

# **Working with Public Housing Agencies to Improve Survivors' Access to Housing**



Dear OVW Grantees:

The National Housing Law Project has created the attached Toolkit outlining steps that advocates can take to improve local public housing agency (PHA) policies that affect survivors of domestic and sexual violence. The public housing and Section 8 voucher programs are administered by local PHAs. These agencies have discretion to adopt plans and policies that consider the special housing needs of survivors of domestic and sexual violence. Such policies can improve survivors' likelihood of being admitted to subsidized housing and prevent survivors from being needlessly evicted due to their abusers' actions. Accordingly, advocates should participate in local planning processes to ensure that their PHAs adopt policies that serve survivors' housing needs.

This Toolkit is designed to provide an overview of the PHA planning process as well as detail various ways advocates can influence PHA policies. The Toolkit contains several sample documents that you can use in working with your local PHA.

We hope that you find these materials helpful in aiding your clients. If you have any questions regarding working with PHAs regarding the housing rights of domestic and sexual violence survivors, please contact:

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## **I. Introduction**

Advocates can improve local housing policies that affect domestic violence survivors by participating in the public housing agency (PHA) annual planning process. PHAs, commonly referred to as housing authorities, must develop plans each year that set forth the policies governing their Section 8 voucher and public housing programs. This process is crucial for advocates who want to improve policies that impact survivors who are seeking admission to subsidized housing or who are seeking to maintain their subsidized housing. 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 serve their clients' housing needs. This Toolkit outlines the different types of PHA plans, explains the PHA plan process, and provides examples of policies that PHAs can adopt to protect domestic violence survivors' housing stability.

## **II. Public Housing Agency (PHA) Plans**

This section describes how advocates can shape several types of PHA plans: (1) Annual and 5-Year Plans; (2) Section 8 Administrative Plans; and (3) public housing Admissions and Continued Occupancy Policies. The Annual Plan is a document that PHAs must submit yearly to the Department of Housing and Urban Development (HUD) 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 Admissions and Continued Occupancy Policy serves a similar function for public housing.

### **A. 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 HUD.<sup>1</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. While advocates should review the Annual Plan and 5-Year Plan for information regarding domestic violence, the PHA's detailed policies affecting housing rights of survivors typically will be found in the Section 8 Administrative Plan and the public housing Admissions and Continued Occupancy Policy.

### **i. Violence Against Women Act**

Under the Violence Against Women Act (VAWA), PHAs have obligations to address the housing needs of survivors of domestic violence, dating violence, stalking, and sexual assault. In the 5-Year Plan, PHAs must include a statement of the goals, 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>2</sup>

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<sup>1</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).

<sup>2</sup> 42 U.S.C. § 1437c-1.

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>3</sup>

A PHA’s description of the activities, services, or programs offered to survivors must be readily available to the public.<sup>4</sup> However, 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 or maintain 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 tenants or 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 Toolkit, 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.

## **ii. PHA Planning Process**

### *Timeline for PHA Plans*

PHAs must follow a federally mandated timeline when developing and submitting their Annual and 5-Year Plans. The plans must be submitted to HUD 75 days before the end of the PHA’s fiscal year.<sup>5</sup> Additionally, the PHA must give the public 45 days’ notice of the public hearing on the plan, which is typically published in local newspapers.<sup>6</sup> As an example, a PHA may operate on a fiscal year that begins on July 1. Therefore, the PHA’s plans must be submitted to HUD by April 16, 75 days before the end of the fiscal year. The public hearing should be set to allow the PHA enough time to respond to the public’s comments. Because the public must be given a 45-day notice regarding the hearing, a July 1 PHA will often begin the comment process in early to mid-January. Advocates can determine which fiscal year

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<sup>3</sup> § 1437c-1.

<sup>4</sup> HUD, Instructions Form HUD-50075, at 1 (2005).

<sup>5</sup> 24 C.F.R. § 903.23(b)(2).

<sup>6</sup> 24 C.F.R. § 903.17(b).

their local PHA is on by visiting HUD's website.<sup>7</sup> Below is a chart detailing the timeline of the PHA Plan Process for varying fiscal year start dates.

Advocates should begin working with their local PHAs long before the official comment period is open, as many PHAs complete the planning process before the required deadlines. This allows advocates to influence the initial drafting process, during which the PHA may be more open to additional ideas and input. To do this, advocates can contact the PHA's executive director or the persons in charge of administering the Section 8 program and the public housing program and indicate their interest in working on the plan process. Advocates also should send PHA staff members a letter requesting notifications of when the PHA begins its planning process and releases its draft plans for review.

### Timeline for PHA Plan Process<sup>8</sup>

Action	Jan. 1 FY Start Date	April 1 FY Start Date	July 1 FY Start Date	Oct. 1 FY Start Date
PHA should begin to develop plan for coming year. Resident Advisory Board (RAB) and advocates should review prior year plan and develop issues. Current year approved plan attachments and supporting documents are available for review.	May (Prior Year)  8 months	Aug. (Prior Year)  8 months	Nov. (Prior Year)  8 months	Feb.  8 months
PHA should have available a draft plan and should discuss the plan with RAB and advocates working on behalf of domestic violence survivors, persons with disabilities, homeless persons, individuals who are limited English proficient, etc.	Mid-July (Prior Year)  5.5 months	Mid-Oct. (Prior Year)  5.5 months	Mid-Jan.  5.5 months	Mid-April  5.5 months
Notice of public hearing, proposed plan available for review.	Mid-Aug. (Prior Year)  4.5 months	Mid-Nov. (Prior Year)  4.5 months	Mid-Feb.  4.5 months	Mid-May  4.5 months
Public hearing (time should be allowed between public hearing and date plan is due at HUD to make revisions based upon public comment).	First week of Oct. (Prior Year)  3 months	First week of Jan.  3 months	First week of April  3 months	First week of July  3 months
Plan due at HUD.	Mid-Oct. (Prior Year)  2.5 months	Mid-Jan.  2.5 months	Mid-April  2.5 months	Mid-July  2.5 months
HUD approves the plan and notifies PHA. PHA provides RAB with a copy of the approved plan. Or HUD rejects the plan.	Jan. 1	April 1	July 1	Oct. 1

<sup>7</sup> HUD, View Approved Plans—By State, <http://www.hud.gov/offices/pih/pha/approved/>.

<sup>8</sup> This chart is adapted from HUD's Public Housing Agency (PHA) Plan Desk Guide (Sept. 20, 2011), [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_8904.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_8904.pdf).

### *Obtaining PHA Plans*

To obtain copies of the proposed Annual Plan, advocates should contact their PHAs. PHAs must make available to the public their proposed 5-Year and Annual Plans, along with all required attachments and supporting documents. Once approved by HUD, the PHA's 5-Year and Annual Plans are posted on HUD's website. Many PHAs post their approved plans, including the Administrative Plan and ACOP, on their own websites. Often, an advocate can simply request the plans from the PHA via email and receive electronic copies. Advocates should review the plans, especially in areas where the PHA's policies do not fully serve survivors' needs. For example, if survivors have complained about lengthy wait periods before they are able to transfer to another public housing unit, even in emergency situations, the advocate should determine exactly what the PHA's policies are regarding transfers and whether they can be improved.

### *Written Comments*

The written comment process should be interactive. Advocates should offer to meet with the PHA to discuss potential changes to its policies. The PHA may be more receptive if advocates explain how they can assist the PHA, such as by conducting trainings on VAWA or domestic violence or by accepting referrals from PHA staff members who are assisting tenants experiencing domestic violence. In any case, advocates should submit written comments by the deadline provided by the PHA. The comments should include the language that advocates want to see in the plan, along with a brief explanation of why the revised language is needed. Advocates should consider submitting the comments in conjunction with other organizations. This Toolkit includes several sample comments. Generally, written comments on the plans are due the day of or shortly before the public hearing. The public hearing is typically before the PHA's board of commissioners, which must approve the plan before it is submitted to HUD.

### *Resident Advisory Board (RAB)*

When developing the PHA plans, a PHA is required to form a Resident Advisory Board (RAB), composed of public housing residents and voucher tenants. The PHA must provide the RAB draft copies of the PHA plans, seek comments from the RAB on the plans, and respond to the RAB's comments.<sup>9</sup> Advocates should provide RAB members with information regarding domestic violence and explain how the PHA's policies could better serve domestic violence survivors.

