

Oakland Comments on PHA Annual Plan, 5 Year Plan, and Section 8 Admin. Plan

A: ADDRESSING DOMESTIC VIOLENCE IN OHA HOUSING

Domestic violence is a widespread epidemic, affecting up to 3 million women in the United States each year.¹ It is often lethal. In the United States, on average more than three women are murdered by their husbands or boyfriends every day.² The connections between domestic violence and housing are clear. 50% of homeless women are homeless due to domestic violence.³ Four out of five victims are turned away from battered women's shelters in the bay area due to lack of space. Finding and preserving affordable housing is an essential step for abuse survivors in their struggle to keep themselves and their children safe.

Congress had recognized the need for Public Housing Authorities (PHAs) to include special provision in their plans for domestic violence survivors. The Conference Committee Report accompanying the Department of Housing and Urban Development appropriations legislation for fiscal year 2002 directed "HUD to work with PHAs to develop plans to protect victims of domestic violence from being discriminated against in receiving or maintaining public housing because of their victimization."⁴ Through the Quality Housing and Work Responsibility Act, Congress also urged PHAs to consider preferences for domestic violence victims:

It is the sense of Congress that, each public housing agency involved in the selection of eligible families for assistance under the United States Housing Act of 1937 (including residency in public housing and tenant-based assistance under section 8 of such Act) should, consistent with the public housing agency plan of the agency, consider preferences for individuals who are the victims of domestic violence.⁵

On January 5, 2006 the President signed the Violence Against Women Act (VAWA) of 2005⁶ into law. VAWA includes new housing protections and programs for victims of domestic violence, dating violence, sexual assault and stalking. This new law mandates that a PHA, in its Annual Plan, include a description of any policies or programs that help victims obtain or maintain housing, and any policies or programs to prevent domestic violence, dating violence, sexual assault, and stalking or enhance victim safety.

¹ The Commonwealth Fund, "Health Concerns Across a Woman's Lifespan: 1998 Survey of Women's Health," May 1999.

² Bureau of Justice Statistics Special Report, "Intimate partner Violence and Age of Victim, 1993-1999," October 2001.

³ 1990 Ford Foundation Study. Cited by Joan Zorza, "Woman Battering: A Major Cause of Homelessness," in Clearinghouse Review, vol. 25, no. 4, 1991.

⁴ H.R. Conf. Rep. 272, 107 Cong., 1st Sess. 120 (Nov. 6, 2001).

⁵ Pub. L. No. 276-105, 112 Stat. 2,518, 2,548 (1998), § 514(e) codified at 42 U.S.C.A. §1437f note (West. Supp. 2001).

⁶ Pub. L. No. 109-162 (2005) at 42 U.S.C.A. §1437c-1, 42 U.S.C.A. §1437d, 42 U.S.C.A. §1437f.

With this in mind, BayLegal suggests that once the Federal Regulations are amended to include this new language the OHA include the following provisions in its revised Section 8 Administrative Plan and ACOP for the upcoming fiscal year.

- 1) A PHA is prohibited from denying admission or terminating a participant based solely on a person's status as domestic violence, stalking, or dating violence survivor.
- 2) Victims of domestic violence are entitled to an exemption from the "one-strike" criminal activity eviction rule. Under VAWA an incident of actual or threatened domestic violence, stalking, or dating violence does not qualify as a "serious or repeated violation" or "good cause for terminating ...the victim." Additionally, criminal activity directly relating to domestic violence, stalking, or dating violence does not constitute grounds for termination of tenancy.
- 3) A PHA or private landlord may bifurcate the lease in order to allow the victim to remain in the unit or retain the voucher while terminating or evicting the perpetrator.
- 4) A PHA must provide notice to tenant that: an incident of domestic violence, dating violence, or stalking does not qualify as serious or repeated violations of the lease; that criminal activity directly relating to domestic violence; dating violence or stalking is not grounds for termination of tenancy; and that new confidentiality rules govern the disclosure of information under the law.
- 5) A Section 8 family may move (port) to another jurisdiction if they comply with other program obligations and are moving "to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believe[s] he or she was imminently threatened by harm from further violence if he or she remained" in the unit.
- 6) In the Public Housing context, PHAs have the discretion to adopt policies that ensure a public housing resident can move if he or she is experiencing domestic violence.

Additionally we suggest the following additions to its Plans:

- 1) **The Oakland Housing Authority should modify its wait list and transfer protocols to include a preference for victims of domestic violence who are in immediate risk of violence and who need access to safe and affordable housing in order to escape the abuse.**

The Annual Plan, Section 8 Administrative Plan and ACOP currently contain no preference for victims of domestic violence. Modifying these policies to include such a preference 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.

2) OHA should excuse domestic violence victims from damage debts incurred by their abusers.

OHA should seek repayment from a perpetrator of domestic violence only not the household victim of domestic violence for damages to a public housing unit or private Section 8 unit when a perpetrator of domestic violence caused the damages.

3) OHA should modify its policies to provide domestic violence survivors with waivers of any requirements that put them at increased risk of abuse, make it more difficult for them to escape the abuse, or unfairly penalize them as abuse victims.

The above recommendations provide some examples of issues that arise in the public housing and Section 8 contexts for victims of domestic violence. These include situations where domestic violence victims must flee a residence in order to ensure their safety, where perpetrators of domestic violence cause damage to a unit in a battering incident through no fault of the victim, and where households split up due to domestic violence. However, it is impossible to enumerate the varied circumstances that may arise to pose obstacles for domestic violence victims. Given this, OHA policies and plans should include a provision that:

? A victim of domestic violence may request a waiver of any OHA required provision or policy that increases the safety risk to the victim, makes it more difficult for the victim to escape abuse, or unfairly penalizes the victim for the abuse.

There is strong precedent for taking such an approach in the federal laws governing Temporary Aid to Needy Families (TANF). These laws include a Family Violence Option that sets forth such a waiver in order to recognize the unique barriers faced by domestic violence survivors.⁷ California elected to include the Family Violence Option in the CalWORKs program, and provides counties with the ability to waive any program requirement that would make it more difficult for an abuse survivor or her/his children to escape abuse or that would be detrimental to or unfairly penalize past or present victims of abuse.⁸

Conclusion

With these suggestions in mind, we encourage the Oakland Housing Authority to modify its plans to recognize and address the epidemic of domestic violence.

⁷ 42 U.S.C. § 602(a)(7); 45 C.F.R. §§ 260.50-260.59.

⁸ W.I.C. § 11495.1(a)(3).