

Alameda County Family Justice Center



A collaborative of law enforcement, government, and non-profit agencies ensuring the safety and healing of abuse victims through comprehensive, coordinated, accessible services.



March 6, 2008

Housing Authority of the City of Alameda
Attn: Eileen Duffy, Operations Manager
701 Atlantic Avenue
Alameda, CA 94501-2161

Re: Comments on Proposed Annual Plan for Fiscal Year 2008; Section 8 Administrative Plan; and Public Housing Admissions and Continued Occupancy Policy

Dear Ms. Duffy,

The Alameda County Family Justice Center (ACFJC) submits the following comments in connection with the Alameda Housing Authority's (AHA) proposed Annual Plan for Fiscal Year 2008-2009. We are also submitting comments on the Section 8 Administrative Plan and the public housing Admissions and Continued Occupancy Policy (ACOP).

The Alameda County Family Justice Center (ACFJC) is a community initiative launched by more than 50 organizations and 150 people who have joined together to provide comprehensive services required by domestic violence, child abuse, sexual assault and exploitation, dating violence, stalking, and elder abuse victims and their families. Through co-location and collaboration of diverse agencies, we leverage tax payer funded services with private donor based programs, thereby using the often limited energy and resources of a victims in the most efficient manner. The mission of the ACFJC is to ensure the safety and healing of domestic violence victims through easily accessible, coordinated, and comprehensive services.

We submit these comments in the hope that they will facilitate a continued dialogue with AHA and assist the agency in administering its housing programs in a manner that serves the needs of survivors of domestic violence, dating violence, sexual assault, or stalking.

Our comments focus on the aspects of AHA's plans that affect the housing rights of domestic violence victims. We appreciate AHA's efforts in incorporating the provisions of the Violence Against Women Act (VAWA) into the Administrative Plan and ACOP. We are particularly impressed with AHA's policy of notifying Section 8 participants of VAWA at the time of admission and at annual recertification. AHA's policy of providing an informal hearing for participants terminated from assistance based on an unfavorable history that may have resulted from domestic violence is also notable. These are innovative and thoughtful policies that could be quite helpful in assisting victims in using VAWA's protections

We encourage AHA to continue its work in preserving housing opportunities for victims of domestic violence, dating violence, sexual assault, or stalking and submit the comments below to further address victims' needs. We would welcome meeting with AHA to respond to any questions or concerns that the agency may have with regard to our comments.

Annual Plan

AHA's draft annual plan does not describe the activities, services, or programs that AHA has implemented to help victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing.

COMMENT:

The Violence Against Women Act of 2005 (VAWA) requires a PHA to describe in its annual plan any activities, services, or programs that help victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing. *See* 42 U.S.C. § 1437c-1(d)(13). We therefore encourage AHA to describe any activities it has undertaken to implement VAWA. For example, AHA must inform tenants of their rights as victims of domestic violence, dating violence, or stalking, and inform owners and managers of their rights and obligations under VAWA. *See* 42 U.S.C. § 1437d(u)(2)(B); 42 U.S.C. § 1437f(ee)(2)(B). It is our understanding that AHA has instituted efforts to inform tenants, owners, and managers of VAWA, and we suggest that AHA detail these efforts in its annual plan. Additionally, if AHA has trained its staff on VAWA's provisions, designated staff members to handle VAWA cases, or made arrangements to refer tenants or applicants to a particular victim service provider, AHA should describe these activities and indicate the steps it has taken to make victims of domestic violence, dating violence, and stalking aware of the services.

Please note that the ACFJC is available to accept referrals from AHA staff who encounter victims of domestic violence, child abuse, sexual assault, dating violence and/or stalking.

Section 8 Administrative Plan

Family Breakup Policy (page 3-2)

The Administrative Plan provides that if family members are forced to leave the unit because of actual or threatened physical violence by another member of the household, the AHA may terminate the assistance contract for the unit and transfer the assistance to the family members forced to leave. The actual or physical violence must be documented by a qualified third party, such as a representative of the law enforcement or judicial system.

COMMENT:

We appreciate AHA's efforts to protect victims' housing rights in the event that a family breaks up due to domestic violence. We also appreciate AHA's willingness to accept verification of domestic violence from a qualified third party. For purposes of consistency, we encourage AHA to accept the same forms of documentation that are used for verification of domestic violence under VAWA. We suggest that in addition to representatives from the law enforcement or judicial system, AHA accept third-party verification from victim service providers, such as those stationed at ACFJC, as well as attorneys and medical professionals. This approach is consistent with VAWA, which permits an individual to certify his or her status as a victim of domestic violence in any of the following three ways: (1) completing the HUD-approved certification

form; (2) providing documentation signed by a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, in which the professional attests under penalty of perjury to the professional's belief that the incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or (3) providing a police or court record. *See* 42 U.S.C. § 1437f(ee)(A), (C).

