



Survivors Have Rights and Protections to Move with a Voucher April 2016

The hallmark of the voucher program is the ability of families to select a unit and to move from one unit to another and not forfeit the rental assistance. HUD generally refers to the process of relocating with a voucher as a “move with continued tenant-based assistance.”¹ Moves with continued assistance can occur both within and outside the jurisdiction of the public housing agency (PHA) that issued the family’s voucher. A family may use its voucher to lease a unit anywhere in the United States where there is a PHA operating a voucher program.² The term “portability” refers to those moves with a voucher outside of the jurisdiction of the issuing PHA. The PHA that issued the voucher to the family is known as the “initial PHA.”³ The PHA in the jurisdiction where the family will be moving is called the “receiving PHA.”⁴

Moves with continued assistance are often critical for survivors. They raise a host of issues for survivors, primarily of three types: (1) issues that are typical of any move for a survivor; (2) issues related to the applicability of the Violence Against Women Act (VAWA); and (3) issues involving unique features of the voucher program. The first two categories of issues include safety planning for survivors to move with the voucher, documenting that the individual has experienced abuse and is subject to the protections of VAWA, confidentiality of the information that is provided, and possibly removing the perpetrator from the voucher. These issues are all discussed in *Maintaining Safe and Stable Housing for Domestic Violence Survivors, A Manual for Attorneys and Advocates*.⁵ Note however that the manual has not been updated since the enactment of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).⁶ For a summary of VAWA 2013’s key housing provisions, please see NHLP’s article *VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards*.⁷

This memo highlights some of the unique issues, policies, and procedures that apply to voucher holders who have experienced abuse and seek to move with continued assistance. When advising survivors in this situation, advocates should become familiar with various rules and policies governing such moves. HUD has published regulations and sub-regulatory issuances regarding moving with continued assistance and portability. In addition, each PHA’s policies regarding moves

¹ 42 U.S.C.A. § 1437f(r) (West 2016) (portability); 24 C.F.R. § 982.354 (2016).

² 24 C.F.R. § 982.1 (2016).

³ *Id.* § 982.4.

⁴ *Id.*

⁵ <http://www.nhlp.org/files/NHLP%20Domestic%20Violence%20and%20Housing%20Manual%202.pdf>

[hereinafter referred to as “NHLP, DV Manual”.] *See, e.g.*, § 2.5 (safety planning for survivors moving with a voucher), § 6.4 (documenting domestic violence for VAWA eligibility), § 6.5 (confidentiality of documentation and information), and § 6.9.2 (removing perpetrator from the voucher).

⁶ 42 U.S.C.A. §§ 14043e-11, 1437d note (West 2016).

⁷ http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated_1.pdf

with continued assistance and portability are included in the PHA's Administrative Plan for the voucher program.⁸ Advocates should seek improvements to the Administrative Plan if it is inconsistent with the HUD regulations or to address gaps in the HUD regulations.⁹

When a Family May Move

The voucher regulations state that a family is permitted to move with continued assistance in any of the following situations:¹⁰

- The PHA has terminated the Housing Assistance Payments (HAP) contract between the owner and the PHA.
- The owner and the tenant mutually agree to terminate the lease.
- The owner has given the tenant a notice to vacate, commenced an eviction action, or obtained a judgment of possession.
- The tenant has the right to terminate the lease and has given the owner a notice of lease termination.
- A family member has been a victim of domestic violence, dating violence, or stalking,¹¹ and the move is needed to protect the family member's health or safety.

A survivor's right to move may be precipitated by any of these reasons. However, if the precipitating event is additionally related to the fact that a family member is or has been a survivor of domestic violence, dating violence, sexual assault, or stalking, that fact should be brought to the attention of the PHA and/or the landlord because survivors have additional protections. For example, if the landlord has commenced an eviction against the family because of the acts of the abuser, the survivor could assert that he or she is entitled to a bifurcation of the lease.¹² If the abuser is evicted, the survivor benefits not only because the abuser may no longer live in the unit, but also because it should strengthen the survivor's claim to retain the voucher, which may then be used to move. Additionally, if the PHA is terminating the HAP contract with the owner because of actions by the abuser, the survivor could inform the PHA of the relationship between the abuse and the reasons for the HAP termination and seek appropriate relief, which may include preserving housing assistance for the survivor.