### *Public Hearing*

The PHA must hold a public hearing to accept comments on its proposed plans. The hearing must be held in front of the PHA's board of commissioners. This can often be a vital tool for influencing the plans, as the board can pressure PHA staff to make changes. Advocates have found that the board is often interested in hearing how the PHA is addressing domestic violence, particularly whether the PHA is complying with VAWA. PHA plans are typically but one item on the board's agenda. There is usually a time limit on public comments—sometimes just two or three minutes per person. Thus, advocates should prepare statements that briefly summarize their concerns and explain how the PHA's policies could be improved. Even with such a short time for comment, the hearing process can be an important part of advocating for policies that improve survivors' access to housing. In most cases, the PHA will

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<sup>9</sup> 42 U.S.C. § 1437c-1(e); 24 C.F.R. § 903.13 (2007).



not provide the board with copies of public comments that have been submitted on the PHA plans, so advocates should consider mailing their comments to board members prior to the hearing, or bringing copies of their comments to the hearing.

### *Follow-Up*

PHAs are required to respond in writing to the Resident Advisory Board's comments, and the PHA must submit those responses to HUD with its Annual Plan. Most PHAs will also respond to comments from the general public. These responses are sometimes useful to understanding the reasoning behind a PHA's refusal to make a change. After submitting comments, advocates should request follow-up meetings with the PHA. Through these meetings, the advocates can work with the PHA to make and implement policy changes.

### *HUD Review*

HUD reviews PHA Annual Plans to determine if a plan contains all the information required by law, including information on how the PHA is serving victims of domestic violence, dating violence, and stalking. Once HUD approves a plan, it must be made available to the public. Additionally, HUD typically posts copies of approved plans on its website.<sup>10</sup>

### *Enforceability*

HUD regulations require that a PHA must follow the rules and policies set forth in its approved PHA Plan.<sup>11</sup> HUD has the authority to respond to complaints of noncompliance. If a PHA has failed to include information regarding domestic violence in its Annual Plan and has not responded to requests to address this deficiency, advocates should contact the local HUD staff responsible for reviewing and approving PHA plans and the regional HUD office of Fair Housing and Equal Opportunity.

## **B. Section 8 Administrative Plan and Public Housing Admissions and Continued Occupancy Policy (ACOP)**

In addition to commenting on the Annual and 5-Year Plan, advocates should also review their PHA's Section 8 Administrative Plan and public housing Admissions and Continued Occupancy Policy (ACOP). These two documents govern the PHA's day-to-day operation of its subsidized housing programs. They are particularly important because they are the local policies that PHA staff members tend to rely upon when making decisions. The Administrative Plan sets forth the policies that the PHA uses in its Section 8 program,<sup>12</sup> while the ACOP sets forth the policies that are used in the public housing program.<sup>13</sup> 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. In any case, the Administrative Plan and ACOP ought to be consistent with the Annual Plan.

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<sup>10</sup> See HUD, Approved Plans—By State, <http://www.hud.gov/offices/pih/pha/approved/>.

<sup>11</sup> 24 C.F.R. § 903.25.

<sup>12</sup> This includes both the Housing Choice Voucher Program and the project-based voucher program. Many PHAs do not have a Section 8 voucher program and only operate a public housing program. As a result, these PHAs do not maintain a Section 8 Administrative Plan.

<sup>13</sup> Many PHAs do not have a public housing program and only operate a Section 8 voucher program. As a result, these PHAs do not maintain an ACOP.

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 survivors. As we will discuss, PHAs should amend their admissions, evictions, terminations, and confidentiality 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 statutory language providing protections against denials of housing, evictions, and terminations applies 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 maintaining housing. These policies are discussed throughout this Toolkit, and a sample PHA domestic violence policy is included in this Toolkit. 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 survivors with disabilities and LEP survivors. It may be particularly effective to collaborate with disability and immigrants' rights organizations to review the policies and submit comments.

Many of the policies in the Section 8 Administrative Plan and the ACOP are often similar or even identical. In many cases, these policies may impact a survivor's ability to obtain and maintain housing. Below we discuss some of the Administrative Plan and ACOP policies that advocates should review and submit comments upon, including admissions criteria, moving to another jurisdiction with a Section 8 voucher, emergency transfers, family absence from the unit, family breakup, termination of assistance, and certification of domestic violence. Sample comments on PHA Administrative Plans and ACOPs are included in this Toolkit.

### **i. Admissions Preferences**

The Administrative Plan and ACOP must describe the PHA's policies for selecting applicants from Section 8 and public housing waiting lists, including any admissions preferences.<sup>14</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 and sexual violence survivors.<sup>15</sup> Advocates should consider whether a domestic and sexual 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.

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<sup>14</sup> § 982.54(d)(1).

<sup>15</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\\_Admissons\\_and\\_Continued\\_Occupancy\\_Policy.pdf](http://www.thecha.org/filebin/pdf/mapDocs/FY2009_Admissons_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).

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

Implementing a domestic and sexual 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 PHA's board. Additionally, a preference does not guarantee that a survivor who is not on the waiting list will be immediately granted a voucher or public housing unit once she submits an application for subsidized housing. In many jurisdictions, applicants must wait months or years before they receive a voucher or public housing unit, even if they qualify for a preference. Advocates should explore with PHAs whether there are ways to expedite the implementation of a domestic and sexual violence preference.

## **ii. Admissions Criteria**

The Administrative Plan and ACOP must set forth the PHA's criteria for admitting applicants to the Section 8 voucher and public housing programs.<sup>16</sup> Advocates should carefully review the PHA's admissions policies, as they often have the effect of excluding survivors from obtaining a voucher or a public housing unit. 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, property damage, or missing appointments with the PHA. If these survivors apply for subsidized housing after escaping 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 or convicted of criminal activity. 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>17</sup> Advocates can address admissions criteria by asking PHAs to include this language in the Administrative Plan and ACOP. Advocates should also ask PHAs to adopt policies that require PHA staff to consider whether negative history was related to acts of violence committed against a survivor. PHAs should examine whether an applicant would be suitable for housing assistance but for a negative history caused by domestic or sexual violence. If inquiries reveal that the negative history was the consequence of domestic or sexual violence against the applicant, the PHA should not deny the household assistance. Any inquiries regarding domestic or sexual 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, obtaining housing is a two-step process. First, the applicant must meet the PHA's eligibility requirements to obtain a voucher. Second, the applicant must find a private landlord who is willing to rent to her and accept the voucher. The private landlord is responsible for screening an applicant's tenancy and credit history. Therefore, advocates will need to contact the private landlord, rather than the PHA, if a survivor with a Section 8 voucher has been denied an apartment based on her credit or landlord references. Like PHAs administering public housing

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<sup>16</sup> §§ 960.202(a)(1) (public housing), 982.54(d)(1), (4) (Section 8 voucher).

<sup>17</sup> 42 U.S.C. § 1437d(c)(3) (public housing); 42 U.S.C. § 1437f(o)(6)(B) (Section 8 vouchers).

and Section 8 programs, under VAWA Section 8 landlords are prohibited from denying housing to an applicant because she is or has been a victim of domestic violence.<sup>18</sup>

In the public housing program, PHAs are responsible for screening applicants' tenancy and credit history. 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, whether the applicant has a pattern of evictions, and whether the applicant has a criminal record. Such screening policies may have the effect of excluding survivors who have negative tenancy, credit, or criminal 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 or sexual violence. If the negative history is the consequence of domestic or sexual violence, the PHA should not deny the household assistance.

### **iii. 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>19</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>20</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.

### **iv. Moving to Another Jurisdiction with a Section 8 Voucher**

A PHA's Administrative Plan sets forth the policies that are used when a Section 8 voucher tenant seeks to move to another jurisdiction. Most PHAs have detailed procedures regarding "portability," which is when a Section 8 tenant seeks to move and use her voucher assistance outside of the PHA's jurisdiction. Portability is particularly important to domestic violence survivors who must move to a confidential location to escape their batterers.

Ordinarily, a Section 8 voucher family cannot continue to receive assistance if they move out of their assisted apartment in violation of the lease.<sup>21</sup> However, VAWA provides an exception to this restriction on portability. If a Section 8 voucher family has moved to protect the safety of a victim of domestic violence, dating violence, or stalking who reasonably believed she would be threatened by further

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<sup>18</sup> 42 U.S.C. § 1437f(o)(6)(B).