Prohibited Reasons for Denial of Assistance (page 3-16)

The Administrative Plan currently lists several grounds on which persons will not be denied housing assistance.

COMMENT:

We encourage AHA to list "Whether a member of an applicant family is a victim of domestic violence, dating violence, or stalking" as one of the grounds on which a person cannot be subjected to discrimination. As noted in VAWA, the fact that an applicant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission. *See* 42 U.S.C. § 1437f(o)(6)(B).

Screening for Suitability as a Tenant (pages 3-19, 9-1)

The Administrative Plan provides that AHA will provide prospective Section 8 landlords with the name and address of the landlord at the applicant's current and former address.

COMMENT:

A policy requiring tenants to disclose prior landlords' contact information or mandating that the information be shared if available may cause serious problems for victims of domestic violence. If the prospective owner contacts a victim's current or former landlord, the abuser may be able to track the victim's location. We suggest that AHA tell applicants which parties will be contacted so that safety risks can be identified. We encourage AHA to work with victims of domestic violence to identify alternative means of verification for critically needed information where primary means may place the applicant's safety at risk.

Victim Documentation (pages 3-22, 12-10)

The Administrative Plan states that an applicant for Section 8 assistance who seeks to assert VAWA's protections must provide two documents. First, the applicant must provide a signed statement that includes the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking. Second, the applicant must provide either (a) a police or court record; or (b) a signed statement from a victim service provider, an attorney, a medical professional, or another knowledgeable professional from whom the victim has sought assistance in addressing the abuse.

For current program participants who are facing termination because of incidents related to domestic violence, it is unclear how many forms of documentation are required. The Administrative Plan initially states that program participants can provide a statement signed by the victim, or a police or court record, or a statement signed by a professional. However, the Administrative Plan goes on to state that program participants are required to submit “the required certification and supporting documentation” (emphasis added). This seems to indicate that program participants, like applicants, are required to provide two forms of documentation.

COMMENT:

AHA’s policy for verifying domestic violence is inconsistent with VAWA’s provisions. AHA requires a victim to provide a signed certification naming the perpetrator and attesting that the incidents of violence are bona fide, and either a statement from a professional or a police or court record. Further, the current verification policies make no mention of the availability of the HUD-approved certification form. Many victims may have little to no experience in documenting the violence that they have experienced, and may have never drafted a declaration or an affidavit outlining the incidents of abuse. The HUD-approved form is therefore a helpful way to assist these victims in providing the information that is needed to verify incidents of violence.

VAWA clearly states that a victim may satisfy the certification requirement by providing only *one* of three documents: (1) HUD-approved certification form; OR (2) signed statement from a professional; OR (3) police or court record. *See* 42 U.S.C. § 1437f(ee)(1)(A), (C). It is therefore contrary to the intent of the statute to require the victim to provide both a signed certification and another type of documentation. It is also unduly burdensome for the victim, who in some cases may be in the process of fleeing from the perpetrator. HUD has also made clear that a signed statement from a professional or a police or court record may be provided “[i]n lieu of a certification form.” *See* Notice PIH 2006-42. AHA should therefore modify its current certification policy to reflect VAWA’s language and to require that a victim need only supply *one* of the three types of documentation listed in the statute (again, certification form, signed statement from a professional, or police or court record). This approach is consistent with the policies that other housing authorities in the Bay Area have implemented. As the chart below shows, only one other housing authority (San Mateo County) requires victims to provide two forms of documentation:

Housing Authority	Certification Required to Assert VAWA’s Protections
Alameda County	<ol style="list-style-type: none"> 1. HUD-approved certification form; OR 2. Signed statement from service provider; OR 3. Police or court record
Berkeley	<ol style="list-style-type: none"> 1. HUD-approved certification form; OR 2. Signed statement from service provider; OR 3. Police or court record
Contra Costa County	<ol style="list-style-type: none"> 1. HUD-approved certification form; OR 2. Signed statement from service provider; OR 3. Police or court record
Fairfield	<ol style="list-style-type: none"> 1. HUD-approved certification form; OR

	<ol style="list-style-type: none"> 2. Signed statement from service provider; OR 3. Police or court record
San Francisco	<ol style="list-style-type: none"> 1. HUD-approved certification form; OR 2. Signed statement from service provider; OR 3. Police or court record
San Mateo County	<ol style="list-style-type: none"> 1. HUD-approved certification form; AND EITHER: <ol style="list-style-type: none"> a. Signed statement from service provider; OR b. Police or court record
Sonoma County	<ol style="list-style-type: none"> 1. HUD-approved certification form and/or housing authority's certification form

Please note that AHA's verification policy is also inconsistent with VAWA in that it requires the victim to provide certification with "14 calendar days" of AHA's request for such certification. However, VAWA provides that an individual must be given 14 *business* days to provide certification. See 42 U.S.C. § 1437f(ee)(1)(B).

