

# SAFE HOMES, SAFE COMMUNITIES

A Guide For Local Leaders On Domestic Violence And Fair Housing



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# Safe Homes, Safe Communities

## A Guide For Local Leaders On Domestic Violence And Fair Housing

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The ACLU Women's Rights Project pushes for change and systemic reform in institutions that perpetuate the unequal treatment of girls and women, including survivors of gender-based violence. Victims of gender-based violence too often face obstacles to obtaining and maintaining secure housing, such as evictions or housing denials based on the violence they have experienced or sexual harassment by landlords and housing managers. The ACLU works to address the harmful impact of housing discrimination against survivors of domestic and sexual violence through litigation, legislative and policy advocacy, and public education.



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## **EXECUTIVE SUMMARY**

One in three women<sup>i</sup> experiences domestic violence (DV) in her lifetime, resulting in physical injury, economic distress, psychological trauma, and even death. DV is a nationwide crisis that wreaks havoc on the lives of victims and their families, and has far-reaching consequences for entire communities. One such consequence is that survivors of DV are at heightened risk for homelessness and housing insecurity, due to factors including discrimination, loss of employment, economic abuse leading to poor credit history, and survivors' need to be in a home that is secure from their abuser. This guide recommends best practices for local leaders to promote fair housing for DV survivors in their communities.

### **Who Should Read this Guide?**

This guide is written for local leaders at the municipal level, especially leaders who influence the policies of their city or town with respect to housing, emergency shelter, policing, and social services. Other leaders, including officials at the county and state level, will also benefit from this guide, as many of the recommendations can be implemented in county and state policies. Finally, public housing administrators should read this guide, focusing especially on the recommendations in section IV(E).

### **Your Legal Responsibility: Federal and State Laws Affecting Housing for Domestic Violence Survivors**

Promoting equal housing opportunity for DV survivors is not only the right thing to do; it is also required by law. Federal and state laws prohibit discrimination against survivors of DV and also affirmatively require municipalities to promote survivors' access to safe, decent, affordable housing. A failure to abide by these and other laws could place municipalities at risk of losing federal housing funds administered through the federal Department of Housing and Urban Development (HUD) and/or facing costly legal liability to individual victims. Local leaders who guard against housing discrimination and take proactive measures to promote housing opportunity for DV survivors not only serve the interests of DV survivors but also the interests of their municipality.

### **Best Practices: Promoting Fair Housing for Domestic Violence Survivors**

Promoting housing opportunity for DV survivors is crucial to upholding anti-discrimination laws and enabling DV survivors to escape abuse and regain housing stability. This guide describes the following best practices for promoting fair housing for DV survivors:

#### ***Incorporate domestic violence measures into the Assessment of Fair Housing (AFH)***

Under the Fair Housing Act (FHA) and other statutes and regulations, jurisdictions receiving federal housing funds are required to prepare an Assessment of Fair Housing (AFH) (formerly known as an "Analysis of Impediments" or AI) in which they identify barriers to fair housing in their communities and plan future actions to increase fair housing. Municipalities should incorporate DV considerations into their AFH.

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<sup>i</sup> This guide will reference and cite the impact of domestic violence on women, but women are by no means the sole group to experience domestic violence. About 15% of domestic violence victims are male, and domestic violence affects people of all sexualities and gender identities.

For example, the AFH may:

- Incorporate DV service providers and survivors into the AFH process, inviting DV advocates and survivors to consultations and providing copies of the AFH for feedback and input during public comment periods.
- Identify and address policies that have a discriminatory impact on DV survivors, such as “nuisance” ordinances that penalize DV survivors for contacting the police.
- Determine barriers to housing stability for DV survivors, such as a lack of safe, affordable housing. Work with DV service providers to develop programs that provide housing to survivors.
- Plan future “action steps” that the community may take to increase housing opportunity for DV survivors, such as passing laws that prohibit housing discrimination against survivors.

***Protect domestic violence victims’ access to effective police assistance.*** A critical component of housing stability for DV survivors is the knowledge that they can seek effective police protection if their abuser or anyone else tries to harm them. However, many communities have enacted laws that threaten DV survivors with eviction if they contact the police, leading to increased violence and disastrous consequences for the victims and for public safety. These laws are usually written broadly and, while they may not be targeted specifically at DV survivors, they have adverse consequences for them. Characteristics of these laws include:

- Imposing penalties on nuisance properties, where a “nuisance” is defined as a situation in which an occupant, guest or business invitee commits criminal activities or engages in disorderly conduct on the premises.
- Holding tenants responsible for criminal conduct at or near their apartments, regardless of whether the tenant sanctioned or was the victim of that conduct.
- Creating a point system, imposing “strikes,” or enforcing any other mechanism by which tenants will be evicted after multiple instances of criminal activity or calls to the police.
- Characterizing arrests and/or police investigations, rather than convictions, as triggering enforcement of the ordinance.
- Requiring landlords to perform criminal background checks on prospective tenants, which can impact DV survivors who have either been arrested because of an act of self-defense against an abuser, or who were coerced by an abuser to participate in crime.

***Protect domestic violence survivors’ rights in rented or owned homes.*** In order to curb the negative impacts of domestic violence and homelessness, leaders should explore the passage and full enforcement of local laws to ensure that DV survivors’ housing rights are protected. These laws may include:

- Imposing bans on housing discrimination that specifically prohibit discrimination against DV survivors and other victims of abuse.
- Allowing victims of domestic violence to terminate a lease early or remove a perpetrator from the lease.
- Permitting the exclusion of an abuser from the home pursuant to court order.

***Collaborate with and support the efforts of DV service providers.*** Working with local DV service providers can provide municipalities with valuable insight on how to address housing barriers for survivors and to ensure housing equality. This guide recommends the following best practices for that collaboration:

- **Respect Confidentiality.** As mandated by law, shelters should maintain the confidentiality of DV survivors' contact and identifying information. Additionally, communities should implement measures to exclude information about DV shelters and individual victims from public databases, such as listings of deeds, mortgages, or tenant lists. However, municipalities should use data on *aggregate* numbers of DV survivors in order to determine the allocation of housing and shelter resources.
- **Understand the Different Services Provided by Homeless and DV Shelters.** Communities should understand the distinctions between the services offered by homeless and DV shelters in order to best address the unique needs of homeless DV survivors. Communities should also support transitional housing for DV survivors.
- **Include DV Service Providers in Collaboration with Homeless Services.** Communities should encourage collaboration between DV and homeless systems in order to address the overlapping problems of housing insecurity and DV and to make cross-referrals and share resources.
- **Respect Personal Autonomy.** An underlying principle held by most DV service providers involves restoring a survivor's autonomy; the survivor, and not the service provider, makes the choice of what to do and where to go. Programs that use a one-size-fits-all model of services do not respect the survivor's ability to make his or her own choices. Shelters and municipalities should seek to maximize DV survivors' autonomy in both their day-to-day life and in choosing which services to receive.
- **Promote Language Access.** Under HUD's proposed AFH regulations, municipalities are encouraged to include individuals from marginalized communities and to ensure that they are able to fully participate in the AFH and planning process. For individuals with limited English proficiency, municipalities may need to offer interpreter services and translate public materials into common non-English languages in the community.
- **Promote Access for People with Disabilities.** Under the Americans with Disabilities Act, DV shelters must be accessible to people with mental and physical disabilities and may not exclude people for reason of disability.
- **Sensitivity to Gender, Sexual Orientation, and Gender Identity.** Communities should make sure that they provide shelter and other services to abuse victims and their children, regardless of gender, sexual orientation, or gender identity.
- **Ensure Survivors Know their Housing Options.** DV survivors, especially those who are homeless, should be counseled about their eligibility for rental assistance programs. Municipalities should implement HUD's recommendation to Public Housing Authorities (PHAs) and adopt admission preferences for victims of DV in supportive and public housing and rental subsidies. Cross-training between PHAs, local housing programs, and DV service providers will enable all to better serve the needs of survivors transitioning from shelters.



***Protect Public Housing and Section 8 tenants.*** PHAs must comply with federal, state, and local laws related to DV and should strive to enact policies that support the housing needs of DV survivors. For example:

- PHAs should make themselves accessible to DV survivors and accommodate requests for lock changes, emergency transfers, the removal of an abuser from a lease or Section 8 Housing Choice voucher, heightened security measures, and other provisions necessary to protect the DV survivor's safety.
- PHAs should inform DV survivors that PHAs must protect confidentiality as provided by law.
- PHAs must uphold their tenants' right to seek help from the police and not penalize any current or former tenant for requesting police assistance.
- PHAs should either decline to use criminal background checks, credit checks, or checks of eviction histories when screening potential tenants who may be DV survivors, or alternatively give DV survivors an opportunity to contextualize any negative findings if related to their status as victims of DV.
- PHAs should consider adopting HUD's recommendations for establishing preference policies and creating an admissions preference for DV survivors on public housing and Section 8 wait-lists.
- PHAs should establish emergency transfer policies for DV survivors who need a transfer or a voucher in order to relocate, and work to implement the HUD model emergency transfer plan (forthcoming with VAWA 2013 implementation).

### **Conclusion**

By vigilantly safeguarding the housing rights of DV survivors, municipalities can protect not only the survivors, but entire communities from the disastrous consequences of DV and housing insecurity.

# SAFE HOMES, SAFE COMMUNITIES: A GUIDE FOR LOCAL LEADERS

## I. INTRODUCTION

One in four women will experience domestic violence (DV) in her lifetime,<sup>1</sup> with disastrous consequences for the victim, her family, and her community. DV—the willful intimidation, physical or sexual assault, battery, and/or other abusive behavior perpetrated by an intimate partner—is a crisis affecting every community, regardless of age, economic status, sexual orientation, gender, race, religion, or nationality.<sup>2</sup> Although this guide will reference and cite the impact of DV on women, women are by no means the sole group to experience DV. About 15% of DV survivors are male, and DV affects people of all sexualities and gender identities. A study by the United States Centers for Disease Control (CDC) found that, on average, nearly 20 Americans *per minute* are victims of physical violence by an intimate partner.<sup>3</sup> Victims of DV suffer physical injury, alienation, economic distress, psychological trauma, and, in severe cases, death.

Abuse may start in the home, but it has far-reaching consequences for the entire community. For example, children who have witnessed or been victims of abuse may have special needs, requiring extra attention from their schools.<sup>4</sup> Abusers often prohibit their victims from working and/or sabotage the survivors' efforts to hold a job,<sup>5</sup> which has ripple effects on the local economy. DV also can require intensive response from law enforcement<sup>6</sup> and medical systems when victims need emergency and long-term medical care.<sup>7</sup>

“Local leaders who take proactive measures to fight domestic violence not only benefit survivors, but also their communities.”

Finally, DV disrupts communities by causing housing overturn, vacancies, and homelessness, since many victims of DV struggle with housing stability.<sup>8</sup> DV programs have identified shelter as the largest unmet need for DV victims.<sup>9</sup> Local leaders who take proactive measures to fight DV not only benefit survivors but also their communities. **This guide will focus on housing-related strategies for supporting DV survivors: a critical component to ensuring fair housing and security in communities.**

### ***Who Should Read this Guide?***

This guide is written for local leaders at the municipal level, especially leaders who influence their city or town’s policies with respect to housing, emergency shelter, policing, and social services. Other leaders, including officials at the county and state level, may also benefit from this guide, as many of the recommendations can also be implemented in county and state policies. Finally, public housing administrators should read this guide, focusing especially on the recommendations in section IV(E).

