

HOUSING JUSTICE

National Housing Law Project

Newsletter December 2010

White House Unveils Initiatives to Prevent Domestic Violence

Marking Domestic Violence Awareness Month, the White House hosted a ceremony where Vice President Biden and President Obama addressed survivors of domestic violence, advocates, and government officials and highlighted the problems that domestic violence survivors face, as well as new initiatives to address some of those problems.

In his remarks, President Obama highlighted a few of the Administration's initiatives, including increased interagency coordination to combat domestic violence, the Department of Housing and Urban Development's (HUD) new rules aimed at preventing survivors from being denied assisted housing or evicted because of the violence against them, and the Department of Justice's (DOJ) guidance and tools regarding accessing courts and enforcing restraining orders. In conjunction with the President's speech, the Obama Administration issued a fact sheet outlining its initiatives to prevent domestic violence. The initiatives are composed of four broad categories: protecting children and breaking the cycle of violence, improving legal protections for victims of domestic violence, increasing sexual assault arrests and successful prosecutions, and helping victims regain housing and financial independence.

Protecting Children and Ending the Cycle of Violence

To protect children and break the cycle of vio-

Nobody in America should live in fear because they are unsafe in their own home -- no adult, no child.

Excerpt from President Obama's Domestic Violence Awareness Month remarks

lence, the Administration has designed a number of programs to serve youth affected by domestic violence. These programs range from providing health services (Pregnancy Assistance Fund, Maternal, Infant, and Early Childhood Home Visiting Program) to education (Head Start "Safe Families, Safe Homes" curriculum) and mental health services (Attorney General's Defending Childhood Initiative and Health and Human Services' Enhancing Services for Children and Youth Exposed to Domestic Violence). Many of these programs will begin in only a few states initially.

Legal Protections for Survivors

DOJ unveiled two new efforts at increasing access to courts for survivors of domestic violence. First, DOJ is launching a pilot project called Access to Justice for Domestic Violence Victims. The project seeks to increase pro bono legal services to victims of domestic violence by partnering with private law firms who agree to hire law students that had participated in their law school clinics and defer them for a year, so that the recent graduates can provide legal services for survivors.

(Continued on page 2)

IN THIS ISSUE

White House Domestic Violence Initiatives

HUD Issues Domestic Violence Rules

(Continued from page 1)

These attorneys will assist survivors in securing protective orders, navigating family court, and obtaining housing. Initially, this project will begin in New Orleans and Baltimore. Additionally, DOJ, in partnership with the national Council of Juvenile and Family Court Judges, will release a guide for advocates, attorneys, judges, law enforcement officers, and prosecutors on protective order issuance and enforcement entitled "Civil Protection Orders: A Guide for Improving Practice."

Sexual Assault Arrests and Prosecutions

DOJ and the National Institute of Justice (NIJ) have launched initiatives to increase sexual assault arrests and successful prosecutions. The DOJ initiative will bring together the public by holding regional forums and roundtables regarding sexual violence. NIJ will study and identify the causes of the current backlog of rape kits and develop a better system for tracking, screening, and testing DNA evidence. Ideally, reducing the backlog will lead to identifying the perpetrators of sexual assault and ensuring that they do not assault others.

Housing and Financial Independence

Importantly, the Obama Administration has recognized that housing and financial independence are key factors in breaking the cycle of abuse. In response, HUD released its rules implementing VAWA and guiding housing providers on their duty to ensure that survivors are not evicted or denied admission to assisted housing because of abuse inflicted upon them. Details on these rules can be found in the accompanying article. A number of other initiatives focus on building assets, credit, and accessing financial institutions and jobs.

The Administration's focus on the broad range of barriers survivors of domestic violence face to accessing jobs, housing, stability, and safety is a welcome effort. In addition to new initiatives, the President's 2011 budget includes \$130 million to help victims find shelter, counseling, legal assistance, transitional housing, and other services. ■

HUD Releases New Rules on Domestic Violence and Housing

The Department of Housing and Urban Development (HUD) recently clarified and strengthened its regulations regarding rights of domestic violence survivors in federally subsidized housing. The rules implement the housing protections of the Violence Against Women Act (VAWA) and incorporate several suggestions made by legal services attorneys and domestic violence advocates.

Background

VAWA, which became effective January 2006, prohibits survivors of domestic violence, dating violence and stalking from being evicted or denied housing assistance based on acts of violence committed against them. In November 2008, HUD published an interim rule amending its regulations, including those governing the public housing and Section 8 programs, to conform with the Act. For the most part, the interim rule mirrored VAWA's statutory language, frustrating advocates who had hoped that the regulations would clarify some of the Act's ambiguities.

Fortunately, on October 27, 2010, HUD published a final rule conforming its regulations to VAWA and clarifying some of the critical issues affecting domestic violence survivors living in subsidized housing. The rule was published in the Federal Register at 75 Fed. Reg. 66,246. Some of the topics addressed include the documentation needed to prove domestic violence, the ability of domestic violence survivors to flee subsidized housing and move with Section 8 vouchers, and housing providers' obligations to protect survivors' confidentiality. This article examines the provisions of the final rule that are likely to be of greatest interest to legal services providers.