When a PHA May Deny or Delay Granting a Request to Move

Generally, PHAs are prohibited from discouraging a family from choosing to live anywhere within the PHA's jurisdiction or outside the PHA's jurisdiction (at least as permitted under the portability rules).¹³ In limited circumstances, however, a PHA may deny a voucher

⁸ See, e.g., Boston Housing Authority, Section 8 Admin Plan, Chapter 12, Portability, available at <https://www.bostonhousing.org/en/Policies/Section-8-Admin-Plan-Ch-12.aspx>

⁹ See NHLP, DV Manual, *supra* note 5, at Ch. 8, for a discussion of the PHA Plan process and Administrative Plan.

¹⁰ 24 C.F.R. § 982.354(b) (2016).

¹¹ Under VAWA 2005, HUD regulations provided protections for survivors of domestic violence, dating violence, and stalking regarding moving with continued voucher assistance. 24 C.F.R. 982.354(b)(4) (2016). VAWA 2013 did not change these statutory provisions concerning moving with continued assistance/portability. Therefore, there is no mention of extending coverage for survivors of sexual assault in the portability context. Nevertheless, it appears that HUD agrees that survivors of sexual assault also should be on the list of those permitted to move with continued assistance.

¹² 24 C.F.R § 5.2009 (2016).

¹³ *Id.* § 982.301(a)(2).

family's request and thereby refuse to issue the family a voucher to move. HUD guidance authorizes a PHA to deny a family's request to move only if it has grounds to do so under the voucher regulations.¹⁴ However, as explained below, the VAWA rules may provide separate grounds to revisit a PHA's denial of the request to move that was made under the ordinary voucher rules.

A PHA may deny a voucher family's request to move only for one of the following six reasons:

(1) Program Violations. A PHA may deny the move (both within and outside of the PHA's jurisdiction) because of the voucher family's action or failure to act in accordance with program regulations.¹⁵ This very broad category includes the obligation of the household not to engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity. Another obligation is that the family may not commit a serious or repeated violation of the lease. In these situations, VAWA protections can provide significant rights to survivors. If there is a lease violation, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed as a serious or repeated lease violation by the survivor.¹⁶ In the case of crimes by household members or guests, any offending activity directly related to domestic violence, dating violence, sexual assault, or stalking cannot generally be cause for termination of the tenancy or assistance of the survivor.¹⁷

Unfortunately, the VAWA protections do not directly address other program violations, such as failure to report that a family member no longer resides in the unit or absences from the unit, as well as failure to allow an inspection of the unit. Nevertheless, if there is a link between the abuse and the program violation, those facts should be asserted to support a policy argument that the purpose of VAWA is to protect the survivor. Hence, a survivor should not be denied a moving voucher because of the abuse, especially if the abuse caused the other program violations, and the failure of the PHA to issue the voucher results in the termination of the family from the program.¹⁸

(2) Non-resident Applicants. If the head of household or spouse did not legally reside in the PHA's jurisdiction at the time that the family submitted the voucher application, then the family can only port out of the PHA's jurisdiction during the first 12 months after being admitted to the program, if it is expressly permitted by the PHA.¹⁹ However, for moves that are necessary to protect health or safety, denying these requests to port would violate VAWA's implementing regulations, which provides that a survivor cannot be denied assistance or terminated from the voucher program because

¹⁴ Housing Choice Voucher Family Moves with Continued Assistance, PIH 2012-42 (Oct. 2, 2012), 13 [hereinafter PIH 2012-42].

¹⁵ *Id.* (citing 24 C.F.R. §§ 982.552, 982.553); *see also* NHLP, DV Manual, *supra* note 5, at Ch. 7, Evictions and Subsidy Terminations in Federally Subsidized Housing and § 6.8, VAWA's Protections Against Evictions and Subsidy Terminations.

¹⁶ 42 U.S.C.A. § 14043e-11(b)(1), (b)(2) (West 2016); 24 C.F.R. § 982.551(e) (2016); *see* NHLP, DV Manual, *supra* note 5, at § 6.8, discussing VAWA's Protections Against Evictions and Subsidy Terminations.