<sup>19</sup> 24 C.F.R. § 982.54(d)(7).

<sup>20</sup> § 982.307(b)(i)-(ii).

<sup>21</sup> 42 U.S.C. § 1437f(r)(5).

violence if she remained, the family may continue to receive assistance.<sup>22</sup> A PHA cannot refuse to issue a voucher to an assisted family due to the family's failure to seek the PHA's approval before moving if the family moved to protect the health or safety of a domestic violence victim.<sup>23</sup> Advocates should urge PHAs to amend their Administrative Plans to include VAWA's language regarding portability.

Additionally, advocates should ask their PHAs to amend existing policies that restrict survivors' ability to move. Many PHAs have policies that require a family to lease a unit within the PHA's jurisdiction for the initial 12 months of assistance before they can move to another jurisdiction. Additionally, PHAs often have policies stating that a family can only move during the initial term of the lease (generally 12 months) if the landlord agrees to end the lease. Some PHAs also have policies stating that families may only move once during a 12-month period. However, VAWA provides 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.<sup>24</sup> Advocates therefore should ask PHAs to amend these policies to provide explicit exceptions for families who must move to protect the safety of survivors of domestic violence. Further, advocates should ask PHAs to adopt a policy stating that if it is necessary for a family member to break a lease to escape domestic violence, the PHA will not terminate the victim from the Section 8 program. Finally, advocates should ask PHAs to include a statement in the Administrative Plan that the address to which an individual fleeing domestic violence has relocated will be confidential and will not be shared with any person outside the PHA unless the individual waives confidentiality in writing.

#### **v. Emergency Transfers within Public Housing**

A domestic violence survivor living in public housing may need to move or "transfer" to another public housing unit to protect her safety. PHAs set forth their policies regarding public housing transfers in the ACOP. In many jurisdictions, unless a tenant qualifies for an emergency or priority transfer, the tenant may have to wait several weeks or even months before the transfer is granted. Advocates should therefore ask PHAs to adopt policies that provide emergency transfers or Section 8 vouchers for public housing tenants who are at significant risk of harm as a result of incidents or threats of domestic violence. This approach has been encouraged by HUD in its Public Housing Occupancy Guidebook, which states that "PHAs may adopt a transfer policy that includes a preference for victims of domestic violence who wish to move to other neighborhoods or even other jurisdictions. One tool PHAs may choose to use is the issuance of a voucher to the victimized family."<sup>25</sup>

To ensure that survivors are granted transfers in a timely fashion, advocates should recommend that PHAs act on domestic violence transfer requests within a certain timeframe, such as 10 business days. Finally, advocates should ask PHAs to adopt a policy that the address to which a domestic violence survivor has relocated will be kept strictly confidential and will not be shared with any person outside the PHA unless the survivor voluntarily waives confidentiality. Advocates should also ask PHAs to adopt a policy stating that PHA staff members will have access to information regarding domestic violence transfers only if it is essential to the performance of their duties.

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<sup>22</sup> § 1437f(r)(5); 24 C.F.R. § 982.353(b); PIH 2011-3, at 12.

<sup>23</sup> HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. 66,246, 66,263-66,264 (codified at 24 C.F.R. § 982.314) (Oct. 27, 2010) [hereinafter VAWA Final Rule].

<sup>24</sup> 24 C.F.R. § 982.314.

<sup>25</sup> See U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 218-19 (2003).

It should be noted that at least one court has found that a PHA was not obligated to provide a transfer to a domestic violence survivor where the PHA's ACOP did not provide for such transfers.<sup>26</sup> Under the PHA's ACOP, the only crime victims who were eligible for transfers were victims of federal hate crimes. This case illustrates that advocates should press for policies that explicitly state that incidents of domestic violence are grounds for an emergency or priority transfer.

#### **vi. Family Absence from the Dwelling Unit**

The ACOP and Administrative Plan should include the PHA's policies regarding how long a family may be absent from the assisted dwelling unit before their assistance will be terminated.<sup>27</sup> For example, many PHAs have policies stating that if the entire family is absent from the assisted unit for more than 30 consecutive days, the unit will be considered abandoned and the family's assistance will be terminated. Advocates should urge PHAs to adopt exceptions to these policies if the family's absence was due to domestic violence. A family experiencing domestic violence may be forced to relocate to a shelter or other confidential location while they develop a safety plan, obtain a restraining order, or wait for law enforcement to apprehend the perpetrator. Accordingly, PHAs should adopt a policy stating that prior to determining that a family has abandoned the unit, the PHA shall take into account the role domestic violence played in the absence.

#### **vii. Family Breakup**

Family breakup policies in a PHA's Section 8 and public housing programs can have a significant impact on survivors. For example, a survivor who lives with her batterer may need to flee the subsidized unit due to domestic violence. Or, the batterer may be forced to leave the subsidized unit as a result of a restraining order or incarceration. In these circumstances, PHAs have discretion to determine which members of the family will continue to receive assistance.<sup>28</sup> For the Section 8 voucher program, the Administrative Plan must state the PHA's policies on how it will decide who remains in the Section 8 program if the family breaks up.<sup>29</sup> PHAs can consider a variety of factors in making this decision.<sup>30</sup> However, if the Section 8 assistance has been allocated under a settlement or judicial decree as part of divorce or separation proceedings, the PHA must follow the court's determination of which family members continue to receive assistance.<sup>31</sup> In the public housing program, HUD regulations do not require PHAs to adopt a family breakup policy. However, PHAs have discretion to adopt such a policy for their public housing, and advocates should encourage them to do so.

Advocates should review their PHA's family breakup policy to ensure that it considers whether domestic violence caused the family to split up. HUD's VAWA regulations provide that if the family has broken up due to domestic violence, the PHA must ensure that the victim retains Section 8 voucher assistance.<sup>32</sup> This policy should be clearly stated in the PHA's Administrative Plan. If there is a dispute as to which member or members of the family should continue receiving Section 8 assistance after a family separation, the PHA must prioritize survivors of domestic violence where that violence contributed to the household's breakup.

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<sup>26</sup> Robinson v. Cincinnati Hous. Auth., 2008 WL 1924255 (S.D. Ohio 2008).

<sup>27</sup> 24 C.F.R. § 982.54(d)(10).

<sup>28</sup> § 982.315(a).

<sup>29</sup> §§ 982.54(d)(11), 982.315(a).

<sup>30</sup> § 982.315(b)(3).

<sup>31</sup> § 982.315(c).

<sup>32</sup> § 982.315(a)(2).

Many PHAs have not amended their Administrative Plans or ACOPs since the publication of HUD's VAWA regulations. As a result, advocates should ask their PHAs to amend family breakup policies that assign the voucher to the head of household, to the family member who remains in the assisted unit, or to the family member who has been chosen by the household to retain the assisted unit. Advocates should explain that these policies can be problematic because in cases where the abuser controls all of the family's finances and resources, it is likely that the abuser has listed himself as head of household on the housing application, forced the survivor to leave the unit, or forced the survivor to agree to assign him the voucher. The Administrative Plan and ACOP should make clear that such policies do not apply in cases where the family has broken up due to domestic violence, and that the PHA will ensure that the victim retains voucher assistance or the public housing unit.

### **viii. Evictions and Terminations of Section 8 Voucher Assistance**

Advocates should encourage PHAs to incorporate into the ACOP and Administrative Plan VAWA's protections against evictions and subsidy terminations, as well as other policies that protect survivors from losing their housing due to violence committed against them. The ACOP and Administrative Plan should include VAWA's language providing that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered a serious or repeated violation of the lease by the victim justifying termination of assistance.<sup>33</sup> The ACOP and Administrative Plan should also include VAWA's provision stating that the PHA or Section 8 landlord may evict or terminate assistance to individuals who engage in violence against family members or others without penalizing the victims of such violence.<sup>34</sup> Finally, the ACOP and Administrative Plan should state that if a victim has committed a lease or program violation unrelated to domestic violence, dating violence, or stalking, the PHA or Section 8 landlord may not hold the victim to a more demanding standard than other tenants in deciding whether to evict or terminate assistance.<sup>35</sup>

In addition to adopting VAWA's language, advocates should ask PHAs to amend their ACOPs and Administrative Plans to state that in making eviction or termination decisions, the PHA will consider the role that domestic violence played in lease or program violations. In many cases, it may not be readily apparent that a survivor's violation of a lease provision or program requirement was related to acts of domestic violence. For example, a survivor may miss appointments with the PHA because she is afraid to leave the home due to threats of violence by the batterer, or because she has taken refuge at a shelter or has been hospitalized. If inquiries by the PHA reveal that a family's action or failure to act was the consequence of domestic violence against a member of the household, a PHA should not deny or terminate assistance.

