whereby the tenant is in non-compliance and may be subject to termination of tenancy or assistance, or both.
- B. The monthly retroactive rent repayment amount is in addition to the family's regular rent contribution and is payable to the Housing Authority.
- C. The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income.
- D. Late and missed payments constitute default of the repayment agreement and may result in termination of tenancy and/or assistance.

Refusal to enter into a Repayment Agreement for monies owed **may will** subject the family to eviction procedures.

[...]

## APPENDIX C: POLICY AGAINST TRESPASSING

[...]

All other persons without legitimate purpose to enter LMHA public housing property are subject to being barred from LMHA public housing property, including, but not limited to:

[...]

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<sup>43</sup> The CARES Act of 2020 temporarily alters the administration and policies of this section. See Page 1 of this plan.

<sup>44</sup> HUD Notice PIH 2018-18, "Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System," Item 16.

Note: Anyone named on the Trespass/Ban list will remain so for a (1) year period, unless he or she, through the appeals process, is removed by the Supervisor of Safety and Investigations and with the agreement of the Director of Property Management and affected Property Managers.

#### **4.0 ENFORCEMENT**

As determined by the LMHA's authorized staff or agent, a person who has engaged in Trespass of LMHA public housing property, shall be banned for a period of one year from entering LMHA property.

[...]

#### **6.0 REMOVAL FROM BAN LIST**

Persons listed on the Trespass/Ban List may only be removed by the Supervisor of Safety and Investigations and with the agreement of the Director of Property Management and affected Property Managers.

[...]

## **APPENDIX F: PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING POLICY**

[...]

### **For Additional Information**

- You may view a copy of HUD's final VAWA rule at <https://www.hud.gov/sites/documents/5720-F-03VAWAFINRULE.PDF>. Additionally, **LMHA** must make a copy of HUD's VAWA regulations available to you if you ask to see them.
- For questions regarding VAWA, please contact **Assistant Director of Leased Housing (Section 8) at 502-569-4901** or **Director of Property Management (Public Housing) at 502-569-3400**.

[...]