¹⁷ 42 U.S.C.A. § 14043e-11(b)(3)(A) (West 2016); 24 C.F.R. § 982.551(l) (2016); *see also* NHLP, DV Manual, *supra* note 5, at § 6.8, discussing VAWA's Protections Against Evictions and Subsidy Terminations.

¹⁸ NHLP, DV Manual, *supra* note 5, at § 6.8.2 Limitations on VAWA Protections.

¹⁹ 42 U.S.C.A. § 1437f(r)(1)(B)(i) (West 2016); 24 C.F.R. § 982.353(c) (2016) ("If the initial PHA approves, the family may lease a unit outside the PHA jurisdiction under portability procedures."); PIH 2012-42, *supra* note 14, at 13; *see also* 42 U.S.C.A. § 1437f(r)(1)(B)(i) (West 2016).

the tenant is or has been a survivor of domestic violence, dating violence, sexual assault, or stalking, and reasonably believes he or she was imminently threatened by harm from further violence if he or she remained in the unit.²⁰

(3) *Income Ineligibility.* If the family is new to the voucher program, the initial PHA must determine if the family is income eligible in the area to which the family wishes to move. If the family is not income eligible in the area to which the family wishes to move, then the family cannot move to that area with the voucher. For a family that is already renting a unit with a voucher, the receiving PHA does not re-determine income eligibility when the family exercises portability and cannot deny a voucher based on income.²¹ However, the receiving PHA can, after accepting the port, recertify the family – a process that examines changes in the family’s income.

(4) *Timing and Frequency of Moves.* Consistent with civil rights laws, including VAWA, PHAs may adopt policies restricting the timing and frequency of voluntary moves, such as prohibiting a move during the initial lease term or disallowing more than one move in a 12-month period.²² These restrictions do not apply if a family member has been a survivor of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the family member’s health or safety.²³

(5) *Moving Out During the Lease Term.* The PHA may ordinarily deny a voucher family’s request to relocate if the family moved out of its assisted unit in violation of the lease.²⁴ However, this provision does not apply if the family has complied with all other program obligations and moved to protect a survivor of domestic violence, dating violence, sexual assault, or stalking upon a reasonable belief that he or she was imminently threatened by further violence if he or she remained in the assisted dwelling unit.²⁵ Although the survivor does not jeopardize his or her voucher and right to portability if he or she breaks the lease, the survivor may still have financial obligations under the lease, such as remaining rent or other fees, for which VAWA does not resolve liability. Nevertheless, an advocate should assist the survivor in negotiating a reduction or elimination of the charges, since in most states the landlord has an obligation to mitigate damages by taking reasonable steps to re-rent the premises. Additionally, advocates should evaluate whether the family has rights under state fair housing or other laws (including state domestic violence and housing laws) to end the lease without further liability, such as where the move is needed as a reasonable accommodation for a tenant with disabilities.²⁶

(6) *Insufficient Funding.* A PHA may deny a voucher family’s request to move if the PHA does not have sufficient funding within the budgetary allocation, including any voucher Housing

²⁰ 24 C.F.R. §§ 982.353(b), 982.354(b)(4) (2016).

²¹ 24 C.F.R. § 982.353(d) (2016); PIH 2012-42, *supra* note 14, at 5.

²² 24 C.F.R. § 982.354(c)(2). The housing authority’s Administrative Plan must state any restrictions on the number of times a voucher family may move. *Id.* § 982.54(d)(19).

²³ *Id.* §§ 982.354(c)(2), 982.354(b)(4), 982.353(b) (2016); Streamlining Administrative Practices in the Housing Choice Voucher, PIH Notice 2012-15, 4-5 (Feb. 27, 2012).

²⁴ 42 U.S.C.A. § 1437f(r)(5) (West 2016); 24 C.F.R. § 982.353(b) (2016).

²⁵ 42 U.S.C.A. § 1437f(r)(5) (West 2016); 24 C.F.R. § 982.353(b) (2016); PIH 2012-42, *supra* note 14, at 13.

²⁶ *See, e.g.,* Rodriguez v. Morgan, 2012 WL 253867 (C.D. Cal. Jan. 26, 2012) (landlord failed to reasonably accommodate tenant with disabilities when he failed to respond to tenant’s request for mutual rescission of the lease).