### ***Why Focus on Domestic Violence and Housing?***

DV is a leading cause of homelessness and housing insecurity. According to the United States Department of Justice, one in four homeless women in the United States is a DV survivor.<sup>10</sup> Some DV survivors become homeless when they flee abuse, or when abuse interferes with their ability to work.<sup>11</sup> Many landlords evict or refuse to rent to survivors in order to avoid current or future violence or problems from the abuser.<sup>12</sup> While local nonprofit and government agencies provide some housing assistance to DV survivors, they are unable to meet the needs of all survivors. A nationwide survey of DV service providers found that in just a single day, the service providers were unable to meet the housing needs of 5,778 DV survivors.<sup>13</sup> Non-DV shelter and affordable housing systems may be ill-equipped to deal with the unique confidentiality and trauma-related needs of DV survivors, which require innovative responses from both service providers and municipalities.<sup>14</sup>

“Housing insecurity is a persistent problem for DV survivors, but secure housing is an opportunity.”

Housing insecurity is a persistent problem for DV survivors, but secure housing is an opportunity. When DV survivors are able to escape an abuser and live in a home that is safe, stable, and affordable, they can begin to rebuild an independent life and support their children. Both homelessness *and* DV have costly effects on communities, so enabling DV survivors to obtain safe housing will be a boon to an entire municipality in the long run.

Another reason to be conscious of housing issues is that municipalities could face legal liability if they do not support the housing needs of DV survivors. Federal laws such as the Fair Housing Act (FHA) 42 U.S.C. § 3604 et seq. and the Violence Against Women Act (VAWA) 42 U.S.C. § 14043e et seq. prohibit housing discrimination against survivors of DV, and the FHA and other federal laws and regulations mandate that municipalities take affirmative steps to promote fair housing for marginalized groups. This guide provides an overview of those laws and of municipal responsibilities.

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Fortunately, municipalities are in a position to help DV survivors stay safe, get back on their feet, and flourish in the community. This guide provides information about how local leaders can effect positive changes for DV survivors and meet the municipality's legal requirements to affirmatively further fair housing.

## **II. COMMON MISCONCEPTIONS ABOUT DOMESTIC VIOLENCE, AND APPROPRIATE HOUSING POLICY RESPONSES**

In navigating this guide, it is first important to address a number of common misconceptions that may make municipal officials hesitant to implement the recommended actions. These misconceptions may also unintentionally encourage the pursuit of policies that actually harm victims of DV.

***A. Misconception: Policies screening prospective tenants based on criminal, credit, and eviction histories will not result in the exclusion of DV survivors because of abuse perpetrated against them.***

While implementing criminal background checks, credit checks, or checks of eviction histories may appear a neutral means for excluding applicants that are likely to be bad tenants, these screening practices can exclude DV victims from housing on the basis of a negative record for which they were not responsible and that instead reflects abuse perpetrated against them. Criminal arrest records do not unequivocally determine culpability: victims of DV who fight back against their abusers in self-defense will often be arrested and/or charged with criminal conduct. Credit histories are also problematic because abusers often employ strategies of economic abuse that prevent survivors from working or coerce them into debt. Finally, a survivor's eviction history may not indicate that survivor's current ability to be a good tenant, for abusers sometimes evict tenants from jointly-held apartments or withhold financial support as a tactic of control. Given this background, a survivor's past history often does not accurately predict his or her likelihood of perpetrating criminal activity on the property, breaching a lease, or being unable or unwilling to pay rent. Municipalities should not mandate the use of background checks in screening potential tenants, but should instead encourage landlords to give applicants an opportunity to contextualize any negative findings as relating to status as a victim of DV.

***B. Misconception: Requiring DV survivors to prove their status with a restraining order or protection from abuse order will pose no problematic hurdles for victims of abuse.***

While an order of protection is effective for some victims of DV in pursuing safety from abuse, it is not the only tool available nor is it always the safest or most appropriate option for a victim. Victims of DV are frequently warned by their abusers not to contact the police or the courts for help, and when they do they can face increased violence and danger. A study by the National Institute of Justice and the Centers for Disease Control and Prevention found that women who are separated from an abuser are dramatically more likely to face severe violence than those who

remained.<sup>15</sup> Moreover, additional research has demonstrated that survivors of DV are the best assessors for predicting the dangerousness of their abusers.<sup>16</sup> Standards for verifying a survivors' status in order to access necessary housing practices should reflect this. HUD has adopted this approach in regulations implementing VAWA, which allow but do not require housing providers to request that a tenant certify that he or she is a victim of DV. HUD has clearly stated that tenants can prove their status through self-certification and cannot be required to provide a third party verification, police report, or court order.<sup>17</sup> Municipalities should follow this mode of survivor-centered verification status, as the federal government has found it an accurate, reliable means of establishing eligibility, and it does not risk putting victims in enhanced danger.

***C. Misconception: Inappropriate enforcement of local policies that hold tenants responsible for criminal conduct that occurs at their homes can be solved with an express domestic violence exception.***

It may at first appear that a straightforward DV exception would adequately fix any unintended consequences and potential liability that stem from local policies that hold tenants responsible for crime at their property and thus chill DV victims' ability to seek police assistance without penalty. However, a DV exemption can only work if police are able to correctly identify the situation as DV. Many situations of intimate partner violence may not be labeled as such by police. For example, it is common during DV incidents for a victim to call 911 and hang up. Police may be sent to the scene but unable to determine the circumstances that led to the call, and may characterize the call as frivolous. Furthermore, the existence of the ordinance may encourage landlords to take independent but inappropriate actions against victims of DV before a police response to the home, circumventing any opportunity for survivors to take advantage of this exception and leading to the same chilling result.

### **III. YOUR LEGAL RESPONSIBILITY: FEDERAL AND STATE LAWS AFFECTING HOUSING FOR DOMESTIC VIOLENCE SURVIVORS**

Promoting housing opportunity for DV survivors is not only the right thing to do; it is also required by law. Local leaders must be cognizant of their legal responsibilities to ensure fair housing for DV survivors, at the risk of losing federal housing funds or facing costly legal liability. Federal and state laws prohibit discrimination against survivors of DV and establish affirmative provisions to promote survivors' ability to access safe, affordable housing.

“Promoting housing opportunity for DV survivors is not only the right thing to do; it is also required by law.”

This section will discuss several important sources of legal responsibility related to the housing rights of DV survivors:

- **The Violence Against Women Act (VAWA)** is a federal law that establishes specific rights and protections for DV survivors (regardless of gender) and prohibits federally-funded housing programs from discriminating against DV survivors.
- **The Fair Housing Act (FHA)** is a federal law that makes it unlawful to discriminate in the sale or rental of housing against any person based upon a protected class: race, color, religion, sex, familial status, national origin, or disability. Although the FHA does not mention DV, discrimination based on DV often constitutes discrimination based on one of the FHA's protected classes (such as sex). Both private landlords and municipalities may be subject to liability for FHA violations.
- **Affirmatively Furthering Fair Housing (AFFH):** The FHA and other federal laws and regulations mandate that federally-funded programs must be administered in a manner which “affirmatively furthers” the policies of the FHA.<sup>18</sup> This means that avoiding discrimination is not enough to meet the FHA's requirements: municipalities must proactively promote fair housing goals.
- **State Law:** Many states have passed legislation designed to protect the rights of DV survivors, often creating more extensive rights and obligations than federal law.

#### ***A. The Violence Against Women Act***

The Violence Against Women Act<sup>ii</sup> (VAWA) is a federal law that aims to promote justice, civil rights, and security for victims of DV, sexual assault, dating violence, and stalking. VAWA contains a specific section addressing the housing rights and needs of survivors.<sup>19</sup> Municipalities can benefit from VAWA provisions that offer grants for DV shelters and other sexual violence-related housing programs.<sup>20</sup> VAWA also permits federally-funded housing operators as well as private owners or management agents administering housing to individuals receiving federal subsidies to bifurcate leases and to remove an abuser from a home in order to protect victims' safety.<sup>21</sup> Thus, VAWA can be an asset for leaders seeking to provide housing and safety to DV survivors. Leaders in states with large rural communities should particularly note that the U.S. Department of Agriculture and Rural Development (RD) has issued guidance for state directors of RD as well as program directors of RD multifamily housing regarding implementing VAWA. This guidance includes a model emergency transfer plan and a format for self-certification for survivors of DV.<sup>22</sup>

VAWA also prohibits certain conduct for federally-funded housing providers. Under VAWA, federally-funded housing providers (including municipalities,<sup>23</sup> public housing authorities, owners and managers operating RD multifamily housing, and landlords of tenants with Section 8 vouchers, Low-Income Housing Tax Credit recipients, emergency shelter and transitional housing grant recipients, and other recipients of federal housing assistance) may not deny assistance to, terminate from participation, or evict an applicant or tenant on the basis that he or she has been a

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<sup>ii</sup> Even though the statute is named the “Violence Against Women Act,” it is equally applied to all victims of domestic or sexual violence, regardless of gender.

victim of DV, dating violence, sexual assault, or stalking.<sup>24</sup> Additionally, DV survivors may not be evicted from their homes based on criminal activity in or near the home if that criminal activity directly relates to DV.<sup>25</sup>

VAWA's nondiscrimination provisions are significant for municipalities that oversee or operate public housing authorities and Section 8-assisted housing, as they may come into conflict with VAWA if they implement policies that terminate a tenant's lease when alleged criminal activity is committed by a guest of the tenant on the premises and this is linked to DV.<sup>26</sup> Additionally, municipal policies that direct private landlords to evict based on criminal and other activity on the premises may come into conflict with VAWA when a DV victim in a federally subsidized housing program is involved. These types of laws are problematic for crime victims in general, but VAWA makes it illegal to enforce these laws in instances where the criminal activity in question is related to domestic or sexual violence.

### ***B. The Fair Housing Act's Anti-Discrimination Provisions***

In addition to the specific protections for DV survivors under VAWA, victims of DV are protected by the general anti-discrimination provisions of the Fair Housing Act (FHA). The FHA prohibits housing discrimination based upon race, color, religion, sex, familial status, national origin, or disability. In a memo to fair housing offices, HUD stated that DV survivors may have claims under the FHA when they are evicted, denied housing, or otherwise discriminated against due to DV they have experienced.<sup>27</sup> HUD found that discrimination against DV survivors can constitute sex discrimination, as approximately four in five DV survivors are women and gender stereotypes about DV survivors implicate the FHA's prohibitions against sex discrimination in housing.<sup>28</sup> Even when discrimination is not explicit or intentional, policies that are discriminatorily enforced against or have a disparate impact on DV survivors will often constitute gender discrimination that is illegal under the FHA.<sup>29</sup> Although DV discrimination claims are most often based upon gender discrimination, victims of DV-related housing discrimination may also bring FHA claims when race, disability, sexual orientation,<sup>30</sup> or national origin are factors in an adverse action.

The following are examples of discrimination:

- A landlord (or a municipally controlled housing agency) denies housing to a female DV victim based upon a gender-biased belief that women always go back to their abusers.
- A female DV survivor was evicted because her abuser broke into her home, but a male tenant was not evicted when someone burglarized his unit for non-DV reasons.
- A municipality enacts a nuisance law that encourages or requires landlords to evict tenants who make frequent calls to the police, and this ordinance targets DV related crimes for penalty or is disproportionately enforced against DV victims. If DV victims are penalized under such a law even though the call sought police protection from DV, both their landlords and their city may be subject to FHA claims.

