

HOUSING JUSTICE

National Housing Law Project

Newsletter May 2011

Portability: The Right of Tenants to Move While Receiving Section 8 Voucher Assistance

Tenants in the Section 8 voucher program can use their rental assistance anywhere in the country where there is a public housing agency (PHA) administering a voucher program. This feature is known as “portability,” and it allows tenants to relocate to a rental unit of their choice, including one located outside the jurisdiction of the PHA that initially issued the voucher. Portability is particularly important for survivors of domestic violence who need to move with their voucher assistance in order to protect their safety.

The following is a summary of the relevant Department of Housing and Urban Development (HUD) regulations governing the portability feature of the voucher program, and of voucher holders’ rights with respect to moving out of the jurisdiction of the PHA that initially issued their vouchers. To protect victims of domestic violence, dating violence, and stalking, HUD has enacted regulations pursuant to the Violence Against Women Act (VAWA) that exempt victims of domestic violence from some of the restrictions on portability. PHAs’ obligations regarding portability are set forth in HUD regulations, HUD PIH Notices, HUD’s Housing Choice Voucher Program Guidebook, and each PHA’s Section 8 Administrative Plan. This article primarily relies on HUD PIH Notice 2011-3, issued January 19, 2011.

Duty of PHAs to Assist Tenants in Porting

PHAs have obligations to assist tenants in porting their vouchers to other jurisdictions. The PHA that first issued the voucher to the tenant is known as the “initial PHA.” The PHA in the jurisdiction where the tenant will be moving is called the “receiving PHA.” Portability begins when a voucher tenant contacts the initial PHA and expresses interest in moving to the jurisdiction of another PHA. The portability rules provide that the initial PHA must provide the tenant with contact information for the receiving PHA. It must also contact the receiving PHA on the family’s behalf.

The receiving PHA *must* provide an eligible transferring tenant with assistance. Therefore, the receiving PHA’s local preferences or priorities for selecting applicants are not relevant to the transferring tenant, and the receiving PHA may not place the porting tenant on its waiting list. However, the receiving PHA may deny assistance, or terminate the family once it has ported, in accordance with its rules regarding screening for criminal history and illegal drug activity. Thus, it is important for any voucher participant who wishes to port to become familiar with the criminal history screening policies of the receiving PHA. This is especially true if the participant or a member of the participant’s family has a criminal background.

HUD regulations provide that the receiving PHA *must* issue a voucher to the porting tenant within two weeks of obtaining all of the tenant’s documentation. The receiving PHA has the choice of

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billing the initial PHA for assistance on behalf of the porting family, or of absorbing the family into its own program.

Restrictions on Portability

PHAs often impose a number of restrictions on portability and may not be aware that special rules apply to survivors of domestic violence, dating violence, and stalking. For example, many PHAs restrict portability for one year if a family receiving a voucher for the first time does not reside in the PHA's jurisdiction at the time the family applies for voucher assistance. Further, many PHAs prohibit voucher tenants from moving if they already have moved at least once during the past 12 months. However, HUD's VAWA regulations at 24 C.F.R § 982.314 state that PHA policies restricting the timing or frequency of portability moves do not apply if a family needs to relocate due to domestic violence, dating violence, or stalking. Therefore, advocates can use HUD regulations to show PHAs that the typical restrictions on portability may not apply to abuse victims.

PHAs often deny portability in cases where a voucher holder has left her unit in violation of the lease. Ordinarily, tenants who vacate the unit before the lease has ended do not maintain the right to port. However, an exception to this rule exists for survivors of domestic violence, dating violence, and stalking. As part of VAWA, abuse victims maintain the right to port themselves and their families to a new jurisdiction even if they have left their prior rental unit in violation of the lease. Thus, if a survivor was forced to break her lease and move elsewhere in order to escape her abuser, and she failed to seek the PHA's approval before moving, she can still exercise her right to use her voucher in another jurisdiction.

Limited Exceptions for Budgetary Constraints

It is important for advocates to understand the circumstances under which a PHA may deny portability because of funding shortfalls. Historically, many PHAs have denied portability on the basis

that they lacked sufficient funding. Such claims arise when a family wants to move to a more expensive area.

HUD has restricted the circumstances in which a PHA may deny portability moves because of insufficient funds. A PHA may deny a request to move to a higher-cost area if the PHA would be unable to avoid termination of voucher assistance for current participants during the calendar year. However, a PHA may not deny a portability request simply because the family wishes to move to a higher-cost area. The PHA must be able to document that granting the port would result in the termination of other families. Such documentation may include pending rent increases and the attrition rate for families leaving the voucher program. Significantly, a PHA may not deny a family the right to port for insufficient funding if it wants to serve other families on the waiting list. If HUD determines that the PHA improperly denied a family's request to port due to insufficient funding, it can impose sanctions on the PHA.