Assistance Payment (HAP) reserves to support the move.²⁷ Generally, a PHA cannot deny a request to move simply because the family is moving to a higher cost unit or a higher cost area.²⁸ The PHA can deny the move only if, because of the move, it would be unable to avoid terminations of other voucher participants in the current calendar year.²⁹ The PHA must provide written notice to the local HUD office in writing and within 10 business days of its determination that it is necessary to deny moves to a higher-cost unit based upon insufficient funding.³⁰ In addition, the PHA must include in its Administrative Plan a policy regarding denials of moves due to insufficient funds and may not admit other families to its voucher program until it complies with that policy.³¹ Unless the PHA's policy makes an exception for survivors, a policy of denying moves for insufficient funding is not affected by VAWA. If the PHA denies the move because of expense, the survivor could still move to a safe unit that costs the same or less than the current unit.

Significantly, a HUD notice provides if the PHA has approved a family's request to move, it may withdraw the approval due to insufficient funds only if the family can remain in the original unit.³² A survivor may have to argue that the family cannot remain because it would be unsafe to stay in the unit.

What Should a Family Consider Prior to or When Moving?

Survivors should take numerous steps involving the PHA and the landlord when moving. If the family wants to move to a new unit, the family must notify both the PHA that issued the voucher to the family and the owner before moving.³³ In addition, if the family wants to move to a unit that is outside the initial PHA's jurisdiction, then the notice to the initial PHA must specify the area where the family wants to move.³⁴ Typically, if the family has a long-term lease, it must determine if it can terminate the lease and what liabilities might result, or it must get the owner's agreement to break the lease mid-term. As noted above, a survivor has unique rights to break a lease and not lose the voucher.

Requesting a voucher to move may be the first time that the survivor is confronted with the need to provide documentation of the abuse.³⁵ If the family is moving, it should consider where it wants to move and look for a unit before informing the owner or the PHA. A survivor will want to

²⁷ 24 C.F.R. § 982.354(e)(1) (2016), *see* HUD VMS Data Reports at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/psd (provides some information regarding voucher usage and reserves).

²⁸ PIH 2012-42, *supra* note 14, at 13.

²⁹ *Id.*

³⁰ 24 C.F.R. § 982.354(e) (2016).

³¹ PIH 2012-42, *supra* note 14, at 14. The Administrative Plan must address how the PHA will inform families of moves denied for financial reasons, how long a request to move will be held open and how the family will be notified when funds become available. Moreover, the 5 Year Plan for the PHA must include a statement regarding domestic violence.

³² *Id.* at 14-15. *But see* Koroma v. Richmond Redev. & Hous. Agency, 2010 WL 1704745 (E.D. Va. Apr. 27, 2010) (prior to issuance of PIH 2012-42, PHA that initially stated it would absorb porting tenant's voucher could reverse its decision because of funding shortfalls).

³³ 24 C.F.R. § 982.354(d) (2016); *see also* Cain v. Allegheny Hous. Auth., 986 A.2d 947 (Pa. Commw. Ct. 2009) (reversing voucher termination based on tenant's alleged failure to notify PHA that she was moving, because tenant had previously notified PHA that she needed to move because landlord had threatened her with eviction).

³⁴ 24 C.F.R. § 982.354(d) (2016).

³⁵ *See* NHLP, DV Manual, *supra* note 5.

take into consideration whether the location is safe. PHAs are required to have a policy in the Administrative Plan regarding absence from the unit.³⁶ If the survivor must temporarily relocate for safety reasons, he or she should promptly inform the PHA and such notice ought to be in writing.³⁷ Moreover, many PHAs have policies limiting the number of days a tenant may be absent from a voucher unit before his or her assistance will be terminated. Furthermore, the voucher regulations provide that in no case may a unit be without a household member for more than 180 consecutive days.³⁸ If the survivor has moved out, he or she should also promptly inform the PHA as one of the tenant obligations is to inform the PHA of changes in family composition.³⁹ When the survivor informs the PHA that he or she will move or will be absent from the unit, he or she should tell the PHA that the information as to where he or she will move must remain confidential and that no one should be informed of his or her new or prior address.⁴⁰ In addition, the survivor should ask for the voucher in his or her name.