Documentation of Domestic Violence

The final rule clarifies VAWA's requirements for documenting an incident of domestic violence,

(Continued on page 3)

(Continued from page 2)

dating violence, or stalking. Under the Act, if an individual seeks to assert VAWA's protections, a PHA, owner, or manager may request in writing that the individual provide documentation that she is a victim of domestic violence, dating violence or stalking. VAWA specifies three types of proof that can satisfy the documentation requirement: a HUD-approved form; a police or court record; or a signed statement from a victim service provider, an attorney, or a medical professional. A victim can use the HUD-approved form to self-certify that she is a victim of domestic violence, dating violence, or stalking.

Many housing providers, reluctant to accept the self-certification form alone, had questions regarding whether they could require a victim to provide third-party documentation in addition to the form. In response, the preamble to the final rule states that "an individual requesting protection cannot be required to provide third-party documentation." Additionally, HUD amended 24 C.F.R. § 5.2007 to make clear that documentation of domestic violence may consist of HUD's certification form, a police report or court record, or documentation signed by a victim service provider, attorney, or medical professional.

The final rule also addresses instances in which a housing provider has difficulty determining which household member is the victim and which is the abuser. HUD amended 24 C.F.R. § 5.2007 to state that in cases where a housing provider receives documents from two members of a household, each claiming to be a victim and naming the other household member as the perpetrator, "the PHA, owner, or management agent may determine which is the true victim by requiring third-party documentation." The preamble to the final rule states that if any questions remain regarding which household member is the victim, "a PHA grievance hearing, informal hearing or informal review could be an appropriate venue to pursue fact-finding and make a determination."

Confidentiality

The final rule expands upon housing providers'

confidentiality obligations regarding incidents of domestic violence, dating violence, and stalking. VAWA states that documentation of domestic violence shall not be entered into a shared database or provided to any related entity. The final rule augments these confidentiality protections by prohibiting employees of a PHA, owner or management agent from having access to information regarding domestic violence unless they are specifically and explicitly authorized to access this information and it is necessary to their work.

Portability

The final rule clarifies that certain restrictions on portability of Section 8 vouchers do not apply when a participant has been a victim of domestic violence and the move is needed to protect the victim's health or safety. Specifically, HUD has revised 24 C.F.R. § 982.314 to clarify that a PHA may not refuse to issue a voucher to an assisted family due to the family's failure to seek the PHA's approval prior to moving if the family moved to protect the health or safety of a victim of domestic violence. HUD also revised this regulation to state that PHA policies that prohibit moves during the initial lease term and that prohibit more than one move during a one-year period do not apply if the family needs to move due to domestic violence.

Family Breakup

Several advocates asked HUD to clarify how PHAs should respond when domestic violence leads to family breakup. In response, HUD revised 24 C.F.R. § 982.315 to state that if family breakup results from domestic violence, "the PHA must ensure that the victim retains assistance." In the preamble to the final rule, HUD states that it will issue guidance on how to add victims currently residing with an abuser to a public housing lease or Section 8 voucher.

Actual and Imminent Threat

The final rule provides guidance regarding what

(Continued on page 4)

(Continued from page 3)

constitutes an “actual and imminent threat” for purposes of VAWA. The Act states that a housing provider’s authority to evict or terminate assistance is not limited if the housing provider can demonstrate an “actual and imminent threat” to other tenants or employees at the property if the victim’s assistance or tenancy is not terminated. Several advocates and housing providers asked HUD to provide factors to consider in determining whether a particular situation amounts to an actual and imminent threat to other tenants or employees. In response, HUD amended 24 C.F.R. § 5.2005 to state that an actual and imminent threat consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm. Further, the final rule states that the factors to be considered in determining the existence of an actual and imminent threat include the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Additionally, the final rule states that eviction or termination of a victim’s assistance due to an actual and imminent threat should occur “only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat.” Further, evictions or terminations predicated on public safety “cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.”

Survivors with Criminal History

Advocates asked HUD to amend its regulations regarding screening of criminal history to improve access to housing for domestic violence survivors who have criminal history that resulted from self-defense, coercion, or mutual arrests. In response,

HUD amended 24 C.F.R. § 982.553, its regulation governing screening of criminal history in the Section 8 voucher program. HUD added a new subsection (e) stating that in cases of criminal activity related to domestic violence, the protections for victims of domestic violence set forth at 24 C.F.R. part 5, subpart L apply. Further, the preamble to the final rule states that “HUD agrees that victims of domestic violence, dating violence, or stalking must not be denied assistance or terminated from programs based solely on a criminal history related to domestic violence, dating violence, or stalking.”

Conclusion

HUD’s final rule helps to clarify some areas of ambiguity that have arisen during implementation of VAWA’s housing provisions. Advocates should consult VAWA’s statutory language and the final rule when assisting domestic violence survivors who are facing denials of housing, evictions, or subsidy terminations in public or Section 8 housing. Notably, HUD states throughout the final rule that it plans to issue additional VAWA guidance. The National Housing Law Project will continue to monitor HUD’s implementation of VAWA and share any updates with advocates. ■

For technical assistance or requests for trainings or materials, please contact:

Navneet Grewal, ngrewal@nhlp.org,
 Meliah Schultzman, mschultzman@nhlp.org
 National Housing Law Project
 614 Grand Ave. Suite 320
 Oakland, CA 94610.
 Phone: (510)251-9400
www.nhlp.org

This project was supported by 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/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.