Municipalities could suffer costly legal consequences if they violate DV survivors' rights under the FHA. In the past, municipalities that discriminated against DV survivors have been subject to legal action by both the federal government and individual victims, resulting in monetary settlements.<sup>31</sup> For example, the borough of Norristown, PA recently paid \$495,000 in a settlement

with a DV survivor who faced eviction after the police responded to several incidents of abuse in her home.<sup>32</sup>

### ***C. The Fair Housing Act's Affirmatively Furthering Fair Housing Requirement***

In addition to guarding against discrimination, municipalities must take proactive steps to promote fair housing for DV survivors. This is not just sound policy—it's mandated by the requirement under the FHA and other laws and regulations that federally-funded housing programs must be administered in a manner which “affirmatively furthers” the policies of the FHA.<sup>33</sup> The affirmatively furthering fair housing (AFFH) obligation goes beyond a prohibition of housing discrimination and mandates that municipalities and other affordable housing administrators take steps to actively assure that affordable housing is “fully available to all residents of the community.”<sup>34</sup> Recipients of federal housing funds are required to analyze impediments to fair housing and take proactive measures to overcome the effects of these impediments.<sup>35</sup> Because approximately four in five DV survivors are female,<sup>36</sup> affirmatively furthering equal access to housing on the basis of gender requires municipalities to consider their policies' impact on DV survivors' ability to access and maintain safe and secure housing.

Municipalities are subject to the AFFH requirement if they receive certain types of federal housing funding, such as funding for public housing, community development block grants, or other housing subsidy funding. As part of the AFFH requirement, municipalities and Public Housing Authorities (PHAs) are required to proactively respond to housing inequalities in their communities, and take steps to further fair housing.

If a federally-funded housing program refuses to comply with the AFFH requirement, the federal government may file suit against the program to require their cooperation in affirmative furtherance goals<sup>37</sup> or may withhold funds from the noncompliant entity.<sup>38</sup> Additionally, the requirement of affirmatively furthering fair housing has been the basis for complaints brought by private citizens and organizations under the FHA.<sup>39</sup>

The federal government is currently in the process of strengthening the impact, usefulness, and enforceability of the “affirmatively furthering fair housing” requirement. In a proposed federal rule, HUD plans to assist and direct funding recipients to more meaningfully analyze data related to fair housing and to create a more direct link between its findings of housing impediments and future program planning documents and activities.<sup>40</sup> One component of the new rule is that municipalities and PHAs will be required to produce a regular “Assessment of Fair Housing” (AFH) (replacing the “Analysis of Impediments” or “AI” which was required under the old rules). In the AFH, municipalities and PHAs are required to use HUD-provided data as well as local data sources and information to identify both impediments to and opportunities for the promotion of fair housing within the community or program. This information must be directly incorporated into housing planning activities. Although the impact of the new rule is yet to be seen, it aims to make it easier for municipalities to discover and address inequities in their communities' housing. See Section IV(A), below, for guidance on how to incorporate DV concerns into the AFH.



#### ***D. State Laws***

Many states have laws that provide additional fair housing guidelines and/ or protections for victims of DV. Municipalities should thus be aware of any state laws that might impose additional requirements or prohibitions on municipal housing or DV policy. For example, some state laws explicitly prohibit discrimination against DV survivors, and other laws have provisions granting DV survivors the right to early-terminate or bifurcate a lease or change the lock on their apartment doors. A useful resource is the National Housing Law Project's State and Local Law Compendium, which provides an overview of each state's legislation that provides housing protections for DV survivors: Nat'l Hous. Law Project, *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium* (2014), *available at* <http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf>.

### **IV. RECOMMENDATIONS**

#### ***A. Incorporate Domestic Violence Measures Into Assessment of Fair Housing***

As discussed above, the FHA and HUD rules require participants in federal housing programs to analyze fair housing impediments and opportunities in a standardized Assessment of Fair Housing (AFH).<sup>41</sup> Jurisdictions receiving federal housing funds and municipal or regional PHAs are required to submit AFHs to HUD. In the AFH, municipalities/PHAs must analyze their fair housing environment, identify fair housing issues and their causes, set and prioritize fair housing goals, and plan meaningful actions to affirmatively further fair housing.<sup>42</sup> A new tool provided to municipalities will be centralized, federally-collected data to better enable municipalities to analyze their fair housing issues.<sup>43</sup> However, municipalities will also be expected to attain a higher level of analysis of their housing issues and, most importantly, take direct, practical steps to respond to the issues identified in their AFH.<sup>44</sup> Municipalities are also required to consult with public and private service providers, local stakeholders, and the public as they develop the AFH and other housing plans.<sup>45</sup>

As part of the municipality's requirement to assess fair housing with the AFH, it should not overlook the needs of DV survivors. While not specifically mentioned in the AFH Assessment Tool or the metrics provided by HUD,<sup>46</sup> female DV survivors comprise a protected class and their needs must be assessed, as well as included in the proactive steps the municipality takes to affirmatively further fair housing.<sup>47</sup> Municipalities can obtain local and regional data and information about the housing impacts of DV from police reports, local service providers, scholarly research, research conducted by advocacy groups, and even local government efforts to track the homeless population.<sup>48</sup> Examples of relevant data may include:

- Information from police reports or other indicators of the prevalence of DV in the community;
- Analysis of housing accessibility for DV survivors, including DV shelters, supportive housing programs, and market-rate housing;
- The number of requests for DV services made to local DV providers in the community, and the number of service denials;

- Statistics about any geographic areas or populations that experience especially high levels of DV;
- Reports on the demographics of the homeless population that include DV as a sub-group and/or track leading causes of homelessness and housing insecurity;<sup>49</sup> and
- Capacity of local domestic service providers to address the needs of survivors who experience disabilities, have limited English proficiency, or identify as LGBT.

To the extent that such data is available, it should be analyzed alongside the HUD-provided data to enhance the community’s understanding of its impediments to fair housing for DV violence survivors. Impediments may include a lack of resources for DV shelters and affordable housing providers, restrictions on survivors’ ability to terminate a lease or eject their abusers from their homes, zoning laws that impose an obstacle to creating shelters with restrictive occupancy or group housing requirements, and laws or practices that lead to housing discrimination against DV survivors. The AFH instructs leaders to engage community stakeholders in identifying impediments to fair housing. To fully understand and address all the barriers, local leaders must engage DV advocates, service providers, and DV survivors in their assessment and planning processes regarding fair housing.<sup>50</sup> Critically, leaders should investigate the unintended consequences of policies that are not facially designed to affect DV survivors, but that end up hurting DV survivors inadvertently.

“Impediments may include a lack of resources for DV shelters and affordable housing providers, restrictions on survivors’ ability to terminate a lease or eject their abusers from their homes, zoning laws that impose an obstacle to creating shelters with restrictive occupancy or group housing requirements, and laws or practices that lead to housing discrimination against DV survivors.”

Under the preexisting AI requirement, several municipalities have already incorporated DV concerns in their analyses of fair housing.<sup>51</sup> Municipalities can build on these examples to conduct a more comprehensive and solutions-based analysis of DV-related barriers to fair housing. For example, Bellingham, Washington’s Analysis of Impediments states that its housing providers have often failed to work with victims of DV, sometimes in ways that constitute sex discrimination. The Bellingham AI discusses Bellingham’s previous efforts to distribute informational materials about DV to its fair housing providers.<sup>52</sup> While it is commendable that Bellingham addressed DV issues in its AI, a prospective rather than retrospective DV analysis would better satisfy the new AFH requirements and goals.

Under the new AFH requirement, municipalities should not simply identify existing impediments to fair housing; they must directly respond to these issues by advancing concrete fair housing goals for the future and developing “action steps” to achieve these goals. Action steps might include the creation of shelter and housing resources specifically for DV survivors, partnerships between affordable housing providers and DV service providers, working with PHAs and other housing providers to establish preferences for DV survivors, and the elimination of laws that lead to housing discrimination against DV survivors.

Although jurisdictions are required by law to submit an AFH, it can be a benefit, not a burden, for municipalities. With the help of HUD and community stakeholders, municipalities can use the AFH to identify challenges to providing housing to DV survivors and take meaningful steps to address DV survivors' housing issues. In the long run, the AFH can be a tool to curb the tide of both DV and housing insecurity and mitigate the disastrous consequences that each problem has for communities.

### ***B. Protect Domestic Violence Victims' Access to Effective Police Assistance***

Although most people would agree that DV survivors should be able to call 9-1-1 for protection from their abusers, many municipalities have housing laws that prevent them from doing so. Municipalities throughout the United States have adopted crime-free ordinances, nuisance laws, tenant selection policies, and zero-tolerance laws that penalize tenants and/or property owners for police calls made from a property.<sup>53</sup>

For example, some of these laws identify certain conditions that make a property a "nuisance" – often including disorderly conduct, police activity, and crimes committed on the premises by individuals other than the tenant – and establish a procedure by which landlords must "abate" the nuisance.<sup>54</sup> If the landlord fails to "abate" the nuisance, he or she may be assessed penalties or even have his or her rental license revoked. Landlords might thus be pressured or even required to evict tenants after multiple police calls have been made to their apartment, even if the tenant at issue was not engaged in any criminal activity. These laws are intended to reduce crime, but they end up hurting crime *victims*. Across the country, municipal policies require or pressure landlords to evict DV survivors simply because they asked for police protection from their abusers.<sup>55</sup> DV survivors thus become further victimized when they are forced to choose between calling the police and keeping their homes.

#### ***Lakisha's Story***

One night in the summer of 2012, Lakisha received a knock on her door from her abusive ex-boyfriend, Wilbert. Lakisha knew Wilbert was dangerous, but she was afraid to call the police on him, because contacting the police could cause her to lose her home. Lakisha's town had a nuisance ordinance prohibiting multiple calls to the police from one property and, a couple of months prior, Lakisha had received her third "strike" under the ordinance. If the police were called to Lakisha's home one more time, she could be evicted.

Lakisha could not prevent Wilbert from entering her apartment, putting her life at risk. Wilbert soon became violent. He stabbed Lakisha in the neck with a shard of glass from a broken ashtray, and Lakisha had to be airlifted to the hospital. Even then, Lakisha never called the police. But a neighbor did, and Lakisha's town pressured her landlord to evict her.

Fortunately for Lakisha, legal action by HUD and the ACLU convinced her town to repeal its nuisance ordinance, and Lakisha was able to remain living in her town.<sup>56</sup> Unfortunately, however, Lakisha is one of many DV survivors across the country living in towns with similar laws, who could be evicted simply for asking for police protection from their abusers.

Another example of a problematic policy is an ordinance requiring landlords or government-subsidized housing providers to screen prospective tenants based on their criminal histories.<sup>57</sup> Criminal history screenings are problematic in part because prior criminal activity may include not just prior convictions, but also any alleged criminal conduct that the housing provider deems to be a threat to other residents' health, safety, and peaceful enjoyment of the property—even if the prospective tenant was not involved in the alleged criminal conduct. Moreover, victims of DV who fight back against their abusers in self-defense will often be arrested and/or charged with criminal conduct, even though their actions were defensive. Victims of DV are also frequently coerced into criminal conduct (such as drug crimes and prostitution) by their abusers. Thus, tenant screening policies based on criminal histories can be detrimental to DV survivors and may constitute illegal housing discrimination when a blanket ban on prospective tenants with criminal conduct on their record is enforced against DV survivors.<sup>58</sup> Municipalities should not recommend or mandate any particular action in response to a finding of criminal history. Instead, if housing providers do use background checks, they should be encouraged to exercise discretion, inquire about the circumstances that may have contributed to any negative reporting, and give applicants the opportunity to explain whether the past history related to status as a victim of DV.