Timing of Moves

Often a voucher holder who is a survivor must move quickly. HUD regulations do not provide a timeframe for how quickly a PHA must respond to a voucher family's request to move.⁴¹ There may be some guidance in the PHA's Section 8 Administrative Plan.

The PHA must give the family at least an initial 60-day search time, which may be extended for another 60 days or longer.⁴² Families may find the standard search time of 60 days insufficient.⁴³ There may be reasons that the survivor will need more time, because he or she was unable to search due to the abuse, including fear of being followed or physical harm. Therefore, it is important to know the PHA's standard practice and to determine what is needed to get extensions of the search time. For example, if the PHA routinely extends the voucher search time for new applicants, it ought to extend the search time for current families who want to move. Even if the PHA is less generous in extending the voucher search time for applicants, there are arguments for allowing longer extensions for a current tenant.⁴⁴ In addition, PHAs must suspend the voucher search term

³⁶ 24 C.F.R. §§ 982.54(d)(10), 982.312(d)(1) (2016).

³⁷ *But see* 24 C.F.R. § 982.354(b)(4) (2016) (a PHA may not terminate assistance if the family already moved out, regardless of prior notification to the PHA). *See also* Cain v. Allegheny Hous. Auth., 986 A.2d 947 (Pa. Commw. Ct. 2009) (reversing voucher termination based on tenant's alleged failure to notify PHA that she was moving, because tenant had previously notified PHA that she needed to move because landlord had threatened eviction).

³⁸ 24 C.F.R. § 982.312(a) and (c) (2016).

³⁹ *Id.* § 982.551 (h)(3) and (i).

⁴⁰ 24 C.F.R. § 982.307(b) requires the PHA to inform the new owner of the family's current and prior address, but it also states that in cases involving domestic violence, dating violence, and stalking, 24 C.F.R. part 5, subpart L, applies. From this language, advocates should argue that the PHA ought not to release such information for a survivor.

⁴¹ As a reference point, if there is too much delay, it may be helpful to point out that HUD rules require in the portability context that the receiving PHA issue a voucher within two weeks after it has received the relevant documentation. PIH 2012-42, *supra* note 14, at 4.

⁴² 24 C.F.R. § 982.302 (2016).

⁴³ *See* Jackson v. Jacobs, 971 F. Supp. 560 (N.D. Ga. 1997) (preliminary injunction ordering initial PHA to restore Voucher tenant's assistance after she was unable to find housing in receiving PHA's jurisdiction).

⁴⁴ There is no harm in extending the search time for a current voucher resident, who is still in the unit. A search voucher for an existing tenant does not deprive someone else on the waiting list of a voucher, it merely provides an opportunity to transfer the current voucher to another landlord. If the survivor has already moved out of the unit, arguably 180 days should be allowed by reference to the time period for when a voucher automatically terminates. *See e.g.*, 24 C.F.R. 982.312(a), (c) (2016).

from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied.⁴⁵ Also note that for porting families, the receiving PHA's policies on extensions apply once the receiving PHA has issued the family a voucher.⁴⁶

Furthermore, advocates should urge PHAs to adopt policies that are responsive to survivors. For example, the issuance of vouchers to move should be expedited in the case of domestic violence, extensions should be freely granted and policies allowing for suspension or tolling of the search time should be adopted. Such policies are consistent with the objectives of the voucher program and the PHA's obligation not to discourage a family from moving,⁴⁷ as well as with VAWA.

PHAs' Additional Responsibilities Regarding Portability

Portability begins when a voucher family contacts the initial PHA and expresses interest in moving to the jurisdiction of another PHA. The portability rules require that the family notify the initial PHA of its desire to relocate and must specify the location where it wants to live.⁴⁸ If there is more than one PHA in that area, then the initial PHA provides the family with contact information for the receiving PHAs that serve that area, and the family selects the receiving PHA. In situations where the family prefers not to select the receiving PHA, the initial PHA picks the receiving PHA for the family.⁴⁹ Once the receiving PHA is determined, the initial PHA must contact the receiving PHA, via email or other confirmed delivery method, before approving the family's request to move so as to determine whether the voucher will be absorbed or billed by the receiving PHA. The receiving PHA must advise the initial PHA in writing of its decision.⁵⁰ If the receiving PHA notifies the initial PHA that it will absorb the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA.⁵¹ If the receiving PHA plans to bill the initial PHA for the portability voucher and the cost of the HAP will increase due to the move, then the initial PHA can deny the move if it does not have sufficient funding for continued assistance.⁵²