Furthermore, while a PHA or Section 8 landlord may evict or terminate assistance to a victim if the PHA can demonstrate an "actual and imminent threat" to other tenants or employees of the property if the victim is not removed, the ACOP and Administrative Plan should outline what an "actual and imminent threat" is. Under HUD regulations, 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. Advocates should make sure that there is language in the ACOP and Administrative Plan listing the factors a PHA will consider in determining this kind of threat, which include:

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<sup>33</sup> 42 U.S.C. § 1437d(l)(5) (public housing); 42 U.S.C. § 1437f(o)(20)(B) (Section 8 vouchers).

<sup>34</sup> § 1437d(l)(6)(B) (public housing); § 1437f(o)(20)(D)(i) (Section 8 vouchers); *see also* 24 C.F.R. § 982.552(c)(2) (stating that a PHA may terminate voucher assistance to culpable family members while permitting the innocent family members to continue receiving assistance); HUD Notice PIH 2007-5 (Feb. 16, 2007) (same).

<sup>35</sup> § 1437d(l)(6)(D) (public housing); § 1437f(o)(20)(D)(iii) (Section 8 vouchers).

- the duration of the risk,
- the nature and the severity of the potential harm,
- the likelihood that the potential harm will occur, and
- the length of time before the potential harm would occur.<sup>36</sup>

Advocates should also make sure the ACOP and Administrative Plan state that terminating assistance for a domestic violence victim because of an “actual and imminent threat” should occur only if no other actions would reduce or eliminate the threat. Therefore, before evicting or terminating a victim, a PHA or Section 8 landlord should consider alternatives. Such alternatives could include assisting the victim in relocating, 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. Evictions or terminations predicated on public safety cannot be based on stereotypes and must be tailored to particular concerns about individual residents.<sup>37</sup>

#### **ix. Splitting the Lease**

VAWA provides that a PHA or Section 8 landlord may split or “bifurcate” a lease to evict a perpetrator of domestic violence without evicting the victim of such violence.<sup>38</sup> Advocates should ask PHAs to incorporate this language into the Administrative Plan, ACOP, and public housing leases.

#### **x. Damages to the Unit**

Survivors of domestic violence living in public housing often lack the funds needed to pay for damages their batterers cause to their units. As a result, these survivors may face eviction for failing to reimburse the PHA for repairs made to the unit. Advocates should urge PHAs to adopt a policy that where damages to a unit result from an incident of domestic violence, the victim of such violence will not be held liable for such damages. PHAs should instead seek repayment from the perpetrator of such violence.

#### **xi. Documentation of Domestic Violence and Confidentiality**

If a survivor asserts VAWA’s protections, a PHA or Section 8 landlord may request documentation of domestic violence in accordance with VAWA’s statutory language and HUD regulations. The ACOP and 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>39</sup> Advocates should be aware

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<sup>36</sup> VAWA Final Rule, 75 Fed. Reg. at 66,259 (codified at 24 C.F.R. § 5.2005).

<sup>37</sup> *Id.*

<sup>38</sup> 42 U.S.C. § 1437d(l)(6)(B).

<sup>39</sup> § 1437d(u)(1)(A), (C) (public housing); § 1437f(ee)(A), (C) (Section 8 vouchers).



that a PHA or Section 8 landlord must accept the self-certification form as a complete request for relief, without insisting on additional documentation from the individual seeking protection.<sup>40</sup> In addition, they should review the ACOP and 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>41</sup> The ACOP and Administrative Plan should also set forth the deadline for documentation<sup>42</sup> and what will be considered good cause for extending the deadline, such as hospitalization or continuance of a court date.

In addition, advocates should make sure that the ACOP and Administrative Plan include language about the PHA's procedures in cases where it has difficulty determining which household member is the victim and which is the abuser. When a PHA 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 may determine which party is the true victim by requiring third-party documentation.<sup>43</sup> Furthermore, if any questions remain regarding which household member is a victim, a PHA grievance hearing, informal hearing or informal review could be appropriate.<sup>44</sup>

The ACOP and Administrative Plan also should 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>45</sup> It should outline that employees of a PHA may not have access to information regarding domestic violence unless they are specifically and explicitly authorized to access this information because it is necessary to their work.<sup>46</sup> The ACOP and Administrative Plan also should acknowledge that VAWA provides exceptions to confidentiality where disclosure is requested by the survivor in writing, where the information is required for use in an eviction proceeding, or where otherwise required by the law.<sup>47</sup> Finally, the ACOP and 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.

### **xiii. Public Housing Leases**

In addition to amending PHA policies, advocates should also urge PHAs to amend their public housing leases to address domestic violence survivors' rights. Under VAWA, public housing leases must include eviction protections for survivors, including a statement that an incident of domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim of that violence.<sup>48</sup> Similarly, public housing leases must include a statement that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be cause for termination of the tenancy if the tenant is a victim of that violence.<sup>49</sup> Further, the lease must contain a

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<sup>40</sup> VAWA Final Rule, 75 Fed. Reg. at 66,251.

<sup>41</sup> VAWA provides that PHAs are not required to demand official documentation and may rely solely on the survivor's statement. § 1437d(u)(1)(D) (public housing); § 1437f(ee)(1)(D) (Section 8 vouchers).

<sup>42</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 and ACOP.

<sup>43</sup> VAWA Final Rule, 75 Fed. Reg. at 66,260 (codified at 24 C.F.R. § 5.2007).

<sup>44</sup> *Id.* at 66,253.

<sup>45</sup> § 1437d(u)(2)(A) (public housing); § 1437f(ee)(2)(A) (Section 8 vouchers).

<sup>46</sup> VAWA Final Rule, 75 Fed. Reg. at 66,259 (codified at 24 C.F.R. § 5.2007).

<sup>47</sup> § 1437d(u)(2)(A) (public housing); § 1437f(ee)(2)(A) (Section 8 vouchers).

<sup>48</sup> § 1437d(l)(5).

<sup>49</sup> § 1437d(l)(6)(A).

statement that the PHA may bifurcate the lease to evict an individual who engages in acts of violence without evicting the victim of such violence.<sup>50</sup> Accordingly, advocates should remind PHAs that they must add this language to their public housing leases.

### **xiii. Notice to Tenants**

PHAs are required to provide public housing and Section 8 tenants with notice of their rights under VAWA.<sup>51</sup> The ACOP and Administrative Plan should set forth the notification procedures that the PHA will use. PHAs should notify tenants in a variety of ways, including providing verbal notice during orientations to the voucher program and annual recertification meetings; inserting a paragraph regarding VAWA rights into termination notices; posting notice of VAWA in the PHA's office; and posting notice of VAWA on the PHA's website. This Toolkit includes sample VAWA notices for Section 8 and public housing tenants. Advocates should urge PHAs to make VAWA information accessible to individuals with disabilities and limited English proficiency.

### **xiv. 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 and ACOP.<sup>52</sup> Additionally, VAWA's definition of "domestic violence" incorporates state law definitions of the term. Therefore, PHAs should include the jurisdiction's definition of domestic violence in the Administrative Plan and ACOP.

### **xv. Linkages to Community Resources**

Advocates should urge PHAs to include a statement in the ACOP and Administrative Plan on how they will inform survivors of domestic violence about community resources. For example, the ACOP and 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 ACOP and Administrative Plan also could state that the PHA will give resources on domestic violence 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 ACOP and 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 and Section 8 landlords. Advocates should encourage PHAs to develop relationships with organizations that serve LEP survivors as well as survivors from underserved ethnic and cultural groups.

## **III. Practice Tips: Advocating with PHAs**

As noted above, PHAs are required to submit Annual Plans to HUD each year. Domestic and sexual violence advocates throughout the country have participated in this process by submitting written policy

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<sup>50</sup> § 1437d(l)(6)(B).

<sup>51</sup> § 1437d(u)(2)(B) (public housing); § 1437f(ee)(2)(B) (Section 8 vouchers).