Conclusion

It is critical that domestic violence survivors be able to exercise their right to relocate with continued Section 8 voucher assistance. Unfortunately, many PHAs are unaware of HUD's VAWA regulations stating that ordinary restrictions on the timing and frequency of moves do not apply to domestic violence survivors who are moving for their safety. If a PHA has denied a survivor's portability request, the survivor should assert her right to an informal hearing to challenge the denial. Advocates should urge housing authorities to consider the safety needs of domestic violence survivors when they assess portability requests. To avoid future problems, advocates should urge PHAs to adopt explicit language in their portability policies stating that restrictions on the timing and frequency of moves with voucher assistance do not apply to domestic violence survivors. Advocates who want to learn more about portability should see page 4 for details on a webinar that National Housing Law Project will offer later this month. ■

Department of Education Issues Guidance on Schools' Obligations to Respond to Sexual Violence

On April 4, the U.S. Department of Education, Office for Civil Rights issued a "Dear Colleague Letter" to remind schools of their responsibilities to respond to sexual violence in accordance with Title IX of the Education Amendments of 1972. "Schools" include all recipients of federal funding, such as school districts, colleges, and universities. The letter provides guidance on Title IX requirements as they relate to sexual violence and sets forth examples of remedies and enforcement strategies that schools may use to respond to sexual violence.

While acts of sexual violence are vastly underreported, data show that the likelihood that students will suffer from acts of sexual violence is significant. For example, when young women go to college, almost 20% of them will be victims of attempted or actual sexual assault, as will approximately 6% of undergraduate men. These victims are more likely to suffer from depression and post-traumatic stress disorder, to abuse alcohol and drugs, and to contemplate suicide.

The letter details schools' obligations under Title IX regarding sexual violence. It states that once a school knows of possible sexual violence, it must take immediate and appropriate action to investigate what happened. If sexual violence occurred, a school must take prompt and effective steps to prevent its recurrence, address its effects, and protect the complainant. The school also must provide a grievance procedure for students to file complaints of sex discrimination, including complaints of sexual violence. The school must notify both parties of the complaint's outcome.

Housing-Related Issues

The letter briefly addresses housing-related issues. For example, the letter notes that Title IX requires a school to take steps to protect the complainant, including taking interim steps before the outcome of an investigation of sexual violence.

The letter states that the school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change living situations. When taking steps to separate the complainant and the alleged perpetrator, a school should minimize the burden on the complainant. The school should not automatically remove the complainant from housing while allowing the alleged perpetrator to remain (although assisting the complainant in moving to a different residence hall may be preferable to the complainant in some instances).

On the Web

To read the letter in its entirety, visit <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

The letter makes clear that schools are permitted to disclose to the complainant information about sanctions imposed upon a student who was found to have engaged in sexual harassment against the complainant. This includes an order that the harasser stay away from the complainant or that the harasser must be transferred to another residence hall. The letter notes that this information is particularly important because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a complainant in a sexual harassment case may continue to be subject to a hostile environment if she does not know whether she will continue to share a residence hall with the perpetrator. Further, information about sanctions also directly affects a complainant's decisions regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For example, if a complainant knows that the perpetrator will be transferred to another residence hall for the rest of the year, the complainant may not want to transfer to another school, but if the perpetrator will remain in the residence hall, the complainant may want to transfer schools. This guidance should be helpful for advocates in assisting sexual violence victims in weighing their options. ■

Survey Reports Link Between Recession and Increased Demand for Domestic Violence Services

In a recent survey, domestic violence shelters throughout the country reported increases in domestic violence for a third straight year, while funding cuts decreased shelters' ability to help survivors. According to the Mary Kay Truth About Abuse survey, the abuse is reportedly more severe, victims are struggling to find jobs, and shelters expect the situation will not improve in light of the economy.

More than 670 domestic violence shelters were surveyed in March 2011. Shelters report the economy's decline since 2008 has increased demand for their services. They also note that their ability to raise funds and provide services will be hampered over the next 12 months.

The survey reveals alarming trends in light of the economy's decline since 2008, including:

- 80% of domestic violence shelters nationwide report an increase in clients seeking assistance with abuse.
- 73% of shelters attribute this rise in abuse to financial issues.
- 48% of shelters link this increase in domestic violence to job loss.
- 89% of domestic violence shelters expect their overall situation during the next 12 months will be worse than now, or the same as now, due to the economy.
- 76% of domestic violence shelters indicate their funding has decreased the most from governmental organizations.
- 65% of women in shelters cannot find employment due to the economy.
- 56% of shelters note the abuse is more violent now than before the economic downturn.
- 77% of shelters indicate their clients stayed longer in their relationships due to the state of the economy.

To view the report, visit www.marykay.com/content/company/2011survey.pdf ■

Upcoming Webinar

Relocation for Survivors in Subsidized Housing

Thursday, May 26, 2 p.m. Eastern

Register at <https://www1.gotomeeting.com/register/654324425>

This free webinar will provide a basic overview of the options available to survivors of domestic and sexual violence who need to relocate within subsidized housing. Survivors living in public and Section 8 housing often have concerns about whether they can move to escape violence while maintaining their subsidized housing. We will discuss issues advocates should be aware of when assisting a survivor to move or "port" her Section 8 voucher to another jurisdiction. We will also discuss steps advocates can take to help survivors who need to transfer to a unit in a different public housing or project-based Section 8 development. We will also review the safety and privacy issues advocates should consider when working with housing authorities and subsidized landlords.

This training is designed for advocates and attorneys who are new to relocation within subsidized housing. For questions, contact Meliah Schultzman, mschultzman@nhlp.org

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

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