Definition of Domestic Violence (pages 3-32, GL-5)

The Administrative Plan's current definition of domestic violence is difficult to read because it does not break down the categories of persons who are considered victims of domestic violence. Further, VAWA's definition of "domestic violence" includes felony or misdemeanor crimes of violence committed "by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction." To make this definition of domestic violence easier to understand, we encourage AHA to list the categories of persons who are protected under California's family violence laws.

COMMENT:

To make the Administrative Plan's definition of domestic violence easier to understand, we suggest replacing the current definition with the following text:

"*Domestic violence*" is defined as felony or misdemeanor crimes of violence committed by:

- (1) a current or former spouse of the victim;
- (2) a person with whom the victim shares a child in common;
- (3) a person who is cohabitating with or has cohabitated with the victim as a spouse;
- (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies;
- (5) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction [i.e., California].

VAWA also protects persons who are covered by state law definitions of domestic violence. California law defines "*domestic violence*" as abuse perpetrated against the victim by:

- (1) The victim's spouse or former spouse.
- (2) Someone the victim lives with or lived with in the past.
- (3) Someone the victim is dating or has dated.
- (4) Someone the victim has a child with.

- (5) Someone to whom the victim is related by blood, marriage, or adoption (including the victim's parent, grandparent, child, grandchild, brother, or sister)

Local Preferences (pages 4-8, 4-9)

The Annual Plan, Section 8 Administrative Plan and ACOP currently contain no preference for victims of domestic violence.

COMMENT:

We urge AHA to consider adopting a local preference for victims of domestic violence. Modifying AHA's admissions policies to include a preference for victims of domestic violence would accord with Congressional recognition of the unique needs faced by families subject to domestic violence. Accessing safe and affordable housing are crucial steps toward safety and stability for victims of domestic violence.

We understand that there may be concerns that a waitlist preference for domestic violence victims could be exploited. To address these concerns, we suggest that AHA require that applicants provide one of the three forms of documentation listed in VAWA, i.e., certification form, signed statement from a service provider, or police or court record.

Actual and Imminent Threat Provision (pages 12-10, 12-11)

The Administrative Plan provides that if AHA can demonstrate an "actual or imminent threat" to other participants if an individual's assistance is not terminated, AHA "will bypass the standard process and proceed with the immediate termination of the family's assistance."

COMMENT:

It is unclear what AHA means by stating that it will "bypass the standard process and proceed with the immediate termination of the family's assistance." Given that neither VAWA nor HUD has defined the meaning of the term "actual or imminent threat," and that this term is highly subjective, AHA must not deny an informal hearing or other "standard process" to individuals who are believed to pose an actual and imminent threat to other tenants. If the tenant does indeed pose such a threat, termination of assistance alone would not result the tenant's removal from the premises. In fact, until the Section 8 landlord commences an eviction action against the tenant, the tenant is free to remain in the unit regardless of whether the Section 8 assistance is terminated. Therefore, AHA's current policy of proceeding with the immediate termination of a Section 8 tenant who poses an "actual and immediate threat" does nothing to preserve the safety of other tenants in the building. Instead, the immediate termination policy serves only to harm the interests of domestic violence victims who are most at risk of experiencing violence, and limits their ability to flee from their batterers.

A much more constructive approach would be to work with the victim to port the Section 8 voucher to another unit in a confidential location. This way, AHA would be able to protect the interests of both the victim of domestic violence and the other tenants in the building. In any

event, because it is highly likely that an individual would dispute whether he or she poses an actual or imminent threat to other tenants, the individual must be afforded an informal hearing before his or her rental assistance is terminated for this reason.

Termination Notice (page 12-11)

The Administrative Plan currently states that if AHA terminates assistance to a family, it will provide the family with a written description of the grounds under which AHA proposes to terminate assistance and the procedures for seeking an informal hearing.

COMMENT:

We encourage AHA to include information regarding VAWA's protections for tenants in its termination letters. Although AHA has sent written notices to tenants informing them of VAWA, many victims may remain unaware of their rights because the batterer monitors the mail or because the victim is limited English proficient. As a result, many victims may not know that they can raise VAWA as a defense to terminations relating to the abusive conduct of their batterers. Including a paragraph regarding VAWA in the termination letters could prevent victims from unnecessarily losing their housing assistance for reasons related to abuse.

Deciding Whether to Terminate the Tenancy (pages 12-14, 12-15)

The Administrative Plan provides that an owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, or stalking is limited by VAWA.