<sup>52</sup> See 42 U.S.C. §§ 1437d(u)(3)(C), 1437f(f)(10), 13925(a)(6), (8).

suggestions that would improve survivors' access to housing. Examples of these comments are included in this Toolkit to assist advocates who are interested in submitting comments of their own. Further, it is often helpful to provide PHAs with proposed domestic and sexual violence policies, which are included in this Toolkit.

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. Even if advocates are too late to participate in the annual planning process during a particular year, they can still begin the process of meeting with the PHA and discussing 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 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 a participant 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. Another strategy is to secure the support of other organizations, elected representatives, members of the PHA's board of commissioners, or the RAB. Where appropriate, advocates should volunteer to take referrals from PHA staff members who are assisting applicants or tenants who are experiencing domestic violence.

Advocates who submit written comments during the annual planning process also should work with the RAB to ensure that they understand the issues of domestic violence and 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 hearing what the PHA is doing to comply with VAWA. After the PHA planning process has ended, advocates should contact the PHA regularly to determine what it is doing to implement the advocates' policy suggestions.

#### **IV. Conclusion**

By participating in local planning processes, advocates can ensure that PHAs adopt policies that consider the special housing needs of survivors of domestic and sexual violence. Because VAWA requires PHAs to describe any activities or services that they provide to assist victims of domestic violence, dating violence, sexual assault, and stalking, advocates have an opportunity to engage PHAs in dialogue on these issues. Ways in which advocates can form working relationships with their PHAs include meeting with the PHA to discuss ways to assist tenants who are experiencing domestic and sexual violence, offering to provide training on the dynamics of domestic violence, submitting written comments on the PHA's policies, and attending public hearings on the PHA's policies.

# **Sample Comments**

## **COMMENTS OF ADVOCATES FOR BASIC LEGAL EQUALITY ON LUCAS METROPOLITAN HOUSING AUTHORITY'S ANNUAL AND FIVE YEAR PUBLIC HOUSING PLAN**

Thank you for your invitation to attend the first planning meeting for Lucas Metropolitan Housing Authority's Annual and Five Year Plans. Unfortunately, no representative from ABLE can attend, due to previously scheduled appointments out of town. We would like to submit the following letter and suggestions for consideration at the first meeting and will attend future meetings.

This letter summarizes the requirements of the federal Violence Against Women Act of 2005 (VAWA) (Pub. L. 109-162; 119 Stat. 2960) and LMHA board decisions. Suggestions on how to implement these requirements into the current plan are also included in an attachment. We recognize that LMHA is choosing to submit a streamlined annual plan that includes only the components listed in 24 CFR § 903.12, but LMHA must address the admissions policy of the annual plan to comply with the requirements of VAWA. The list of suggestions is not inclusive of all possible implementations and does not meet all the requirements of VAWA, but the list should help the planning process get started.

### **1. Violence Against Women Act Protections**

VAWA, which became effective on January 5, 2006, includes new housing legal protections and programs for victims of domestic violence, dating violence, sexual assault, and stalking. VAWA amended the Public Housing Program, the Housing Choice Voucher Program, Project-Based Section 8, and the general Section 8 statute.

LMHA should use the planning process for the Annual and Five Year PHA Plans as an opportunity to begin implementing all of the new VAWA requirements.

#### **A. Goals and Objectives**

The Five Year Plan must include "the goals, objectives, policies, or programs that will enable the housing authority to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking." 42 U.S.C. § 1437c-1(a)(2) (2006).

**See suggested amendments 1 and 2 to implement this goal.**

The Annual Plan must 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 helps 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." 42 U.S.C. § 1437c-1(d)(13) (2006).

**See suggested amendments 3 and 4 to implement this goal.**

## B. Policies

Some of the more substantive policy requirements of VAWA should be included in the Five Year and Annual Plans since they are policies that enable LMHA to serve the needs of victims of domestic violence, dating violence, sexual assault, and stalking. Some provisions that should be included in the Five Year and Annual Plans include:

1. An exception to the federal “one-strike” criminal activity eviction rule for tenants who are victims and provisions that an incident of actual or threatened domestic violence, dating violence, or stalking does not qualify as a “serious or repeated violation of the lease” or “good cause for terminating the assistance, tenancy, or occupancy rights of the victim.” See 42 U.S.C. § 1437d(l)(5) (2006); 42 U.S.C. § 1437f(c)(9)(B) (2006); 42 U.S.C. § 1437f(d)(1)(B) (2006); 42 U.S.C. § 1437f(o)(7)(C) (2006); 42 U.S.C. § 1437f(o)(20)(A) (2006).
2. A policy stating “criminal activity directly relating to domestic violence, dating violence, or stalking” does not constitute grounds for termination of a tenancy. See 42 U.S.C. § 1437d(l)(6) (2006); 42 U.S.C. § 1437f(c)(9)(C) (2006); 42 U.S.C. § 1437f(d)(1)(C) (2006); 42 U.S.C. § 1437f(o)(7)(D) (2006); 42 U.S.C. § 1437f(o)(20)(B) (2006).
3. A policy stating that an individual’s status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of admission or denial of housing assistance. See 42 U.S.C. § 1437d(c)(3) (2006); 42 U.S.C. § 1437f(c)(9)(A) (2006); 42 U.S.C. § 1437f(d)(1)(A) (2006); 42 U.S.C. § 1437f(o)(B) (2006).

**See suggested amendments 4 and 5 to implement this policy.**

4. A policy allowing LMHA or Section 8 landlord to bifurcate a lease in order to evict, remove, or terminate the assistance of the offender while allowing the victim, who is a tenant or lawful occupant, to remain. See 42 U.S.C. § 1437d(l)(6)(B) (2006) (Public Housing); 42 U.S.C. §§ 1437f(o)(7)(D)(ii) (2006) (Housing Choice Voucher Program); 42 U.S.C. §§ 1437f(c)(9)(C)(ii) and (d)(1)(B)(iii)(II) (2006) (Project-Based Section 8).
5. Information about how LMHA will inform tenants of their new rights and owners and managers of their rights and obligations. See 42 U.S.C. § 1437d(u)(2)(B) (2006); 42 U.S.C. § 1437f(ee)(2)(B) (2006).

**See suggested amendments 6 and 7 to implement this policy.**

6. Information about how LMHA will amend its leases to include these new policies. See 42 U.S.C. §§ 1437d(l)(5), (6) (2006) (Public Housing); 42 U.S.C. §§ 1437f(o)(7)(C), (o)(7)(D), and (o)(20) (2006) (Housing Choice Voucher Program); 42 U.S.C. §§ 1437f(c) and (d) (2006) (Project-Based Section 8).
7. Information about how LMHA will inform Section 8 voucher tenants of the possibility of voucher portability between jurisdictions to escape an imminent threat of further violence from domestic violence, dating violence, or stalking. See 42 U.S.C. § 1437f(ee)(2)(B) (2006).

### C. Programs

VAWA helps PHAs respond appropriately to domestic violence, dating violence, sexual assault, and stalking through an incentive grant program. Grants can be used for education and training staff, developing improved housing admissions and occupancy policies and best practices, improving collaboration with victim services organizations, and reducing discriminatory evictions and denials of housing to victims. See 42 U.S.C. § 14043e-4 (2006).

VAWA establishes a grant program to fund collaborative local efforts to create long term housing stability for victims of domestic violence, dating violence, sexual assault, and stalking who are homeless or at risk of becoming homeless. See 42 U.S.C. § 14043e-3 (2006).

VAWA also clarifies certain requirements in the existing transitional housing program for victims to ensure voluntary participation in supportive services and to permit operating expenses as an eligible use of funds. See 42 U.S.C. § 13975 (2006).

## **2. Preference for Domestic Violence Victims and Homeless Individuals**

On December 21, 2005, the Board of Directors of LMHA voted to approve creating a preference for victims of domestic violence. The Board made this decision after a tenant survey showed extensive tenant support for such a preference. This preference should be reflected in the Annual Plan.