So-called crime-free ordinances may also include a registration requirement, mandating that owners and managers of a property provide lists of lessees and tenants to the municipality. These lists are often available to the public, including through open records requests. Such a registration requirement implicates privacy rights that many federal courts have recognized: protections against disclosures of one's address and the right to keep private the names of those with whom one lives.<sup>59</sup> Registration provisions also pose specific problems for DV survivors, for whom the ability to keep one's name and address private is a central concern.

Finally, many public housing authorities have “no tolerance” policies whereby tenants may be evicted for alleged violent or criminal conduct committed by the tenants and/or their guests. These policies often have a disparate impact on women, particularly DV survivors, and thus constitute impermissible sex discrimination.<sup>60</sup>

#### **Characteristics of Laws That Threaten DV Survivors**

- Defining a nuisance as any situation where an “occupant, guest or business invitee commits criminal activities,” or “engages in disorderly conduct” on the premises, regardless of whether the tenant endured or sanctioned that conduct. Laws are also problematic when they define nuisances based on specific crimes that are commonly associated with domestic violence, such as assault and sexual misconduct.
- Creating a point system, three-strike rule, or any other mechanism by which tenants will be evicted after multiple instances of “criminal activity” or calls to the police.
- Characterizing “criminal activity” based on arrests and/or police investigations, rather than convictions.
- Requiring landlords to perform criminal background checks on prospective tenants.

Despite the popularity of the policies described above, there is no evidence that penalizing people for calling the police does anything to control crime. However, there is evidence that these policies impose penalties on innocent people and their landlords and discourage calls to the police, ultimately undermining public safety.<sup>61</sup> In order to respond effectively to criminal activity and to deter future crime, police need to be informed quickly when crime is occurring. If community members are threatened with the possibility of eviction for reporting or being the victim of a crime, they will be reluctant to notify the police of criminal activity, and crime will likely multiply. This is especially important in the DV context because abuse tends to escalate and what begins as assault and battery could turn into homicide.<sup>62</sup> Intimate partner homicides make up 40 to 50 percent of all murders of women in the United States, and in 70 to 80 percent of intimate partner homicides, the man physically abused the woman prior to her murder.<sup>63</sup>

Municipalities also put themselves at risk of liability whenever they enforce a law that penalizes tenants and/or property owners for police calls made to the property. As discussed in Section III, above, laws that have a discriminatory impact on DV survivors can constitute violations of VAWA and the FHA. Additionally, laws that penalize tenants for police calls made to the property may also violate provisions of the United States Constitution, including the First Amendment's right to petition the government for a redress of grievances and the Fourteenth Amendment's equal protection and due process clauses.<sup>64</sup> As penalties for enforcing illegal nuisance ordinances, municipalities might lose federal housing funds and be subject to legal action by HUD and/or private individuals. For example, the Borough of Norristown, PA recently paid \$495,000 in a settlement with a DV survivor who faced eviction after the police responded to several incidents of abuse in her home.<sup>65</sup> The Borough also entered a conciliation agreement with HUD to settle its Secretary-initiated complaint of housing discrimination stemming from the ordinance.<sup>66</sup> The town of East Rochester, NY settled a similar lawsuit for \$100,000.<sup>67</sup>

To avoid costly legal consequences, municipalities should examine their municipal code and eliminate any laws that may have a discriminatory impact on victims of DV. Although these ordinances are often intended to reduce crime and disorderly conduct, any positive benefits are far outweighed by their negative consequences. Laws that penalize tenants for contacting law enforcement are ineffective at achieving their stated goal of crime reduction, because they define criminal activity too broadly, penalize tenants and landlords for the conduct of people they may have no control over, and are subject to great human error.<sup>68</sup> They also can be inefficient and unwieldy to enforce, requiring more resources than lawmakers initially realize. Moreover, these ordinances are unnecessary additions to municipalities' existing penal and zoning laws, which, if enforced efficiently, would be a more effective measure of combating crime and disorderly conduct.<sup>69</sup> In order to maximize efficiency in combating crime and disorderly conduct, municipalities should focus on improving existing enforcement mechanisms, rather than enacting new punitive ordinances.<sup>70</sup>

In addition to citywide nuisance ordinances, municipalities should also scrutinize the policies of any federally-funded housing that they operate, including the Section 8 Housing Choice Voucher Program and public housing. For example, tenant selection policies that deny federally-funded housing to people with criminal histories and eviction policies that allow federally-funded housing agencies to evict tenants based on alleged "criminal activity" committed by their guests may come into conflict with VAWA and the FHA if they are enforced against DV survivors for incidents

related to the abuse. If local PHAs or other housing agencies enforce these policies against DV victims in a discriminatory manner, they could be sued in court or lose their federal housing funds.

Municipalities must also examine their policing policies to ensure that police response to DV calls do not discourage calls to the police, thereby jeopardizing survivors' safety and housing security. A critical element of housing stability for DV survivors is an assurance that, if they seek police assistance for abuse or other crime that occurs in their homes, the local police force will respond appropriately and without gender bias. Federal laws, such as the Safe Streets Act<sup>71</sup> and the Violent Crime Control and Law Enforcement Act of 1994,<sup>72</sup> mandate unbiased policing. Local leaders can exert oversight over their police department to ensure that they are not engaging in discriminatory practices and understand how to respond to DV calls effectively and without bias. To prepare police officers to effectively respond to DV calls, officers should be trained on topics such as bias-free policing; interviewing victims, suspects, and child witnesses; investigating intimate partner sexual assault; documenting sexual and DV; and determining the dominant aggressor.<sup>73</sup> Police officers should also be trained in related aspects of cultural competency such as sexual orientation awareness (to correct misconceptions that abuse cannot occur in same-sex relationships) and limited English proficiency (to ensure that officers do not simply accept the abuser's account of events when a DV survivor cannot speak English).

“A critical element of housing stability for DV survivors is an assurance that, if they seek police assistance for abuse or other crime that occurs in their homes, the local police force will respond appropriately and without gender bias.”

Municipalities may also wish to examine the practices of private landlords in their communities. Private landlords can face personal liability when they evict a tenant because he or she contacted the police,<sup>74</sup> or when they engage in housing discrimination against DV survivors, such as by refusing to rent to people who have experienced abuse.<sup>75</sup> These actions contribute to community-wide problems of housing instability and homelessness. Therefore, municipalities should incorporate considerations of DV into any landlord trainings held in the community. Such trainings may educate landlords about the risks of discrimination against DV survivors and about the detrimental effects of screening prospective tenants based on criminal, credit, and eviction histories.

Finally, municipalities should consider passing laws that affirm crime victims' right to seek police assistance, and that create an affirmative defense to any proceedings penalizing tenants and landlords that arise from a tenant's status as a victim of DV or requests for police assistance in response to crime or emergency. If municipalities are actively involved in preventing housing discrimination on the basis of calling the police, they will protect the housing rights of crime victims in their communities, and DV victims in particular. They will also prevent both the municipality and local landlords from facing costly legal penalties. Furthermore, policies that ensure that DV survivors and all crime victims receive protection, not punishment, if they contact the police lead to greater reporting, productive relationships with law enforcement, and increased public safety overall.

### ***C. Protect Domestic Violence Survivors' Rights in Rented or Owned Homes***

In order to curb the negative impacts of DV and homelessness, leaders should take active measures to ensure that DV survivors' housing rights are safeguarded. Municipalities should consider passing new laws that prohibit housing discrimination against DV survivors and provide affirmative housing rights to DV survivors seeking to leave an abusive relationship. These laws will benefit not only survivors, but also entire communities, because DV and homelessness take a great toll on communities and attending to DV survivors' housing rights will help end the mutually-reinforcing crises of housing instability and abuse.

Municipalities should have strong, comprehensive anti-discrimination statutes that prohibit housing discrimination based on factors such as sex, race, national origin, disability, familial status, sexual orientation, and gender identity/expression,<sup>76</sup> as well as a specific prohibition on discrimination against victims of domestic and sexual violence. Moreover, laws enacted should enable DV survivors to stay in their homes whenever possible. Providing a DV survivor with the legal right to terminate a lease early can also assist with that survivor's ability to relocate to a safe home without threatening his or her economic stability. All states and some municipalities have laws that protect DV survivors' housing rights, although the nature of the laws varies by state.<sup>77</sup> Some state laws allow the exclusion of an abuser regardless of home ownership or prime tenancy, which enables DV survivors to stay in their homes. Other laws allow for early termination of leases in DV situations and/or permit the bifurcation of leases in order to exclude an abuser from the lease.<sup>iii</sup> Finally, many laws require landlords to change the locks on an apartment in order to protect DV victims and/or permit victims to change their locks if landlords fail to do so.

#### **Examples of State and Local Housing Protections for DV Survivors:**

- Prohibiting discrimination against DV survivors who are tenants or applicants for housing.
- Prohibiting lease agreements that require tenants to waive their right to call for emergency assistance.
- Permitting early lease termination so a battered tenant can flee violence.
- Allowing courts to exclude an abuser from the home.
- Bifurcation of leases in order to early-terminate or exclude a perpetrator from the lease.
- In eviction proceedings, affirmative defense whenever the basis of the eviction relates to being a victim of an incident of DV.
- Granting survivors the right to install new locks

<sup>iii</sup> These laws should direct landlords to determine the party to be excluded from the lease upon straightforward evidence and should provide additional due process protections that allow the excluded party to challenge this decision in court. The federal government has set out a process in VAWA for deciding competing claims that can serve as an appropriate guide for municipalities, counties, or states that implement such a policy. *See* 42 U.S.C. § 14043e-11; 24 CFR 5.2007(e).

Local officials should become aware of their state's laws and work with government agencies, DV service providers, and other nonprofits to inform DV survivors of their legal rights. A useful resource is the National Housing Law Project's state-by-state overview of the housing rights of DV survivors, which comprehensively covers each state's legislation that provides housing protections for DV survivors.<sup>78</sup> Municipalities should also work with the appropriate local, county, or regional programs to ensure that DV survivors have adequate legal services, often provided for free or at minimal cost, in order to exercise their legal rights.

Beyond the state and federal laws already in place, several municipalities have enacted legislation to reinforce the housing rights of DV survivors in their communities, or to lessen negative impacts that existing laws might have on DV survivors. For example, San Francisco has created an affirmative defense of DV in any eviction case where the grounds for eviction are substantially based on acts constituting DV.<sup>79</sup> In New York City, rent-stabilized or rent-controlled tenants can ordinarily be evicted for non-occupancy of their apartment, but a city law created an exception to this rule: DV survivors who have the intent to return to the apartment may not be evicted for non-occupancy.<sup>80</sup> Monroe County<sup>81</sup> and Westchester County<sup>82</sup> in New York and the city of Philadelphia<sup>83</sup> have ordinances prohibiting housing discrimination against victims of DV. Leaders should explore the passage of these ordinances or other laws that can enhance the housing rights of DV survivors in their communities. Additionally, local leaders may support state legislation protecting DV survivors' housing rights.

