



# Assisting Survivors of Domestic Violence in Applying for Housing



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Oakland, CA 94610  
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- ACLU of San Diego and Imperial Counties, [www.aclusandiego.org](http://www.aclusandiego.org)
- ACLU Women's Rights Project, [www.aclu.org/fairhousingforwomen](http://www.aclu.org/fairhousingforwomen)
- Advocates for Basic Legal Equality, <http://www.lawolaw.org/>
- Alameda County Family Justice Center, [www.acfjc.org](http://www.acfjc.org)
- Bay Area Legal Aid, [www.baylegal.org](http://www.baylegal.org)
- California Partnership to End Domestic Violence, [www.cpedv.org](http://www.cpedv.org)
- Central Jersey Legal Services, Inc., [www.lsnj.org](http://www.lsnj.org)
- Greater Boston Legal Services, [www.gbls.org](http://www.gbls.org)
- Legal Aid Foundation of Los Angeles, [www.lafla.org](http://www.lafla.org)
- Legal Aid Society Harlem Community Law Offices, [www.legal-aid.org](http://www.legal-aid.org)
- Legal Assistance Foundation of Metropolitan Chicago, [www.lafchicago.org](http://www.lafchicago.org)
- Legal Momentum, [www.legalmomentum.org](http://www.legalmomentum.org)
- Legal Services of Northern California, [www.lsncl.org](http://www.lsncl.org)
- Mid-Minnesota Legal Assistance, [www.midmnlegal.org](http://www.midmnlegal.org)
- National Law Center on Homelessness and Poverty, [www.nlchp.org](http://www.nlchp.org)
- Queens Legal Services, Inc., <http://www.queenslegalservices.org/>
- Sargent Shriver National Center on Poverty Law, [www.povertylaw.org](http://www.povertylaw.org)
- Utah Legal Services, [www.utahlegalservices.org](http://www.utahlegalservices.org)
- Victim Rights Law Center, [www.victimrights.org](http://www.victimrights.org)
- YWCA of San Diego County, [www.ywcasandiego.org](http://www.ywcasandiego.org)

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# Chapter 1: Introduction

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This Manual was created for advocates and attorneys working with survivors of domestic violence who are applying for housing. Efforts to help survivors find housing are crucial, as housing instability is a major obstacle for survivors who are seeking to end abusive relationships or to avoid returning to their abusers.<sup>1</sup> The Manual provides background information and sample documents that can be used to advocate on behalf of survivors who are seeking housing. The goal of this Manual is to make housing issues more accessible and easily understandable to advocates, regardless of their prior knowledge of housing law. National Housing Law Project plans to publish a second manual that addresses common issues survivors face once they have obtained housing, including evictions.

This Manual is designed for use by attorneys and non-attorneys. However, the legal information provided in this Manual is intended to provide a general understanding of housing laws and should not be construed as legal advice. Advocates are encouraged to seek assistance from housing law attorneys to determine how these laws would apply to a particular client's circumstances.

Sample advocacy materials, including sample letters, court documents, and policies, are included in the appendix to this Manual.

### 1.1 The Connection Between Domestic Violence and Denials of Housing

Survivors of domestic violence and their children face a number of serious housing problems related to the acts of violence committed against them. In enacting the Violence Against Women Act of 2005, Congress recognized that housing providers are discriminating against, denying access to, and even evicting families from housing because of their status as survivors of domestic violence.<sup>2</sup> Legal services attorneys and domestic violence advocates have reported hundreds of cases where tenants were denied housing because of acts of domestic violence committed against them.<sup>3</sup> In a test conducted by the Equal Rights Center, 65% of applicants seeking housing on behalf of domestic violence survivors were either denied housing or offered less advantageous terms than applicants not associated with domestic violence.<sup>4</sup> In 2008,

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<sup>1</sup> See, e.g., California Department of Health Services, Office of Women's Health, *Data Points: Results from the California Women's Health Survey* Issue 4, No. 4 (Summer 2006).

<sup>2</sup> See 42 U.S.C. § 14043e.

<sup>3</sup> National Law Center on Homelessness & Poverty & National Network to End Domestic Violence, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country* 3 (Feb. 2007), [http://www.nlchp.org/content/pubs/NNEDV-NLCHP\\_Joint\\_Stories%20February\\_20072.pdf](http://www.nlchp.org/content/pubs/NNEDV-NLCHP_Joint_Stories%20February_20072.pdf).

<sup>4</sup> Equal Rights Center, *No Vacancy: Housing Discrimination Against Survivors of Domestic Violence in the District of Columbia* (Apr. 2008), <http://www.equalrightscenter.org/publications/novacancy.php>.

domestic violence advocates in Vermont reported 158 denials of housing due to issues related to domestic and/or sexual violence.<sup>5</sup>

Fortunately, a growing number of legislators and housing providers are recognizing the connections between domestic violence and denials of housing. In response, they have enacted policies specifically designed to protect survivors from being denied housing or otherwise penalized for acts of violence committed against them. Even in instances where there are no specific housing laws or policies that protect survivors of domestic violence, advocates are using a variety of creative strategies to help their clients obtain housing. This Manual covers both the specific housing protections available to survivors, and some of the other arguments and resources that may be used to preserve survivors' housing rights.

## 1.2 The Material Covered in This Manual

This Manual focuses on domestic violence survivors' rights in applying for housing. It does not cover evictions or subsidy terminations, as these topics will be discussed in a future manual. Based on our experiences as a technical assistance provider for Legal Assistance for Victims grantees throughout the country, the Manual is organized around the areas in which we most frequently receive questions regarding survivors' access to housing. These areas have been organized into chapters as described below.

**Chapter 2: Finding Housing and Resources for Survivors.** One of the first steps to helping survivors find safe and stable housing is to become familiar with the resources that are available in the community. Chapter 2 begins by describing the federally subsidized housing programs, which are often the only option for survivors with little or no income. The Chapter provides a brief description of each housing program and explains how advocates can find this housing in their communities.

**Chapter 3: Understanding the Subsidized Housing Application Process.** Chapter 3 seeks to provide advocates with tools for assisting their clients in obtaining housing. Chapter 3 focuses on the admissions process for federally subsidized housing, with discussions of eligibility requirements, ways to mitigate negative information on a survivor's application, and procedures for challenging a denial of housing.

**Chapter 4: Addressing Negative Credit and Tenancy History.** Chapter 4 addresses two issues that survivors often encounter whether they are applying for private or federally subsidized housing: negative credit and tenancy history. Chapter 4 examines survivors' rights in the event that they are denied housing due to information contained in a credit or tenancy history report. It also discusses some of the steps that survivors can take to address negative credit and tenancy history

**Chapter 5: Fair Housing Protections for Survivors.** Chapter 5 discusses several examples of instances where fair housing laws have been used to protect survivors' housing rights. The Chapter also describes the options available to enforce the rights of survivors who have experienced housing discrimination

**Chapter 6: Housing Rights of Survivors With Disabilities.** Survivors with disabilities may be barred or impeded from residing in housing that is not designed to accommodate their needs. Chapter 6 discusses how advocates can assist survivors with disabilities in obtaining accessible housing.

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<sup>5</sup> Study Committee Report to the Vermont Legislature: Housing Discrimination Against Victims of Domestic and Sexual Violence 6 (Jan. 2009), *available at* <http://www.leg.state.vt.us/reports/2009ExternalReports/241418.PDF>.

**Chapter 7: The Violence Against Women Act (VAWA) and Rights of Applicants for Federally Subsidized Housing.** VAWA protects the rights of applicants to certain federally subsidized housing programs who are survivors of domestic violence, dating violence, or stalking. Chapter 7 discusses the scope of VAWA’s housing protections and provides examples of how these rights have been used in practice.

**Chapter 8: Using Local Planning to Increase Survivors’ Access to Housing.** To increase the likelihood that survivors of domestic violence will be able to obtain affordable housing, advocates should participate in the local planning processes that help set housing policy for the community. Chapter 8 addresses several different types of housing plans and how advocates can shape those plans. A major focus of Chapter 8 is how advocates can work with public housing agencies (PHAs) to develop policies that serve the needs of survivors living in Section 8 and public housing.

### 1.3 Terminology

Advocates may have questions regarding some of the terminology we use in this Manual. In anticipation of these questions, we offer the following explanations.

**Advocates:** This Manual is intended for use by both attorneys and non-attorneys. As a result, we use “advocates” to encompass actions that can be taken by both attorneys and non-attorneys. When referring to actions that involve practice of the law, we use the term “attorneys.”

**Housing providers:** Throughout this manual, we discuss the laws governing public housing agencies (PHAs) and private landlords. For ease of reference, we collectively refer to PHAs and private landlords as “housing providers.”

**She/He:** We fully recognize that males, females, and transgendered persons are survivors of domestic violence, and that both females and males can be perpetrators. We also recognize that statistical data continue to demonstrate that the vast majority of domestic violence survivors are women.<sup>6</sup> Accordingly, we have chosen to use the female pronoun when describing the survivor and the male pronoun when describing the perpetrator. This is not intended to discount or minimize the harms experienced by any survivor of domestic violence, regardless of gender.

**Survivor/Victim:** As a general practice, we use the term “survivor” throughout this Manual, as many individuals who have experienced incidents of domestic violence prefer this term. We use the term “victim” where we cite to or paraphrase statutes or where we excerpt material from other sources.

We hope that advocates will find this Manual helpful in assisting survivors who are facing obstacles to obtaining housing. Because the housing laws discussed in this Manual can be quite technical, advocates should review the language of the statute or regulations at issue, or consult with a housing law practitioner. Additionally, domestic violence and housing is a rapidly changing area of the law. While we have made every effort to ensure that the information in this Manual is accurate, it is critical to check for changes in statutes, regulations, and case law. Finally, cases involving domestic violence and housing are often highly fact-specific, and the strategies or legal theories that should be applied in a particular case will depend heavily upon each client’s individual circumstances. While this Manual seeks to provide advocates with a starting point for developing action plans for protecting clients’ housing rights, advocates should

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<sup>6</sup> See, e.g., U.S. Dep’t of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (Feb. 2003) (finding that 85% of victims of intimate partner violence are women).

examine whether the client may have additional legal claims that are not discussed in this Manual.



## Chapter 2: Finding Housing and Resources for Survivors

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### 2.1 Introduction

One of the first steps to helping survivors find safe and stable housing is to become familiar with the resources that are available in your community. This Chapter begins by describing the federally subsidized housing programs, which are often the only option for survivors with little or no income. The Chapter provides a brief description of each housing program and explains how you can find this housing in your community. The Chapter also provides an overview of some resources that may assist survivors in obtaining housing, including crime victim compensation funds, Temporary Assistance for Needy Families Emergency Assistance, Homelessness Prevention and Rapid Re-Housing Program funds, and the 211 hotline.

### 2.2 Overview of the Federally Subsidized Housing Programs

This section seeks to familiarize advocates with the various types of federally subsidized housing programs for which their low-income clients may be eligible.<sup>7</sup> Three of the largest U.S. Department of Housing and Urban Development (HUD) programs are the public housing

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<sup>7</sup> For an extensive discussion of the federally subsidized housing programs, see NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS: TENANTS' RIGHTS (3d ed. 2004 and Supp.).

program, the Section 8 Housing Choice Voucher program, and the project-based Section 8 program. HUD also funds several other affordable housing programs, which are discussed below. Additionally, the U.S. Department of Agriculture funds Rural Development housing for low-income families in rural and suburban areas. Finally, the Low-Income Housing Tax Credit (LIHTC) program provides tax benefits to private owners who rent units to income-eligible tenants. The appendices to this Manual include a table that lists the statutory and regulatory authorities that govern the federally subsidized programs.<sup>8</sup>

Occupancy in the federal housing programs is usually limited to tenants in particular income ranges, which are typically defined as a percentage of Area Median Income (AMI). As described below, the various housing programs may have different income limitations.<sup>9</sup>

Survivors and advocates who are searching for affordable housing should consult the Local Renting Information page on HUD's website.<sup>10</sup> The page is organized by state and provides contact information for federally subsidized developments and public housing agencies (PHAs). The page also provides links to a variety of services in each state, including information regarding emergency rental assistance, rental housing listings, housing resources for seniors, and fair housing agencies. Because waitlists for federally subsidized housing are usually long, survivors should apply for several different housing programs and, if possible, should apply in several cities and counties. Survivors should also explore joining the household of a friend or family member who is already living in federally subsidized housing.

### **2.2.1 Public Housing**

Public housing units are owned and operated by a local PHA, commonly referred to as the housing authority. The PHA is responsible for collecting rents and maintaining the public housing units. Each PHA must administer its public housing program in accordance with rules set out by HUD. Although many people commonly associate public housing with inner-city high-rises, it can also consist of single-level apartments, duplexes, and single-family homes in rural, suburban, and urban areas.

To be eligible for public housing, applicants must have incomes at or below 80% of AMI.<sup>11</sup> After a survivor has completed an application to determine her eligibility for public housing, the PHA will typically place her name on a waiting list. The PHA selects applicants from the waitlist and screens their tenancy and criminal histories.<sup>12</sup> A public housing tenant's rent is typically set at 30% of adjusted income, although the PHA may elect to set a minimum rent from \$0 to \$50.<sup>13</sup> Advocates should contact their PHA to determine whether the public housing waitlist is open. Contact information for PHAs is available on HUD's Local Renting Information website, which

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<sup>8</sup> See Appendix 1.

<sup>9</sup> For information on the current income limits and median income for a particular area, see <http://www.huduser.org/datasets/il.html>.

<sup>10</sup> See HUD, Local Renting Information, <http://www.hud.gov/renting/local.cfm>.

<sup>11</sup> See note 9, *supra*.

<sup>12</sup> Chapter 8 discusses ways in which advocates can shape their PHA's policies for screening applicants for public housing.

<sup>13</sup> If a tenant is paying the minimum rent and becomes unable to pay that amount because of a financial hardship, the tenant can ask to return to an income-based rent. See 42 U.S.C. § 1437a(a)(2)(C); 24 C.F.R. § 960.253(f). Housing authorities must adopt policies for determining what constitutes a financial hardship. The policies must provide that a decrease in income due to changed circumstances, including loss or reduction of employment or earnings, constitutes a financial hardship. Advocates can argue that domestic violence constitutes changed circumstances due to the survivor's inability to work or loss of the batterer's income as a result of incarceration.

is organized by state.<sup>14</sup> Survivors may apply for housing subsidies with as many PHAs as they choose.

### **2.2.2 Section 8 Housing Choice Vouchers**

Section 8 Housing Choice Vouchers are issued by PHAs to low-income families. Families are then responsible for finding their own housing and can choose any dwelling that meets the requirements of the program. The PHA and the landlord enter into a contract under which the PHA agrees to pay a portion of the family's monthly rent directly to the landlord. The family pays the remainder of the rent amount that the PHA does not pay. A family's contribution toward the rent is generally set at 30% of their adjusted income, with some exceptions.

One feature of the Housing Choice Voucher Program that may be particularly important to domestic violence survivors is the family's ability to move with continued rental assistance, which is commonly called "portability." Families can take their vouchers and move to another unit in any jurisdiction in the United States where another PHA operates a voucher program. For this reason, Housing Choice Vouchers are often referred to as "tenant-based assistance."

Advocates should contact the PHA to determine whether the voucher waitlist is open. If a PHA administers both public housing units and Housing Choice Vouchers, applicants can be placed on both waitlists. A list of all the PHAs operating a voucher program, which includes each PHA's contact information, is available on HUD's website.<sup>15</sup> Survivors may apply to as many PHAs as they choose.

Eligibility for the Housing Choice Voucher Program is generally restricted to families whose income does not exceed 50% of AMI.<sup>16</sup> The PHA determines which applicants receive voucher assistance in accordance with standards and procedures established by federal law and locally developed policies.<sup>17</sup> Private landlords participating in the Housing Choice Voucher Program may have their own criteria for selecting tenants, such as credit and landlord reference checks.<sup>18</sup>

### **2.2.3 Section 8 Project-Based Vouchers**

The Section 8 project-based voucher program is a small subset of the Housing Choice Voucher program. PHAs can choose to use some of their Housing Choice Voucher funds for assistance to owners who commit a certain number of units in their buildings to voucher tenants. Some domestic violence programs have worked with PHAs to use project-based vouchers to fund affordable housing units for survivors.<sup>19</sup>

A tenant who wants to move out of the project-based voucher unit can obtain a new voucher from the PHA that allows the tenant to relocate and continue to receive rental assistance. The unit maintains its project-based assistance, and the owner is free to re-rent to another eligible tenant. The PHA determines family eligibility and selects participants in accordance with the standards and procedures described above for the Housing Choice Voucher program.

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<sup>14</sup> See HUD, Local Renting Information, <http://www.hud.gov/renting/local.cfm>.

<sup>15</sup> See HUD, PHA Contact Information, <http://www.hud.gov/offices/pih/pha/contacts/>.

<sup>16</sup> See note 9, *supra*.

<sup>17</sup> Chapter 8 discusses ways in which advocates can influence their PHA's Section 8 voucher policies.

<sup>18</sup> For more information about addressing negative credit or rental history, see Chapter 4.

<sup>19</sup> See Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2005, 70 Fed. Reg. 67,540, 67,558 (Nov. 7, 2005); Nathan Whalen, *Marjie's House Breaks Ground*, WHIDBEY NEWS-TIMES (May 15, 2004), <http://www.pnwlocalnews.com/whidbey/wnt/news/22117319.html>.

## **2.2.4 HUD Project-Based Section 8 Developments**

HUD project-based Section 8 developments are separate and distinct from project-based Section 8 voucher units, and different rules apply to project-based Section 8 developments. In a project-based Section 8 development, HUD rental subsidies are attached to the building. As a result, a tenant living in a project-based Section 8 development will lose her rental assistance if she moves out of the subsidized unit. Owners of project-based Section 8 buildings are usually private individuals or corporations that have received HUD subsidies to provide affordable housing. The owner is responsible for collecting rent and maintaining the building. A family's contribution toward rent is generally set at 30% of the family's adjusted income, with some exceptions.

Families are eligible for project-based Section 8 if their income is less than 50% of AMI. Admissions decisions are made by the building's owner or manager, pursuant to a written tenant selection policy and procedures developed by the owner under HUD guidelines. Families typically apply for project-based Section 8 developments by contacting the building's owner or manager. HUD maintains lists of project-based Section 8 developments that can be searched by city or county.<sup>20</sup>

## **2.2.5 Other HUD-Subsidized Programs**

There are several other programs in which private owners receive HUD subsidies to provide affordable housing. Examples include the Section 202 Supportive Housing for the Elderly Program, the Section 811 Supportive Housing for Persons with Disabilities Program, the Section 221(d)(3) Below Market Interest Rate Program, and the Section 236 Rental Program. In these programs, admission decisions are made by the owner or manager pursuant to a written tenant selection policy and procedures developed by the owner under HUD regulations and guidelines. Applicants must meet income eligibility requirements. Families apply for these programs by contacting the building's owner or manager. HUD maintains a list of these developments that can be searched by city or county.<sup>21</sup>

## **2.2.6 Programs for the Homeless**

The federal government supports a variety of housing programs designed for homeless individuals and families, including the Supportive Housing program, Shelter Plus Care, and Section 8 Moderate Rehabilitation SRO housing. These programs are authorized under the McKinney/Vento Homeless Assistance Act and are often referred to as the McKinney/Vento programs. To be eligible for these programs, an applicant must meet the federal definition of homeless, and advocates should carefully read the definition to determine whether their clients qualify.<sup>22</sup> The definition of homeless includes, but is not limited to, the following:

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<sup>20</sup> See HUD, Low-Rent Apartment Search, <http://www.hud.gov/apps/section8/index.cfm>.

<sup>21</sup> See *id.*

<sup>22</sup> The complete definition of "homeless" for purposes of these housing programs was amended in May 2009. See Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, Pub. L. No. 111-22, § 1003, available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:s896enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s896enr.txt.pdf).

“[A]ny individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual’s or family’s current housing situation, including where the health and safety of children are jeopardized, and who have no other residence and lack the resources or support networks to obtain other permanent housing.”<sup>23</sup>

HUD maintains a contact list for Continuum of Care Coordinators, who coordinate homeless assistance providers that receive HUD funds.<sup>24</sup> These coordinators can help advocates locate federally subsidized housing for homeless survivors.