**See suggested amendments 8, 9, and 10 to establish these preferences.**

SUBMITTED May 25, 2006

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Toby Fey  
Americorps Team Member  
ADVOCATES FOR BASIC LEGAL EQUALITY

# **SUGGESTED AMENDMENTS**

## **GOALS AND OBJECTIVES**

1. **B. Goals** (Streamlined Five-Year PHA Plan) (on page 4)  
**HUD Strategic Goal: Improve Community Quality of Life and Economic Vitality.**  
Include under “Other: (list below)”  
Collaborate with domestic violence organizations to provide linkages and referrals to appropriate counseling, legal services, law enforcement agencies and social services organizations.
2. **B. Goals** (Streamlined Five-Year PHA Plan) (on page 5)  
**HUD Strategic Goal: Ensure Equal Opportunity in Housing for all Americans**  
Include under “Other: (list below)”  
Adopt appropriate policies to fully comply with federal legislation concerning domestic violence victims that will prohibit using any incident relating to domestic violence, dating violence, or stalking as a basis to deny admission or assistance, tenancy or occupancy rights to any victim of domestic violence, dating violence or stalking.
3. **Executive Summary** (Streamlined Annual PHA Plan) (on page 7)  
Include after “Other initiatives are as follows:”  
Alleviate the fear of homelessness for domestic violence victims by adopting appropriate policies concerning domestic violence victims and collaborating with domestic violence organizations to provide linkages and referrals to appropriate counseling, legal services, law enforcement agencies and social services organizations.
4. **1.B.(1) Strategies** (on pages 9-10)  
**Strategy 1:**  
Include under “Other (list below)”  
Expand housing opportunities for victims of domestic violence, dating violence, sexual assault or stalking and collaborate with domestic violence organizations to provide linkages and referrals to appropriate counseling, legal services, law enforcement agencies and social services organizations.

## **ADMISSIONS POLICY**

5. **3.A.(1) Eligibility** (on pages 13-14)  
**b. Which non-income (screening) factors does the PHA use to establish eligibility for admission to public housing (select all that apply)?**  
Include under “Other (describe)”  
Whether a resident’s negative history is related to being a victim of domestic violence, dating violence, or stalking and if so, whether the applicant would be eligible but for the incidents of domestic violence
6. **3.B.(1) Eligibility** (on page 20)  
**a. What is the extent of screening conducted by the PHA? (select all that apply)**



Include under “Other (list below)”

Whether a resident’s negative history is related to being a victim of domestic violence, dating violence, or stalking and if so, whether the applicant would be eligible but for the incidents of domestic violence

## **INFORMATIONAL REQUIREMENTS**

**7. 3.A.(5) Occupancy** (on page 17)

**a. What reference materials can applicants and residents use to obtain information about the rules occupancy of public housing (select all that apply)**

Include under Other Source (list)

Fact sheets distributed to tenants informing tenants of their new rights under the Violence Against Women Act of 2005.

**8. 3.B.(1) Eligibility** (on page 20)

**e. Indicate what kinds of information you share with prospective landlords? (select all that apply)**

Include under Other (describe below)

Fact sheets distributed to landlords informing landlords of their new rights and obligations under the Violence Against Women Act of 2005.

## **ADMISSIONS PREFERENCE**

**9. 3.A.(4) Admissions Preference** (on page 16)

**b. Transfer policies:**

Include under “Other: (list below)”

victims of domestic violence, dating violence, sexual assault or stalking

**10. 3.A.(4) Admissions Preference** (on page 16)

**c. Preferences – 2:**

Check “Victims of domestic violence” box

Check “Homeless” box

**11. 3.B.(4) Admissions Preference** (on page 21)

**c. Preferences – 2:**

Check “Victims of domestic violence” box

Check “Homeless” box



**LAW OFFICE OF  
TEXAS RIOGRANDE LEGAL AID, INC.**

**AUSTIN OFFICE  
4920 N. IH-35  
AUSTIN, TX 78751  
TELEPHONE (512) 374-2700 TOLL FREE (800) 369-9270  
FAX (512) 447-3940**

December 13, 2006

Mr. James Hargrove  
Executive Director  
Housing Authority of the City of Austin  
1124 South IH-35  
Austin, TX 78704

Re: Comments on Draft Amendment to 5-Year Plan for Fiscal Years 2005-2009

Dear Mr. Hargrove:

This letter is in response to the request by the Housing Authority of the City of Austin ("HACA") for comments on its proposed Amendment to the 5-Year Plan for Fiscal Years 2005-2009 to incorporate the 2005 Violence Against Women Act ("VAWA").

As you may know, family violence is one of the leading causes of homelessness among women and children. HACA has always demonstrated an admirable commitment to providing safe, affordable housing for victims of domestic violence who would otherwise have few alternatives for shelter. Perhaps most importantly, HACA and its programs provide survivors of family violence with a stable, long-term solution to their housing needs.

HACA's Draft Amendment to its 5-Year Plan is an encouraging first step to fulfilling Congress's goals of obtaining and maintaining safe housing for victims of domestic and dating violence. In particular, HACA's stated commitment to work with victim service providers is integral to reducing the incidence and impact of family violence.

However, we encourage HACA to take this opportunity to not only incorporate the specific statutory changes to the Public Housing and Housing Choice Voucher programs mandated by VAWA, but also commit to broader, comprehensive policy goals and changes to address the problem of domestic violence. Congress has asked public housing agencies ("PHA"s) to include in their 5-year plans a statement of the "goals, objectives, policies, or programs that will enable the housing authority to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking." 42 U.S.C. § 1437c-1(a)(2). The Department of Housing and Urban Development ("HUD") has also encouraged PHAs to develop "coordinated solutions" and applauded PHAs that "have sought to implement a multitude of solutions to address challenges posed by domestic violence situations." *HUD Public Housing Occupancy Guidebook*, Part 7, Ch. 19, at 19.0 (June 2003).

In addition to the policies and goals stated in the Draft Amendment, HACA should also adopt the following as part of its 5-Year Plan for Fiscal Years 2005-2009:

- (1) Implement Admissions Preferences to Help Victims of Domestic and Family Violence Obtain Housing: Admissions preferences should be given to victims of domestic violence, particularly those in emergency situations or in immediate danger of homelessness. Federal regulations already encourage such preferences. 24 C.F.R. § 960.208(b)(4).
- (2) Create Admissions Procedures to Allow Victims of Domestic Violence to Explain Negative Histories: Many victims of domestic violence possess poor credit, work, or rental histories, records of criminal activity or disturbances, histories of substance abuse, or other problematic backgrounds that often prevent them from qualifying for housing. Upon further investigation, however, these negative histories are often directly related to abuse. HACA should implement procedures to allow closer review of applicants who have been victims of domestic violence, and admit those who would otherwise qualify for housing assistance but for their negative history resulting from their victimization.
- (3) Develop Expedited Procedures for Emergency Transfers of Public Housing and Housing Choice Voucher Tenants in Immediate Danger: Currently, HACA has no official policies in place to provide expedited transfers for victims of domestic violence whose residences are known to their abusers. Housing Choice Voucher holders in particular are faced with processing times of several weeks or more to transfer their vouchers to a safe unit, if their transfer requests are approved at all. HACA must create and implement procedures to allow quick and efficient transfers to safe housing for victims of domestic violence at risk of further attacks from their abusers.
- (4) Develop Policies and Procedures for Addressing Family Break-Up in Situations Involving Domestic Violence: VAWA grants PHAs, owners, and managers power to bifurcate leases “in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant.” 42 U.S.C. § 1437d(1)(6)(B); 42 U.S.C. § 1437f(c)(9)(C)(iv); 42 U.S.C. § 1437f(d)(1)(B)(iii)(II); 42 U.S.C. § 1437f(o)(7)(D)(ii). HACA must develop policies and procedures to allow the housing authority, owners, and managers to exercise this power. Additionally, HACA must develop policies and procedures requiring the transfer of vouchers, lease agreements, and other housing assistance to victims of domestic violence in cases of family break-up, eviction, or termination involving domestic violence and where the benefits or leases are in the abusers’ names.
- (5) Develop Procedures to Address the Safety Needs of Victims of Domestic Violence on Properties: HACA should develop procedures for victims of domestic violence to quickly and easily request and obtain reasonable safety measures from PHAs, property owners, and managers. Such measures may include changing locks, reinforcing doors and windows, and asking employees and security to remain alert to the presence of abusers.

(6) Hold Abusers Responsible for Damages, Not the Victim: Though VAWA already prohibits eviction or termination of benefits for lease violations related to incidents of domestic violence, victims may still be held financially responsible for damages committed by an abuser without more specific guidance from HACA. HACA should develop policies holding abusers responsible for their own damages, and forbidding property owners and managers from requiring victims of domestic violence to be responsible for such damages, financially or otherwise.