The initial PHA must determine the family's eligibility to move in accordance with the portability rules.⁵³ The receiving PHA does not re-determine income eligibility for a participant family. For a new voucher family, however, the initial PHA must determine whether the family is eligible for admission to the receiving PHA's voucher program.⁵⁴ In determining eligibility, the receiving PHA's income limits are used by the initial PHA.⁵⁵

Further, the receiving PHA's local preferences or priorities for selecting eligible applicants are not relevant to the porting family, and the receiving PHA may not place the porting family on

⁴⁵ 24 C.F.R. § 982.303(c) (2016).

⁴⁶ 24 C.F.R. § 982.355(c)(14) (2016).

⁴⁷ *See id.* § 982.301(a)(2) (2016).

⁴⁸ *Id.* § 982.355(c)(2); PIH 2012-42, *supra* note 14, at 5.

⁴⁹ 24 C.F.R. § 982.355(b) (2016).

⁵⁰ *Id.* § 982.355(c)(3).

⁵¹ *Id.* § 982.355(c)(4).

⁵² *Id.* § 982.355(c)(5).

⁵³ *Id.* § 982.355(c)(2).

⁵⁴ *Id.* § 982.355(c)(9).

⁵⁵ *Id.*

its voucher waiting list.⁵⁶ HUD guidance provides that the receiving PHA *must* issue a voucher to the porting tenant within two weeks of obtaining all of the tenant’s documentation.⁵⁷ The receiving PHA determines the unit size and payment standard for which the family is eligible under its own Administrative Plan policies.⁵⁸ If the receiving PHA chooses to recertify or reexamine a current participant family, the PHA cannot delay issuing the voucher or otherwise delay approval of a unit.

Additionally, a receiving PHA cannot refuse to assist incoming portable families or direct them to another neighboring PHA for assistance.⁵⁹ The PHA must have approval in writing from HUD before refusing any incoming portable families.⁶⁰

Although the receiving PHA may not delay in issuing a voucher to a porting family, it may take subsequent action. For example, the receiving PHA may seek to terminate the family after it has ported for program violations committed during the family’s tenure in the receiving jurisdiction.⁶¹ Some receiving PHAs may go further, by screening families’ criminal history after they already have ported.⁶² If the receiving PHA has more stringent criteria than the initial PHA, it may terminate the family’s assistance due to criminal history involving acts prior to the porting.⁶³ This practice arguably violates the voucher statute, which limits PHAs’ authority to conduct elective screening to “applicants” for the voucher program.⁶⁴ In any case, survivor families porting with a voucher should become familiar with the screening policies of the receiving PHA, especially if a member of the survivor family has a criminal background.

Hearing Requirements

Hearing requirements vary depending upon the situation. HUD regulations state that a PHA’s refusal to process or provide assistance under portability procedures constitutes termination of assistance for an applicant as well as a participant.⁶⁵ As a result, in any case where an initial or receiving PHA refuses to process or provide assistance under portability procedures, the family must be given the opportunity for an informal review or hearing.⁶⁶

⁵⁶ *Id.* § 982.355(c)(10).

⁵⁷ PIH 2012-42, *supra* note 14, at 4.

⁵⁸ 24 C.F.R. § 982.355(c)(12) (2016).

⁵⁹ *Id.* 982.355(b).

⁶⁰ *Id.*

⁶¹ *Id.* § 982.355(c)(10).

⁶² PIH 2012-42, *supra* note 14, at 4-5 (stating that a receiving PHA may take subsequent action against a porting family based on their criminal background).

