

If the mortgagee begins eviction proceedings, tenants should assert their rights under the PTFA in their answer and/or in court (if the tenant is not required to file an answer). Tenants should make clear to the court that the Sample Notification to Occupant of Pending Acquisition does not comply with the 90-day notice requirement of the PTFA since the mortgagee did not have complete title to the property when it sent the notice. Tenants also should assert that the new owner must honor the terms of an existing lease. Finally, tenants and advocates can contact HUD, FHA and elected officials to encourage these entities to develop a new occupied conveyance notification that does not mislead tenants and informs them of their full rights under the PTFA. ■

HUD Staff: Payments to SSA Representative Payee Not Income for Rent-Setting Purposes

Department of Housing and Urban Development (HUD) staff learned that a tenant who was engaged in conversations with HUD Secretary Shaun Donovan regarding the Preservation, Enhancement, and Transformation of Rental Assistance (PETRA) proposal was facing eviction because the housing authority was charging her an unaffordable rent. The housing authority was considering as her income the amount that she received as a Social Security Administration (SSA) designated payee. A representative payee is appointed by SSA to receive Social Security and/or SSI benefits for someone who cannot manage his money. The main responsibilities of a payee are to use the benefits to pay for the current and foreseeable needs of the beneficiary.

HUD, relying on 20 C.F.R. § 404.2035, considered the housing authority's actions inappropriate. The SSA rule requires that all money received by the payee be used for the sole benefit of the beneficiary. The beneficiary did not reside with the tenant, and there was no claim that the tenant abused her authority. Because of the extraordinary circumstances, HUD staff sent a letter to the court where the eviction proceedings were filed and explained HUD's position. HUD requested that the court postpone the eviction proceedings pending further investigation by HUD. The court continued the eviction action pending a final decision from HUD. The National Housing Law Project will continue to monitor this case and provide updates to advocates. ■

HUD Releases New Domestic Violence and Housing Rules

The Department of Housing and Urban Development (HUD) recently clarified and strengthened its regulations regarding rights of domestic violence survivors in federally subsidized housing. At a White House ceremony announcing new initiatives to address domestic violence, President Obama stated that the rules would prevent victims from being evicted or denied housing because they were abused. The rules implement the housing protections of the Violence Against Women Act (VAWA) and incorporate several suggestions made by the Housing Justice Network and domestic violence advocates.

Background

VAWA, which became effective January 2006, prohibits survivors of domestic violence, dating violence and stalking from being evicted or denied housing assistance based on acts of violence committed against them.¹ In November 2008, HUD published an interim rule amending its regulations, including those governing the public housing and Section 8 programs, to conform with the Act.² For the most part, the interim rule mirrored VAWA's statutory language, frustrating advocates, public housing agencies (PHAs) and owners who had hoped that the regulations would clarify some of the Act's ambiguities.

Fortunately, on October 27, 2010, HUD published a final rule conforming its regulations to VAWA and clarifying some of the critical issues affecting domestic violence survivors living in subsidized housing.³ According to HUD Secretary Shaun Donovan, "This rule recognizes the need to protect victims of domestic abuse from being evicted just because they were victimized. No one should be afraid of losing their home if they report abuse."⁴

Some of the topics addressed in the rule include the documentation needed to prove domestic violence, the ability of domestic violence survivors to flee subsidized housing and move with Section 8 vouchers, and housing providers' obligations to protect survivors' confidentiality. This article examines the provisions of the final rule that are likely to be of greatest interest to legal services attorneys and advocates.

¹Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006).

²HUD Programs: Violence Against Women Act Conforming Amendments, 73 Fed. Reg. 72,336 (Nov. 28, 2008).

³HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. 66,246 (Oct. 27, 2010) [hereinafter VAWA Final Rule].

⁴Press Release, Department of Housing and Urban Development, HUD Strengthens Protections for Victims of Domestic Violence. (Oct. 27, 2010), http://portal.hud.gov/portal/page/portal/HUD/press/press_releases_media_advisories/2010/HUDNo.10-248.

Documentation of Domestic Violence

The final rule clarifies VAWA's requirements for documenting an incident of domestic violence, dating violence or stalking. Under the Act, if an individual seeks to assert VAWA's protections, a PHA, owner or manager may request in writing that the individual provide documentation that she is a victim of domestic violence, dating violence or stalking.⁵ VAWA specifies three types of proof that can satisfy the documentation requirement: a HUD-approved form; a police or court record; or a signed statement from a victim service provider, an attorney or a medical professional.⁶ A victim can use the HUD-approved form to self-certify that she is a victim of domestic violence, dating violence or stalking.

Many housing providers, reluctant to accept the self-certification form alone, had questions regarding whether they could require a victim to provide third-party documentation in addition to the form. In response, the preamble to the final rule states that "an individual requesting protection cannot be required to provide third-party documentation."⁷ The preamble further states that a housing provider "must accept the standard HUD certification form as a complete request for relief, without insisting on additional documentation."⁸ Additionally, HUD amended 24 C.F.R. § 5.2007 to make clear that documentation of domestic violence may consist of HUD's certification form, a police report or court record, or documentation signed by a victim service provider, attorney or medical professional.⁹

The final rule also addresses instances in which a housing provider has difficulty determining which household member is the victim and which is the abuser. HUD amended 24 C.F.R. § 5.2007 to state that in cases where a housing provider receives documents from two members of a household, each claiming to be a victim and naming the other household member as the perpetrator, "the PHA, owner, or management agent may determine which is the true victim by requiring third-party documentation."¹⁰ The preamble to the final rule states that if any questions remain regarding which household member is the victim, "a PHA grievance hearing, informal hearing or informal review could be an appropriate venue to pursue fact-finding and make a determination."¹¹ The preamble also states that HUD will issue additional guidance to assist housing providers confronted with these cases.