### **2.2.7 Rural Housing Programs**

Rural Development (RD), an agency within the U.S. Department of Agriculture, supports several programs that provide affordable rental housing for low-income rural residents. Under the Section 515 Rural Rental Housing Program, RD makes loans to developers of affordable multifamily rental housing. Families are generally eligible for these properties if their income is less than 80% of AMI.<sup>25</sup> The Section 514/516 Farm Labor Housing Program provides housing for tenants who receive a substantial portion of their income from farm labor. Under both programs, admission decisions are made by the owner or manager, pursuant to a written tenant selection policy and procedures developed by the owner under RD regulations and guidelines. RD maintains a list of rental properties on its website that is searchable by town and zip code.<sup>26</sup>

### **2.2.8 Low-Income Housing Tax Credit Program**

Low-Income Housing Tax Credit (LIHTC) properties are owned by private landlords who receive tax benefits in return for renting to income-eligible tenants. The LIHTC program is administered by the Internal Revenue Service and state agencies, which are often called housing finance agencies. Admissions decisions are made by the building’s owner or manager, and the owner cannot discriminate against an applicant with a Section 8 voucher. LIHTC units have flat rents that are governed by federal law. HUD maintains a list of LIHTC properties on its website that is searchable by city or county.<sup>27</sup> Advocates should note that without additional subsidies, such as project-based Section 8 or a Section 8 voucher, LIHTC rents may not be affordable to the lowest income families.

## **2.3 Housing Resources**

The rest of this Chapter highlights four programs that provide housing-related services to survivors of domestic violence, including rental assistance, security deposits, utility assistance, and referrals to affordable housing providers. Specifically, this section discusses crime victim

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<sup>23</sup> Pub. L. No. 111-22, § 1003.

<sup>24</sup> HUD, Continuum of Care Contacts, <http://hudhre.info/index.cfm?do=viewCocContacts>.

<sup>25</sup> See note 9, *supra*.

<sup>26</sup> USDA, Multi-Family Housing Rentals, [http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select\\_state.jsp?home=YES](http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp?home=YES).

<sup>27</sup> LIHTC Database Access, <http://lihtc.huduser.org/>.

compensation funds, Temporary Assistance for Needy Families Emergency Assistance, Homelessness Prevention and Rapid Re-Housing Program funds, and the 211 hotline.

### **2.3.1 Crime Victim Compensation Funds**

In many states, domestic violence survivors can apply for crime victim compensation funds to cover expenses that resulted from acts of domestic violence,<sup>28</sup> including the costs of temporary housing and relocation.<sup>29</sup> Advocates should consult the program guidelines for their jurisdiction to determine whether temporary housing and moving expenses are covered, as well as to determine the maximum amount of assistance available.<sup>30</sup> Eligibility requirements for victim compensation funds vary from state to state, so advocates must review their state's criteria to determine whether their clients qualify. In general, most states require that the victim report the crime to law enforcement, cooperate with the investigation and prosecution of the crime, submit a timely application to the compensation board, and incur a cost that is not covered by any other source (such as insurance).<sup>31</sup> In some states, domestic violence victims may be eligible to apply for victim compensation funds if they have obtained a restraining order, even if they have not interacted with the criminal justice system.<sup>32</sup>

### **2.3.2 Temporary Assistance for Needy Families Emergency Assistance**

Temporary Assistance for Needy Families (TANF) funds are used by states to provide monthly cash payments to eligible low-income families. In addition to the monthly payments, many states use a portion of their TANF funds to provide short-term emergency assistance to families who are homeless or are at risk of becoming homeless.<sup>33</sup> Further, the American Recovery and Reinvestment Act of 2009 created a temporary TANF Emergency Fund that states can use to provide short-term emergency assistance.<sup>34</sup> TANF emergency assistance may be a resource for low-income survivors who need short-term assistance to pay rent, security deposits, utilities, or moving expenses. Advocates should note that states generally cannot use TANF emergency assistance to provide long-term rent or utility assistance to families, and this assistance is often limited to a one-time basis.

The types of TANF emergency assistance provided vary from jurisdiction to jurisdiction, but many states offer assistance with rent payments, security deposits, utility payments, moving expenses, and temporary shelter. Some states offer this assistance to families regardless of

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<sup>28</sup> For more information about economic assistance available to domestic violence survivors through victim compensation funds, see NATIONAL CONSUMER LAW CENTER, CONSUMER RIGHTS FOR DOMESTIC VIOLENCE SURVIVORS 85 (2006).

<sup>29</sup> See, e.g., N.Y. EXEC. LAW § 631; 18 PA. CONS. STAT. ANN. § 11.103.

<sup>30</sup> The National Association of Crime Victim Compensation Boards has created a state-by-state directory that identifies the types of costs that are covered by crime victim compensation funds and the amount of assistance available. See National Association of Crime Victim Compensation Boards, Program Directory, <http://www.nacvcb.org/progdir.html>.

<sup>31</sup> NATIONAL CONSUMER LAW CENTER, *supra* note 28, at 86.

<sup>32</sup> *Id.*

<sup>33</sup> See BARBARA SARD, CTR. ON BUDGET & POL'Y PRIORITIES, USING TANF FUNDS FOR HOUSING RELATED BENEFITS TO PREVENT HOMELESSNESS 4 (2001), <http://www.cbpp.org/archiveSite/4-3-01TANF.pdf>.

<sup>34</sup> See LIZ SCHOTT, CTR. ON BUDGET & POL'Y PRIORITIES, OPPORTUNITIES CREATED UNDER THE TANF EMERGENCY FUND CREATED BY THE FEDERAL RECOVERY ACT (2009), <http://www.cbpp.org/files/7-29-09tanf.pdf>.

whether they are currently receiving TANF. To apply for TANF emergency assistance, families should contact their nearest county social services agency.

### **2.3.3 Homelessness Prevention and Rapid Re-Housing Program**

The American Recovery and Reinvestment Act of 2009 provided federal grants to states, counties, and cities for the Homelessness Prevention and Rapid Re-Housing Program (HPRP). A contact list for the jurisdictions that received HPRP funds directly from HUD is available online.<sup>35</sup> Cities or towns that did not receive HPRP funds from HUD may still have received HPRP funds from the state, and advocates should contact the state entity on HUD's list to determine if their jurisdiction received an HPRP grant from the state.

HPRP funds may be a resource for survivors who are homeless or are at risk of losing their homes and need assistance in paying rent, security deposits, utilities, and moving costs. To be eligible for HPRP funds, a household's income cannot exceed 50% of Area Median Income. Further, the household must be either homeless or at risk of losing its home and "meet the following circumstances: (a) No appropriate subsequent housing options have been identified; (b) The household lacks the financial resources to obtain immediate housing or remain in its existing housing; and (c) The household lacks support networks needed to obtain immediate housing or remain in its existing housing."<sup>36</sup>

HUD has stated that individuals who meet these minimum qualifications, are victims of domestic violence, and need HPRP assistance to leave the domestic violence situation are eligible for HPRP rapid re-housing assistance.<sup>37</sup> To prove domestic violence, an applicant can provide a signed self-declaration.<sup>38</sup> HUD has posted a self-declaration template on its website, which includes a box that an individual can check that states that she is a victim of domestic violence and is fleeing from abuse.<sup>39</sup> HPRP grantees are also directed to attempt to obtain written third-party verification, although HUD has not issued guidance on what type of third-party verification is suitable to verify domestic violence for purposes of HPRP.<sup>40</sup>

A domestic violence survivor who is not fleeing from the abuse (i.e. because the batterer has been incarcerated or she has obtained a restraining order) may still be eligible for homelessness prevention assistance if she can document that she is at risk of homelessness. HUD has issued a list of the acceptable types of documentation that may be used to prove that a household is at risk of homelessness. HUD describes this list as "not all inclusive,"<sup>41</sup> leaving room for advocates to argue that a client is at risk of homelessness even if she cannot provide one of the types of documentation on the list. The types of documentation on HUD's list include, but are not limited to, an eviction notice; a court order based on eviction action notifying the HPRP applicant that

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<sup>35</sup> HUD, Homelessness Prevention and Rapid Re-Housing Program (HPRP) Grantee Contact Information, <http://www.hudhre.info/documents/HPRPContactInfoDec09.pdf>.

<sup>36</sup> HUD, HPRP, Eligibility Determination and Documentation Guidance 1 (Mar. 17, 2010), [http://www.hudhre.info/documents/HPRP\\_EligibilityAndDocumentationGuidance.pdf](http://www.hudhre.info/documents/HPRP_EligibilityAndDocumentationGuidance.pdf).

<sup>37</sup> *Id.* at 6. Other categories of persons who are eligible for rapid re-housing assistance include individuals sleeping in an emergency shelter, individuals sleeping in a place not meant for human habitation, and individuals graduating from or timing out of transitional housing.

<sup>38</sup> *Id.* at 15.

<sup>39</sup> HPRP Self-Declaration of Housing Status Template, <http://www.hudhre.info/HPRP/index.cfm?do=viewHPRPTools>.

<sup>40</sup> HUD, *supra* note 36, at 15.

<sup>41</sup> *Id.* at 16.

she must leave her dwelling; a notice indicating that a building that an applicant is renting is being foreclosed on; utility shut-off notice; a notice from the landlord or a government entity that an applicant's housing is condemned; a foreclosure notice from a lending institution; and a self-declaration from the applicant.<sup>42</sup> A self-declaration is acceptable only if third-party documentation cannot be obtained.<sup>43</sup>

Eligible activities for HPRP funds include financial support and housing relocation and stabilization. Financial support includes payments for short-term rental assistance (one to three months), long-term rental assistance (four to 18 months), rental arrearages (up to six months), security deposits, utility deposits, utility payments (up to 18 months), utility arrearages (up to six months), moving costs, and motel and hotel vouchers. The financial support can only be paid directly to third parties, such as landlords or utility companies. Housing relocation and stabilization services include case management, outreach and engagement, housing search and placement, legal services, and credit repair.

Using HUD's list of HPRP grantees,<sup>44</sup> advocates can contact the entity in their jurisdiction that received HPRP funds to determine which agencies have been selected to administer the funds. Most jurisdictions distributed their HPRP funds to subgrantees, such as homeless services agencies and domestic violence service providers. Survivors typically must apply through these subgrantees to receive HPRP assistance.

### **2.3.4 211 Hotlines**

Survivors in most states can obtain referrals to affordable housing providers, rental assistance, and emergency shelters by dialing 211.<sup>45</sup> The information and referral service is free and confidential. In many states, 211 hotlines have multilingual capabilities.

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<sup>42</sup> *Id.* at 16-18.

<sup>43</sup> *Id.* at 10.

<sup>44</sup> HUD, *supra* note 35.

<sup>45</sup> For more information about the coverage of 211 hotlines in your state, visit <http://211us.org/status.htm>.



# Chapter 3: Understanding the Subsidized Housing Application Process

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### 3.1 Introduction

This Chapter focuses on the admissions process for individuals who are applying for federally subsidized housing.<sup>46</sup> The Chapter provides an overview of the eligibility requirements for the federally subsidized housing programs as well as waiting lists and preferences. The Chapter then discusses several screening criteria that often result in denials of housing for survivors of domestic violence: criminal history and past debts, prior evictions, and terminations from federally subsidized housing. Finally, the Chapter discusses some of the factors that can be used to mitigate a survivor’s negative application information, as well as the process for challenging denials of federally subsidized housing.

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<sup>46</sup> For more information regarding the admissions process for federally subsidized housing, see NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS: TENANTS’ RIGHTS Ch. 2 (3d ed. 2004); MASSACHUSETTS LAW REFORM INSTITUTE, LEGAL TACTICS, FINDING PUBLIC AND SUBSIDIZED HOUSING (2d ed. 2006), <http://www.masslegalhelp.org/housing/finding-housing-booklets>.

## 3.2 Determining Survivors' Eligibility for Federally Subsidized Housing

One of the first issues advocates must examine is whether their clients satisfy the basic eligibility requirements for federally subsidized housing. This section discusses two of those requirements: income limits and eligible immigration status.

### 3.2.1 Income Limits

All of the major HUD housing programs have income limits that applicants cannot exceed, or else they are ineligible. The maximum income limits for public housing, Section 8 vouchers, and HUD-assisted housing are defined by federal law. The terms “low-income”, “very low-income”, and “extremely low-income” are respectively defined as 80%, 50%, and 30% of area median income (AMI), as defined by HUD.<sup>47</sup> Families who are “low-income” are eligible for public housing, the Section 8 voucher program, and HUD-assisted housing, such as project-based Section 8 developments and the Section 236 Rental Program.<sup>48</sup> Eligibility is based on annual gross income. Beyond observing income eligibility limits, public housing agencies (PHAs) and owners must target a certain percentage of new housing to extremely low-income families. There is no minimum income required for program eligibility.

To be eligible for the income-limited units of a Low-Income Housing Tax Credit (LIHTC) development, a tenant's income must be no higher than 50% to 60% of AMI. To be eligible for Section 515 Rural Rental Housing, a tenant's income must be less than 80% of AMI, although in some cases families with slightly higher incomes may be eligible.

For each metropolitan statistical area or county, HUD annually publishes median income and the income limits for low, very low, and extremely low-income families.<sup>49</sup> For fiscal year 2010, the estimated median income for the United States was \$64,400.<sup>50</sup> Because the income limits are substantially different from area to area and from program to program, advocates should ask PHAs or subsidized landlords for the income guidelines for their programs.

### 3.2.2 Immigration Restrictions

Under Section 214 of the Housing and Community Development Act, only United States citizens and certain categories of non-citizens are eligible for subsidies from the majority of HUD programs, including public housing, Section 8 vouchers, and project-based Section 8.<sup>51</sup> The categories of eligible non-citizens include: (1) lawful permanent residents; (2) lawful temporary residents under the amnesty program created by the Immigration Reform and Control Act of 1986; (3) refugees, asylees, and persons granted withholding of removal or deportation; (4) trafficking victims; (5) parolees; and (6) citizens of Micronesia, the Marshall Islands, and Palau.<sup>52</sup> Some federally subsidized programs do not have immigration restrictions.<sup>53</sup>

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<sup>47</sup> See note 9, *supra*.

<sup>48</sup> 42 U.S.C. § 1437f(a) (public housing and Section 8 voucher); 24 C.F.R. § 5.653(b)(2) (project-based Section 8); 12 U.S.C. § 1715z-1(i)(2) (Section 236).

<sup>49</sup> This information is available at <http://www.huduser.org/DATASETS/il.html>.

<sup>50</sup> HUD, Transmittal of Fiscal Year 2010 Income Limits for the Public Housing and Section 8 Programs, PDR 2010-02 (May 14, 2010).

<sup>51</sup> 42 U.S.C. § 1436a(a); 24 C.F.R. § 5.506; *see also* NATIONAL HOUSING LAW PROJECT, *supra* note 46, at 2/18-2/22.

<sup>52</sup> *Id.*

Even if a survivor does not fit into any of the categories of eligible non-citizens described above, she may still be eligible for federally subsidized housing if at least one person in her household has eligible immigration status.<sup>54</sup> The eligible household member may be anyone in the household, including a minor child.<sup>55</sup> When a household applies for housing, it has to declare which of its members has eligible immigration status.<sup>56</sup> If not all members are eligible, the housing assistance that the household would otherwise qualify for is prorated to reflect the presence of ineligible household members.<sup>57</sup> If family members choose not to declare that they are eligible, they are treated as ineligible.<sup>58</sup> Declining to declare eligible status does not mean that the family member is admitting to having no documentation and is not evidence of a person's status. Mixed households may be required to identify the members who decline to declare their status,<sup>59</sup> but no further documentation is required or authorized for the non-declarants.

A common question that arises is whether VAWA self-petitioners<sup>60</sup> are eligible for federally subsidized housing.<sup>61</sup> Battered immigrant qualified aliens, which include VAWA self-petitioners, were made statutorily eligible to receive federal benefits as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.<sup>62</sup> In 2003, Congress directed HUD and the Justice Department to interpret housing statutes consistently with immigration and public benefits statutes so that qualified alien battered immigrants would be eligible for federally subsidized housing.<sup>63</sup> Unfortunately, HUD has not yet taken action to clarify battered immigrants' eligibility for subsidized housing, and it remains HUD's position that VAWA self-petitioners are not among the categories of immigrants eligible for most HUD programs. As a result, most PHAs will deny VAWA self-petitioners access to public and Section 8 housing unless a member of their household has qualifying immigration status. Until HUD clarifies this matter, VAWA self-petitioners should consider applying for subsidized housing programs that do not have immigration restrictions.

### 3.3 Waiting Lists and Preferences

After the survivor has completed a preliminary application to determine her eligibility for subsidized housing, she will be placed on a waiting list. PHAs and subsidized landlords typically organize waiting lists by either the date and time the application was received or by a random lottery. Once on the list, a survivor may be asked to respond to requests from the PHA or owner

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<sup>53</sup> These programs include Low-Income Housing Tax Credit, Section 515 rural rental housing, Shelter Plus Care, and the Supportive Housing program for the homeless.

<sup>54</sup> 24 C.F.R. §§ 5.506(b)(2), 5.512(a) & (e), 5.516(b), 5.520(a), 5.504(b).

<sup>55</sup> *Id.*

<sup>56</sup> § 5.508(f)(i).

<sup>57</sup> 42 U.S.C. § 1436a(b)(2); 24 C.F.R. § 5.520.

<sup>58</sup> 24 C.F.R. § 5.508(e).

<sup>59</sup> § 5.508(e).

<sup>60</sup> VAWA's immigration provisions allow survivors of domestic violence who are married to their abusers to legalize their immigration status in the family immigration system independent of their spouses. This process is referred to as a "self-petition," because the survivor files the petition on her own, and the abuser plays no role in the process.

<sup>61</sup> For more information, see NHLP, *Housing Benefits for Qualified Aliens Who Are Battered Still in Question*, 33 HOUS. L. BULLETIN 297 (Apr./May 2003), which is included at Appendix 2.

<sup>62</sup> 8 U.S.C. § 1641(c).

<sup>63</sup> H.R. Rep. No. 108-10, 108th Cong., 1st Sess. 476, 1495 (Feb. 12, 2003).

to determine whether she is still interested in the housing. Failure to respond may result in the survivor being dropped from the waiting list. Therefore, it is important for survivors to notify the PHA or landlord in writing (saving a copy) of any change in address.

Applicants may reach the top of the waiting list more quickly if they qualify for an admissions preference.<sup>64</sup> Given the shortage of affordable housing, some PHAs have established preferences to determine who should be first in line to receive assistance. For the most part, PHAs have discretion to set their preferences, and the preferences must be set forth in the PHA's policy documents. Accordingly, preferences differ from jurisdiction to jurisdiction, and advocates will need to contact their local PHAs to determine what their preferences are. Examples of preferences that PHAs have adopted include a preference for residents of the community, homeless applicants, and families with members who are working. Survivors who are applying for subsidized housing should carefully review the preferences and seek to qualify for all the applicable preferences.

Some PHAs have adopted preferences specifically for survivors of domestic violence, although the majority of PHAs do not have such policies. Of the PHAs that have domestic violence preferences, most require that applicants provide some form of documentation, such as a letter from law enforcement or a restraining order, to qualify for the preference. If a PHA does not have a domestic violence preference, advocates should consider meeting with the PHA to discuss the possibility of adopting such a preference.<sup>65</sup>

### **3.4 Screening by Public Housing Agencies and Owners**

When a survivor reaches the top of the waiting list, the PHA or landlord may screen her credit, tenancy, and criminal history to determine whether she is likely to abide by the lease, pay rent on time, keep the unit in good condition, and not disturb other tenants. Advocates assisting survivors in applying for subsidized housing should verify the screening criteria a housing provider uses, and discuss with the survivor how to address any negative history related to those criteria. This section focuses on two types of screening criteria that often cause difficulties for survivors: (1) criminal history; and (2) prior debts, evictions, and subsidy terminations involving federally subsidized housing.

#### **3.4.1 Criminal History**

Survivors of domestic violence often have criminal history related to self-defense, coercion, or duress. It is therefore important for advocates to understand the rules regarding criminal history and eligibility for federally subsidized housing.<sup>66</sup> As a preliminary matter, survivors should review their criminal records to ensure that they do not contain erroneous information, and should contact their local public defender or legal services office regarding possible expungement of their criminal records.<sup>67</sup>

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<sup>64</sup> Preferences may be called by a different name locally. For example, they may be referred to as admissions priorities or emergency status.

<sup>65</sup> See Chapter 8 for more information regarding working with PHAs on their domestic violence policies.

<sup>66</sup> For more information on assisting individuals with criminal history in applying for subsidized housing, see NATIONAL HOUSING LAW PROJECT, *AN AFFORDABLE HOME ON RE-ENTRY: FEDERALLY ASSISTED HOUSING AND PREVIOUSLY INCARCERATED INDIVIDUALS* (2008).