#### ***D. Collaborate with and Support the Efforts of DV Service Providers***

Every DV survivor should have a safe place to turn to if he or she needs to leave home to flee an abuser or becomes homeless for another reason. Homelessness is disastrous for any individual, but the stakes are especially high for DV survivors. If a DV survivor becomes homeless and has nowhere to go, the survivor might lose custody of children, be exposed to further abuse and/or sexual assault, return to an abusive relationship, or even be at risk of death.<sup>84</sup> DV shelters offer survivors critical support, beyond just a roof over their heads. Shelters provide safety, nutritional meals, counseling, emotional recovery, childcare and child counseling, connections to resources like legal services and welfare benefits, and information on survivors' options as they seek to escape abuse.<sup>85</sup>

Although DV shelters are a lifesaver for many victims, they are often underfunded and thus unable to help every victim who needs their services. On September 17, 2013, the National Network to End Domestic Violence (NNEDV) conducted a 24-hour survey of the activities of DV shelters throughout the United States. In this 24-hour period, 66,581 DV survivors were served, but there were also 9,641 unmet requests for services, including requests for emergency shelter, housing, transportation, childcare, legal representation, and other needs.<sup>86</sup> Thus, municipalities must seek to maximize the amount of resources that can be provided to local DV shelters in order to help them serve survivors effectively.

Local leaders should be attentive to DV shelter best practices and understand the essential services that DV shelters provide in the community. Municipalities often provide funds to nonprofit service providers and can be a valuable connection between the service providers and government services.



Here are some key features for developing a cooperative and supportive collaboration with DV shelters:

- **Respect Confidentiality.** VAWA and many state laws mandate that DV shelters keep survivors' data and identifying information confidential.<sup>87</sup> Communities must uphold this mandate and should also establish measures to exclude shelter and victim information from public databases, such as databases of deeds, mortgages, or tenant lists. Confidentiality measures, however, must not prevent agencies from meaningfully participating in AFH and fair housing plans. DV programs can and should share *aggregate* numbers related to their services and the need of DV survivors in the community. Notwithstanding confidentiality provisions, local leaders should count DV service providers and survivors in any statistics used to determine the allocation of housing and shelter resources.<sup>88</sup>
- **Understand the Different Services Provided by Homeless and DV Shelters.** A traditional homeless shelter is designed to help with housing needs, but may be ill-equipped to deal with DV survivors' complex and critical safety planning needs.<sup>89</sup> Separation from an abusive partner is a trigger for severe violence or even murder, so women are often at the greatest risk during the process of separating from their abusive partners.<sup>90</sup> DV-focused shelters typically have security and confidentiality measures in place that serve to protect DV survivors and their children. In addition to DV shelters, DV-focused transitional housing programs are valuable resources to help DV survivors transition into permanent housing.
- **Encourage Collaboration between DV and Homeless Systems.** DV and homeless systems should collaborate with one another in order to address the overlapping problems of housing insecurity and DV.<sup>91</sup> Homeless service providers should be trained in how to identify and respond to DV, and they should integrate trauma-based care into their programming. For example, homeless programs established for homeless youth under the Runaway Homeless Youth Act should incorporate principles and services responsive to DV, as many youths are fleeing abusive homes and/or are victims of violence themselves. Conversely, DV service providers should be trained in the dynamics of homelessness, housing resources in their communities, and housing policies and eligibility requirements. Both systems should communicate with one another and, when needed, make referrals to each other's services. In communities that lack the resources to develop distinct DV shelters, homeless service providers should collaborate with area providers of DV services to ensure that the homeless shelters are meeting DV survivors' needs. To support the dual goals of preventing DV and homelessness, government and nonprofit agencies may wish to apply for federal funding from HUD's Continuum of Care program, which offers grants to promote a community-wide, integrated commitment to ending homelessness.<sup>92</sup>
- **Respect Personal Autonomy.** An underlying principle held by most DV service providers involves restoring a survivor's autonomy; the survivor, and not the service provider, makes the choice of what to do and where to go. Programs that use a one-size fits all model of services do not respect the ability of the survivor to make his or her own choices. Shelters should seek to maximize DV survivors' autonomy in both their day-to-day life and in choosing which services to receive.<sup>93</sup>

- **Promote Language Access.** Under HUD’s proposed AFH regulations, municipalities are encouraged to include individuals from marginalized communities and to ensure that they are able to fully participate in the AFH and planning process. For individuals who are limited English proficient, municipalities may need to offer interpreter services and translate public materials into common non-English languages in the community. Additionally, Title VI of the Civil Rights Act of 1964 and federal regulations implementing it require recipients of federal financial assistance to ensure that their programs and activities normally provided in English are accessible to people with limited English proficiency.<sup>94</sup>
- **Access for People with Disabilities.** Under the Americans with Disabilities Act (ADA) and other federal laws, DV shelters must make reasonable accommodations for victims with disabilities and may not exclude victims who have mental or physical disabilities or who have a chemical dependence.<sup>95</sup> Municipalities should support shelters in upholding the ADA’s requirements and ensuring that all victims are maximally served by shelters, regardless of mental or physical disabilities.
- **Sensitivity to Gender, Sexual Orientation, and Gender Identity.** Although the majority of DV survivors are female, male DV survivors are also in need of support. According to a study by the CDC, an estimated 2.2% of men have been raped by an intimate partner and 9.5% have experienced other sexual violence by an intimate partner in their lifetime.<sup>96</sup> DV also impacts people of all sexual orientations and gender identities, with lesbian, gay, bisexual, and transgender (LGBT) individuals experiencing abuse at high rates.<sup>97</sup> But, because DV is commonly misperceived as a problem affecting only heterosexual women, the needs of heterosexual male or LGBT victims are often neglected.<sup>98</sup> Communities should make sure that they provide shelter and other non-residential services to abuse victims of all genders, sexual orientations, and gender identities. This is not only good policy, but also upholds communities’ anti-discrimination obligations under the FHA, VAWA, and Family Violence Prevention and Services Act (FVPSA) grants.<sup>99</sup>
- **Cross-Train with DV Services to Ensure Survivors Know their Housing Options.** DV survivors, especially those who are homeless, should be counseled about their eligibility for rental assistance programs and given priority in receiving placements in supportive and public housing and rental subsidies. Cross-training between PHAs and local run housing programs and the DV service providers will enable both to better serve the needs of survivors transitioning from shelters.

For many survivors, a shelter is a critical step in the process of transitioning from abuse to independence, but it is never the end-goal. Thus, it is equally important to enable DV survivors to leave shelter and transition into new housing, or perhaps to avoid shelter altogether. DV survivors,

“By maintaining supportive shelters, robust resources for long-term housing, and integrating other services with shelter and housing systems, municipalities can help DV survivors escape abuse and attain emotional, physical, and financial independence.”

especially those who are homeless, should be counseled about their eligibility for rental assistance programs and receiving placements in supportive and public housing and rental subsidies, including access to all homeless housing resources in the community.<sup>100</sup>

Municipalities should include DV survivors in assessments of local needs and priorities in housing and should consider extending admission preferences to victims of DV in subsidized housing programs, a priority that was indicated by HUD in its recommendations to PHAs.<sup>101</sup> Municipalities may also wish to supplement federal- and state-provided housing resources with their own rental subsidies for DV survivors, as well as other relocation assistance like one-time cash payments to cover moving expenses. Although this requires funding, it is more cost-effective than housing survivors in emergency shelters or incurring the community-wide costs associated with homelessness.<sup>102</sup> Communities may also seek new federal funding for housing programs designed to help DV survivors, such as grants under the HOME Investment Partnerships Program, which funds short-term, tenant-based rental subsidies.<sup>103</sup> These resources should be well integrated with DV shelter systems so that shelters can inform survivors about and help them apply for housing subsidy programs. Additionally, shelters and other community organizations should provide asset-building services, financial counseling, job training, and other resources so that DV survivors may develop the financial independence to afford housing on their own.<sup>104</sup> By maintaining supportive shelters, robust resources for long-term housing, and integrating other services with shelter and housing systems, municipalities can help DV survivors escape abuse and attain emotional, physical, and financial independence.

#### ***E. Protect Public Housing and Section 8 Tenants***

Municipalities with locally controlled PHAs are obligated to ensure that their PHAs comply with all federal, state, and local laws related to the protection of DV survivors in public housing and the Section 8 Housing Choice Voucher Program. They also must take affirmative measures to ensure that DV survivors in the PHAs remain safe and secure. Although the following recommendations are especially important for leaders with direct control over public and subsidized housing administration, local leaders may play a role in creating or informing the public and subsidized housing policies affecting their communities. Many PHAs are city-run, while others span larger jurisdictions. Regardless, local leaders can collaborate with PHA administrators in their region to promote fair, supportive, and nondiscriminatory public housing for DV survivors.

Depending on individual circumstances, the needs of DV survivors in public housing will differ.<sup>105</sup> Some DV survivors will want to remain in their current public housing unit while taking measures to protect their safety, such as bifurcating the lease to exclude the abuser from the home. Other survivors may need to request a transfer to another unit or development, or a Section 8 Housing Choice voucher, in order to flee abuse and hide their whereabouts from an abuser. Survivors may also require the PHA to assist with additional protective measures like changing the locks on the survivors' doors or putting the abuser on a list of tenants who are excluded from the premises. PHAs should be flexible in working with each DV survivor to protect that survivor's safety and housing security depending on individual needs. Additionally, as required by VAWA, PHAs should make all tenants aware of the protections that VAWA provides for tenants living in public housing. It is especially critical to ensure that survivors know that, under VAWA, PHAs have a legal duty to keep information regarding DV confidential.<sup>106</sup>

Pursuant to appropriate proceedings, PHAs have the ability to accommodate survivors' requests to approve a new lease in their name only or, if the survivor needs to move, to issue a new voucher for the survivor only. Additionally, the PHA's required local family break-up policies should ensure that the survivor retains the subsidy if the household breaks up on its own.<sup>107</sup> Such accommodations may be necessary to support any restraining orders that might be in place against an abuser. Under VAWA, Section 8 landlords may remove the abuser from the lease while allowing the DV survivor to continue living in the apartment.<sup>108</sup> PHAs must provide DV survivors with any documents or administrative support needed during this process. Additionally, best practices dictate that PHAs recertify DV survivors' household income after an abuser moves out, because household income will likely have decreased and result in a change to the housing subsidy.<sup>109</sup> Finally, if a DV survivor requests to move with a Section 8 voucher due to the abuse, the PHA should issue a transfer voucher quickly and confidentially, as fleeing abuse might be vital to the safety of the survivor and his or her children.<sup>110</sup> If a PHA fails to take reasonable measures to safeguard DV survivors' housing rights and safety needs, the PHA may be subject to civil liability under the FHA or VAWA.<sup>111</sup>

“Depending on individual circumstances, the needs of DV survivors in public housing will differ . . . PHAs should be flexible in working with each DV survivor to protect that survivor's safety and housing security depending on individual needs.”