⁵42 U.S.C. §§ 1437d(u), 1437f(ee).

⁶*Id.*

⁷VAWA Final Rule, 75 Fed. Reg. at 66,251.

⁸*Id.*

⁹*Id.* at 66,259.

¹⁰*Id.* at 66,260 (to be codified at 24 C.F.R. § 5.2007).

¹¹*Id.* at 66,253.

Confidentiality

The final rule expands upon housing providers' confidentiality obligations regarding documentation of domestic violence, dating violence and stalking. VAWA states that documentation of domestic violence shall not be entered into a shared database or provided to any related entity.¹² The final rule augments these confidentiality protections by prohibiting employees of a PHA, owner or management agent from having access to information regarding domestic violence unless they are specifically and explicitly authorized to access this information because it is necessary to their work.¹³ The preamble to the final rule also states that HUD will provide additional guidance on confidentiality protocols that each PHA, owner and management agency should maintain and enforce.¹⁴

Portability

The final rule clarifies that certain restrictions regarding portability of Section 8 vouchers do not apply when a participant has been a victim of domestic violence and the move is needed to protect the victim's health or safety. Specifically, HUD has revised 24 C.F.R. § 982.314 to clarify that a PHA may not refuse to issue a voucher to an assisted family due to the family's failure to seek the PHA's approval prior to moving if the family moved to protect the health or safety of a victim of domestic violence.¹⁵ HUD also revised this regulation to state that PHA policies that prohibit moves during the initial lease term and that prohibit more than one move during a one-year period do not apply if the family needs to move due to domestic violence.¹⁶

Family Breakup

Several advocates asked HUD to clarify how PHAs should respond when domestic violence leads to family breakup. In response, HUD has revised 24 C.F.R. § 982.315 to state that if family breakup results from domestic violence, "the PHA must ensure that the victim retains assistance."¹⁷ Further, in the preamble to the final rule, HUD states that it will issue guidance that will include information on how to add victims currently residing with an abuser to a public housing lease or Section 8 voucher.¹⁸

¹²42 U.S.C. §§ 1437d(u), 1437f(ee).

¹³VAWA Final Rule, 75 Fed. Reg. at 66,259 (to be codified at 24 C.F.R. § 5.2007).

¹⁴*Id.* at 66,252.

¹⁵*Id.* at 66,263-66,264 (to be codified at 24 C.F.R. § 982.314).

¹⁶*Id.* at 66,264.

¹⁷*Id.* at 66,264 (to be codified at 24 C.F.R. § 982.315).

¹⁸*Id.* at 66,254.

Actual and Imminent Threat

The final rule provides guidance regarding what constitutes an “actual and imminent threat” for purposes of VAWA. The Act states that a housing provider’s authority to evict or terminate assistance is not limited if the housing provider can demonstrate an “actual and imminent threat” to other tenants or employees at the property if the victim’s assistance or tenancy is not terminated.¹⁹ Several advocates and housing providers asked HUD to provide standards or factors to consider in determining whether a particular situation amounts to an actual and imminent threat to other tenants or employees at a property. In response, HUD amended 24 C.F.R. § 5.2005 to state that an actual and imminent threat consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.²⁰ Further, the final rule states that the factors to be considered in determining the existence of an actual and imminent threat include the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.²¹ The preamble to the final rule states that HUD intends to issue further guidance on this topic.

Additionally, the final rule states that eviction or termination of a victim’s assistance under the actual and imminent threat provision should occur “only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat.”²² The final rule also states that evictions or terminations predicated on public safety “cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.”²³

Other Changes

In the final rule, HUD has amended 24 C.F.R. § 966.4 to state that public housing leases shall include the protections for victims of domestic violence set forth at 24 C.F.R. part 5, subpart L.²⁴ HUD also amended the regulation to state that public housing leases shall include the PHA’s obligation to consider lease bifurcation in circumstances involving domestic violence.²⁵

Advocates asked HUD to amend its regulations regarding screening of criminal history to improve access to housing for domestic violence survivors who have criminal history that is related to self-defense, coercion, or mutual arrests. In response, HUD amended 24 C.F.R. § 982.553, its regulation governing screening of criminal history in the Section 8 voucher program. HUD added a new subsection (e) stating that in cases of criminal activity related to domestic violence, the protections for victims of domestic violence set forth at 24 C.F.R. part 5, subpart L apply.²⁶ Further, the preamble to the final rule states that “HUD agrees that victims of domestic violence, dating violence, or stalking must not be denied assistance or terminated from programs based solely on a criminal history related to domestic violence, dating violence, or stalking.”²⁷

Conclusion

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

¹⁹42 U.S.C. § 1437d(l)(6)(E); 42 U.S.C. §§ 1437f(c)(9)(C)(v) & (d)(1)(B)(iii)(V); 42 U.S.C. §§ 1437f(o)(7)(D)(v) & (o)(20)(D)(iv).

²⁰VAWA Final Rule, 75 Fed. Reg. at 66,259 (to be codified at 24 C.F.R. § 5.2005).

²¹*Id.*

²²*Id.*

²³*Id.*

²⁴*Id.* at 66,262 (to be codified at 24 C.F.R. § 966.4).

²⁵*Id.* at 66,263 (to be codified at 24 C.F.R. § 966.4).

²⁶*Id.* at 66,264 (to be codified at 24 C.F.R. § 982.553).

²⁷*Id.* at 66,255.