<sup>67</sup> Details regarding criminal records and expungement are beyond the scope of this manual. For more information on this topic, see Sharon M. Dietrich, *When "Your Permanent Record" is a Permanent Barrier: Helping Legal Aid*

Pursuant to federal statutes and regulations, PHAs and owners of some federally assisted housing must reject applicants with certain very specific criminal backgrounds. Specifically, PHAs must permanently deny admission to public housing and the Section 8 voucher program if an applicant has ever been convicted of manufacture or production of methamphetamine on the premises of any federally assisted housing.<sup>68</sup> Further, PHAs and owners of most federally assisted housing must deny admission if any member of the household is subject to a lifetime sex offender registration requirement.<sup>69</sup> Owners of Rural Development (RD) housing or Low-Income Housing Tax Credit (LIHTC) properties are not required to bar any applicant due to criminal history, but have discretion to do so.<sup>70</sup>

For certain programs, there is a mandatory three-year ban on admission if any member of the household has been evicted from federally assisted housing for drug-related criminal activity.<sup>71</sup> The three-year ban applies to applicants for public housing, Section 8 vouchers, project-based Section 8, and other federally assisted housing except for LIHTC and RD housing. Importantly, the mandatory three-year ban applies only where a household member has been *evicted* from federally subsidized housing. It does not apply in cases where a household member has engaged in drug-related activity but has not been evicted for it. (However, as discussed below, the housing provider may still exercise its discretion to reject the applicant.) Further, the ban does not apply to applicants with evictions for drug-related activity from *non*-federally assisted housing. Finally, PHAs or owners may waive the three-year ban if the individual who engaged in the drug-related activity resulting in eviction successfully completed a drug rehabilitation program.<sup>72</sup> The ban may also be waived if circumstances have changed, such as cases where the individual responsible for the drug-related activity has died or is incarcerated.<sup>73</sup> Although Congress set the ban at three years, HUD regulations authorize PHAs and owners to extend the ban for a longer period of time.<sup>74</sup>

Additionally, PHAs and owners have broad discretion to deny or accept applicants who have engaged in any other types of criminal activity. Any policies regarding admission and screening must be in writing and available to applicants.<sup>75</sup> PHAs or owners may reject an applicant for drug-related criminal activity, violent criminal activity, and criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.<sup>76</sup> Importantly, the PHA or owner must determine that the criminal activity occurred within a “reasonable period” of time prior to the admission decision.<sup>77</sup> The term “reasonable period” is not defined in the statute. HUD guidance suggests that “five years may be reasonable for serious offenses” and notes that reasonableness may depend on the type of criminal activity at issue.<sup>78</sup>

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*Clients Reduce the Stigma of Criminal Records*, 41 CLEARINGHOUSE REV. 139 (July-Aug. 2007); MARGARET COLGATE LOVE, RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION: A STATE-BY-STATE RESOURCE GUIDE (2007), available at [http://sentencingproject.org/detail/publication.cfm?publication\\_id=115](http://sentencingproject.org/detail/publication.cfm?publication_id=115).

<sup>68</sup> 42 U.S.C. § 1437n(f)(1).

<sup>69</sup> § 13663(a).

<sup>70</sup> See 7 C.F.R. § 3560.154(j).

<sup>71</sup> 42 U.S.C. § 13661(a).

<sup>72</sup> § 13661(a).

<sup>73</sup> § 13661(a).

<sup>74</sup> 24 C.F.R. §§ 5.5852, 960.203(c)(3)(ii), 966.4(1)(5)(vii)(E).

<sup>75</sup> §§ 5.655(b)(2) (project-based Section 8), 960.202(a) (public housing), 982.54(d) (Section 8 vouchers).

<sup>76</sup> § 5.100.

<sup>77</sup> 42 U.S.C. § 13661(c).

<sup>78</sup> Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule, 66 Fed. Reg. 28,776, 28,779 (May 24, 2001).

Implicit in the statute and HUD's guidance is the concept that at some point, most applicants with an aging criminal record should be eligible for housing and should not be barred by screening criteria. In cases where survivors are denied housing based on aging criminal records, advocates should argue that the housing provider exceeded its discretion because the criminal activity did not occur within a "reasonable period" of time prior to the denial. The appendices to this Manual contain sample letters raising these arguments.<sup>79</sup>

It is also important to note that not all criminal activity should be the basis for a denial. Only criminal activity that is drug-related, violent, or would threaten the health, safety, or right to peaceful enjoyment of the premises should be the basis for a denial.<sup>80</sup> Thus, survivors with a record involving crimes such as shoplifting, writing bad checks, or prostitution should not be rejected unless it can be shown that the activity would pose a threat to the health and safety of other residents.

As discussed later in this Chapter, survivors may improve their chances of securing federally subsidized housing if they present evidence of the mitigating circumstances surrounding negative application information. Mitigating circumstances are facts that can be used to argue that an applicant would be a good candidate for subsidized housing even though her application contains negative information. Thus, in assisting a survivor who has a criminal history, advocates should investigate whether the history is related to acts of domestic violence against the survivor. For example, to avoid prolonged jail time, a survivor may have pleaded guilty to assault charges after injuring her batterer while acting in self-defense. If the survivor can demonstrate that the criminal history was in fact related to acts of violence committed against her, she should explain this to the housing provider and provide supporting documentation. The survivor should explain why it is unlikely that she will be involved in any future criminal activity, such as by demonstrating that she has ended her relationship with the abuser and that she has sought supportive services.

If the survivor is denied admission on the basis of a criminal record, and there is a close link between the criminal history and acts of violence against the survivor, she may be able to argue that the denial is based on her status as a survivor of domestic violence in violation of the Violence Against Women Act (VAWA).<sup>81</sup> As discussed in Chapter 5, she may also be able to argue that the denial of housing constitutes discrimination on the basis of sex in violation of fair housing laws.

Survivors sometimes face denials of housing based on the abuser's criminal history if the abuser was originally listed on the household's application for housing, but has subsequently left the household. For example, the abuser may have been living with the survivor when the application was submitted, but moved out by the time the housing provider screened the household's application for criminal history. In these cases, the survivor should provide documentation to the housing provider that demonstrates that the abuser is no longer part of the

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<sup>79</sup> See Appendices 3 and 4.

<sup>80</sup> See HUD, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 96 (June 2003) (stating that there are a variety of crimes that cannot be claimed to adversely affect the health, safety, or welfare of other residents).

<sup>81</sup> See 42 U.S.C. §§ 1437d(c)(3) (public housing), 1437f(c)(9)(A) (project-based Section 8), 1437f(o)(6)(B) (vouchers); 24 C.F.R. §§ 5.2005(a) (prohibiting a housing provider from denying an applicant admission to housing or rental assistance on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking), 960.203(c)(4) (stating that PHA tenant selection criteria are subject to protections for victims of domestic violence, dating violence, and stalking). See Chapter 7 for more information regarding VAWA's housing protections.

household, such as a restraining order, divorce decree, or proof of the abuser's new address, such as a statement from the abuser's landlord.

### **3.4.2 Previous Debts, Evictions, and Terminations Involving Federally Subsidized Housing**

A PHA will often reject an applicant because of a prior debt she owes to it or any other PHA, such as for back rent or repair charges.<sup>82</sup> Additionally, many PHAs have policies denying admission to applicants who have been previously evicted from public housing or terminated from the Section 8 voucher program.<sup>83</sup>

As discussed in the next section, survivors should present housing providers with evidence of the circumstances surrounding negative application information. Thus, advocates should investigate whether a debt, eviction, or termination from federally subsidized housing was related to acts of domestic violence against the survivor. For example, a survivor may have owed money to a PHA or been evicted because her abuser damaged her public housing unit. If the survivor can demonstrate that the prior debt or eviction was in fact related to acts of violence committed against her, she should explain this to the housing provider and provide supporting documentation. The survivor should be prepared to demonstrate that she has ended her relationship with the abuser, such as by providing a restraining order or other court document or a letter of support from a service provider. If the housing provider denies her admission anyway, and there is a close link between the prior debt or eviction and acts of violence against the survivor, she may be able to argue that the denial is based on her status as a survivor of domestic violence in violation of VAWA.<sup>84</sup> The appendix to this Manual contains sample pleadings that raise these arguments.<sup>85</sup> As discussed in Chapter 5, the survivor may also be able to argue that the denial of housing constitutes discrimination on the basis of sex in violation of fair housing laws.

### **3.5 Mitigating Circumstances**

Survivors with negative credit, tenancy, or criminal history who are seeking admission to federally subsidized housing may improve their odds of success if they present housing providers with evidence of mitigating circumstances surrounding the negative history. Mitigating circumstances are facts that demonstrate that the survivor would be a good candidate for a housing program even though her application contains negative information. Mitigating circumstances may be presented at any time during the application process. Incidents of domestic violence against a survivor may constitute a mitigating circumstance if there is a link between the negative credit, tenancy, or criminal history and the acts of violence. Advocates should remind housing providers that they must carefully consider these mitigating circumstances given

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<sup>82</sup> See 24 C.F.R. §§ 982.552(c)(1)(v) & (vi) (providing that a PHA may deny admission to its Section 8 voucher program for a debt owed to it or any other PHA). For information on challenging denials of admission based on debts to PHAs, see NATIONAL HOUSING LAW PROJECT, *supra* note 46, at 2/58-2/59.

<sup>83</sup> See 24 C.F.R. § 982.552(c)(1)(ii), (iii) (authorizing a PHA to deny a Section 8 voucher applicant because the family was terminated or evicted from federally assisted housing). For information on challenging denials of admission based on prior evictions from or subsidy terminations in federally subsidized housing, see NATIONAL HOUSING LAW PROJECT, *supra* note 46, at 2/60.

<sup>84</sup> See *supra* note 81.

<sup>85</sup> See Appendix 5.

VAWA's prohibition against denying housing to an applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking.<sup>86</sup> In fact, some PHAs have adopted policies explicitly stating that acts of domestic violence, dating violence, and stalking committed against an applicant will be considered as a mitigating circumstance in weighing the application.<sup>87</sup>

The rules regarding the consideration of mitigating circumstances vary among the federally subsidized housing programs. In the public housing program, PHAs are required by regulation to consider mitigating factors. If a PHA obtains adverse information about a survivor who is applying for public housing, it must consider the time, nature, and extent of the survivor's conduct, including the seriousness of the offense.<sup>88</sup>

When reviewing an application for Section 8 voucher assistance, PHAs are urged, but not required, to consider mitigating circumstances. The same rule applies to HUD-assisted owners. HUD regulations set forth the factors that should be considered, which are listed below. Along with this list, we have provided examples of facts that could be considered as mitigating circumstances.

- The seriousness of the offense. This factor may be applicable where a survivor has criminal history that would not affect the health or safety of others, such as shoplifting.
- The effect the denial of admission would have on the rest of the family. This factor would be applicable where the survivor is the sole caretaker of minor children and risks losing custody if she cannot secure housing.
- The effect the denial of admission would have on the community. This factor may support an argument that denying housing to domestic violence survivors and their children will likely increase the rate of homelessness within this vulnerable population and perpetuate the cycle of violence.
- The extent to which the applicant has taken responsibility and taken steps to prevent or mitigate. This factor may be applicable where the survivor can demonstrate that she has ended the abusive relationship that led to the negative conduct at issue.
- Evidence of rehabilitation. This factor may be applicable in cases where a survivor who has drug-related criminal history is participating in or has completed a rehabilitation program.
- Mitigating circumstances relating to the disability of a family member. This factor may be applicable in cases where negative criminal or tenancy history is related to the disability of the survivor or her children.<sup>89</sup>
- Evidence of the family's participation or willingness to participate in social service or counseling programs. This factor may be applicable where the survivor has developed a

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<sup>86</sup> *See id.*

<sup>87</sup> *See, e.g.,* Oakland Housing Authority, Administrative Plan (June 1, 2009), <http://www.oakha.org/MTW/AdminPlan.pdf> (acknowledging that victims of domestic violence may have unfavorable history that would warrant a denial of housing and providing these victims an opportunity to demonstrate that the domestic violence played a role in causing the basis for denial). See Chapter 8 for information on working with PHAs to adopt admissions policies that consider an applicant's status as a survivor of domestic violence as a mitigating factor.

<sup>88</sup> 24 C.F.R. § 960.203(d); PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 80, at 56-57.

<sup>89</sup> Additionally, if a survivor has poor rental, tenancy, or credit history that is directly related to a disability, a housing provider may be required, as a reasonable accommodation, to alter tenancy screening criteria that would otherwise bar the survivor from admission. See Chapter 6 for more information regarding reasonable accommodations.



safety plan, sought assistance with a restraining order, or received emotional support from a domestic violence or other service provider.

In assisting survivors who are applying for subsidized housing, advocates should consider whether any of the factors listed above apply to the survivor's circumstances. If so, the survivor should explain these circumstances and provide supporting documentation as part of her application. The appendices to this Manual contain sample letters that request housing providers to consider mitigating circumstances in making their admissions decisions.

### **3.6 Challenging a Denial of Admission to Federally Subsidized Housing**

If a survivor is denied federally subsidized housing, it is important to understand her rights to challenge the denial. Contesting the denial enables the survivor to correct any erroneous information, present evidence of mitigating circumstances, and assert her protections under VAWA<sup>90</sup> and fair housing laws.<sup>91</sup> This section discusses the notice that a survivor must receive if she has been denied federally subsidized housing, the steps she should take to prepare to challenge the denial, and her rights during the informal hearing process.

#### **3.6.1 Notice of the Denial**

Survivors denied admission to public housing, the Section 8 voucher program, other HUD-assisted housing, or Rural Development housing must be given written notice of the denial.<sup>92</sup> The notice must state the reasons for the denial.<sup>93</sup> It should also state the procedure and timeframe for challenging the denial.<sup>94</sup> Typically, if the survivor wants to exercise her right to challenge the denial, she must submit a written request for an informal hearing or review.

The denial notice must also state that an applicant with a disability has the right to request a reasonable accommodation that would allow the applicant to participate in the informal hearing.<sup>95</sup> Additionally, depending upon the number of non-English speakers served by the PHA or owner, the notice may have to be provided in the survivor's primary language.<sup>96</sup>

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<sup>90</sup> VAWA protections are discussed at length in Chapter 7.

<sup>91</sup> Fair housing protections are discussed at length in Chapter 5.

<sup>92</sup> 42 U.S.C. § 1437d(c)(4) (public housing); 7 C.F.R. §§ 3560.160(e), 3560.154(h) (Rural Development housing); 24 C.F.R. §§ 982.201(f)(1), 982.554(a) (Section 8 voucher); HUD, OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, Handbook 4350.3, REV-1, CHG-2, ¶ 4-9C (June 2007).

<sup>93</sup> See *supra* note 92.

<sup>94</sup> 24 C.F.R. §§ 960.208(a) (public housing), 982.201(f)(1), 982.552(d) & (e), 982.554(a) (Section 8 voucher); HUD, OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, *supra* note 92, at ¶ 4-9(C)(2)(b).

<sup>95</sup> See Accessibility Notice: Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988, PIH 2002-01, ¶ II.C.1 (Jan. 22, 2002); HUD, Compliance with Section 504 of the Rehabilitation Act of 1973 and the Disability/Accessibility Provisions of the Fair Housing Act of 1988, H 2001-02, ¶ II.B.5 (Feb. 6, 2001).

<sup>96</sup> 42 U.S.C. § 2000d (Title VI, § 601 of the Civil Rights Act of 1964); 7 C.F.R. § 3560.160(e) (Rural Development housing); Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 72 Fed. Reg. 2732 (Jan. 22, 2007).

### 3.6.2 Preparation for Challenging the Denial

There are several steps that advocates should take to prepare a survivor for challenging a denial of federally subsidized housing. The survivor should obtain all documents and information from the PHA or owner regarding the denial. After reviewing this information, the advocate should consider contacting the housing provider to request an informal meeting to discuss the denial. While most housing providers are not required to provide such a meeting,<sup>97</sup> some may welcome the opportunity to resolve the survivor's challenge to the denial without having to go through the hearing process. This meeting may be especially beneficial where the survivor believes that the housing provider relied upon inaccurate information, where the survivor can demonstrate mitigating circumstances, or where it appears that the survivor was denied housing for reasons related to domestic violence in violation of VAWA or fair housing laws.

If the advocate is unable to secure a meeting with the housing provider, or the meeting does not yield a resolution, the advocate and survivor should begin to prepare for the hearing. Letters of support are a critical part of this preparation. Examples of individuals whose letters of support may be helpful include employers, teachers, social workers, neighbors, landlords, community leaders, law enforcement officers, district attorneys, victim advocates, and domestic violence service providers. Some of the topics the letters could discuss include how the survivor's circumstances have changed, why the negative tenancy or criminal history is unlikely to recur, the steps the survivor has taken to improve her life, and why the survivor would be a good tenant. The survivor should also ask these individuals whether they would be willing to testify in her support at her hearing. If there is information demonstrating that the survivor has participated in counseling and social service programs, it should also be submitted. If the denial is related to the survivor's disability, she should submit documentation of that disability, such as a letter from a health care provider.<sup>98</sup> A survivor with criminal history should consider submitting a certification that she has not engaged in criminal activity during a specified period of time.<sup>99</sup> Depending on local practice, the letters and information provided should be notarized.

### 3.6.3 The Informal Hearing/Review

Survivors applying for public housing, the Section 8 voucher program, HUD-assisted housing, and Rural Development housing are entitled to a review of the admission decision if they are rejected.<sup>100</sup> Depending on the program, the review is called a grievance, an informal hearing, an informal review, or a meeting.<sup>101</sup> The hearing/review is the survivor's opportunity to

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<sup>97</sup> An exception to this is the Rural Development program, which requires the owner to meet informally with the applicant. *See* 7 C.F.R. § 3560.160(f)(2).

<sup>98</sup> *See* Chapter 6 for more information regarding documentation of disabilities.

<sup>99</sup> *See* 24 C.F.R. § 5.855(c) (stating that certification by an applicant that she has not engaged in criminal activity during a specified period of time is sufficient evidence that the applicant is not currently engaged in criminal activity).

<sup>100</sup> *See, e.g.*, 42 U.S.C. § 1437d(c)(4) (public housing); 7 C.F.R. § 3560.160(f)-(g) (Rural Development program); 24 C.F.R. §§ 982.554 (voucher); *Ressler v. Pierce*, 692 F.2d 1212, 1215 (9th Cir. 1982) (holding that applicants for project-based Section 8 had a sufficient property interest to give rise to due process procedural safeguards).

<sup>101</sup> For Rural Development housing, the review process is called the grievance procedure. For public housing, it is called an informal hearing. For the voucher program, it is called an informal review. For HUD-assisted housing, it is called a meeting. For convenience here, the process is generally referred to as the hearing/review.

demonstrate to an impartial decision-maker that the housing provider relied on erroneous information, failed to consider mitigating circumstances, or denied the survivor housing in violation of VAWA or fair housing laws. The process is generally very informal. An applicant has the right to have an attorney or advocate attend the informal hearing. The survivor, her attorney, or her advocate will have an opportunity to present witnesses and evidence<sup>102</sup> before an impartial hearing officer.<sup>103</sup> For most federally subsidized housing programs, the survivor must be given a written decision after the hearing/review that states the reasons for the decision and indicates the evidence relied upon.<sup>104</sup> If the survivor does not prevail at the hearing/review, she typically has no more appeals at the housing authority level. In most instances, to challenge the hearing officer's decision, she must file a court action.<sup>105</sup>

### 3.7 Conclusion

Survivors face a number of obstacles to securing housing. Fortunately, there are some steps that advocates can take to increase their clients' chances of obtaining housing, such as gathering letters of support, offering to meet with housing providers who have denied housing to clients, and helping clients exercise their rights to challenge denials of federally subsidized housing. Advocates should think creatively in determining ways that they can demonstrate to housing providers that their clients have taken steps to improve their lives, and that they have the support they need to be model tenants.

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<sup>102</sup> See, e.g., 7 C.F.R. § 3560.160(h) (Rural Development housing); 24 C.F.R. § 982.554(b)(2) (voucher); HUD, VOUCHER PROGRAM GUIDEBOOK, HOUSING CHOICE, 7420.10G ¶ 16.5 (Apr. 2001).

<sup>103</sup> See *Billington v. Underwood*, 613 F.2d 91, 95 (5th Cir. 1980).

<sup>104</sup> 24 C.F.R. §§ 982.552(b)(3) (Section 8 voucher program); HUD, PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 80, at 58; OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, *supra* note 92, at ¶ 4-9D.

<sup>105</sup> Some PHAs provide a process where an applicant can appeal a hearing officer's decision. Advocates should consult their PHA's Administrative Plan to determine whether such an appeal process is available.