(7) Examine Proposed Evictions and Terminations More Closely If They Involve Domestic Violence: Because domestic violence is often misunderstood and victims of domestic violence face many problematic stereotypes, HACA should encourage property owners, managers, investigators, and hearing officers to examine the facts more closely if a tenant facing termination is a victim of domestic violence. For example, women are often arrested for assault or battery when they are in fact the victims of abuse. Scratches and other injuries inflicted by a victim in self-defense are immediately visible when police arrive in response to a call, while frequently the bruises and other more severe injuries inflicted by attackers do not appear until hours or even days later. Additionally, many people automatically assume that a domestic incident involved mutual combat when the violence was actually one-sided. Victims faced with criminal charges often plead guilty or no contest in order to put the incident behind them, without realizing the possible consequences for their housing. HACA should develop policies requiring further investigation if a tenant facing termination provides evidence of domestic violence, and seek to preserve housing for tenants whose proposed terminations are based on reasons directly related to domestic violence.

(8) Provide Domestic Violence Training for Owners, Managers, Security, and HACA Staff: Many of the problems related to domestic violence result from a lack of understanding. HACA should develop plans to collaborate with domestic violence shelters, agencies, counselors, experts, and other service providers to provide training for staff, owners, managers, security, and other employees.

(9) Establish Collaborative Programs with Domestic Violence Service Providers: HACA should establish formal and informal collaborations with service providers to make services available to victims and families through referrals, workshops, and other creative methods. In particular, HACA should commit to serving immigrant victims and families who may have less familiarity with the nature and availability of services.

(10) Develop Proposals to Collaborate with Other Housing and/or Domestic Violence Service Providers to Apply for Collaborative Grants to Increase the Long-Term Stability of Victims: VAWA created Collaborative Grants to Increase the Long-Term Stability of Victims. 42 U.S.C. § 14043e-3. To be eligible for these funds, HACA must demonstrate that it is a “coalition or partnership, applying jointly,” that includes agencies or non-profit, non-governmental organizations that deal with housing or domestic violence issues. These funds “shall be used to design or replicate and implement new activities, services, and programs to increase the stability and self-sufficiency of, and create partnerships to develop long-term housing options for adult and youth victims of domestic violence, dating violence, sexual assault, or stalking, and their dependents, who are currently homeless or at risk of becoming homeless.” 42 U.S.C. § 14043e-3(d)(1). HACA should aim to form coalitions and develop proposals to take advantage of these

funds when they become available. Such funds will enable HACA to further expand its activities, services, and programs for victims of domestic violence in need of housing.

(11) Develop Proposals to Apply for Grants to Combat Violence Against Women in Public and Assisted Housing: VAWA created the Grants to Combat Violence Against Women in Public and Assisted Housing “to promote the full and equal access to and use of housing by adult and youth victims of domestic violence, dating violence, sexual assault, and stalking.” 42 U.S.C. § 14043e-4(b)(1). PHAs are among the eligible grantees, and HACA should develop proposals to take advantage of these funds when they become available. Such funds will enable HACA to respond more effectively to domestic violence and ensure victims’ access to housing. Many of the proposals contained in the above comments qualify as policies, practices, and procedures that can be funded through these grants. *See* 42 U.S.C. § 14043e-4(f).

For many victims, the consequences of abuse are exacerbated by financial insecurity and instability. HACA is an indispensable part of the network of services that are essential for these most vulnerable of victims. By incorporating the above principles into its mission, HACA will make a powerful and significant contribution to moving survivors of domestic violence beyond victimization to empowerment.

Thank you for your consideration of these comments.

Sincerely Yours,

RAMEY KO

Faxed to 512-477-0953 and 512-472-2958

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November 21, 2006

Mr. Jim Satterwhite  
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Department of Family and Community Services  
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1840 University, SE  
Albuquerque, NM 87106

Mr. Brian Egan  
Assistant City Attorney  
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1 Civic Plaza NW, Room 4015  
Albuquerque, NM 87103

Re: Albuquerque Housing Services and the New VAWA Requirements

Dear Mr. Satterwhite and Mr. Egan:

We are writing to follow up on our meeting earlier this year with Jim Satterwhite and Sarah Armstrong regarding Albuquerque Housing Services' ("AHS") compliance with new provisions in the Violence Against Women Reauthorization Act of 2005 (Pub. L. 109-162; 119 Stat. 2960) ("VAWA"). As you know, VAWA became effective on January 5, 2006 and includes new legal protections for victims of domestic violence, dating violence, and stalking. VAWA applies to the Public Housing Program, the Housing Choice Voucher Program, Section 8 housing, and Project-Based Section 8. Even though HUD has not issued guidelines, Public Housing Authorities ("PHAs") have been responsible for implementing the changes since January 2006. VAWA requires changes to the Administrative Plan, Admissions and Continued Occupancy Policy, Annual Plan, and 5 Year Plan for Albuquerque Housing Services to be in compliance with federal law.

Title VI of VAWA addresses housing and domestic violence. In our earlier letter of March 28, 2006, we explained the significant connection between homelessness and domestic violence, findings that Congress made explicitly in VAWA. *See* 109 P.L. 162 § 41401 (1). Prior to VAWA's reauthorization, "women and families across the country (were) being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence." 109 P.L. 152 § 41401 (3). Congress cites almost 150 documented evictions in 2004 alone where a tenant was evicted because a crime of domestic violence had been committed against her, and 100 cases where a client was denied housing because of her status as a victim of domestic violence. *See* 109 P.L. 152 § 41401 (4). The purpose of the subtitle is to "reduce domestic violence, dating violence, sexual assault and

stalking and to prevent homelessness” by “creating long-term housing solutions that develop communities and provide sustainable living solutions for the victims of domestic violence, dating violence, sexual assault, and stalking” and “enabling public and assisted housing agencies...property management companies, and other housing providers and agencies to respond appropriately to domestic violence, sexual assault, and stalking, while maintaining a safe environment for all housing residents.” 109 P.L. 162 § 41402 (2) and (4).

Title VI OF VAWA amended 42 U.S.C. §1437 in several significant ways. It affects public housing projects, the Section 8 housing projects and Section 8 voucher programs. Attached as Exhibit A is a highlighted copy of 42 U.S.C. §1437 indicating where some of those changes were made in the statute. This letter cites to the revised statute and not to VAWA itself. For your convenience, however, we have also attached a highlighted copy of Title VI of VAWA as Exhibit B.

This letter addresses: (i) the protections for victims of domestic violence that VAWA mandates be implemented in public housing, Section 8 projects, and Section 8 voucher program; and (ii) specific recommendations we are making regarding changes to AHS’s Admissions and Continued Occupancy Policy (“ACOP”), and the Rental Assistance Housing Programs Administrative Plan (“Administrative Plan”) to comply with VAWA. We have attached relevant excerpts from the ACOP and Administrative Plan as Exhibits C and D to facilitate your review of our recommendations.

## **I. THE NEW VAWA REQUIREMENTS**

This letter focuses on the new policies and protections set forth in VAWA relating to public housing and victims of domestic violence, dating violence and stalking. But we wanted to point out that VAWA also creates some new opportunities for the City to seek federal grants to strengthen its programs relating to domestic violence and housing. Grants may be available for education and training and to fund collaborative local efforts to create long-term housing stability for victims of domestic violence, dating violence, sexual assault and stalking who are homeless or at risk of becoming homeless. We hope that you will reach out to service providers in the community and collaborate on these efforts. We would welcome the opportunity to continue to work with you on any such efforts.

This section of the letter is divided into seven sections: (i) new admission and eviction policies mandated by VAWA; (ii) new Annual and Five-Year Plan requirements mandated by VAWA; (iii) notice requirements; (iv) confidentiality requirements; (v) certification issues raised by VAWA; (vi) new portability requirements for Section 8 voucher recipients who are victims of domestic violence; and (vii) lease bifurcation provisions that protect victims from eviction, while still allowing the batterer to be evicted.