As discussed in Section III(B), above, PHAs should also work to ensure that their residents are able to seek help from the police, and are otherwise not discriminated against for their status as victims of DV. When tenants are penalized and/or evicted as a result of a nuisance ordinance, PHAs must not terminate benefits if the penalties or eviction were based on incidents of DV. PHAs will want to carefully assess whether termination will result in further illegal discrimination against that DV survivor tenant. Municipalities should assess their PHAs' tenant selection and eviction policies to ensure that none of the policies contain provisions that could be used to penalize victims of DV for the abuse committed against them or for any police activity at their apartments as a result of DV. As discussed above, policies do not need to be intentionally discriminatory in order to have discriminatory impacts on DV survivors. For example, “zero-tolerance” crime policies, which evict a tenant after they or their guest has allegedly engaged in “criminal activity” on the premises, may disproportionately affect DV survivors whose abusers act violently towards them. In a similar manner, tenant selection policies that exclude tenants based on previous criminal activity are problematic if enforced as a blanket ban on prospective tenants, regardless of whether they are DV survivors. Enforcing such zero-tolerance or tenant selection policies may subject PHAs to legal action on discrimination grounds, which might result in the loss of federal housing funds and/or civil liability.<sup>112</sup>

In addition to tenant-selection policies based on *criminal* histories, tenant-selection policies based on *credit* or *eviction* histories are also detrimental to DV survivors. Such tenant-selection policies tend to be an inaccurate assessment of DV survivors' ability to pay the rent and maintain

good standing as a tenant. Credit histories are problematic because abusers often wreak financial havoc over their victims' lives by preventing them from working, exercising complete financial control over them by limiting access to money, or by "coerced debt," which is the common abuse tactic of taking out credit in a victim's name via fraud or duress.<sup>113</sup> In such cases, a credit history is not a true reflection of a DV survivor's ability or willingness to pay rent. For similar reasons, screening tenants based on eviction history is problematic because abuse may temporarily prevent DV victims from keeping an apartment, and because abusers sometimes evict tenants from a jointly held apartment or withhold financial support as an abuse tactic.<sup>114</sup> HUD recommends that PHAs use discretion and contextualize credit or eviction histories when reviewing the applications of DV survivors.<sup>115</sup> PHAs may directly inquire about the circumstances that may have contributed to any negative reporting, but should give applicants the opportunity to contextualize these findings as stemming from their status as a victim of DV. PHAs should also be aware of potential limitations in survivors' ability to provide requested information due to safety reasons or a change of identity and should work with survivors and DV providers to identify alternative means of verifying suitability.

PHAs should also consider giving admissions and transfer preferences to DV survivors.<sup>116</sup> Admissions preferences for DV survivors are appropriate because DV survivors are especially vulnerable to homelessness, and because housing insecurity places DV survivors at higher risk of future abuse and sexual violence.<sup>117</sup> PHAs should also prioritize DV-based transfer requests in order to accommodate the needs of DV survivors who may need to urgently transfer to a new apartment to protect themselves from an abuser. PHAs should thus establish emergency transfer policies for DV survivors who need a transfer or a voucher in order to relocate<sup>118</sup> and be prepared to implement HUD's model emergency transfer plan when HUD issues the plan as part of VAWA 2013 implementation.<sup>119</sup>

In implementing all of these protections, PHAs should follow the survivor-centered practices in verifying status of DV that HUD sets out in its regulations on lease bifurcation.<sup>120</sup> This policy abstains from requiring third-party verification and, when it is requested, allows survivors to choose amongst a number of means by which to prove their status.

Municipalities should also provide DV training to PHA employees, especially those who work closely with tenants. This will enable PHA staff to identify possible instances of DV and respond empathetically and effectively when DV survivors request their assistance. Training will also help prevent instances of discrimination by dispelling gender-based myths about DV survivors. If municipalities affirmatively safeguard the rights of public housing and Section 8 tenants facing DV, they will shield the PHAs from legal liability, and, most importantly, protect the safety of public housing tenants and communities.

## V. CONCLUSION

Municipalities' efforts to combat DV and housing insecurity are far from limited to the policy measures described above. Municipalities should also be open to new, innovative ways to protect DV survivors in their communities. There is great variation throughout the country in the levels of protection provided to DV survivors, with some states and municipalities leading the way with effective new laws and programs. For example, a few states have passed laws that give DV survivors the right to take leave from work in order to seek housing.<sup>121</sup> These policies are still rare nationwide, but they have positively impacted survivors and their families. Municipalities should seek ways to pass new laws in their own jurisdictions, and also lobby regional, state, and federal governments for stronger protections for DV survivors.

In crafting DV policies, municipalities should seek input from DV service providers, other nonprofit organizations, and, if possible, DV survivors themselves. They should also continuously evaluate existing policies—with input from DV survivors and other stakeholders—for potential discriminatory impacts. By vigilantly safeguarding the housing rights of DV survivors, municipalities can protect not only the survivors but entire communities from the disastrous consequences of DV and housing insecurity.<sup>122</sup>

## VI. ACKNOWLEDGEMENTS

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## VII. APPENDIX

Please visit [www.aclu.org/safe-homes](http://www.aclu.org/safe-homes) for an appendix of resources for local leaders on DV and fair housing.

## VIII. ENDNOTES

<sup>1</sup> M.C. Black et al., Ctrs. for Disease Control & Prevention, National Intimate Partner and Sexual Violence Survey: 2010 Summary Report 2 (2011), available at [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>2</sup> *What is Domestic Violence*, National Coalition Against Domestic Violence, <http://www.ncadv.org/need-support/what-is-domestic-violence> (last visited March 9, 2015).

<sup>3</sup> *Injury Prevention & Control: Division of Violence Prevention*, Ctrs. for Disease Control & Prevention, <http://www.cdc.gov/violenceprevention/nisvs/>.

<sup>4</sup> Children's Bureau, Domestic Violence and the Child Welfare System 2-3 (2014) (finding that children who have been exposed to domestic violence are more likely to suffer behavioral, emotional, and cognitive problems, to struggle academically, and to exhibit pro-violence attitudes).

<sup>5</sup> Carmela Decandia et al., Nat'l Ctr. on Family Homelessness, *Closing the Gap: Integrating Services For Survivors of Domestic Violence Experiencing Homelessness 2* (2013), available at <http://www.familyhomelessness.org/media/371.pdf>; Ctrs. for Disease Control & Prevention, *Costs of Intimate Partner Violence Against Women in the United States 18–19* (2003), available at <http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>.

<sup>6</sup> U.S. Conference of Mayors, *City Responses to Domestic Violence: A 77-CITY SURVEY 2* (2010), available at <http://usmayors.org/publications/DomesticViolence10.pdf> (survey of 77 cities conducted by the U.S. Conference of Mayors found that two-thirds of cities reported that domestic violence calls have had an impact on police department staffing, because they are frequent, time-intensive, and typically require at least two officers to deescalate violent situations).

<sup>7</sup> See Julie L. Gerberding et al., Ctrs. for Disease Control & Prevention, *Costs of Intimate Partner Violence Against Women in The United States 15* (2003), available at <http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf> (“Of the estimated 322,230 intimate partner rapes each year, 116,647 result in injuries (other than the rape itself), 36,161 of which require medical care. And of the nearly 4.5 million physical assault victimizations, more than 1.8 million cause injuries, 519,031 of which require medical care. Nearly 15,000 rape victimizations and more than 240,000 physical assault victimizations result in hospital ED visits.” Many of victims are required to return to the hospital multiple times after an assault).

<sup>8</sup> See National Network to End Domestic Violence, *Domestic Violence Counts 2013, 3* (2014) [hereinafter NNEDV Census], available at [http://nnedv.org/downloads/Census/DVCounts2013/Census13\\_FullReport\\_forweb\\_smallestFileSizeWhiteMargins.pdf](http://nnedv.org/downloads/Census/DVCounts2013/Census13_FullReport_forweb_smallestFileSizeWhiteMargins.pdf) (survey of 1,649 local domestic violence programs found that in one day, victims made 9,641 unmet request for services, and 60% of those unmet requests were for housing).

<sup>9</sup> *Id.* at 6.

<sup>10</sup> J.L. Jasinski et al., *The Experience of Violence in the Lives of Homeless Women: A Research Report*, Nat'l Inst. of Justice, U.S. Dep't of Just. (2005).

<sup>11</sup> Nat'l Law Ctr. on Homelessness & Poverty, *There's No Place Like Home: State Laws that Protect Housing Rights for Survivors of Domestic and Sexual Violence 5* (2012), available at [http://www.nlchp.org/Theres\\_No\\_Place\\_Like\\_Home](http://www.nlchp.org/Theres_No_Place_Like_Home).

<sup>12</sup> *Id.*

<sup>13</sup> NNEDV Census, *supra* note 8, at 3.

<sup>14</sup> DeCandia et al., *supra* note 5, at 5–21; Phyllis Holditch Niolon et al., *An Innovative Approach to Serving the Needs of IPV Survivors*, 18 *Journal of Women's Health* 775, 776 (2009).

<sup>15</sup> Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Justice, NCJ Doc. 181867, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey 37* (July 2000).

<sup>16</sup> Lesley Laing, *Risk Assessment in Domestic Violence*, Australian Domestic & Family Violence Clearinghouse, no. 13 2004 at 8-10, available at [http://www.adfvc.unsw.edu.au/PDF%20files/risk\\_assessment.pdf](http://www.adfvc.unsw.edu.au/PDF%20files/risk_assessment.pdf).

<sup>17</sup> 24 C.F.R. § 5.2007.

<sup>18</sup> 42 U.S.C. §§ 2918a(c)(3)(B), 3226(c)(3)(B)(xxi), 3608(e), 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 12872(c)(2)(E), 12873(c)(2)(E), 12892(c)(2)(E), 12893(c)(2)(E), 1437aaa-2(d)(2)(M), 1437c-1(d)(16); 24 C.F.R. §§ 91.225(a)(1), 91.235(c)(4), 91.325(a)(1), 91.425(a)(1)(i), 91.520(a), 570.487(b), 570.421(a)(1)(iv), 570.601(a)(2), 570.704(b)(8)(v), 570.904, 903.1, 903.2(d), 903.7(o), 905.308(b)(1), 960.103(b), 982.53(c).

<sup>19</sup> 42 U.S.C. § 14043e-14043e-11; see also Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, Docket No. FR-5720-P-02 (proposed March 25, 2015) (to be codified at 24 CFR pts. 5, 92, 200, 574, 576, 578, 880, 882, 883, 884, 886, 891, 960, 966, 982-83), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=5720p02vawa2013proprule.pdf>.

<sup>20</sup> 42 U.S.C. § 14043e-3–14043e-4.

<sup>21</sup> 24 C.F.R. § 5.2009(a).

<sup>22</sup> Administrative Notice from Tony Hernandez, Adm'r for Hous. and Cmty. Facilities Programs to State Dirs. Rural Dev. and Program Dirs. Multifamily Hous.: Implementation of 42 U.S.C. § 14043e-11 of the Violence Against Women Reauthorization Act in Rural Development's Multi-Family Housing Programs (Jan. 5, 2015), available at <http://www.rurdev.usda.gov/SupportDocuments/an4778.pdf>.

<sup>23</sup> Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, *supra* note 19, at 21 (defining covered housing provider to include “state or local government[s]” that have “responsibility for the administration and/or oversight of VAWA protections” and noting that “VAWA protections and responsibilities are not limited to PHAs, owners, and managers of assisted housing.”)

<sup>24</sup> 42 U.S.C. § 14043e-11(a)–(b).

<sup>25</sup> 42 U.S.C. § 14043e-11(b); 24 CFR § 5.100.

<sup>26</sup> Memorandum from Sara K. Pratt, Deputy Sec’y for Enforcement and Programs, Office of Fair Hous. & Equal Opportunity, U.S. Dep’t of Hous. & Urban Dev. to FHEO Office Directors and FHEO Regional Directors: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act 4 (Feb. 9, 2011) [hereinafter FHEO Guidance on Housing Discrimination Against Domestic Violence], *available at* <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>.