## Chapter 4: Addressing Negative Credit and Tenancy History

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#### 4.1 Introduction

This Chapter addresses two issues that survivors often encounter whether they are applying for private or federally subsidized housing: negative credit and tenancy history. As recognized in the Violence Against Women Act, “[b]ecause abusers frequently manipulate finances in an effort to control their partners, victims often lack steady income, credit history, landlord references, and a current address, all of which are necessary to obtain long-term permanent housing.”<sup>106</sup> Additionally, many survivors have difficulties securing housing as a result of prior evictions stemming from damages or disturbances caused by the batterer. This Chapter examines survivors’ rights in the event that they are denied housing due to information contained in a credit or tenancy history report. It also discusses some of the steps that survivors can take to address negative credit and tenancy history.<sup>107</sup>

#### 4.2 Poor or No Credit History<sup>108</sup>

A major obstacle that survivors face in securing rental housing is poor or no credit history. A survivor may lack credit history because credit accounts were in the abuser’s name only, because she changed her identity, or because she is a recent immigrant. A survivor may have negative credit history because the abuser ran up credit cards that were in the survivor’s name, because the abuser defaulted on loans on which the survivor was a co-signer, or because the survivor could not keep up with bills once she left the abuser. This section explains survivors’ rights regarding credit reports during the housing application process.

Many landlords consider credit reports in determining whether to rent to a particular applicant. Credit bureaus compile these reports. They contain information on what credit the survivor owes and the amount that is due. They also contain a summary of how many times any account has been delinquent by 30, 60, and 90 days and the dates of the most recent and severe delinquencies. Additionally, they list any accounts that have been turned over to collections agencies or for which there are court judgments against the survivor. Information about the survivor’s accounts can be reported for only seven years from the date that she failed to pay a

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<sup>106</sup> 42 U.S.C. § 14043e(10).

<sup>107</sup> For information on using fair housing laws to challenge denials of housing, see Chapter 5. For information on housing protections for applicants to federally subsidized housing under the Violence Against Women Act, see Chapter 7.

<sup>108</sup> For more information regarding credit issues that affect domestic violence survivors, see NATIONAL CONSUMER LAW CENTER, GUIDE TO CONSUMER RIGHTS FOR DOMESTIC VIOLENCE SURVIVORS 93 (2006).

debt, although bankruptcies can remain on the survivor's credit report for ten years.<sup>109</sup> As discussed in greater detail in the next section, credit reports may include information on any eviction actions that have been filed against the survivor.

Before a survivor begins looking for housing, she should order copies of her credit report from the three main credit bureaus, closely review the reports, and determine whether there are any mistakes.<sup>110</sup> The three credit bureaus, known as Equifax, Experian, and Trans Union, must provide a free credit report every 12 months.<sup>111</sup> However, these free reports typically do not include the numerical credit score, and the survivor may have to pay a fee to obtain her score. Under the federal Fair Credit Reporting Act (FCRA), the survivor has a right to correct any erroneous information in the reports.<sup>112</sup> The survivor can do so by sending a written dispute letter to each credit bureau reporting incorrect information.<sup>113</sup> Credit bureaus must investigate the complaint and correct erroneous information. If the investigation does not resolve the dispute, the survivor may add a brief statement to future reports explaining her situation.<sup>114</sup> Survivors should be wary of credit repair agencies that offer to "fix" the survivor's credit report for a fee, as these agencies rarely provide services beyond what the survivor or an advocate can do free of cost.

If a landlord takes an adverse action against a survivor based partly or entirely on negative information from a credit bureau, the FCRA requires the landlord to provide the survivor with an adverse action notice.<sup>115</sup> Examples of adverse actions include refusing to rent to the survivor, requiring a co-signer on the lease, requiring a larger deposit than might be required for another applicant, or charging a higher rent amount than for another applicant.<sup>116</sup> The adverse action notice must include:

- The name, address, and telephone number of the credit bureau that supplied the consumer report; and
- A notice of the survivor's right to dispute the accuracy or completeness of any information the credit bureau provided, and the survivor's right to a free report from the credit bureau upon request within 60 days.<sup>117</sup>

The FCRA allows individuals to sue landlords who fail to provide adverse action notices.<sup>118</sup> Successful plaintiffs are entitled to recover damages, court costs, and fees. The law also provides punitive damages for deliberate violations of the FCRA.<sup>119</sup> However, a landlord who inadvertently fails to provide an adverse action notice in an isolated case has legal protections, as

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<sup>109</sup> 15 U.S.C. § 1681c(a).

<sup>110</sup> An added benefit of having the survivor request her credit report is that some landlords may accept a copy of the report from the survivor instead of running their own report, saving the survivor fees that the landlords would otherwise charge.

<sup>111</sup> To obtain free credit reports, visit [www.annualcreditreport.com](http://www.annualcreditreport.com) or call 877-322-8228.

<sup>112</sup> § 1681b.

<sup>113</sup> See NATIONAL CONSUMER LAW CENTER, *supra* note 108, at 101; Federal Trade Commission, Credit Repair: How to Help Yourself, <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre13.shtm>.

<sup>114</sup> § 1681i(b).

<sup>115</sup> § 1681m(a).

<sup>116</sup> Federal Trade Commission, Using Consumer Reports: What Landlords Need to Know, <http://www.ftc.gov/bcp/edu/pubs/business/credit/bus49.pdf>.

<sup>117</sup> § 1681m(a).

<sup>118</sup> § 1681o.

<sup>119</sup> § 1681n.

long as he can demonstrate that at the time of the violation, he maintained reasonable procedures to assure FCRA compliance.<sup>120</sup>

In addition to the federal FCRA, several states have enacted laws that provide additional protections for housing applicants. For example, some states limit credit check fees to the actual costs the landlord incurred in using a tenant screening service.<sup>121</sup> Some states also require that if the landlord obtains the applicant's credit report, he must give a copy of the report to the applicant if she requests it.<sup>122</sup> Advocates should examine their state's law to determine whether their clients have specific rights regarding landlords' use of their credit history.

If the survivor knows that she has negative credit history, there are some steps she can take to improve her chances of getting housing. If the survivor paid her rent on time at her prior residence, she can provide prospective landlords with a copy of the rent ledger, a letter from her former landlord, cancelled checks, money orders, or rent receipts demonstrating on-time payment. The survivor may also consider writing a letter explaining the circumstances surrounding the negative credit, such as divorce, financial abuse by the abuser, or inability to work due to injury or illness, and stating that those circumstances are unlikely to recur. The letter should document any increases or stabilization in the survivor's income resulting from a new job, public benefits, or other income streams. Finally, the survivor should contact a variety of properties to determine their requirements regarding credit history, as some properties (particularly smaller property owners) have more flexible policies than others. If all else fails, the survivor should consider offering to have a co-signer on the lease, such as a parent or sibling, or offering to pay a higher security deposit.

### 4.3 Poor Tenancy History

Many survivors may have difficulty finding housing due to past eviction actions stemming from domestic violence. This section explains some of the rights that survivors have regarding their tenancy history during the housing application process.

Landlords frequently obtain reports on prior eviction actions before renting to prospective tenants. These reports are compiled by the three major credit bureaus and by tenant-screening agencies. The reports are based on publicly available court records and often contain incomplete or inaccurate information.

As with credit reports, a landlord who denies an applicant housing based on information in a tenancy history report must furnish the contact information for the agency that generated the report.<sup>123</sup> If a survivor believes that the information in the report regarding her involvement in an eviction action is incorrect, she has a right to dispute the accuracy of the report.<sup>124</sup> Tenant-screening and credit reporting agencies are required to investigate the matter free of charge and to make appropriate corrections "within a reasonable time."<sup>125</sup>

Because it is likely that prospective landlords will find out about eviction actions, survivors should be prepared to explain the circumstances of the action and demonstrate that those circumstances are unlikely to recur. If the eviction suit was filed in error or was eventually

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<sup>120</sup> § 1681m(c).

<sup>121</sup> *See, e.g.*, CAL. CIV. CODE § 1950.6; WASH. REV. CODE § 59.18.257.

<sup>122</sup> *See, e.g.*, CAL. CIV. CODE § 1950.6(f).

<sup>123</sup> 15 U.S.C. § 1681m(a).

<sup>124</sup> § 1681b.

<sup>125</sup> § 1681i.

dismissed, survivors should obtain a letter from the prior landlord to this effect. Survivors should also provide prospective landlords with copies of any documents, such as court records or settlement agreements that show that the information contained in the tenancy history report is incomplete or inaccurate. Letters of recommendation from former landlords, neighbors, and service providers could also prove helpful. If the abuser was responsible for causing the disturbances or criminal activity that resulted in the eviction, the survivor should emphasize that she no longer lives with the abuser. Additionally, the survivor should contact several different properties to determine their criteria regarding tenancy history, as some properties are more lenient than others. As a last resort, the survivor may consider offering to pay a higher security deposit.

#### **4.4 Conclusion**

Before applying for housing, survivors should examine their credit and tenancy history to ensure its accuracy and identify potential problem areas. Advocates can play a helpful role in assisting survivors who need to challenge inaccurate or incomplete information contained in credit reports. Advocates can also assist survivors in gathering supplemental information that can be used to demonstrate that the survivor will be a good tenant, regardless of any negative credit or tenancy history found in her credit report.

# Chapter 5: Fair Housing Protections for Survivors Applying for Housing

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### 5.1 Introduction

Survivors of domestic violence often face denials of housing that are related to acts of violence committed against them. For example, advocates have reported that survivors have been denied housing because the prospective landlord learned that they were currently residing in a domestic violence shelter, or because they asked the prospective landlord to accept victim compensation relocation funds. As we discuss in Chapter 7, survivors of domestic violence applying to certain types of federally subsidized housing have protections against being denied housing due to activity relating to domestic violence. These protections are available under the federal Violence Against Women Act of 2005 (VAWA).<sup>126</sup>

Unfortunately, survivors of domestic violence applying for unsubsidized rental housing are not covered by VAWA, and they remain at risk of being denied housing for reasons related to the violence committed against them. Nevertheless, as discussed throughout this Chapter, these survivors may be protected by federal and state fair housing laws. As part of a national effort to promote survivors’ housing rights, several advocates have argued that housing discrimination

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<sup>126</sup> See 42 U.S.C. §§ 1437d(c)(3), 1437d(l)(5) (public housing), 1437f(c)(9)(A)-(B) (project-based Section 8), 1437f(o)(6)(B), 1437(o)(7)(C) (Section 8 voucher).



against survivors constitutes sex discrimination, because the majority of domestic violence survivors are women. Although this theory is relatively new, it has been used successfully in several cases to restore housing or provide compensation to survivors who were denied housing. This Chapter discusses several examples of instances where fair housing laws have been used to protect survivors' housing rights. The Chapter concludes by describing the options available to enforce the rights of survivors who have experienced housing discrimination, including informal advocacy, administrative complaints, and civil lawsuits.<sup>127</sup>

## **5.2 State and Local Laws Specifically Protecting Victims of Domestic Violence**

It is critical for advocates to examine their state and local laws to determine whether they provide any protections for domestic violence survivors applying for housing. A handful of states and local jurisdictions have enacted laws prohibiting landlords from refusing to enter into a rental agreement based on an applicant's status as a victim of domestic violence. As of the publication of this Manual, those jurisdictions are Arkansas, Dane County (Wisconsin), District of Columbia, Indiana, North Carolina, Rhode Island, Washington, and Westchester County (New York).<sup>128</sup> Advocates who suspect that a client has been denied housing because of her status as a victim of domestic violence should consider asserting these state or local laws in challenging the denial.

It is important to note that few housing providers will explicitly deny an applicant housing on the basis that she is a victim of domestic violence. Rather, survivors are most often denied housing due to negative tenancy, credit, or criminal history that is related to the acts of abuse.<sup>129</sup> Advocates working with domestic violence survivors who have been denied housing because of negative history related to the abuse should still consider challenging the denial, citing any state or local law that prohibits housing discrimination against domestic violence victims. Advocates can argue that denying a survivor housing based on such negative history is equivalent to denying her housing based on her status as a victim of domestic violence, and that the denial therefore violates state or local law. In making this argument, it is helpful to provide documentation that demonstrates the link between the negative history and the abuse, such as a police report showing that the abuser damaged the prior residence.

## **5.3 Fair Housing Laws**

This section provides an overview of the federal Fair Housing Act (FHA) and describes the protections against discrimination that it offers to individuals who are applying for housing. Advocates should note that state and local fair housing laws may provide broader and more comprehensive coverage than the FHA. For example, as discussed above, some states have enacted laws specifically prohibiting landlords from refusing to rent to survivors of domestic

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<sup>127</sup> Several helpful resources are available for advocates seeking to learn more about fair housing litigation on behalf of survivors. *See, e.g.*, Sandra Park, *Domestic Violence Survivor Achieves Policy Changes at Michigan Management Company*, 43 CLEARINGHOUSE REV. 80 (May/June 2009); ACLU Women's Rights Project, *Violence Against Women: Housing*, <http://www.aclu.org/fairhousingforwomen>; Legal Momentum, Legal Knowledge Center, <http://www.legalmomentum.org/legal-knowledge/>.

<sup>128</sup> *See* ARK. CODE ANN. § 18-16-112; DANE COUNTY CODE § 31.02; D.C. CODE § 2-1402.21; IND. CODE ANN. § 32-31-9-8; N.C. GEN. STAT. ANN. § 42-42.2; R.I. GEN. LAWS § 34-37-1; WASH. REV. CODE ANN. § 59.18.580; WESTCHESTER COUNTY CODE § 700.05.

<sup>129</sup> Negative tenancy and credit history is discussed more fully in Chapter 4.

violence. Accordingly, in addition to the FHA, advocates should examine whether a survivor who has been denied housing may have remedies under state and local fair housing laws.

This section discusses the housing that is covered by the FHA, the groups who are protected, the type of conduct that is prohibited, and enforcement options for survivors who have experienced discrimination.

### **5.3.1 Coverage**

The FHA covers all dwellings, with a few exceptions. The FHA generally does not cover (1) a dwelling with four or fewer units, as long as the owner is one of the occupants; (2) a single family home, provided the owner does not own more than three such houses at one time; and (3) certain housing run by private clubs for their members.<sup>130</sup> The FHA also provides certain exceptions for housing owned by religious organizations<sup>131</sup> and for senior housing.<sup>132</sup>

Fair housing laws cover more than just apartments. Fair housing laws are aimed at “dwellings,” which are broadly defined as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence.”<sup>133</sup> Thus, public housing, homeless shelters, hotels, and nursing homes are all considered dwellings for purposes of fair housing laws.

### **5.3.2 Groups Protected by the Fair Housing Act**

The FHA makes it illegal to discriminate on the basis of race, color, religion, sex, national origin, familial status (families with children), and disability.<sup>134</sup> Some states have enacted fair housing laws that prohibit discrimination on additional grounds, such as a housing applicant’s source of income or sexual orientation. It is therefore critical for advocates to examine their local and state laws to determine whether they protect groups in addition to those protected by the FHA.

Survivors of domestic violence are not a protected class under the FHA. As a result, refusing to rent to a housing applicant based on her status as a survivor of domestic violence is not explicitly barred by the FHA. However, as we explain later, advocates have successfully used sex discrimination theories to protect survivors against housing discrimination.

### **5.3.3 Prohibited Conduct**

The FHA prohibits housing providers from taking certain actions based on an applicant’s or tenant’s race, color, religion, sex, national origin, familial status, or disability. Some of the actions that landlords are prohibited from taking based on a person’s membership in a protected class include:

- Refusing to rent or sell a dwelling.

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<sup>130</sup> 42 U.S.C. §§ 3603(b)(1)-(2), 3607.

<sup>131</sup> § 3607.

<sup>132</sup> § 3607.

<sup>133</sup> § 3602(b).

<sup>134</sup> § 3604. People with disabilities and families with children were added to the list of protected classes by the Fair Housing Amendments Act of 1988. For purposes of simplicity, we use the acronym “FHA” when referring to both the Fair Housing Act and the Fair Housing Amendments Act.

- Setting different terms, conditions, or privileges for sale or rental of a dwelling.
- Providing different housing services or facilities.
- Falsely representing that a dwelling is not available for rent or sale.<sup>135</sup>

It is also against the law to:

- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, disability, familial status, or any other characteristic protected under the FHA.<sup>136</sup>
- Refuse to make a “reasonable accommodation” to rules, policies, practices, or services for an individual with a disability.<sup>137</sup>
- Coerce, intimidate, threaten, or interfere with any person exercising their rights under fair housing laws.<sup>138</sup>

At the end of this Chapter, we will explain some of the steps advocates and survivors can take if they believe that any of the discriminatory conduct described above has occurred.

#### **5.4 Discrimination Based on an Applicant’s Status as a Domestic Violence Survivor**

As discussed, the federal FHA does not explicitly prohibit housing providers from denying housing to applicants based on their status as survivors of domestic violence. However, survivors may still be able to use fair housing laws to challenge denials of housing that are related to acts of domestic violence committed against them. In recent years, several advocates have challenged these types of actions by using sex discrimination theories.<sup>139</sup> These theories may be used to file an administrative complaint or lawsuit seeking admission to housing, monetary damages, or a policy change by the housing provider.

The use of sex discrimination theories to challenge domestic violence discrimination is relatively new, and this practice is not yet widely accepted or known by the courts. There is only one published federal case.<sup>140</sup> Still, these arguments have been successful in informal advocacy with housing providers. Such informal advocacy may include making a phone call to the provider, sending a letter asking the housing provider to cease its discriminatory conduct,<sup>141</sup> or asking law enforcement, the local district attorney’s office, or a local government official to contact the provider on the survivor’s behalf.

The next two sections explain the two major sex discrimination theories that may be used to challenge housing discrimination against domestic violence survivors: (1) disparate treatment theory; and (2) disparate impact theory. In cases challenging housing discrimination against survivors, advocates often raise both theories in tandem.

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<sup>135</sup> § 3604.

<sup>136</sup> § 3604.

<sup>137</sup> § 3604. This topic is addressed at length in Chapter 6.

<sup>138</sup> § 3617.

<sup>139</sup> *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005); *Winsor v. Regency Property Mgmt.*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995); *HUD v. CBM Group, Inc.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001); *see also* 1985 Op. N.Y. Att’y Gen. 45 (1985) (finding discrimination against domestic violence survivors had a discriminatory effect on women in violation of state fair housing law).

<sup>140</sup> *See Bouley*, 394 F. Supp. 2d at 675.

<sup>141</sup> A sample letter is included at Appendix 6 of this Manual.

### 5.4.1 Disparate Treatment Theory

Disparate treatment claims (also called intentional sex discrimination) have been raised in cases where housing providers treat female housing applicants differently from similarly situated male applicants. An example would be a situation in which a landlord refuses to rent to a female applicant who has an eviction on her credit report, but agrees to rent to a male applicant who has similar tenancy history. To succeed on a disparate treatment claim, a plaintiff must provide proof that the housing provider had a discriminatory intent or motive. However, this intent can be inferred from the fact that the housing provider treated male tenants differently from similarly situated female tenants.<sup>142</sup>

An example of a case that has raised disparate treatment theory on behalf of a domestic violence survivor is *Blackwell v. H.A. Housing LP*.<sup>143</sup> Wyneneicka Blackwell was denied a transfer to a different apartment complex after her former partner sexually assaulted and beat her in her apartment. The property management company had a policy of transferring tenants under “special circumstances,” and at least two other tenants had been transferred to other complexes under this policy.<sup>144</sup> However, the company denied Ms. Blackwell’s transfer on the basis that she did not have a “good history” with the property due to a history of domestic violence and a poor payment record.<sup>145</sup> Ms. Blackwell asserted that her request for a transfer was due to special circumstances, that the management company refused to transfer her because of her sex, and that this denial of housing constituted intentional discrimination on the basis of her sex in violation of the FHA.<sup>146</sup> The case settled, with the management company agreeing to implement a domestic violence policy in at least 12 of its properties.<sup>147</sup>

Disparate treatment claims have also been raised where housing providers made sex-based stereotypical remarks regarding battered women.<sup>148</sup> Courts have found that reliance on gender stereotypes about battered women can be evidence of intentional sex discrimination.<sup>149</sup> Examples of potentially discriminatory stereotypes include that a victim of domestic violence likely deserved the abuse, or that battered women are unstable or untrustworthy.

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<sup>142</sup> See *United States v. Reece*, 457 F. Supp. 43 (D. Mont. 1978) (finding that landlord’s policy of refusing to rent to single women without cars while renting to single men without cars violated the Fair Housing Act).