COMMENT:

We encourage AHA to include VAWA's provisions regarding lease bifurcation in the Administrative Plan. VAWA provides that a Section 8 owner may evict the abuser without evicting the victim. *See* 42 U.S.C. 1437f(o)(7)(D)(ii); 42 U.S.C. 1437f(o)(20)(D)(i). Including this provision would inform Section 8 owners that they have the option of removing the batterer while allowing the victim to stay in place.

Public Housing Admissions and Continued Occupancy Policy (ACOP)

Definition of Domestic Violence (§ 8.2 and Glossary)

The current definition of domestic violence found in the Administrative Plan and ACOP is difficult to understand because it does not clearly break down the categories of persons who can be considered victims of domestic violence. Please see our comments on the Administrative Plan for a proposed revision to the definition of domestic violence.

§ 8: VAWA and Denial of Assistance

The ACOP provides that if an applicant is denied assistance due to unfavorable history, the applicant will have an opportunity to provide documentation proving that the unfavorable history

is due to acts of domestic violence committed against the applicant. The applicant will be required to provide two documents. First, the applicant must provide a signed statement that includes the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking. Second, the applicant must provide either (a) a police or court record; or (b) a signed statement from a victim service provider, an attorney, a medical professional, or another knowledgeable professional from whom the victim has sought assistance in addressing the abuse.

COMMENT:

We appreciate AHA's policies permitting public housing applicants to cite domestic violence as a mitigating factor during the application process. However, as noted above in our comments on the Administrative Plan, VAWA requires that an individual provide only one form of documentation to verify incidents of domestic violence. Please refer to our comments on the Administrative Plan for more information regarding VAWA's certification procedures.

§16.2 Categories of Transfers: Emergency Transfers

The ACOP provides that a family may be granted an emergency transfer to another unit when conditions pose an immediate threat to the life, health, or safety of a family or one of its members. Such situations may involve defects of the unit or the building, the health condition of a family member, a hate crime, the safety of witnesses to a crime, or a law enforcement matter particular to the neighborhood.

COMMENT:

We encourage AHA to adopt an emergency transfer policy to assist victims of domestic violence, dating violence, or stalking who need to flee their abusers. Such a policy could be patterned after VAWA's portability provisions, which permit a family to move out of an assisted unit if the move is needed "to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking." *See* 42 U.S.C. 1437f(r)(5). This approach has been encouraged by HUD in the Public Housing Occupancy Guidebook, which states that "PHAs may adopt a transfer policy that includes a preference for victims of domestic violence who wish to move to other neighborhoods or even other jurisdictions. One tool PHAs may choose to use is the issuance of a voucher to the victimized family." *See* Public Housing Occupancy Guidebook, Chapter 19: Domestic Violence at 218-19.

§20.2 Termination by the Housing Authority

The ACOP provides that a family will be terminated from assistance for violent criminal activity, except where the criminal activity relates to domestic violence, dating violence, or stalking and the tenant or an immediate member of the tenant's family is the victim or threatened victim of domestic violence, dating violence, or stalking.

COMMENT:

We are pleased that AHA has included VAWA's eviction protections in its ACOP. We suggest that AHA specify which documents it will accept in verifying incidents of domestic violence. As we have noted throughout our comments, VAWA provides that an individual may certify that he or she is a victim of domestic violence, dating violence, or stalking in any of the following three ways: (1) completing the HUD-approved certification form; (2) providing documentation signed by a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, in which the professional attests under penalty of perjury to the professional's belief that the incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or (3) providing a police or court record. *See* 42 U.S.C. § 1437d(u)(1)(A), (C).

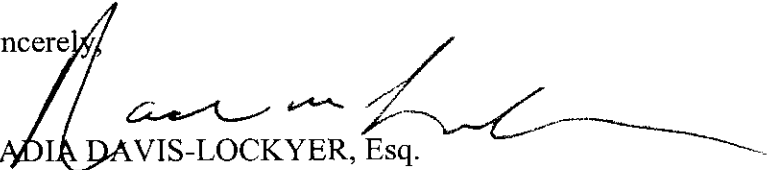
We also recommend that AHA include VAWA's lease bifurcation provisions in the ACOP. VAWA provides that a housing authority administering a public housing program may evict, remove, or terminate assistance to the abuser without evicting or terminating assistance to the victim. *See* 42 U.S.C. § 1437d(l)(6)(B).

Conclusion

Thank you for the opportunity to submit these comments. We look forward to discussing these issues with you in greater depth.

The ACFJC is willing to assist AHA in providing training on domestic violence and the related issues that impact the day-to-day lives of victims of domestic violence and their children.

Sincerely,


NADIA DAVIS-LOCKYER, Esq.
Executive Director