<sup>27</sup> *Id.* at 3-4.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 5; *c.f.* *Texas Dep’t of Hous. Cmty. Affairs v. Inclusive Communities Project*, 135 S. Ct. 939, (2015), motion granted, No. 13-1371 (S. Ct. Jan. 9, 2015) (pending before the Supreme Court on the question of whether disparate-impact claims are cognizable under the Fair Housing Act).

<sup>30</sup> The FHA does not specifically include sexual orientation and gender identity as a protected class. However, the FHA’s prohibitions on discrimination on the basis of sex or disability can extend to claims of discrimination on the basis of sexual orientation or gender identity. Sexual orientation discrimination also may violate HUD regulations. *See* U.S. Dep’t of Hous. & Urban Dev., “Ending Housing Discrimination Against Lesbian, Gay, Bisexual, and Transgender Individuals and their Families,” HUD.GOV, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/LGBT\\_Housing\\_Discriminati](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discriminati) on. (last visited Feb. 5, 2015).

<sup>31</sup> *See, e.g.*, Release and Settlement Agreement, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. Sep. 18, 2014), *available at* <https://www.aclu.org/womens-rights/briggs-v-borough-norristown-et-al>; Conciliation Agreement between Assistant Secretary of the Office of Fair Housing and Equal Opportunity and Municipality of Norristown, Nos. 03-13-0277-8 and 03-13-0277-9 (Dep’t of Hous. & Urban Dev. Sept. 17, 2014); Second Amended Complaint, *Grape v. Town/Village of East Rochester*, No. 07 CV 6075 CJS (F) (W.D.N.Y. July 6, 2007); Conciliation Agreement between Assistant Secretary of the Office of Fair Housing & Equal Opportunity and City of Berlin, New Hampshire, No. 01-15-0017-8 (Dep’t of Hous. & Urban Dev., Jan. 29, 2015), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=TownBerlin.pdf>; *see also* Anna Perskey, *A Call for Help: Ordinance that evicts tenants for seeking police aid is putting abused women out on the street*, 99-Sep ABA J. 14 (2013).

<sup>32</sup> Release and Settlement Agreement, *supra* note 31.

<sup>33</sup> 42 U.S.C. §§ 2918a(c)(3)(B), 3226(c)(3)(B)(xxi), 3608(e), 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 12872(c)(2)(E), 12873(c)(2)(E), 12892(c)(2)(E), 12893(c)(2)(E), 1437aaa-2(d)(2)(M), 1437c-1(d)(16); 24 C.F.R. §§ 91.225(a)(1), 91.235(c)(4), 91.325(a)(1), 91.425(a)(1)(i), 91.520(a), 570.487(b), 570.421(a)(1)(iv), 570.601(a)(2), 570.704(b)(8)(v), 570.904, 903.1, 903.2(d), 903.7(o), 905.308(b)(1), 960.103(b), 982.53(c).

<sup>34</sup> Office of Fair Hous. & Equal Opportunity, Fair Housing Planning Guide, 5-4 (U.S. Dep’t of Housing & Urban Dev., 1996), *available at* <http://www.hud.gov/offices/fheo/images/flhpg.pdf>.

<sup>35</sup> *Id.* at 4-3-4.4.

<sup>36</sup> Shannan Catalano, U.S. Dep’t of Justice, Special Report Intimate Partner Violence, 1993-2010 3 (2012).

<sup>37</sup> *See, e.g.*, *Otero v. N.Y. City Hous. Auth.*, 484 F.2d 1122 (2d Cir. 1973); *Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970).

<sup>38</sup> Affirmatively Furthering Fair Housing Proposed Rule, 78 Fed. Reg. 43,710, 43,712 (proposed July 19, 2013) (to be codified at 24 CFR pts. 5, 91, 92, 570, 574, 576, and 903).

<sup>39</sup> *See, e.g.*, Complaint, *U.S. ex rel. Lockey v. City of Dallas, Tex.*, No. 3:11-CV-354-O (N.D. Tex. Jan. 23, 2013), 2013 WL 268371.

<sup>40</sup> Affirmatively Furthering Fair Housing Proposed Rule, 78 Fed. Reg. at 43,714.

<sup>41</sup> *Id.* at 43,710.

<sup>42</sup> Affirmatively Furthering Fair Housing Assessment Tool: Solicitation of Comment—60-Day Notice, 79 Fed. Reg. 57,949, 57,950 (Sep. 26, 2014).

<sup>43</sup> *Id.* at 57,950-51.

<sup>44</sup> *Id.*

<sup>45</sup> *See* 24 C.F.R. §§ 5.158, 91.100, 91.105.

<sup>46</sup> *See* U.S. Dep’t of Hous. & Urban Dev., Fair Housing Assessment Tool (proposed September 26, 2014), *available at* <http://www.huduser.org/portal/publications/pdf/AFFH-Assessment-Tool-2014.pdf>.

<sup>47</sup> 24 C.F.R. § 5.158. *See also*, Affirmatively Furthering Fair Housing Assessment Tool: Solicitation of Comment—60-Day Notice, 79 Fed. Reg. at 57,954 (emphasizing that communities must engage in analysis of all fair housing issues even when those issues are not named explicitly in the Assessment Tool).

<sup>48</sup> Whenever local governments are participants in HUD programs that require them to collect data on the homeless population in their communities, such as the Continuum of Care Program, they should include domestic violence as a sub-group of displaced persons in their analysis, as recommended by HUD. *See e.g.* U.S. Dep’t of Hous. and Urban Dev.,



HUD's Homeless Assistance Programs, *Continuum of Care 101*, 70 (2009), available at <https://www.hudexchange.info/resources/documents/coc101.pdf>.

<sup>49</sup> See, e.g., U.S. Dep't of Hous. and Urban Dev., *PIT and HIC Guides, Tools, and Webinars*, Homelessness Data Exchange (HDX) (last visited Feb. 5, 2015), <https://www.hudexchange.info/hdx/guides/pit-hic/>; The United States Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America's Cities* (2014), available at <http://usmayors.org/pressreleases/uploads/2014/1211-report-hh.pdf>.

<sup>50</sup> For an example of an Analysis of Impediments that uses community input from a domestic violence service provider, see Urban Design Ventures, *Phone Interview with Denise Flynn, Project Director—Women's Center of Montgomery County*, in 2012 Analysis of Impediments to Fair Housing Choice for Norristown (2012), available at [http://www.norristown.org/template/upload\\_files/2012\\_CAPER\\_Narrative.pdf](http://www.norristown.org/template/upload_files/2012_CAPER_Narrative.pdf).

<sup>51</sup> See, e.g., City of Bellingham Planning and Community Development, City of Bellingham, Washington, *2012 Analysis of Impediments to Fair Housing Choice Update* (2012), available at <http://www.cob.org/documents/planning/housing/analysis-of-impediments.pdf>; Utah Division of Housing and Community Development, *Analysis of Impediments to Fair Housing Choice 2012-2013 Update* 38-41 (2012); Common Ground, *Tri-Cities Analysis of Impediments to Fair Housing* 26-27 (2009), available at <http://www.pasco-wa.gov/DocumentCenter/Home/View/2904>.

<sup>52</sup> See City of Bellingham Planning and Community Development, *supra* note 51 at 44.

<sup>53</sup> See Emily Werth, Sargent Shriver Nat'l Ctr. On Poverty Law, *The Cost of Being Crime Free: Legal and Free Rental Housing and Nuisance Property Ordinances* 5-20 (Aug. 2013), available at <http://povertylaw.org/sites/default/files/files/housing-justice/cost-of-being-crime-free.pdf>.

<sup>54</sup> *Id.* at 4-5.

<sup>55</sup> Erik Eckholm, *Victims' Dilemma: 911 Calls Can Bring Eviction*, N.Y. Times (Aug. 16, 2013), available at [http://www.nytimes.com/2013/08/17/us/victims-dilemma-911-calls-can-bring-eviction.html?pagewanted=all&\\_r=1&\\_hpid=hp\\_911-calls-can-bring-eviction%3Ahomepage%2Fstory&\\_hpt=hp\\_911-calls-can-bring-eviction%3Ahomepage%2Fstory](http://www.nytimes.com/2013/08/17/us/victims-dilemma-911-calls-can-bring-eviction.html?pagewanted=all&_r=1&_hpid=hp_911-calls-can-bring-eviction%3Ahomepage%2Fstory&_hpt=hp_911-calls-can-bring-eviction%3Ahomepage%2Fstory).

<sup>56</sup> See Complaint ¶ 39, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D.P.A. Apr. 29, 2013) (ECF 9), available at [https://www.aclu.org/files/assets/2013.04.29\\_-\\_verified\\_first\\_amended\\_complaint.pdf](https://www.aclu.org/files/assets/2013.04.29_-_verified_first_amended_complaint.pdf); Press Release, HUD No. 14-121, *HUD and Philadelphia-Area Borough Settle Allegations of Housing Discrimination Against Victims of Domestic Violence* (Oct. 1, 2014), available at [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2014/HUDNo\\_14-121](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-121); Release and Settlement Agreement, *supra* note 31.

<sup>57</sup> Connecticut Fair Hous. Center, *Affirmatively Furthering Fair Housing: A Guide for Housing Providers* 13-18 (2013), available at <http://www.ctfairhousing.org/wp-content/uploads/CFHC-AffirmFurthGuideProviders.pdf>.

<sup>58</sup> U.S. Dep't of Hous. and Urban Dev., Notice: H 09-15, *Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005 for the Multifamily Project-Based Section 8 Housing Assistance Payments Program* (Oct. 1, 2009), available at <http://www.hud.gov/offices/adm/hudclips/notices/hsg/files/09-15hsgn.doc>.

<sup>59</sup> See, e.g., *U.S. Dep't. of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 500-02 (1994); *Brown v. Texas*, 443 U.S. 47, 52 (1979) (invalidating conviction under Texas statute empowering police officers to demand "name and residence address" in the absence of reasonable suspicion); *Sterling v. Borough of Minersville*, 232 F.3d 190, 197 (3d Cir. 2007) (finding that disclosure of information revealing sexual orientation was violative of privacy right); *Yeager v. Hackensack Water Co.*, 615 F. Supp. 1087, 1092 (D.N.J. 1985) (compelled disclosure of household members' names prohibited as violative of privacy right).

<sup>60</sup> Complaint, *United States and Alvera v. CBM Group*, No. 01-857-PA (D. Or., filed June 8); see also FHEO Guidance on Housing Discrimination Against Domestic Violence Victims, *supra* note 26.

<sup>61</sup> See Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 Am. Sociological Rev. 117 (2013).

<sup>62</sup> Karina Bland, *Signs Almost Always Precede Deadly Domestic Violence Cases*, U.S.A. Today (Jun. 10 2012), <http://usatoday30.usatoday.com/news/nation/story/2012-06-10/domestic-violence-signs/55496458/1>; House of Ruth, *Intimate Partner Violence Dynamics*, <http://www.hruth.org/domestic-violence-dynamics.asp>; Jane M. Sadusky et al., Praxis International, *Planning and Conducting a Best-Practice Assessment Community Response to Domestic Violence, Criminal Justice System Response: Emergency Communications (911) and Police Patrol* (2010), available at [http://www.stopvaw.org/uploads/self\\_assessment\\_911-patrol\\_may\\_2010.pdf](http://www.stopvaw.org/uploads/self_assessment_911-patrol_may_2010.pdf).

<sup>63</sup> Jacquelyn C. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, 250 NIJ Journal 14, 18 (2003), available at <https://www.ncjrs.gov/pdffiles1/jr000250e.pdf>.