<sup>143</sup> Compl., *Blackwell v. H.A. Hous. LP*, No. 05cv1225 (D. Colo. July 1, 2005), *available at* <http://www.legalmomentum.org/assets/pdfs/blackwellcomplaintstamp-1.pdf>. The Blackwell complaint is included at Appendix 7 of this Manual.

<sup>144</sup> *Id.* at 7. The complaint did not specify whether the other tenants who had been transferred were male or female. Ideally, a disparate treatment claim alleges that male tenants were granted privileges, benefits, or protections that were denied to a similarly situated female tenant.

<sup>145</sup> *Id.* at 6.

<sup>146</sup> *Id.*

<sup>147</sup> A copy of the policy is available at Legal Momentum’s Legal Cases Database, <https://www.quickbase.com/db/bdy472as8?a=dr&r=iz&rl=dmm2>.

<sup>148</sup> There are no published housing discrimination cases involving housing providers who made stereotypical remarks regarding male survivors of domestic violence or LGBT survivors of domestic violence. However, if stereotypical remarks made by the housing provider indicate that the housing provider denied housing benefits to a male survivor because of his sex, the survivor could likely raise a disparate treatment claim. Similarly, if a housing provider denied housing to an LGBT survivor because of his or her sex, the survivor could likely raise a disparate treatment claim.

<sup>149</sup> See *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 701 (9th Cir. 1990) (sex discrimination by police department); *Smith v. Elyria*, 857 F. Supp. 1203, 1212 (N.D. Ohio 1994) (same).

## 5.4.2 Disparate Impact Theory

In addition to disparate treatment theory, survivors have used disparate impact theory to challenge housing policies that have the effect of excluding domestic violence survivors from housing. Under disparate impact theory, a gender-neutral policy that can be statistically proven to have a greater negative impact on women than on men constitutes discrimination on the basis of sex. It is not necessary to demonstrate that the landlord intended to discriminate on the basis of sex in adopting the policy.

Advocates have argued that housing policies that have a negative impact on domestic violence survivors in turn have a disparate impact on women, because women constitute the majority of domestic violence survivors.<sup>150</sup> Disparate impact theory has most commonly been used to challenge policies that result in the eviction of an entire household when a violent act is committed at the unit, regardless of who perpetrated the violence. There is no published case where an advocate has challenged a denial of housing that was related to domestic violence. However, such a case could likely be brought if an advocate can demonstrate that a housing provider has a policy or practice of denying housing to applicants who are survivors of domestic violence.

To prove a disparate impact argument, advocates must establish the link between domestic violence and sex. Statistical data showing that the vast majority of domestic violence survivors are women is crucial in establishing this link. The following national statistics help demonstrate the relationship between domestic violence and a person's sex, for the purpose of fair housing claims:

- The U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women.<sup>151</sup>
- Although women are less likely than men to be victims of violent crimes overall, women are five to eight times more likely than men to be victimized by an intimate partner. Additionally, more than 70% of those murdered by their intimate partners are women.<sup>152</sup>
- Among people who rent their homes, women are 7.4 times as likely as men to be the victims of domestic violence.<sup>153</sup>

To the extent that state and local statistics regarding domestic violence and sex are available, advocates should also cite them to bolster the survivor's case.

The application of disparate impact theory to domestic violence victims applying for housing was endorsed in an opinion written by the New York attorney general.<sup>154</sup> The state's commission on domestic violence sought the attorney general's opinion as to whether a landlord may deny housing to a domestic violence victim seeking housing apart from her abuser on the presumption that the abuser will visit the housing and endanger the safety of the premises. According to the attorney general, a rule barring rentals to victims of domestic violence would violate fair housing

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<sup>150</sup> See, e.g., U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (Feb. 2003) (finding that 85% of victims of intimate partner violence are women).

<sup>151</sup> *Id.*

<sup>152</sup> L.A. Greenfield, et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends*, U.S. Dep't of Justice, Bureau of Justice Statistics, NCJ-167237 (March 1998).

<sup>153</sup> Callie Marie Rennison & Sarah Welchans, U.S. Dep't of Justice, *Intimate Partner Violence* (2000).

<sup>154</sup> 1985 Op. N.Y. Att'y Gen. 45 (1985). The attorney general's opinion is included at Appendix 8 of this Manual.

laws because it would have a disproportionate effect on women, as state statistics showed that the vast majority of domestic violence victims are women.<sup>155</sup> The attorney general also stated that a refusal to rent to domestic violence victims could not be justified by business necessity, finding that the violent conduct of a spouse or other party could not be conclusively attributed to a domestic violence victim so as to prevent her from obtaining housing.<sup>156</sup>

In sum, fair housing laws may provide options for individuals who have been denied housing because of their status as survivors of domestic violence. Survivors should write down any remarks that the housing provider made regarding domestic violence, the dates on which the remarks were made, and whether anyone else heard the statements. Survivors should keep copies of correspondence from the housing provider. The next section of this Chapter explains ways in which survivors may enforce their rights under fair housing laws.

## **5.5 Enforcing Rights of Survivors Who Have Faced Discrimination**

Applicants who have been denied housing based on their status as victims of domestic violence have several options for enforcing their rights. This section outlines those options, including conducting informal advocacy, filing an administrative complaint, and filing a civil lawsuit.

Survivors have only a short period of time to act if they have experienced housing discrimination. An administrative complaint must be filed within one year of the discriminatory action, and a civil lawsuit must be filed within two years. Therefore, advocates should act quickly if a survivor indicates that she has experienced discrimination. Advocates who usually do not work on housing issues should consider referring survivors to their local fair housing agency or legal services program.<sup>157</sup>

### **5.5.1 Informal Advocacy**

Housing discrimination disputes may often be handled informally by offering to meet with the housing provider or by writing a letter. A sample letter is included in the appendix to this Manual.<sup>158</sup> Make notes of any conversations with the housing provider, and send a letter to the housing provider afterward that memorializes the content of your conversations. Letters should be sent by certified mail, and advocates should keep copies of all correspondence. If appropriate, it may also be helpful to have law enforcement, the district attorney's office, or a local government official contact the housing provider on the survivor's behalf.

### **5.5.2 Administrative Complaint**

A survivor who has experienced housing discrimination may file an administrative complaint with the federal Department of Housing and Urban Development (HUD). The administrative claim process seeks to reach an agreement between the parties, which may include damages and other relief for the survivor. As will be discussed at the end of this section, survivors can elect to

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<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> For a list of state and local fair housing agencies, see <http://www.civilrights.org/fairhousing/laws/state-agencies.html>.

<sup>158</sup> See Appendix 6.

forgo the administrative complaint process and instead file a civil lawsuit in state or federal court.

This section outlines the administrative complaint procedures used by HUD. Advocates should note that in addition to HUD, many jurisdictions have state and local agencies that investigate fair housing complaints. If there is a state or local agency that provides rights and remedies that are equivalent to the ones provided by HUD, HUD will refer the complaint to that agency.<sup>159</sup> That agency must begin to work with the complainant within 30 days, or HUD can take the complaint back.<sup>160</sup> HUD generally handles cases involving federally subsidized housing.

### **5.5.3 Department of Housing and Urban Development Complaint**

HUD is responsible for enforcement of the federal FHA.<sup>161</sup> A survivor must file a complaint with HUD within one year after the alleged discrimination. After the complaint is filed, HUD will conduct a telephone interview to determine whether it or an equivalent state or local agency has jurisdiction over the complaint. If HUD has jurisdiction, it will conduct an investigation and attempt to settle the matter. If the parties cannot reach a settlement and there is reasonable cause to believe that discrimination has occurred, HUD will issue a charge of discrimination to the housing provider. The parties must then decide whether to have the case heard by a HUD administrative law judge or to have the case heard in federal court. Remedies available from a HUD administrative law judge include damages for the survivor, injunctive or other equitable relief, and civil penalties. However, punitive damages are not available.

In cases involving a larger public impact, such as cases where a housing provider has discriminated against multiple tenants, HUD and the Department of Justice may also file a lawsuit in court, either on behalf of their agencies or on behalf of injured tenants.

To file a housing discrimination complaint with HUD, call 1 (800) 669-9777 or visit <http://www.hud.gov/offices/fheo/online-complaint.cfm>.

### **5.5.4 Civil Lawsuits**

Instead of relying on the administrative complaint process, a survivor who has been discriminated against may file a civil suit under the FHA in federal court within two years of the discriminatory act. Statutes of limitations for housing discrimination claims under state law may vary, and advocates will need to consult their state laws in order to advise survivors as to the time limitations on state fair housing claims. Agencies that are restricted from filing affirmative civil suits should consider referring survivors to pro bono attorneys who can litigate these cases.

While tenants are not required to file an administrative complaint before filing a civil lawsuit, information gathered by HUD during its investigations may be helpful in a civil action. However, the tenant should avoid a determination by HUD or an equivalent state agency that no discrimination occurred and should withdraw her complaint if this outcome seems likely. Also, if a survivor files her civil lawsuit before filing an administrative complaint with HUD, HUD cannot investigate or otherwise act on the administrative complaint.

Remedies for violations of fair housing laws can include:

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<sup>159</sup> HUD's Title VIII Fair Housing Complaint Process, <http://www.hud.gov/offices/fheo/complaint-process.pdf>.

<sup>160</sup> *Id.*

<sup>161</sup> For more information about HUD's Fair Housing and Equal Opportunity Office, visit <http://www.hud.gov/complaints/housediscrim.cfm>.

- Damages for emotional distress, loss of civil rights, or economic injuries, such as relocation or other expenses the survivor incurred due to the discrimination.
- Punitive damages if the housing provider intentionally or flagrantly violated the law.
- Injunctive or other equitable relief, such as ordering the housing provider to stop discriminating against the survivor and to offer a rental unit to the survivor.
- Attorney's fees and costs.

In addition to the fair housing claims discussed in this Chapter, additional state law claims may also be available. For example, survivors who have experienced housing discrimination may have state law claims for unfair business practices and retaliation for exercising fair housing rights.

## **5.6 Conclusion**

Survivors of domestic violence have protections against being denied housing for reasons related to the acts of violence committed against them. Advocates have successfully used state and local laws and fair housing theories, such as disparate treatment theory and disparate impact theory, to challenge denials of housing to domestic violence survivors. Several tools are available to those working on behalf of survivors who have experienced housing discrimination, including informal advocacy, administrative complaints filed with HUD or an equivalent state or local agency, and affirmative litigation.



# Chapter 6: Helping Survivors with Disabilities to Obtain Accessible Housing

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### 6.1 Introduction

Safe, secure and accessible housing is critically important to all survivors, but it may be especially difficult to secure for victims with physical and/or cognitive disabilities.<sup>162</sup> This is because appropriate, affordable housing stock is often limited and admission may be difficult to gain. Victims with physical disabilities may be barred or impeded from residing in housing that

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<sup>162</sup> Portions of the chapter, “Housing Issues and Remedies for Survivors with Disabilities,” are excerpted, with permission, from the Victim Rights Law Center’s national manual, BEYOND THE CRIMINAL JUSTICE SYSTEM: Using the Law to Help Restore the Lives of Sexual Assault Victims, A Practical Guide for Attorneys and Advocates. The full text of the manual is available online at [www.victimrights.org](http://www.victimrights.org). All rights are reserved by the Victim Rights Law Center (VRLC). The material may not be altered or modified without the express permission of the VRLC. Preparation of the manual was supported by VRLC grant number 2004-WT-AX-K062, awarded by the U.S. Department of Justice, Office on Violence Against Women. The opinions, findings, and conclusions expressed in the document are those of the authors and editors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

is not designed to accommodate their needs. For example, a victim with a physical disability or mobility challenges may need housing that is wheelchair accessible. A deaf or hard of hearing victim may need a residence where the telephones, smoke alarms, security alarms, and other safety devices are visual instead of auditory. These services and devices may be especially important to a victim who was assaulted in her home, or in situations where the victim believes the perpetrator knows where she resides. Victims with mental or cognitive disabilities are sometimes evicted from or denied entry to certain housing because their mental illness is perceived to or does in fact result in anti-social, physically aggressive, or self-destructive behavior. (For example, some residential facilities will not accept or retain a resident who engages in serious acts of self-harm.) Addressing housing needs may be the first step to providing effective advocacy for survivors with disabilities.

## **6.2 The Right to Reasonable Accommodation**

It is critical that advocates familiarize themselves with the housing issues that survivors with disabilities face in attempting to obtain housing. Studies show that, compared to women without disabilities, women with disabilities are more likely to experience physical and sexual violence, increased severity of violence, multiple forms of violence, and longer duration of violence.<sup>163</sup> In helping survivors obtain safe housing, advocates should look not only to laws that specifically protect the housing rights of survivors, but also to laws that protect the housing rights of persons with disabilities. Federal fair housing laws prohibit discrimination based on a person's disability.<sup>164</sup> Additionally, state laws often contain protections that are similar to or more expansive than the protections contained in federal laws. One form of discrimination under these laws is a refusal to make reasonable accommodations in rules or policies when needed to provide persons with disabilities an equal opportunity to use and enjoy a dwelling.<sup>165</sup> While other forms of housing discrimination based on disability may occur, this Chapter focuses on the right to reasonable accommodation. This Chapter discusses the reasonable accommodation process and describes how that process can be used to advocate for survivors with disabilities who are applying for housing.

In the housing context, a reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. Most fair housing laws require that housing providers' policies treat and impact groups equally. In contrast, fair housing laws related to reasonable accommodation require that housing providers make exceptions to policies that may be otherwise nondiscriminatory in order to guarantee equal housing opportunities for persons with disabilities.

Reasonable accommodation laws arise from a number of sources. The Fair Housing Act (FHA),<sup>166</sup> the Americans with Disabilities Act (ADA),<sup>167</sup> and the Rehabilitation Act of 1973<sup>168</sup> are federal laws that require reasonable accommodation for individuals with disabilities. Additionally, many states have enacted laws requiring reasonable accommodation, and it is

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<sup>163</sup> Laurie E. Powers, et al., *Interpersonal Violence and Women with Disabilities: A Research Update*, National Online Resource Center on Violence Against Women (Sept. 2009), [http://new.vawnet.org/category/Main\\_Doc.php?docid=2077](http://new.vawnet.org/category/Main_Doc.php?docid=2077).

<sup>164</sup> See Chapter 5 for general information on fair housing.

<sup>165</sup> 42 U.S.C. § 3604(f).

<sup>166</sup> 42 U.S.C. §§ 3601 *et seq.*

<sup>167</sup> 42 U.S.C. §§ 12101 *et seq.*

<sup>168</sup> 29 U.S.C. § 794.

critical for advocates to research their state's laws as they are sometimes more protective than federal laws. The FHA applies to almost all housing.<sup>169</sup> The Rehabilitation Act applies only to federally assisted housing, and the ADA applies only to state-funded housing. This section provides a brief overview of the federal reasonable accommodation laws.

### **6.2.1 The Fair Housing Act (FHA)**

In 1988, the Fair Housing Amendments Act amended the FHA to prohibit discrimination against people with “handicaps,” defining handicap in the same way that disability is defined in other federal legislation. Discrimination under the FHA includes a refusal to make reasonable accommodation in rules, policies, practices, or services, when such accommodation may be necessary to give persons with disabilities equal opportunity to use and enjoy a dwelling.<sup>170</sup> The FHA applies to most housing providers, regardless of whether they are government subsidized. The FHA is of primary importance in helping survivors with disabilities obtain safe and accessible housing. The FHA regulations can be found at 24 C.F.R. § 100.204.

### **6.2.2 Section 504 of the Rehabilitation Act of 1973**

Section 504 of the Rehabilitation Act of 1973 provides additional protections for survivors living in federally subsidized housing. The statute provides that no qualified individual with a disability shall “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency.”<sup>171</sup> Section 504 applies only to housing providers receiving federal assistance. Such housing providers include public housing agencies (PHAs) and owners of project-based Section 8 properties, Section 202 properties (housing for seniors), Section 811 properties (housing for persons with disabilities), or properties subsidized by funds from the Community Development Block Grant, HOME, or Housing Opportunities for Persons with AIDS programs. Housing subsidized by the U.S. Departments of Veterans Affairs and Agriculture are also subject to Section 504. Traditionally, the Low-Income Housing Tax Credit program has not been considered federally assisted for the purpose of civil rights laws. However, any tax credit properties with Tax Credit Exchange Program stimulus funding are subject to Section 504. Section 504 regulations are found at 24 C.F.R. Part 8.

### **6.2.3 The Americans with Disabilities Act (ADA)**

The ADA prohibits discrimination by state and local governments on the basis of disability.<sup>172</sup> Its protections are essentially equivalent to those of Section 504.<sup>173</sup> In 2008, Congress passed the Americans with Disabilities Act Amendments Act (ADAAA).<sup>174</sup> The Act clarifies certain definitions under the ADA in response to Supreme Court decisions that had narrowed their

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<sup>169</sup> For more information about the scope of the Fair Housing Act, see Chapter 5.

<sup>170</sup> 42 U.S.C. § 3604(f).

<sup>171</sup> See 29 U.S.C. § 794(a).

<sup>172</sup> 42 U.S.C. § 12132.

<sup>173</sup> *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (stating that the ADA extends Section 504 coverage to state and local programs).

<sup>174</sup> Pub. L. No. 110-325, 122 Stat. 3553 (effective Jan. 1, 2009).

scope. The ADAAA emphasizes that the definition of disability should be construed in favor of broad coverage. ADA regulations are found at 28 C.F.R. § 35.130(b)(7).

### **6.3 Defining “Reasonable Accommodation”**

A reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. A housing provider must grant a requested reasonable accommodation if it is necessary to accommodate the disability and does not create an undue financial or administrative burden. Failure to provide a reasonable accommodation may be construed as discrimination.<sup>175</sup> Practically, a reasonable accommodation helps individuals with disabilities fully use and enjoy their housing. As discussed below, one of the first considerations in determining whether a survivor has a right to a reasonable accommodation is whether the survivor has a disability as defined under state or federal law. We set forth the relevant federal definition below, and advocates should carefully examine their state law definition of disability as it may be more expansive.

#### **6.3.1 Federal Definition of Disability for the Purpose of Reasonable Accommodation**

All three federal laws define disability in the same manner,<sup>176</sup> based on the initial definition created in Section 504 of the Rehabilitation Act.<sup>177</sup> A person with disabilities is any person who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment.<sup>178</sup> Each prong of this definition is discussed in detail below. A survivor need only satisfy one of these prongs to be considered a person with a disability.

##### **6.3.1.1 Has a Physical or Mental Impairment that *Substantially Limits* One or More Major Life Activities**

To determine whether a person is “substantially limited,” courts will often consider whether the individual is unable to perform a major life activity at all, or whether he or she is “significantly restricted in the duration, manner, or condition” under which he or she can perform that activity, as compared to the average person.<sup>179</sup> “Major life activities” can include either: (a) certain activities, such as caring for oneself, performing manual tasks, reading, bending, speaking, breathing, or working; or (b) major bodily functions, such as digestive, neurological, bowel, bladder, or reproductive functions.<sup>180</sup>

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<sup>175</sup> 42 U.S.C. § 3604(f)(3).

<sup>176</sup> 29 U.S.C. § 705(20); 42 U.S.C. §§ 3602(h), 12102; 24 C.F.R. §§ 8.3, 100.201; 28 C.F.R. § 35.104.

<sup>177</sup> While a number of Supreme Court decisions had interpreted the ADA definition of disability differently than Section 504, Congress clarified the meaning of various terms in the ADA Amendments Act of 2008. *See* 42 U.S.C. § 12102 (effective Jan. 1, 2009).

<sup>178</sup> 29 U.S.C. § 705(20)(B) (1973); 42 U.S.C. § 12102.

<sup>179</sup> *Peters v. City of Mauston*, 311 F.3d 835, 843 (7th Cir. 2002).

<sup>180</sup> 29 U.S.C. § 705(20)(B) (Rehabilitation Act); 42 U.S.C. § 12102(2)(A)-(B) (Americans with Disabilities Act).

### **6.3.1.2 *Has a Record of Such Impairment***

“Having a record” of an impairment requires that a person has a history of, or has been misclassified as having, a disability as defined above.<sup>181</sup> This would include, for example, a survivor who has recovered from cancer or mental illness.<sup>182</sup>

### **6.3.1.3 *Is Regarded as Having Such an Impairment***

This final prong of the definition covers persons who: (a) have an impairment that does not substantially limit a major life activity but are treated as having such a limitation; (b) have an impairment that substantially limits a major life activity only as a result of others’ attitudes toward the impairment; or (c) have no impairment but are treated as having such an impairment.<sup>183</sup> For example, this would cover a survivor with a facial disfigurement who is denied housing because a landlord feared negative reactions from other tenants.<sup>184</sup>

### **6.3.1.4 *Exceptions to the Definition of Disability***

Although fair housing laws cover persons with a range of physical and mental impairments, they do not protect every individual who has an impairment. This section explains the major exceptions to the definition of disability.