⁶³ 24 C.F.R. § 982.355(c)(10) (2016); *See Binns v. City of Marietta Hous. Assist. Program*, 2010 WL 1138453 (N.D. Ga. Mar. 22, 2010) (challenging receiving PHA’s refusal to issue voucher to porting family, allegedly due to disabled family member’s criminal record); *Lawrence v. Brookhaven Dep’t of Hous., Cmty. Dev. & Intergovernmental Affairs*, 2007 WL 4591845 (E.D.N.Y. Dec. 26, 2007) (holding that the receiving PHA was acting within its authority to reexamine the voucher holder’s eligibility when she moved into its jurisdiction, and that it was also within its authority to terminate her assistance after discovering a prior drug conviction). *Housing Choice Voucher Program: Streamlining the Portability Process*, 80 Fed. Reg. 50,564, 50,568 (August 20, 2015) (HUD rejected multiple comments to the proposed portability rule that stated receiving PHAs should be restricted from rescreening porting families in order to minimize hardship on voucher families that relocate).

⁶⁴ *See* 42 U.S.C.A. § 1437f(o)(6)(B) (West 2016).

⁶⁵ 24 C.F.R. § 982.552(a)(2), (3) (2016).

⁶⁶ PIH 2012-42, *supra* note 14, at 5 (receiving PHA must provide a hearing); *See also Orullian v. Hous. Auth. of Salt Lake City*, 2011 WL 6935039 (D. Utah Dec. 30, 2011) (tenant required to move because of an eviction notice should have been given a moving packet or the right to a hearing); *Avanesova*, 2004 WL 5913378 (porting tenant

The right to a hearing for refusal to process a request to move should also apply to other moves.⁶⁷ Moreover, if the move is needed to escape abuse and to protect the family member's health or safety, the refusal to process a request is tantamount to a termination. If the PHA refuses to process or provide the family a moving packet, it must offer the family a hearing.⁶⁸

In practice, however, beyond the grounds specified in the rules for when a family may move, PHAs may sometimes delay issuing a voucher when it determines that the family owes money to the owner or that there are outstanding issues between the owner and the family regarding tenant damage to the unit or generally whether the family is in "good standing" with the owner. The PHA may be concerned that the family is moving from unit to unit leaving behind disgruntled owners, who will discredit the program and make it harder to recruit new owners to the program. These policies can endanger a survivor's safety by unnecessarily preventing the family from moving. Although the rules are insufficiently clear about whether the PHA may delay issuing a voucher in such a situation, the survivor could request a hearing.⁶⁹ Advocates should urge PHAs to consider the safety needs of survivors when they consider a request to move, including portability. Advocates can also refer to VAWA provisions that a survivor should not be denied assistance or terminated due to the abuse and that the federal housing agencies are obligated to develop emergency transfer plans for use by PHAs.⁷⁰

Unfortunately, the federal rules are also not clear regarding the timing of the requested hearing. Additionally, survivors should be aware that when a voucher is awarded to the survivor, the abuser, who is on the same voucher, will have a right to a hearing to challenge the withdrawal of the voucher.⁷¹ Such a challenge may delay the issuance of the voucher.⁷² In the event that the PHA is unable to determine which household member is the survivor, both parties may also seek a hearing.⁷³

This project was supported by funds from the National Resource Center on Domestic Violence and Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

was denied due process when receiving PHA refused to enter into a contract with the landlord); *but see* Koroma v. Richmond Redev. & Hous. Agency, 2010 WL 1704745 (E.D. Va. Apr. 27, 2010) (porting tenant was not entitled to a hearing from receiving PHA that refused to process his portability request; note however that the ruling was prior to PIH 2012-42, *supra* note, 14, which states a contrary policy position).

⁶⁷ 42 U.S.C.A. 1437f(r) (West 2016) (statutory language treats all moves as portability moves and makes no distinction between moves within or outside the jurisdiction of the PHA).

⁶⁸ Orullian v. Hous. Auth. of Salt Lake City, 2011 WL 6935039 (D. Utah Dec. 30, 2011).

⁶⁹ 24 C.F.R. § 982.552(a)(3) (2016) (termination of assistance includes refusing to process or provide assistance under portability procedures).

⁷⁰ 42 U.S.C.A. § 14043e-11(e) (West 2016).

⁷¹ *See, e.g.,* Badri v. Mobile Housing Board, 2011 WL 3665340 (S.D. Ala. Aug. 22, 2011).

⁷² *In re Herman v. NYC Dep't of Hous. Pres. & Dev.*, 2012 WL 3984482 (Sep. 10, 2012).

⁷³ *Id.*