<sup>64</sup> See Complaint ¶ 39, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa Apr. 29, 2013), ECF 9, available at [https://www.aclu.org/files/assets/2013.04.29\\_-\\_verified\\_first\\_amended\\_complaint.pdf](https://www.aclu.org/files/assets/2013.04.29_-_verified_first_amended_complaint.pdf).

<sup>65</sup> Release and Settlement Agreement, *supra* note 31.

- <sup>66</sup> Press Release, HUD No. 14-121, *HUD and Philadelphia-Area Borough Settle Allegations of Housing Discrimination Against Victims of Domestic Violence* (Oct. 1, 2014), available at [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2014/HUDNo\\_14-121](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-121).
- <sup>67</sup> Order, *Grape v. Town/Village of East Rochester*, No. 6:07-cv-06075 (W.D.N.Y. Jan. 19, 2010), ECF 39.
- <sup>68</sup> See Werth, *supra* note 54, at 12-16.
- <sup>69</sup> *Id.* at 17-18.
- <sup>70</sup> *Id.* at 2.
- <sup>71</sup> Safe Streets Act, 42 U.S.C. § 3789d.
- <sup>72</sup> Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.
- <sup>73</sup> U.S. Dep't of Justice, Civ. Rts. Div., *Investigation of the New Orleans Police Dep't* 44 (Mar. 2011), [http://www.justice.gov/crt/about/spl/nopd\\_report.pdf](http://www.justice.gov/crt/about/spl/nopd_report.pdf) (finding “Inadequate policies and procedures, deficiencies in training, and extraordinary lapses in supervision have contributed to a systemic breakdown in NOPD handling of sexual assault investigations. . . [as well as] domestic violence cases, although not to the degree evident in sex crimes.”); U.S. Dep't of Justice, Civ. Rts. Div., *Investigation of the Puerto Rico Police Dep't* 57-58, 65-66, 100 (Sept. 2011) [http://www.justice.gov/crt/about/spl/documents/prpd\\_letter.pdf](http://www.justice.gov/crt/about/spl/documents/prpd_letter.pdf) (identifying department-wide failure to address domestic violence and sexual assault and identifying insufficient training as one cause of the pattern and practice of gender-biased policing).
- <sup>74</sup> See, e.g., U.S. Dep't of Hous. and Urban Dev., *HUD Charges Owner of Maryland Housing Complex with Discriminating Against Victim of Domestic Violence*, Press Release, HUD No. 14-137 (Oct. 31, 2014), available at [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2014/HUDNo\\_14-137](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-137).
- <sup>75</sup> See, e.g., *HUD and New Hampshire Landlords Settle Allegations of Discrimination Against Domestic Violence Victim*, *supra* note 31.
- <sup>76</sup> Diego Iñiguez-Lopez, et al., *The Opportunity Agenda, Realizing the Promise: How to Affirmatively Further Fair Housing 15* (The Long Road in Seattle) (2014), available at [http://opportunityagenda.org/how\\_we%E2%80%99ve\\_affirmatively\\_furthered\\_fair\\_housing](http://opportunityagenda.org/how_we%E2%80%99ve_affirmatively_furthered_fair_housing).
- <sup>77</sup> Nat'l Hous. Law Project, *Hous. Rts of Domestic Violence Survivors: A State and Local Law Compendium* (2014), available at <http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf>.
- <sup>78</sup> *Id.*
- <sup>79</sup> San Francisco Admin. Code § 37.9(a)(3.1).
- <sup>80</sup> N.Y.C. Admin. Code § 26-504.
- <sup>81</sup> Monroe Cty. Code § 260-2.
- <sup>82</sup> Westchester Cty. Code §§ 700.02, 700.05, 700.11, 700.21.
- <sup>83</sup> Philadelphia Fair Practices Ordinance, Philadelphia Code § 9-1108.
- <sup>84</sup> Eleanor Lyon et al., *Meeting Survivors' Needs: A Multi-state Study of Domestic Violence Shelter Experiences* iv (Feb. 2008), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/225025.pdf> (In this DOJ-funded, multistate survey of survivors served by 215 domestic violence shelters, survivors were asked to describe what would have happened to them if they hadn't entered the shelter. Nearly all described tragic outcomes, including homelessness, losing everything, acting out of desperation, uncertainty, and continued abuse/risk of death).
- <sup>85</sup> *Id.* at iv–v, 10–13, 16, 45–46.
- <sup>86</sup> NNEDV Census, *supra* note 8, at 3.
- <sup>87</sup> DeCandia et al., *supra* note 5, at 7.
- <sup>88</sup> National Network to End Domestic Violence, *Comment Re: Docket No.FR 5720-N-01 The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs 2* (Oct. 6, 2013), available at <http://www.regulations.gov/#!documentDetail;D=HUD-2013-0074-0028>.
- <sup>89</sup> DeCandia et al., *supra* note 5, at 5.
- <sup>90</sup> Charlene K. Baker et al., *Domestic violence, Housing Instability, and Homelessness: A review of Housing Policies and Program Practices for Meeting the Needs of Survivors* 15, *Aggression & Violent Behavior*, 430, 431 (2010).
- <sup>91</sup> DeCandia et al., *supra* note 5, at 6.
- <sup>92</sup> See 24 C.F.R. Part 578; U.S. Dep't of Hous. & Urban Dev., *Continuum of Care Program*, available at <http://portal.hud.gov/hudportal/HUD?src=/hudprograms/continuumofcare> (last visited Feb. 8, 2015).
- <sup>93</sup> Charlene K. Baker et al., *supra* note 90, at 436.
- <sup>94</sup> Exec. Order No. 13166, 65 Fed. Reg. 50,121 (2000).
- <sup>95</sup> U.S. Dep't of Health & Human Servs., *Navigating the Family Violence Prevention and Services Program 29–30* (Nov. 2012), available at [http://www.acf.hhs.gov/sites/default/files/fysb/fvpsa\\_admin\\_guide\\_20121119\\_0.pdf](http://www.acf.hhs.gov/sites/default/files/fysb/fvpsa_admin_guide_20121119_0.pdf).
- <sup>96</sup> Black et al., *supra* note 1, at 43.

- <sup>97</sup> See National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2013* 48 (2014), available at [http://avp.org/storage/documents/ncavp2013ipvreport\\_webfinal.pdf](http://avp.org/storage/documents/ncavp2013ipvreport_webfinal.pdf).
- <sup>98</sup> See *id.*; Nat'l Domestic Violence Hotline, *Men Can Be Victims of Abuse Too* (July 22, 2014), available at <http://www.thehotline.org/2014/07/men-can-be-victims-of-abuse-too>.
- <sup>99</sup> See U.S. Dep't of Health & Human Servs., *supra* note 95, at 3, 26.
- <sup>100</sup> See Housing Link, *Out in the Cold: Housing Cuts Leave Domestic Violence Survivors with No Place to Go* (New Destiny Housing, 2012) (describing the harmful consequences of limited priority for DV survivors in applications for housing subsidies).
- <sup>101</sup> U.S. Dep't of Hous. and Urban Development, *Public Housing Occupancy Guidebook* 217 (2003), available at, [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_10760.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10760.pdf) (citing 24 CFR § 960.206, HUD guidance to PHA's in adopting preference policies based on local needs and priorities).
- <sup>102</sup> *Cost of Homelessness*, National Alliance To End Homelessness, [http://www.endhomelessness.org/pages/cost\\_of\\_homelessness](http://www.endhomelessness.org/pages/cost_of_homelessness) (last visited Nov. 17, 2014).
- <sup>103</sup> 42 U.S.C. §§ 12741–12756; U.S. Dep't of Hous. & Urban Dev., *HOME Investment Partnerships Program*, available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/programs/home](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/programs/home) (last visited Feb. 8, 2015).
- <sup>104</sup> See Administration for Children & Families, U.S. Dep't of Health & Human Servs., *Asset Building for Domestic Violence Survivors: Why is it Important?*, Assets For Independence Resource Center, <http://idaresources.acf.hhs.gov/page?pageid=a04700000Bo2RbAAJ> (last visited Nov. 17, 2014) (discussing the benefits of asset-building initiatives for domestic violence survivors).
- <sup>105</sup> Nat'l Hous. Law Proj., *Maintaining Safe and Stable Housing for Domestic Survivors: A Manual for Attorneys and Advocates*, 7–8 (2012) [hereinafter NHLP MANUAL].
- <sup>106</sup> 42 U.S.C. § 1437f(ee)(2)(A); 24 C.F.R. § 5.2007(b)(4).
- <sup>107</sup> NHLP MANUAL, *supra* note 105, at 8.
- <sup>108</sup> 42 U.S.C. § 1437f(o)(20)(D)(i).
- <sup>109</sup> NHLP MANUAL, *supra* note 105, at 8–9.
- <sup>110</sup> *Id.*
- <sup>111</sup> See, e.g., *Robinson v. Cincinnati Metropolitan Housing Authority*, No. 1:08-CV-238 (S.D. Ohio 2008); *Jones v. Housing Authority of Salt Lake County*, No. 2:07-cv-00743-DAK (D. Utah, filed Oct. 2, 2007). See generally FHEO Guidance on Housing Discrimination Against Domestic Violence Victims, *supra* note 26.
- <sup>112</sup> See, e.g., *Warren v. Ypsilanti Housing Commission*, No. 4:02-cv-40034 (E.D. Mich. 2003), <https://www.aclu.org/womens-rights/warren-v-ypsilanti-housing-commission>; Conciliation Agreement with HUD, *T.J. v. St. Louis Housing Authority* (2005). See generally FHEO Guidance on Housing Discrimination Against Domestic Violence Victims, *supra* note 26.
- <sup>113</sup> Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. Pa. L. Rev. 363, 425–428 (2013).
- <sup>114</sup> Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 Cal. L. Rev. 951, 995 (2012).
- <sup>115</sup> U.S. Dep't of Hous. and Urban Dev., *Public Housing Occupancy Guidebook* 218 (2003), available at, [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_10760.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10760.pdf).
- <sup>116</sup> U.S. Dep't of Hous. & Urban Dev., *USICH PHA Guidebook—Protecting Victims of Domestic Violence* 1, 2 (2013), available at [http://usich.gov/resources/uploads/asset\\_library/PHA\\_Domestic\\_Violence.pdf](http://usich.gov/resources/uploads/asset_library/PHA_Domestic_Violence.pdf).
- <sup>117</sup> See Lisa A. Goodman et al., *No Safe Place: Sexual Assault in the Lives of Homeless Women*, National Online Resource Ctr. on Violence Against Women (2011), available at [http://www.vawnet.org/applied-research-papers/print-document.php?doc\\_id=558](http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=558) (noting that homelessness places women at a dramatically greater risk of sexual assault).
- <sup>118</sup> U.S. Dep't of Hous. & Urban Dev., *supra* note 116.
- <sup>119</sup> See 42 U.S.C. § 14043e-11(e); The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs, 78 Fed. Reg. 47,717 (proposed Aug. 6, 2013) (to be codified in scattered sections of 24 C.F.R. part 5), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-08-06/pdf/2013-18920.pdf>.
- <sup>120</sup> See HUD 50066 form, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=50006.pdf>.
- <sup>121</sup> NHLP COMPENDIUM, *supra* note 77.
- <sup>122</sup> NHLP MANUAL, *supra* note 105, at 1–2.











**Housing insecurity is a persistent problem for domestic violence survivors, but secure housing is an opportunity to strengthen an entire community.**

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