#### *Drug Use*

A current illegal user of a controlled substance is not disabled for purposes of reasonable accommodation. However, an individual with a disability can include a survivor who has successfully completed drug rehabilitation, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use.<sup>185</sup>

#### *Direct Threat*

Nothing in the FHA requires a landlord to make a dwelling available “to an individual whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”<sup>186</sup> Examples of a direct threat may include acts that affect tenants’ health, such as excessive noise or physical violence. A direct threat must be based on objective evidence. It cannot be subjective; other tenants’ perceived fears are not sufficient to create a direct threat, even if those fears are reasonable.<sup>187</sup> Furthermore, the housing provider has an obligation to provide a reasonable

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<sup>181</sup> 29 C.F.R. § 1630.2(k).

<sup>182</sup> See U.S. Equal Employment Opportunity Commission, U.S. Department of Justice Civil Rights Division, Americans with Disabilities Act: Questions and Answers, <http://www.ada.gov/qandaeng.htm> [hereinafter Americans with Disabilities Act: Questions and Answers].

<sup>183</sup> 45 C.F.R. § 84.3(j)(2)(iv).

<sup>184</sup> See Americans with Disabilities Act: Questions and Answers, *supra* note 182.

<sup>185</sup> 42 U.S.C. § 12210(b).

<sup>186</sup> § 3604(f)(9).

<sup>187</sup> See, e.g., *Twp. of W. Orange v. Whitman*, 8 F. Supp. 2d 408 (D.N.J. 1998) (finding that a municipality and homeowners could not use a direct threat argument to prevent the siting of nearby group homes for persons with

accommodation that may help mitigate the threat.<sup>188</sup> Therefore, if a survivor presents a direct threat to the health and safety of others for a reason related to disability, advocates should request an accommodation that would mitigate such a threat. If an accommodation that eliminates or mitigates the threat cannot be made, then the individual's tenancy may not be protected. Solutions to direct threat allegations will often need to be creative and individualized.<sup>189</sup>

## 6.4 Requesting an Accommodation

There are several components to requesting a reasonable accommodation, including initial requests, verification, reasonableness, and the interactive process. Each of these components is discussed in detail below. For more information, advocates should consult the Department of Housing and Urban Development's (HUD) guidance regarding the process of requesting a reasonable accommodation.<sup>190</sup>

### *Initial Requests*

If a tenant tells a housing provider that she is disabled and needs a rule, policy, practice, or service changed to accommodate her disability, the provider is obligated to begin the reasonable accommodation process.<sup>191</sup> A request may be oral or written. In some cases, the provider may ask the tenant to make the request by filling out a form. While a housing provider may provide such a form, it must also accept a letter or oral request from the tenant. As a best practice, tenants or their advocates should request accommodations in writing, so that there is a clear record in case of a dispute. The appendices to this Manual contain a sample letter requesting a reasonable accommodation.<sup>192</sup> All requests should include a statement that the tenant has a disability, a description of the requested accommodation, an explanation of how the accommodation is related to the tenant's disability, and an explanation of how the accommodation will help the tenant access or remain in the housing.<sup>193</sup> Note that while a housing provider can request

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mental illness where the fear of the risk the home posed was based on generalized, subjective fear); *Wirtz Realty Corp. v. Freund*, 721 N.E.2d 589 (Ill. App. 1999) (finding that objective evidence is required for a direct threat, and that residents' belief that they were in danger, even if that belief proved to be "reasonable," did not satisfy this requirement).

<sup>188</sup> *McAlister v. Essex Prop. Trust*, 504 F. Supp. 2d 903 (C.D. Cal. 2007); *Roe v. Hous. Auth. of Boulder*, 909 F. Supp. 814 (D. Colo. 1995); *Roe v. Sugar River Mills Assocs.*, 820 F. Supp. 636 (D.N.H. 1993); JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE, REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT 4 (2004)[hereinafter Joint Statement].

<sup>189</sup> For more information regarding the direct threat exception, see Bazelon Center for Mental Health Law, *Fair Housing Information Sheet #8, Reasonable Accommodations for Tenant Posing a "Direct Threat" to Others*, <http://www.bazelon.org/issues/housing/infosheets/fhinfosheet8.html>.

<sup>190</sup> See Non-discrimination and Accessibility for Persons with Disabilities, HUD Letter 2007-05 (Sept. 21, 2007) (making permanent Notice on Non-discrimination and Accessibility for Persons with Disabilities, PIH 2006-13 (Mar. 8, 2006)); Joint Statement, *supra* note 188.

<sup>191</sup> Joint Statement, *supra* note 188, at 10.

<sup>192</sup> See Appendix 9.

<sup>193</sup> See, e.g., *Andover Hous. Auth. v. Shkolnik*, 820 N.E.2d 815 (Mass. 2005) (holding that tenant's requested reasonable accommodation, delay or withdrawal of eviction action, would not permit the tenant to comply with lease provisions regarding excessive noise); *Landmark Props. v. Olivo*, 783 N.Y.S.2d 745 (N.Y. App. Term 2004) (affirming order of eviction where tenant had not submitted clear evidence establishing that his dog was necessary to

verification of a disability or the need for accommodation, it cannot ask about the diagnosis, treatment, nature, or extent of the disability.<sup>194</sup>

### *Verification*

The housing provider may seek to verify the tenant's accommodation request. There are three possible verification scenarios. If a person's disability is obvious or is known to the housing provider, and the need for the requested accommodation is known, then the housing provider may not ask for any more information.<sup>195</sup> If the disability is known or obvious, but the need for the accommodation is not, then the housing provider should ask only for information necessary to verify the need.<sup>196</sup> If neither the disability nor the need for the accommodation is readily apparent, the housing provider may ask for verification of both the disability and the need for the accommodation.<sup>197</sup>

In some cases, housing providers should allow individuals to self-verify their disabilities. For example, an applicant/participant may provide proof of Supplemental Security Income (if younger than 65) or Social Security Disability Insurance benefits in order to verify.<sup>198</sup> A doctor or other medical professional, a peer support group, a non-medical service agency, or any reliable third party who is in a position to know about the individual's disability may also provide verification of the disability and the need for the accommodation.<sup>199</sup>

### *Reasonableness*

If a housing provider has verified the need for the accommodation, and the requested accommodation is reasonable, then he or she must provide it. The term "reasonable" means that the accommodation does not cause the housing provider an undue burden or fundamentally alter the nature of the program.

An undue burden may be financial or administrative.<sup>200</sup> To determine if an undue financial burden exists, four factors should be considered: the housing provider's financial resources, the costs of the requested accommodation, the benefit to the tenant, and the availability of a less expensive alternative accommodation.<sup>201</sup> Courts have recognized that reasonable accommodation will often cause housing providers some financial or other burden.<sup>202</sup>

An accommodation may also be unreasonable if it fundamentally alters the nature of the program. A housing provider does not have to grant a reasonable accommodation request if it includes services or policies that would change the very nature of what the housing provider

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his enjoyment of his rental unit); U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 20 (2003).

<sup>194</sup> PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 193, at 19.

<sup>195</sup> Joint Statement, *supra* note 188, at 12.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 13.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 13-14.

<sup>200</sup> 24 C.F.R. § 8.11.

<sup>201</sup> Joint Statement, *supra* note 188, at 8; *see, e.g.*, Solberg v. Majerle Mgmt., 879 A.2d 1015 (Md. 2005) (finding an undue burden where request would have required landlord to make significant changes to his personal life and daily activities and would have prevented him from inspecting tenant's unit).

<sup>202</sup> United States v. Cal. Mobile Home Park Mgmt. Co., 29 F.3d 1413 (9th Cir. 1994) (holding that mobile home park owner, under duty to provide reasonable accommodation, may have to incur reasonable financial costs).

does. For example, a tenant's request that a landlord provide daily transportation services would likely be considered unreasonable if the building currently has no such service.

### *Interactive Process*

If a housing provider rejects a tenant's reasonable accommodation request, it still must engage in an interactive process with the tenant.<sup>203</sup> This means that it must offer to discuss alternative accommodations that would satisfy the tenant's need while not imposing an undue burden or fundamental alteration to the housing provider's program. During this process, keep in mind that the person with disabilities knows best what accommodation will satisfy her needs. If the two parties cannot agree on an alternative accommodation, it is treated as a denial of the reasonable accommodation request.

Federally assisted housing providers are required to create grievance procedures designed to address claims of discrimination against program participants with disabilities.<sup>204</sup> Therefore, a survivor living in federally assisted housing may use the grievance procedure to challenge an initial refusal to accommodate. In practice, this grievance procedure is often used as the vehicle for the interactive process.

### *Timing of the Request*

A reasonable accommodation may be requested at any time, including prior to application and admission, during occupancy, after termination or eviction, and even during litigation.<sup>205</sup> Advocates should raise a request for a reasonable accommodation as soon as it is apparent that such accommodation is needed.

## **6.5 Common Issues for Survivors**

This section describes some of the reasonable accommodation issues that may be encountered by survivors with disabilities who are seeking housing.

### *Admissions to Housing*

Persons with disabilities may have poor rental, tenancy, or credit history that is directly related to the disability. In these cases, a housing provider may be required, as a reasonable accommodation, to alter its admissions policies or tenancy screening criteria that would otherwise bar the survivor from admission. For example, a survivor may have repeatedly failed to pay her rent on time due to severe depression, and may have an eviction on her credit record as a result. If the survivor has since received treatment that allows her to fulfill the

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<sup>203</sup> Joint Statement, *supra* note 188, at 7.

<sup>204</sup> 24 C.F.R. § 8.53.

<sup>205</sup> Joint Statement, *supra* note 188, at 12; *see also* Radecki v. Joura, 114 F.3d 115 (8th Cir. 1997) (finding that landlord may be required to halt eviction even if the accommodation request was not made until the eviction proceedings); Douglas v. Kriegsfeld Corp., 884 A.2d 1109 (D.C. 2005) (explaining the "general rule under the Fair Housing Act [is] that a reasonable accommodation defense will be timely until the proverbial last minute"); Hous. Auth. of Bangor v. Maheux, 748 A.2d 474 (Me. 2000) (finding that until writ is issued, landlord remains under obligation to provide reasonable accommodation); Schuett Inv. Co. v. Anderson, 386 N.W.2d 249 (Minn. Ct. App. 1986) (ordering landlord not to evict tenant).



responsibilities of her new lease, a prospective housing provider may overlook the poor rental history as a reasonable accommodation.

If an applicant for housing assistance cannot attend an in-person interview due to her disability, the housing provider must conduct the interview at an accessible location, such as the applicant's home, or make other arrangements, such as a phone interview. This may be vital for survivors who cannot attend an in-person interview because of depression, post-traumatic stress disorder, mobility impairments, or other disabilities.

### *Locating a Unit*

An obstacle that survivors with disabilities often encounter is the inability to find an accessible unit at an affordable price. This issue is especially problematic for Section 8 voucher holders. PHAs are required to establish a "payment standard," which is the highest amount the PHA can pay to help a family with rent. The payment standard is based on the fair market rents in the area. Unfortunately, many voucher holders with disabilities have difficulty finding units that are both accessible and that do not have rents higher than the payment standard. Recognizing this difficulty, HUD regulations require that a PHA increase the payment standard for a voucher holder if necessary as a reasonable accommodation.<sup>206</sup> Additionally, while Section 8 tenants typically cannot rent units from relatives,<sup>207</sup> tenants with disabilities may be permitted to do so as a reasonable accommodation.<sup>208</sup>

A reasonable accommodation may also provide greater housing choice to individuals with disabilities. Usually, a PHA may prohibit Section 8 tenants from using their vouchers to rent certain types of housing, such as single-room occupancy housing (units to be occupied by one person), congregate housing (housing with services for seniors or people with disabilities), shared housing, group homes, cooperative housing, and space rentals for mobile homes. However, a PHA must allow a voucher holder to rent any of these housing types if necessary to accommodate a disability.<sup>209</sup> This may be especially vital for a survivor who needs an accessible unit quickly.

### *Receiving Assistance from an Aide or Animal*

A survivor who has a disability may need a live-in aide to help her perform activities of daily living. A PHA or subsidized housing owner must approve a live-in aide as a reasonable accommodation.<sup>210</sup> In some cases, a housing provider may be reluctant to allow a survivor to have a live-in aide where a prior aide had committed acts of domestic violence against the

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<sup>206</sup> 24 C.F.R. §§ 982.505(d), 8.28(a)(5). In the past several years, HUD has annually granted 10 to 15 payment standard waivers. See Anthony Ha, *HUD Regulatory Waivers: Summary of Recent Waivers Regarding Voucher and Other Programs*, 35 HOUS. L. BULL. 238, 239 (2005); Antonia Konkoly, *HUD Regulatory Waivers Benefit Individual Participants and Public Housing Authorities*, 38 HOUS. L. BULL. 139, 140-41 (2008); Jason Lee, *HUD Regulatory Waivers Benefit Individual Participants and Public Housing Authorities*, 37 HOUS. L. BULL. 115, 116-17 (2007).

<sup>207</sup> § 982.306(d).

<sup>208</sup> § 982.306(d); U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK 8-15, 19 (2001).

<sup>209</sup> HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK, *supra* note 208, at 3-5, 17-1.

<sup>210</sup> § 982.316(a).

survivor. However, all reasonable accommodations must be judged on a case-by-case basis, and a housing provider should not restrict a survivor's right to a caregiver because of prior abuse.

A survivor with a disability may need an assistive animal to perform tasks, provide emotional support, or alert the survivor to intruders. State and federal laws protect the right of people with disabilities to keep assistive animals, even when a housing provider's policy prohibits pets.<sup>211</sup> A housing provider may be required to provide an exception to a no-pets policy as a reasonable accommodation to a survivor who needs an assistive animal. For example, a court found that a survivor could request an exception to a landlord's pet policy as a reasonable accommodation where she kept a dog in her apartment to alleviate her post-traumatic stress disorder.<sup>212</sup> The tenant stated that she was a survivor of domestic violence and that the dog lessened her constant state of fear because he preceded her into rooms, switched on lights in darkened rooms, and had been trained to bring her cell phone to her.<sup>213</sup>

## 6.6 Enforcement

Individuals with disabilities who have been denied their right to a reasonable accommodation have several options for enforcement, including administrative complaints and civil lawsuits. For information on these options, see Chapter Five.

## 6.7 Conclusion

Survivors with disabilities face unique challenges to obtaining safe and stable housing. Advocates must be aware of all the tools available to help survivors with disabilities, including the right to a reasonable accommodation. In many cases, a reasonable accommodation may lead to a swift and responsive solution to the survivor's housing needs.

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<sup>211</sup> See, e.g., *Green v. Hous. Auth. of Clackamas County*, 994 F. Supp. 1253 (D. Or. 1998); *Auburn Woods I Homeowners Ass'n v. Fair Employment & Hous. Comm'n*, 18 Cal. Rptr. 3d 669 (Cal. Ct. App. 2004); see also U.S. Department of Justice, *Commonly Asked Questions About Service Animals in Places of Business*, <http://www.ada.gov/qasrvc.htm>; Bazelon Center for Mental Health Law, *Fair Housing Information Sheet #6, Right to Emotional Support Animals in "No Pet" Housing*, <http://www.bazelon.org/issues/housing/infosheets/fhinfosheet6.html>.

<sup>212</sup> *Henderson v. Des Moines Mun. Hous. Agency*, 2007 WL 4553350 at \*6 (Iowa Ct. App. 2007).

<sup>213</sup> *Id.*

# Chapter 7: The Violence Against Women Act and Rights of Applicants for Federally Subsidized Housing

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### 7.1 Introduction

The Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA)<sup>214</sup> protects the rights of applicants to certain federally subsidized housing programs who are survivors of domestic violence, dating violence, or stalking.<sup>215</sup> The 2005 reauthorization marked the first time that VAWA included housing protections for survivors applying for federally subsidized housing. The housing provisions, which became effective January 2006, prohibit survivors from being denied housing assistance based on acts of violence committed against them. The provisions amended the statutes governing certain federally subsidized housing programs, primarily 42 U.S.C. Sections 1437d and 1437f. To help advocates locate the relevant statutory provisions, the appendices to this Manual include a statutory compendium that contains the text of VAWA’s housing provisions and the relevant citations.<sup>216</sup> Congress enacted the housing provisions in response to findings that “[w]omen and families across the country are

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<sup>214</sup> Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006). For more information on VAWA’s housing provisions, see NHLP, *HUD Continues VAWA Implementation*, 36 HOUS. L. BULL. 7 (Jan. 2007); Naomi Stern, *HUD Begins VAWA Implementation*, 36 HOUS. L. BULL. 181 (Sept. 2006); Anthony Ha, *Reauthorized Violence Against Women Act Protects Housing Rights of Domestic Violence Survivors*, 36 HOUS. L. BULL. 53 (Mar. 2006).

<sup>215</sup> In addition to protecting survivors who are applying for housing, VAWA also contains protections for certain survivors who are facing eviction or termination of their rental subsidies. Information regarding VAWA’s protections against evictions and subsidy terminations is available at National Housing Law Project’s webpage for Office on Violence Against Women (OVW) grantees, <http://nhlp.org/resourcecenter?tid=96>.

<sup>216</sup> See Appendix 10.

being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.”<sup>217</sup>

This Chapter first discusses the scope of VAWA’s housing protections, including the types of housing and individuals to whom VAWA applies and the proof that is required to assert the protections. The Chapter then discusses the protections against denials of housing that are available to survivors. Finally, the Chapter concludes with practice tips for using VAWA’s housing protections to their maximum potential.

## **7.2 Types of Housing that VAWA Covers**

In determining whether a survivor can use VAWA’s housing protections, advocates first must examine whether the survivor is applying for a federally subsidized housing program that is covered by VAWA. The covered housing programs are public housing, the Section 8 voucher program, project-based Section 8 developments, and the Section 202 and Section 811 supportive housing programs.<sup>218</sup> If a client is unsure whether she is a participant in one of these programs, review the client’s lease, contact the public housing agency (PHA) or the client’s landlord, or request assistance from a local legal services program or the National Housing Law Project.

VAWA does not cover any other Department of Housing and Urban Development (HUD) programs, such as Shelter Plus Care. It also does not apply to the U.S. Department of Agriculture’s Rural Housing Service programs. Survivors in the Low-Income Housing Tax Credit (LIHTC) program are not covered by VAWA unless their rent is subsidized by a Section 8 voucher or the project-based Section 8 program. Finally, VAWA does not cover tenants living in private housing without any type of rental subsidy.

## **7.3 Individuals Whom VAWA Protects**

VAWA protects any individual who is or has been a victim of actual or threatened domestic violence, dating violence, or stalking.<sup>219</sup> Advocates therefore must determine whether a survivor qualifies as a victim of domestic violence, dating violence, or stalking as defined in VAWA. The statute’s definitions of these terms are gender neutral. Thus, male survivors and survivors in same-sex relationships can assert VAWA’s protections.

Under VAWA, “domestic violence” includes violence committed by a current or former spouse of the survivor; a person with whom the survivor shares a child; a person who is cohabitating with or has cohabitated with the survivor as a spouse; or a person similarly situated to a spouse of the survivor under state law.<sup>220</sup> VAWA also covers any person who is protected by a state’s family violence laws.<sup>221</sup> Some states use definitions of domestic violence that are more expansive than VAWA’s. Thus, there may be instances where an individual fails to meet VAWA’s definition of domestic violence but can still assert VAWA’s protections because he or she meets the state’s definition. For example, unlike VAWA’s definition of domestic violence, California’s definition includes violence against a person to whom the perpetrator is related

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<sup>217</sup> 42 U.S.C. § 14043e.

<sup>218</sup> See HUD Programs: Violence Against Women Act Conforming Amendments, 73 Fed. Reg. 72,336 (Nov. 28, 2008). For an overview of the federally subsidized housing programs, see Chapter 2.

<sup>219</sup> See, e.g., 42 U.S.C. §§ 1437d(l)(6)(A) (public housing), 1437f(c)(9)(C)(i) (project-based Section 8), 1437f(o)(20)(C) (Section 8 voucher).

<sup>220</sup> 42 U.S.C. § 13925(a)(6); 24 C.F.R. § 5.2003.

<sup>221</sup> *Id.*

within the second degree, such as violence against a parent by an adult child or violence between siblings.<sup>222</sup>

Under VAWA, “dating violence” is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the survivor.<sup>223</sup> The existence of such a relationship is based on factors such as its length and frequency of interaction.<sup>224</sup> “Stalking” is defined as following, pursuing, placing under surveillance, or repeatedly committing acts with intent to kill, injure, harass, or intimidate another person.<sup>225</sup> To meet VAWA’s definition of stalking, these acts must place the survivor in reasonable fear of death or serious bodily injury or cause substantial emotional harm to the survivor or an immediate family member of the survivor.<sup>226</sup> In contrast to VAWA’s definitions of domestic violence and dating violence, the definition of stalking does not require that the survivor have had a romantic or intimate relationship with the perpetrator.

Immediate family members of the survivor of domestic violence, dating violence, or stalking are also protected by VAWA. An immediate family member is defined as a spouse, parent, sibling, child, or any other person living in the survivor’s household who is related by blood or marriage.<sup>227</sup>

Survivors of sexual assault are not explicitly listed among the categories of victims who are entitled to VAWA’s housing protections. Advocates representing sexual assault survivors should carefully read VAWA’s definitions of domestic violence, dating violence, and stalking, as well as state law definitions of domestic violence. In some instances, advocates may be able to argue that the circumstances surrounding the sexual assault meet one of these definitions. Additionally, one of VAWA’s stated purposes is to protect the safety of victims of sexual assault who reside in public or assisted housing.<sup>228</sup> Advocates can therefore argue that extending the housing protections to sexual assault survivors is consistent with VAWA’s intent.

#### **7.4 VAWA’s Protections for Survivors Applying for Housing**

VAWA prohibits a housing provider from denying an applicant admission to housing or rental assistance “on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking.”<sup>229</sup> Therefore, survivors cannot be denied admission to public housing or project-based Section 8 housing, or denied eligibility for the Section 8 Voucher program based on incidents of domestic violence, dating violence, or stalking committed against them. Landlords renting to Section 8 voucher tenants also cannot deny housing to survivors on the basis of acts of abuse committed against them.

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<sup>222</sup> See CAL. FAM. CODE § 6211.

<sup>223</sup> 42 U.S.C. § 13925(a)(8); 24 C.F.R. § 5.2003.

<sup>224</sup> *Id.*

<sup>225</sup> 42 U.S.C. §§ 1437d(u)(3)(C) (public housing), 1437f(f)(10) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2003.

<sup>226</sup> *Id.* The statutes and regulations do not describe the type of evidence a survivor must produce to show that she had a reasonable fear of death or serious injury, or that she suffered substantial emotional harm. Any documentation of the threats or acts of intimidation that the survivor experienced, as well as records regarding the survivor’s physical or mental state, would likely be helpful in supporting her assertion that she experienced fear or emotional harm.

<sup>227</sup> §§ 1437d(u)(3)(D) (public housing), 1437f(f)(11) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2003.

<sup>228</sup> 42 U.S.C. § 14043e-1.

<sup>229</sup> 42 U.S.C. §§ 1437d(c)(3) (public housing), 1437f(c)(9)(A) (project-based Section 8), 1437f(o)(6)(B) (vouchers); 24 C.F.R. § 5.2005(a).

It is important for advocates to note that few housing providers will explicitly deny a survivor housing on the basis that she is or has been a survivor of domestic violence, dating violence, or stalking. Rather, survivors are most often denied housing on the basis of negative tenancy, credit, or criminal history that is related to the acts of abuse.<sup>230</sup> For example, many public housing agencies (PHAs) have policies of denying admission to applicants who have previously been evicted from federally subsidized housing. Therefore, a survivor who was previously evicted from public housing due to damages caused by the batterer may be denied admission to federally subsidized housing if she reapplies at the same PHA or applies at another PHA.

Unfortunately, VAWA does not explicitly address denials of housing based on negative tenancy, credit, or criminal history that can be traced back to acts of abuse committed against the applicant. However, advocates working with survivors who have been denied housing because of such history should still challenge the denial.<sup>231</sup> Advocates can argue that denying a survivor housing based on such negative history is equivalent to denying her housing on the basis that she has been a survivor of abuse, and that the denial therefore violates VAWA. In making this argument, it is helpful to document the link between the negative history and the abuse. In the example above, an advocate should gather any documentation showing that the applicant's prior eviction from public housing was related to domestic violence, such as police reports, statements from neighbors, or letters from service providers. Advocates should also note that PHAs are obliged to consider the nature and extent of an applicant's negative history,<sup>232</sup> and that HUD has explicitly advised PHAs to inquire into whether domestic violence was a factor in poor rental history.<sup>233</sup> Advocates should also explain to housing providers the link between domestic violence and poor credit, tenancy, or criminal history, and why many survivors have such poor history. For instance, VAWA's findings section notes that "[b]ecause abusers frequently manipulate finances in an effort to control their partners, victims often lack steady income, credit history, landlord references, and a current address, all of which are necessary to obtain long-term permanent housing."<sup>234</sup> The appendix to Manual contains sample pleadings that raise these arguments.<sup>235</sup>

Although a housing provider cannot deny an applicant admission to housing on the basis of her status as a survivor of domestic violence, dating violence, or stalking, an individual's status as a survivor does not guarantee that she will be accepted into federally subsidized housing. VAWA does not require that housing authorities institute a preference for survivors of abuse when making admissions decisions. However, housing authorities have discretion to institute such a preference, and advocates can encourage them to do so during the annual planning process.<sup>236</sup>

## **7.5 Proving Domestic Violence, Dating Violence, or Stalking Under VAWA**

This section focuses on how an applicant to federally subsidized housing can prove that she is a survivor of domestic violence, dating violence, or stalking for purposes of VAWA's housing provisions. This process is referred to as "certification." Advocates should note that a survivor

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<sup>230</sup> Negative tenancy and credit history are discussed in more detail in Chapter 4.

<sup>231</sup> See Chapter 3 for more information on challenging denials of admission.

<sup>232</sup> 24 C.F.R. § 960.203.

<sup>233</sup> HUD, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 218 (2003).

<sup>234</sup> 42 U.S.C. § 14043e(10).

<sup>235</sup> See Appendix 5.

<sup>236</sup> See Chapter 8 for more information on the PHA planning process.

need only provide the documentation discussed in this section if the survivor seeks to assert a specific right provided in VAWA, and the housing provider requests such documentation.

If a survivor seeks to assert her VAWA rights, a PHA or landlord can ask for proof of domestic violence, dating violence, or stalking.<sup>237</sup> Thus, if a survivor seeks to challenge a denial of housing on the basis that the denial violated VAWA, a housing provider may ask the survivor to certify that she is a victim of domestic violence, dating violence, or stalking. In deciding whether to apply VAWA's protections, the housing provider can choose to rely solely on the survivor's statement, or can submit a written request for certification to the survivor.<sup>238</sup> After a housing provider has requested certification, a survivor must be given at least 14 business days to respond.<sup>239</sup> Housing providers can extend the 14-day deadline at their discretion, and advocates should encourage them to do so where the survivor can show good cause for an extension.<sup>240</sup>

There are three basic types of certification the survivor can provide in response to the housing provider's request: (1) self-certification; (2) statement from a qualified third party; or (3) police or court record.<sup>241</sup> First, the survivor can self-certify by completing a HUD-approved form.<sup>242</sup> Survivors participating in the public housing or Section 8 voucher program should complete form HUD-50066, while form HUD-91066 is for survivors living in project-based Section 8 developments. Form HUD-50066 is available in 12 different languages.<sup>243</sup>

If the housing provider does not give the survivor a copy of the form, it can be downloaded from HUD's website.<sup>244</sup> Advocates should download and print several copies of the forms so that they are readily available in the event that a survivor needs to assert her VAWA rights immediately. These forms are also contained in the appendices to this Manual.<sup>245</sup> The forms request the name of the survivor, the name of the perpetrator, the date on which the incident occurred, and a brief description of the incident. The survivor must sign the form and certify that the information is true and correct. Submitting false information on the form is grounds for termination of assistance or eviction.

If the survivor does not feel comfortable providing the information requested in the HUD-approved form, she can instead provide either a statement from a qualified third party, or a police or court record.<sup>246</sup> Documentation from a qualified third party must be signed by the victim and a victim service provider, an attorney, or a medical professional.<sup>247</sup> The third party must attest under penalty of perjury to his or her belief that the survivor has experienced bona fide incidents of abuse.<sup>248</sup>

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<sup>237</sup> §§ 1437d(u)(1)(A)(public housing), 1437f (ee)(1)(A) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1).

<sup>238</sup> §§ 1437d(u)(1)(D) (public housing), 1437f(ee)(1)(D) (project-based Section 8 and vouchers).

<sup>239</sup> §§ 1437d(u)(1)(B) (public housing), 1437f(ee)(1)(B) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(2).

<sup>240</sup> *Id.*

<sup>241</sup> See 42 U.S.C. §§ 1437d(u)(1)(A), (C) (public housing), 1437f(ee)(1)(A), (C) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1).

<sup>242</sup> *Id.*

<sup>243</sup> These languages are English, Arabic, Cambodian, Chinese, Creole, French, Hmong, Korean, Lao, Russian, Spanish, and Vietnamese. To download the forms, visit <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>.

<sup>244</sup> The forms are available at <http://www.hud.gov/offices/adm/hudclips/forms/>.

<sup>245</sup> See Appendices 11 and 12.

<sup>246</sup> See *supra* note 241.

<sup>247</sup> See *id.*

<sup>248</sup> See *id.*

Unfortunately, VAWA does not contain language protecting any privileged relationship existing between the survivor and the third party. To avoid waiving attorney-client privilege, an attorney representing a survivor generally should not certify that the survivor has experienced bona fide incidents of abuse. Instead, the attorney should explore with the survivor whether there is another individual who can provide the documentation, such as a shelter employee or victim-witness advocate.

As an alternative to submitting the third-party documentation or HUD-approved form, the survivor can provide a federal, state, tribal, territorial, or local police or court record.<sup>249</sup> VAWA's housing provisions do not define what constitutes a police or court record. Examples of documents that should satisfy the certification requirement include a restraining order, a police report, or a criminal complaint or conviction.

A common area of confusion under VAWA is whether a housing provider may request that a survivor provide multiple forms of documentation, or that a survivor provide a particular type of documentation. For example, in some instances housing providers have requested that survivors provide both the HUD-approved certification form and third-party documentation, or that survivors provide restraining orders. However, HUD has made clear that VAWA "allows for the victim to self-certify," and that its form satisfies VAWA's certification requirements.<sup>250</sup> HUD has also stated that third-party documentation or a police or court record may be provided "[i]n lieu of a certification form," indicating that survivors have the authority to decide what type of documentation they will provide.<sup>251</sup> It is therefore contrary to HUD's guidance to require the survivor to provide two forms of documentation, or to limit the types of documentation a survivor can provide. It is also unduly burdensome for the survivor, who in some cases will be fleeing from the perpetrator or temporarily staying in a confidential location. If a housing provider has an overly restrictive documentation policy, advocates should remind the provider of HUD's guidance and explain why many survivors cannot provide multiple forms of documentation. At the same time, however, advocates should attempt to secure several forms of documentation from the survivor in order to strengthen the case and to avoid a protracted dispute with the housing provider regarding documentation, particularly where the survivor needs alternative housing immediately.

## 7.6 Survivors' Rights to Confidentiality Under VAWA

Under VAWA, housing providers must keep confidential any information a survivor provides to certify incidents of domestic violence, dating violence, or stalking.<sup>252</sup> They may not enter the information into any shared database or provide it to another entity.<sup>253</sup> However, certification information may be disclosed if the survivor requests disclosure in writing, or if disclosure is otherwise required by law.<sup>254</sup> Certification information may also be disclosed if needed to remove the batterer from the unit in cases where the survivor and batterer live together.<sup>255</sup>

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<sup>249</sup> See *supra* note 23; 24 C.F.R. § 5.2007(a)(1)(ii).

<sup>250</sup> The Violence Against Women and Department of Justice Reauthorization Act of 2005: Applicability to HUD Programs, 72 Fed. Reg. 12,696 (Mar. 16, 2007).

<sup>251</sup> See Notice PIH 2006-42 (Dec. 27, 2006); Form HUD-50066; Form HUD-91066.

<sup>252</sup> See 42 U.S.C. §§ 1437d(u)(2)(A) (public housing), 1437f(ee)(2)(A) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1)(v).

<sup>253</sup> See *id.*

<sup>254</sup> See *supra* note 237.

<sup>255</sup> See *supra* note 237.



Advocates should remind housing providers of the importance of warning the survivor and giving her adequate time to plan for her safety before the information is disclosed.

## **7.7 Housing Authorities' Duties to Plan for Survivors' Needs**

Under VAWA, PHAs must address the housing needs of survivors of domestic violence, dating violence, stalking, and sexual assault in their annual planning documents. These obligations are discussed in Chapter 8.

## **7.8 Practice Tips**

There are several ways in which advocates can ensure that VAWA's housing protections are used to their maximum potential, such as educating housing providers and clients and collaborating with housing providers.

### **7.8.1 The Need to Educate Housing Providers**

From the outset, advocates should recognize that most PHA staff members, hearing officers, judges, and Section 8 landlords have not received training on VAWA's housing provisions. In some cases, these individuals may be unaware that the provisions even exist. Further, many of these individuals may lack a basic understanding of the dynamics of domestic violence. Accordingly, in advocacy letters and hearing documents, advocates will need to provide these parties with basic information regarding VAWA's purpose and protections. Advocates should also attach copies of VAWA's statutory and regulatory provisions to advocacy letters and bring copies to administrative proceedings or meetings with housing providers. Advocates will also need to provide fundamental information regarding domestic violence, such as why survivors stay, the nature and impact of economic abuse, and the psychological impact that battering has upon survivors.

### **7.8.2 The Need to Educate Clients**

Most survivors lack information regarding their housing rights under VAWA. As a result, survivors often fail to assert VAWA when they are denied housing for reasons related to domestic violence. Advocates should develop strategies for educating clients regarding their VAWA rights, such as posting notices at their offices, on their websites, and at social services agencies. The appendices to this Manual include a sample brochure for clients regarding VAWA housing rights.<sup>256</sup> Advocates should also urge PHAs to use a variety of methods to provide tenants with notice of their VAWA rights, such as including information about VAWA in denial of assistance letters. Further, advocates may need to revise their intake procedures to identify whether a survivor may be entitled to VAWA's housing protections. As a standard procedure, advocates should consider asking clients whether a denial of housing was in any way related to their status as victims of domestic violence.

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<sup>256</sup> See Appendix 13.

### **7.8.3 Collaboration with Housing Providers**

To prevent housing providers from needlessly denying housing to survivors, advocates should request meetings with their local housing providers to discuss ways to work together to implement VAWA's protections. Advocates should offer to provide training on VAWA's housing provisions as well as on the fundamentals of domestic violence, dating violence, sexual assault, and stalking. Where possible, advocates should also offer to take referrals in cases where the housing provider becomes aware that a housing applicant is experiencing abuse. Advocates should also volunteer to work with housing providers to develop admissions policies that serve survivors' needs.<sup>257</sup>

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<sup>257</sup> See Chapter 8 for more information on working with PHAs on their admissions policies.

# Chapter 8: Using Local Planning to Increase Survivors' Access to Housing

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### 8.1 Introduction

To increase the likelihood that survivors of domestic violence will be able to obtain affordable housing, advocates should participate in local planning processes. This Chapter addresses four different types of housing plans and how advocates can shape those plans. First, public housing agencies (PHAs) are required to develop plans that set forth the policies governing their Section 8 voucher and public housing programs. Second, state and local

governments must submit a Consolidated Plan (ConPlan) to HUD to receive money from certain HUD programs. ConPlans must identify certain housing needs, including the housing needs of domestic violence survivors, and develop strategies for addressing those needs. Third, the Continuum of Care (Continuum) is a process where local government and community members develop a plan for providing housing and services to homeless individuals. Fourth, the Qualified Allocation Plan sets forth the state's criteria for allocating Low-Income Housing Tax Credits to housing projects.

## **8.2 Public Housing Agency (PHA) Plans**

Advocates can improve access to housing for survivors by participating in the PHA annual planning process. This process is crucial for advocates who want to increase survivors' chances of securing public housing or Section 8 vouchers. It provides an opportunity for advocates to comment on their local PHA's policies on domestic violence (or to ask the PHA to adopt such policies), and to work toward implementing policies that better serve their clients. National Housing Law Project is available to assist advocates who want to participate in the annual planning process.

This section describes how advocates can shape three types of PHA plans: (1) Annual Plans; (2) Section 8 Administrative Plans; and (3) public housing Admission and Continued Occupancy Policies. The Annual Plan is a document that PHAs must submit yearly that summarizes some of the PHA's policies regarding the public housing and Section 8 programs. The Administrative Plan details the policies that a PHA uses in the day-to-day operation of its Section 8 voucher program. The Admission and Continued Occupancy Policy serves a similar function for the PHA's public housing program.

### **8.2.1 Annual and 5-Year Plans**

Most PHAs, which administer public housing units and Section 8 vouchers, are required to submit Annual and 5-Year Plans to the Department of Housing and Urban Development (HUD).<sup>258</sup> PHAs must submit an Annual Plan each year, with supporting documents, that states some of the PHA's policies regarding the public housing and Section 8 programs. Every five years, all PHAs must update and submit 5-Year Plans stating their mission, goals, and objectives. Additionally, as discussed in the next section, the Annual and 5-Year Plans must contain a statement regarding the housing needs of survivors of domestic violence, dating violence, stalking, and sexual assault.

#### **8.2.1.1 Violence Against Women Act**

Under the Violence Against Women Act of 2005 (VAWA), PHAs now have obligations to address the housing needs of survivors of domestic violence, dating violence, stalking, and sexual assault. In the 5-Year Plan, PHAs are required to include a statement of the goals,

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<sup>258</sup> There are exemptions from the Annual Plan requirements for PHAs with 550 or fewer public housing units and Section 8 vouchers. *See* HUD, Public Housing Agency (PHA) Five-Year and Annual Plan Process for all PHAs, PIH 2008-41 (Nov. 13, 2008).

objectives, policies, or programs that will enable the PHA to serve the needs of victims of domestic violence, dating violence, sexual assault, or stalking.<sup>259</sup>

In the Annual Plan, PHAs are required to include a description of:

“(A) any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;

“(B) any activities, services, or programs provided or offered by a public housing agency that help child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and

“(C) any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.”<sup>260</sup>

A PHA’s description of the activities, services, or programs offered to survivors of domestic violence must be readily available to the public.<sup>261</sup> However, because this requirement is relatively new, many PHAs have not yet developed this description. Others include only a cursory description of activities that serve survivors’ needs, such as “The housing authority has amended its policies to comply with VAWA.” Advocates should urge PHAs to describe in detail the activities, services, or programs that they offer to help survivors to obtain housing. For example, if a PHA has trained its staff on domestic violence or VAWA’s provisions, designated staff members to handle VAWA cases, or made arrangements to refer applicants to a victim service provider, the PHA should describe these activities and indicate the steps it has taken to make survivors aware of the services. If a PHA has not yet implemented any programs to assist survivors, advocates should offer to meet and discuss ways in which the PHA and local service providers can work together to provide this assistance. Later in this Chapter, we provide tips regarding collaboration with PHAs. In setting meetings with PHAs, advocates should consider the timeline for the PHA planning process, which is discussed in the next section.

### **8.2.1.2 Timeline for PHA Plans**

PHAs must follow a federally mandated timeline when developing and submitting their Annual Plans. The appendix to this Manual contains a chart that sets forth this timeline in detail.<sup>262</sup> The plans must be submitted to HUD 75 days prior to the end of the PHA’s fiscal year.<sup>263</sup> Additionally, the PHA must give the public at least 45 days’ notice of the public hearing on the plan.<sup>264</sup> The notice is typically published in local newspapers or posted on the PHA’s website. As an example, if a PHA’s fiscal year begins July 1, its public hearing will typically be held in March or April. Generally, written comments on the plans are due the day of or shortly

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<sup>259</sup> 42 U.S.C. § 1437c-1(d)(13).

<sup>260</sup> § 1437c-1.

<sup>261</sup> Instructions Form HUD-50075, at 1 (2008).

<sup>262</sup> See Appendix 18.

<sup>263</sup> 24 C.F.R. § 903.5(a)(2). To determine when your PHA’s fiscal year begins, visit <http://www.hud.gov/offices/pih/pha/approved/index.cfm>.

<sup>264</sup> § 903.17(b).

before the public hearing. The public hearing is usually before the PHA's board of commissioners, which must approve the plan before it is submitted to HUD.

To obtain copies of the Annual Plan, advocates should contact their PHAs. In some jurisdictions, PHAs post their Annual Plans on their websites.

### **8.2.1.3 Other Policy Documents**

In addition to commenting on the Annual Plan, advocates should also review their PHA's Section 8 Administrative Plan and public housing Admission and Continued Occupancy Policy (ACOP). These are the two documents that govern the PHA's day-to-day operation of its subsidized housing programs. The Administrative Plan sets forth the policies that the PHA uses in its Section 8 program,<sup>265</sup> while the ACOP sets forth the policies that the PHA uses in its public housing program. Although some PHAs revise the Administrative Plan and ACOP on the same timeline as the Annual Plan, they are not required to do so, and some PHAs do not regularly revise these documents.

Regardless of when a PHA last revised its Administrative Plan and ACOP, advocates can review these documents to determine whether the PHA has adopted policies that serve the housing needs of domestic violence survivors. As we will discuss, PHAs should amend their admissions policies in the Administrative Plan and ACOP to comply with VAWA. The rest of this section discusses in detail the VAWA protections that should be incorporated into the Administrative Plan and ACOP. Advocates should note that VAWA's protections against housing denials apply only to survivors of domestic violence, dating violence, and stalking. However, PHAs are free to extend these protections to survivors of sexual assault, and the Administrative Plan and ACOP can be amended accordingly.

In addition to incorporating VAWA's language, PHAs should adopt a variety of other policies to improve survivors' chances of obtaining housing. These policies are discussed throughout this Chapter, and a sample PHA domestic violence policy is included in the appendices to this Manual.<sup>266</sup> Advocates should consider providing proposed policy language when submitting comments on the Administrative Plan and ACOP.

Advocates should also review the policies in the Administrative Plan and ACOP regarding language access for limited English proficient (LEP) families and reasonable accommodations for persons with disabilities. This helps to ensure maximum access to subsidized housing for disabled and LEP survivors. It may be particularly effective to collaborate with disability and immigrants' rights organizations to review the policies and submit comments.

## **8.2.2 Section 8 Administrative Plan**

The Administrative Plan contains the policies that the PHA uses in administering its Section 8 voucher program. Many of these policies may impact a survivor's ability to obtain housing. Below we discuss some of the Administrative Plan policies that advocates should review and submit comments upon, including admissions preferences, admissions criteria, and certification of domestic violence. Many of these policies should also be included in the public housing ACOP, which is discussed in detail later in this Chapter. Sample comments on PHA

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<sup>265</sup> This includes both the Housing Choice Voucher Program and the project-based voucher program.

<sup>266</sup> See Appendix 17.

Administrative Plans and sample Administrative Plan language are included in the appendices to this Manual.<sup>267</sup>

### **8.2.2.1 Admissions Preferences**

The Administrative Plan must describe the PHA's policies for selecting applicants from the Section 8 waiting list, including any admissions preferences.<sup>268</sup> An admissions preference is a policy that provides certain categories of applicants a priority on the waiting list as units become available. For example, some PHAs provide preferences for families who live in the PHA's jurisdiction, who are disabled, or who are homeless. A relatively small number of PHAs throughout the country have chosen to adopt an admissions preference for domestic violence survivors.<sup>269</sup> Advocates should consider whether a domestic violence preference is appropriate in their jurisdiction. In making this determination, it is helpful to consult with legal services programs, disability rights organizations, homeless advocates, and others who are familiar with the PHA's admissions process.

One concern that PHAs often raise is that it may be difficult to verify whether an applicant seeking the domestic violence preference is in fact a survivor of domestic violence. Advocates should therefore offer suggestions for how applicants can document that they qualify for the domestic violence preference, such as by providing a letter from a service provider, a police report, or a restraining order.

Implementing a domestic violence preference may take a significant amount of time. The public must have an opportunity to comment on the preference, and it must be approved by the housing authority's board. Additionally, a preference may not guarantee that a survivor will be immediately granted a voucher once she places her name on the waiting list. In many jurisdictions, applicants must wait months or years before they receive a voucher even if they qualify for a preference. Advocates should explore with PHAs whether there are ways to expedite the implementation of a domestic violence preference.

### **8.2.2.2 Admissions Criteria**

The Administrative Plan must set forth the PHA's admissions criteria for the Section 8 program.<sup>270</sup> Advocates should carefully review these criteria, as they often have the effect of excluding survivors from subsidized housing.<sup>271</sup> For example, many PHAs have policies that prohibit admission of applicants who have previously been terminated from federally subsidized housing, or who owe money to a PHA for rent or damages. Survivors are often evicted or terminated from subsidized housing for reasons related to the batterer's conduct, such as noisy disturbances or property damage. If these survivors apply for subsidized housing after escaping

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<sup>267</sup> See Appendices 14, 15, 16, and 17.

<sup>268</sup> § 982.54(d)(1).

<sup>269</sup> See, e.g., CHICAGO HOUSING AUTHORITY, FY2009 ADMISSIONS AND CONTINUED OCCUPANCY POLICY (ACOP) 10 (2009), available at [http://www.thecha.org/filebin/pdf/mapDocs/FY2009\\_Admissions\\_and\\_Continued\\_Occupancy\\_Policy.pdf](http://www.thecha.org/filebin/pdf/mapDocs/FY2009_Admissions_and_Continued_Occupancy_Policy.pdf); HOUSING AUTHORITY OF CLACKAMAS COUNTY, OR., HOUSING CHOICE VOUCHER ADMINISTRATIVE PLAN 42 (2009), available at <http://www.co.clackamas.or.us/docs/hacc/voucheradmin.pdf>; MINNEAPOLIS PUBLIC HOUSING AUTHORITY, SECTION 8 ADMINISTRATIVE PLAN 4-10 (2006).

<sup>270</sup> §§ 982.54(d)(1), (4).

<sup>271</sup> See Chapter 3 for information on challenging denials of admission to subsidized housing.

the batterer, they risk being denied housing due to the prior eviction or subsidy termination. Additionally, many PHAs have policies that bar admission of applicants who have been arrested for or convicted of violent criminal activity within the past three to five years. As a result, survivors who have arrests or convictions stemming from self-defense, coercion, or mutual arrest risk being denied housing.

Under 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 if the applicant otherwise qualifies for assistance or admission.”<sup>272</sup> Advocates can address admissions criteria by asking PHAs to include this language in the Administrative Plan. Advocates should also ask PHAs to adopt policies that allow for mitigation of negative history that is related to acts of violence committed against a survivor. PHAs should consider whether an applicant would be suitable for housing assistance but for a negative history caused by domestic violence. If inquiries reveal that the negative history was the consequence of domestic violence against the applicant, the PHA should not deny the household assistance. Any inquiries regarding domestic violence should make clear that members of applicant households have a right to confidentiality.

It is important to note that in the Section 8 voucher program, the private landlord is responsible for screening an applicant’s tenancy and credit history.<sup>273</sup> Therefore, advocates will need to contact the private landlord, rather than the housing authority, if a survivor with a Section 8 voucher has been denied an apartment based on her credit or landlord references.

### **8.2.2.3 Certification of Domestic Violence and Confidentiality**

If a survivor asserts VAWA’s protections, a PHA may request documentation of domestic violence. The Administrative Plan should clearly set forth a PHA’s requirements for documenting domestic violence. VAWA permits survivors to certify their status as victims of domestic violence in any of the following three ways: (1) completing a 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.<sup>274</sup> Advocates should review the Administrative Plan to ensure that their PHA has a policy of accepting any one of these three types of documentation. Advocates should also consider whether there are other documents that should be added to the list, such as medical records, a statement from a clergy member or social worker, or a signed statement by the survivor.<sup>275</sup> The Administrative Plan should also set forth the deadline for certification<sup>276</sup> and what will be considered good cause for extending the deadline, such as hospitalization or continuance of a court date.

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<sup>272</sup> 42 U.S.C. § 1437f(o)(6)(B).

<sup>273</sup> Chapter 3 provides suggestions for helping survivors address negative tenancy and credit history.

<sup>274</sup> § 1437f(ee)(A), (C).

<sup>275</sup> VAWA provides that PHAs are not required to demand official documentation and may rely solely on the survivor’s statement. § 1437f(ee)(1)(D).

<sup>276</sup> At a minimum, the survivor must be given 14 business days to respond to the PHA’s written request for certification. § 1437f(ee)(1)(B). Advocates can ask the PHA to provide for a longer period of time in the Administrative Plan.



The Administrative Plan should also make clear that the PHA shall keep confidential any information regarding an individual's status as a survivor of domestic violence and that this information may not be entered into a shared database or provided to other entities.<sup>277</sup> The Administrative Plan should also acknowledge that VAWA provides exceptions to confidentiality where disclosure is requested by the survivor in writing, where the information is required for use in a proceeding to evict the abuser, or where otherwise required by the law.<sup>278</sup> Finally, the Administrative Plan should state that the PHA will inform the survivor before disclosing information so that safety risks or alternatives to disclosure can be identified.

#### **8.2.2.4 Definitions of Domestic Violence, Dating Violence, and Stalking**

PHA staff members often have questions as to whom can be considered a victim of dating violence, domestic violence, or stalking. PHAs should therefore include VAWA's definitions of these terms in the Administrative Plan.<sup>279</sup> Additionally, VAWA's definition of "domestic violence" incorporates state law definitions of the term. Therefore, PHAs should include their state's definition of domestic violence in the Administrative Plan and ACOP.

#### **8.2.2.5 Information Provided to Prospective Section 8 Landlords**

The Administrative Plan must include the PHA's policies for providing information about a family to prospective Section 8 landlords.<sup>280</sup> When a Section 8 participant finds a landlord from whom she wants to rent, the PHA must provide that landlord with certain information. HUD regulations state that the PHA must give prospective Section 8 landlords the Section 8 participant's current and prior addresses, as well as the names and addresses of the landlords at the participant's current and prior addresses.<sup>281</sup> In accordance with these regulations, many PHAs have adopted policies stating that they will give a prospective Section 8 landlord the current and prior addresses of the Section 8 participant and her landlords.

A policy requiring Section 8 participants to disclose prior landlords' contact information or mandating that the information be shared with prospective Section 8 landlords may cause serious problems for survivors of domestic violence. If the prospective Section 8 landlord contacts a survivor's current or former landlord, the abuser may be able to track the survivor's location. Advocates should urge PHAs to adopt a policy stating that they will inform Section 8 participants which parties will be contacted so that safety risks can be identified. PHAs should also adopt a policy stating that they will work with survivors of domestic violence to identify alternative means of verification of landlord references if the survivor's safety would otherwise be compromised.

#### **8.2.2.6 Linkages to Community Resources**

Advocates should urge PHAs to include a statement in the Administrative Plan on how they will inform survivors of domestic violence about community resources. For example, the

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<sup>277</sup> § 1437f(ee)(2)(A).

<sup>278</sup> § 1437f(ee)(2)(A).

<sup>279</sup> See §§ 1437d(u)(3)(C), 1437f(f)(10), 13925(a)(6), (8).

<sup>280</sup> 24 C.F.R. § 982.54(d)(7).

<sup>281</sup> § 982.307(b)(i)-(ii).

Administrative Plan could state that the PHA will maintain updated domestic violence referral information and will place posters on domestic violence services at its offices. Advocates should volunteer to assist the PHA in developing these materials. The Administrative Plan could also state that the PHA will give domestic violence referral information to new residents in their orientation packets and to all current residents during their annual recertification interviews. Where possible, advocates should offer to provide PHAs with these resources and should urge PHAs to make them accessible to LEP and disabled individuals. Finally, the Administrative Plan could state that the PHA will collaborate with domestic violence advocacy groups on providing outreach to residents and on meeting the training needs of PHA staff. Advocates should encourage PHAs to develop relationships with organizations that serve LEP survivors as well as survivors from underserved ethnic and cultural groups.

### **8.2.3 Public Housing Admissions and Continued Occupancy Policy**

The Admissions and Continued Occupancy Policy (ACOP) contains the policies that the PHA uses in administering its public housing program.<sup>282</sup> These policies are often similar to or even identical to the policies contained in the Administrative Plan. As a result, most of our suggestions regarding the Administrative Plan will apply equally to the ACOP. In reviewing the ACOP, advocates should look at the previous sections in this Chapter on the following topics: § 8.2.2.1 Admissions Preferences; § 8.2.2.2 Admissions Criteria; § 8.2.2.3 Certification of Domestic Violence and Confidentiality; § 8.2.2.4 Definitions of Domestic Violence, Dating Violence, and Stalking; and § 8.2.2.6 Linkages to Community Resources.

In addition to the topics discussed in our overview of the Administrative Plan, advocates should also review the policies in the public housing ACOP regarding screening of applicants. Sample comments on PHA ACOPs and sample ACOP language are included in the appendices to this Manual.<sup>283</sup>

#### **8.2.3.1 Screening of Applicants**

PHAs are responsible for screening the tenancy and credit history of applicants to the public housing program. Many PHAs consider factors such as whether the applicant has paid rent and utilities on time, whether the applicant has a pattern of disturbing neighbors or destroying property, and whether the applicant has a pattern of evictions. Such screening policies may have the effect of excluding survivors who have negative tenancy or credit history due to acts of violence or financial abuse committed against them. Advocates should urge PHAs to consider whether an applicant would be suitable for public housing but for a negative history caused by domestic violence. If the negative history is the consequence of domestic violence, the PHA should not deny the household assistance.

### **8.2.4 Practice Tips: Advocating with PHAs**

As noted above, PHAs are required to submit Annual Plans to HUD each year. Many domestic violence advocates throughout the country have participated in the planning process by

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<sup>282</sup> Many PHAs do not have a public housing program and administer Section 8 vouchers only. As a result, these PHAs do not maintain an ACOP.

<sup>283</sup> See Appendices 14, 15, and 16.

submitting written policy suggestions that would improve survivors' access to housing. Examples of these comments are included in the appendices to this Manual to assist advocates who are interested in submitting comments of their own.<sup>284</sup> Further, it is often helpful to provide PHAs with proposed domestic violence policies. The appendices to this Manual contain sample policies.<sup>285</sup>

Advocates should consider requesting a meeting with the PHA well in advance of the annual planning process to discuss policy changes that would assist survivors. This gives the PHA time to amend its existing policies before the policies are submitted to its board of commissioners for approval. However, even if advocates are too late to participate in the annual planning process during a particular year, they can still meet with the PHA and discuss proposed changes to the Administrative Plan and ACOP. Other issues that advocates should raise with the PHA include whether the PHA has trained its staff and Section 8 landlords on domestic violence and VAWA; whether the PHA has adequately notified applicants, tenants, and Section 8 landlords of their rights and obligations under VAWA; and whether the PHA has a protocol for staff members who become aware that an applicant is experiencing domestic violence.

The PHA may be more receptive to working on these issues if advocates begin by explaining the services they can provide to the PHA, such as training and materials on recognizing, understanding, and addressing domestic violence. The PHA may also be more receptive if advocates have secured the support of other organizations, elected representatives, or members of the PHA's board of commissioners. Where appropriate, advocates should volunteer to take referrals from PHA staff members who are assisting applicants who are experiencing domestic violence.

Advocates who submit written comments during the annual planning process should also attend the public hearing on the PHA's plan. This hearing is held before the PHA's board of commissioners, who likely will be interested in what the PHA is doing to comply with VAWA. After the PHA planning process has ended, advocates should contact the PHA regularly to determine its progress in implementing the advocates' policy suggestions.

### **8.3 Other Planning Documents**

In addition to PHA plans, advocates should consider participating in several other planning processes that may affect the availability of housing for domestic violence survivors. This section discusses three planning documents: Consolidated Plans, Continuum of Care Plans, and Qualified Allocation Plans.

#### **8.3.1 Consolidated Plan**

Consolidated Plans (ConPlans) are five-year plans that state and local governments submit to HUD to receive money from four HUD programs: the Community Development Block Grant (CDBG) program, the HOME program, the Housing Opportunities for Persons with AIDS (HOPWA) program, and the Emergency Shelter Grants (ESG) program. ConPlans must identify certain housing needs and develop strategies for addressing those needs. Under VAWA, jurisdictions are required to describe in the ConPlan their estimated housing needs for victims of

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<sup>284</sup> See Appendices 14, 15, and 16.

<sup>285</sup> See Appendix 17.

domestic violence, dating violence, sexual assault, and stalking.<sup>286</sup> Additionally, HUD's ConPlan regulations require jurisdictions to conduct a study known as the Analysis of Impediments (AI) that describes the barriers residents face in choosing housing in an environment free from discrimination.<sup>287</sup> The AI often contains helpful information and statistics regarding demographics, incidences of housing discrimination within a community, and availability of affordable housing.

Large cities and urban counties have their own ConPlans. Small cities and rural counties are part of a state or region's ConPlan. To obtain a copy of the ConPlan, advocates should contact their local housing commission or community development agency. In many jurisdictions, agencies have posted their ConPlans on their websites.

During each year of the five-year ConPlan, jurisdictions must hold at least two public hearings, and there must be a 30-day review and comment period before the hearings.<sup>288</sup> Advocates seeking to address the barriers domestic violence survivors face in obtaining housing can assist during the planning process by providing information on survivors' housing needs and suggesting strategies for addressing those needs. Such strategies could include building or rehabilitating transitional housing, supporting emergency shelters, providing supportive services for survivors, or amending policies that have the effect of excluding survivors from housing. As an example, Orange County, California's 2005-2010 ConPlan states that one of the community's goals is to address the housing needs of domestic violence survivors by providing funding for 20 transitional housing units for survivors using HOME funds.<sup>289</sup>

### **8.3.2 Continuum of Care Plan**

The Continuum of Care (Continuum) is a process in which local government agencies, community-based organizations, service providers, and advocates meet to assess the needs of homeless individuals and develop a plan for providing housing and services to this population. Once the plan is developed, the Continuum applies for funding from HUD's McKinney-Vento homeless programs for housing and supportive services. The Continuum may cover whatever jurisdiction (such as a city, county, region, or state) that the local participants determine is reasonable.

Domestic violence advocates should participate in the Continuum planning process to ensure that survivors' interests are represented in the plan as well as the application for McKinney-Vento funds. Further, by taking part in the Continuum process, advocates can ensure that survivors' needs are considered when the community sets its priorities for serving homeless populations. Contact information for each Continuum is available on HUD's Continuum of Care website.<sup>290</sup> In participating in the Continuum process, advocates should be prepared to submit data establishing survivors' needs for housing and services, such as numbers of clients served (or turned away due to lack of resources).

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<sup>286</sup> 42 U.S.C. § 12705(b)(1).

<sup>287</sup> 24 C.F.R. § 91.225(a)(1).

<sup>288</sup> 42 U.S.C. §§ 5304(a)(3)(D), 5304(a)(2)(C).

<sup>289</sup> Orange County, Consolidated Plan for 2005-2010, at 79.

<sup>290</sup> HUD, Continuum of Care Contacts, <http://hudhre.info/index.cfm?do=viewCocContacts>.

### 8.3.3 Qualified Allocation Plan

The U.S. Department of Treasury distributes tax credits to states for the construction or rehabilitation of housing under the Low-Income Housing Tax Credit Program (LIHTC). Each state's tax credit allocation committee then allocates these tax credits to housing projects in accordance with its Qualified Allocation Plan (QAP). The QAP sets forth a state's LIHTC allocation plan and project selection criteria.<sup>291</sup> States have discretion to provide preferences or set-asides for projects that serve special needs populations, including survivors of domestic violence.<sup>292</sup>

States must update their QAPs annually, and they must hold public hearings on the QAPs. A copy of each state's QAP is available online.<sup>293</sup> Advocates can use the QAP planning and public hearing process to advocate for housing that serves the needs of domestic violence survivors. Alternatively, advocates can work with community-based organizations and developers to submit applications for tax credits for housing that serves domestic violence survivors.

### 8.4 Conclusion

By participating in local planning processes, advocates can ensure that local housing agencies adopt admissions policies that consider the needs of domestic violence survivors. Advocates seeking to improve admissions policies in the public housing and Section 8 programs should participate in their PHA's annual planning process. Advocates seeking to ensure that their community's affordable housing funds are used to create or support housing for survivors should participate in the planning processes for the Consolidated Plan, Continuum of Care, and the Qualified Allocation Plan.

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<sup>291</sup> 26 U.S.C. § 42(m)(1)(A)(i).

<sup>292</sup> *See, e.g.*, Kentucky Housing Corporation, 2008 Qualified Allocation Plan 6 (providing a \$530,000 set-aside for the Kentucky Domestic Violence Association).

<sup>293</sup> Novogradac & Co., Affordable Housing Resource Center, Low-Income Housing Tax Credit: QAPs and Applications 2010, [http://www.novoco.com/low\\_income\\_housing/lihtc/qap\\_2010.php](http://www.novoco.com/low_income_housing/lihtc/qap_2010.php).