### **A. VAWA Requires Adoption of New Policies to Protect Victims with respect to Admissions and Evictions**

VAWA changes long-standing federal policies and requirements regarding the admission and eviction of adult and child victims of domestic violence, dating violence and stalking. The purpose is to ensure that victims do not lose their public housing benefits because their batterers are not eligible or must be evicted. The following are new policies mandated by VAWA:

**First**, an individual's status as a victim of domestic violence, dating violence or stalking is not an appropriate basis for denial of admission or denial of housing assistance. *See* 42 U.S.C. §§ 1437d(c)(3); 1437f(c)(9)(A); 1437f(d)(1)(A); and 1437f(o)(6)(B) (2006).

**Second**, there is now an exception to the federal "one-strike" criminal activity eviction rule for tenants who are victims. VAWA provides that an incident of actual or threatened domestic violence, dating violence, or stalking is not a "serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence." 42 U.S.C. §§ 1437d(1)(5), 1437c(9)(B); 1437f(d)(1)(B)(ii); 1437f(o)(7)(C) and 1437f(o)(20)(A) and (B) (2006).

**Third**, victims of domestic violence, dating violence and stalking are not subject to eviction when others engage in criminal activity relating to domestic violence: "Criminal activity directly relating to domestic violence, dating violence or stalking engaged in by a member of a tenant's household or any guest, or any other person under the tenant's control, shall not be a cause for termination of tenancy or occupancy rights if the tenant or immediate member of the tenant's family is the victim of that domestic violence, dating violence, or stalking." 42 U.S.C. §§ 1437d(1)(6)(A), 1437f(c)(9)(C), 1437f(d)(1)(B)(iii); 1437f(o)(7)(D), and 1437f(o)(20)(C) (2006).

AHS should adopt these policies and include them in its Annual and Five-Year Plans, the ACOP and the Rental Assistance Housing Programs Administrative Plan. We recommend specific language changes in Part II below.

## **B. Changes to the Annual and Five-Year Plans**

In addition to mandating these changes to certain federal housing programs, VAWA also requires AHS to amend its Annual and Five-Year Plans. We urge you to include these policy changes in both the Annual and Five-Year Plans. There are additional changes also required in those plans:

### **1. Annual Plan.** The Annual Plan must now 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"; 42 U.S.C. § 1437c-1(d)(13)(A) (2006).



Comment: This provides an opportunity to develop and describe for the community cooperative programs with the organizations in Albuquerque providing services and support to victims. We encourage AHS to interpret “any activities, services, or programs” broadly so as to provide an opportunity to educate the community about the available resources for victims.

- (b) “any activities, services or programs provided or offered by a public housing agency that helps child and adult victims of domestic violence, sexual assault, or stalking, to obtain or maintain housing”; 42 U.S.C. § 1437c-1(d)(13)(B) (2006) .

Comment: AHS’s current policy giving preference to victims of domestic violence is one such activity, service or program that falls under this definition and can be highlighted in your Annual Plan. We also request that AHS review its other preferences and policies that might adversely affect victims and provide barriers in their efforts to obtain or maintain public housing benefits, including, for example, other admission policies that present barriers such as poor credit or work history, poor landlord references, history of disturbances at prior residences, etc. – circumstances that might directly result from domestic violence.

- (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.” 42 U.S.C. § 1437c-1(d)(13)(C) (2006).

Comment: This, too, provides an opportunity for AHS to develop and publicize its efforts to help victims and their families. Examples of activities or programs offered to prevent domestic violence may include training of staff, workshops for residents or children of residents, extra security, or other measures. Some of the training already taking place may fall under this category. Additionally, the training Bob White has agreed to -- and that we discussed at our earlier meeting for AHS -- might be relevant here for different categories of City employees, including those that work for AHS, the Crime-Free Housing Program and the Nuisance Abatement team.

**2. Five-Year Plan.** The Five-Year Plan shall include “a statement by any public housing agency of the goals, objectives, policies, or programs that will enable the housing authority to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.” 42 U.S.C. §1437-c-1(a)(2) (2006).

Comment: This is another opportunity for the City to develop and describe to the community its efforts to serve the needs of child and adult victims and include the new policies mandated by VAWA.

### **C. Notice Requirements**

AHS must notify tenants of their rights as victims of domestic violence and inform owners and managers of their rights under VAWA. This notice must include the information that an incident of domestic violence or stalking does not qualify as serious or repeated violations of the lease, and that criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for termination of a tenancy, and that an incident of domestic violence, dating violence, or stalking is not grounds for the termination of assistance. Tenants also must receive notice regarding the new confidentiality provisions described below. 42 U.S.C. §§ 1437d(u)(2)(B); 1437f(ee)(2)(B) (2006). Section 8 owners and managers must also be informed of their rights and responsibilities. 42 U.S.C. 1437f(ee)(2)(B) (2006).

Public housing leases must include this information and incorporate the new policies mandated by VAWA. 42 U.S.C. § 1437d(l)(5) and (6) (2006). In Section 8 voucher program, housing assistance payment contracts must include this information. 42 U.S.C. § 1437f(o)(7)(C) and (D). In Project-based Section 8, contracts must include this information 42 U.S.C. § 1437f(c) and (d).

Comment: Sample notices prepared by the National Housing Law Project are attached as Exhibit E to this letter.

#### **D. Confidentiality**

Ensuring confidentiality of information and protecting the identity and location of victims from potential discovery by their batterers are essential to protecting the safety of victims. ***It is important for AHS to emphasize the significance of maintaining confidentiality to its own employees, contractors and to landlords who participate in the voucher program.*** VAWA contains provisions reflecting these confidentiality concerns. Under VAWA, if an individual provides certification of domestic violence, the PHA or Section 8 landlord must keep information confidential, including the individual's status as a victim of domestic violence, dating violence, or stalking. A PHA or Section 8 landlord may not enter the information into any shared database or provide it to any related entity. 42 U.S.C. §§ 1437d(u)(2)(A); 1437f(ee)(2)(A) (2006). Information shall not be disclosed unless the disclosure is: (i) requested or consented to by the individual in writing; (ii) required for use in eviction proceedings related to whether the incident or incidents in question qualify as serious or repeated violation of the lease or criminal activity directly relating to domestic violence, dating violence, or stalking; or (iii) otherwise required by applicable law. 42 U.S.C. §§ 1437d(u)(2)(A)(i-iii); 1437f(ee)(2)(A)(i-iii) (2006).

#### **E. Certification**

Certification of a tenant's status as a victim of domestic violence is not required by statute. In implementing VAWA's provisions regarding protections for victims of domestic violence, a public housing agency or Section 8 landlord may, at its discretion, request certification of domestic violence status, including the name of the perpetrator, within 14

business days. PHAs, however, may extend the deadline for providing certification at their discretion. A list of accepted certifications is set forth in the statute, but certification may be based solely on a domestic violence's victim's statement. 42 U.S.C. §§ 1437 d(u)(1)(A-D) and 1437f(ee)(1)(A-D). If AHS is going to include any certification requirement, we urge you to exercise your discretion to make the requirement flexible and easy for victims to comply with.

#### **F. Portability**

In Section 8, a family may receive a voucher from a public housing agency and move to another jurisdiction "in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit." The family must be in compliance with all other requirements of the Section 8 program. Tenants must be informed of the possibility of voucher portability. 42 U.S.C. § 1437f(r)(5) (2006).

#### **G. Lease Bifurcation**

VAWA now gives PHAs and landlords the authority to bifurcate an existing lease so as to evict the perpetrator of domestic violence while allowing the lawful continued occupancy of the victim. *See* 42 U.S.C. §§1437d(1)(6)(B) and f(c)(9)(c)(ii)(2006).

## **II. RECOMMENDED CHANGES TO THE ADMISSIONS AND CONTINUED OCCUPANCY POLICY AND ADMINISTRATIVE PLAN.**

### **A. Admissions and Continued Occupancy Policy**

We have reviewed AHS's Admissions and Continued Occupancy Policy and recommend that the following pages and provisions be amended to reflect the new VAWA amendments:

1. Nondiscrimination policy (p. 1).

Add "AHS does not discriminate based on a tenant's status as a victim of domestic violence, dating violence or stalking."

2. Eligibility for Admission (pp. 8-9)

In number 4 at the top of page 9, add: "An applicant will not be denied admission if the criminal activity is related to an act of domestic violence, dating violence, or stalking against the applicant or any member of the applicant's household."

3. Eligible Families (p. 9)

In number 4 on page 9 of this section, add: "An applicant will not be denied admission if the criminal activity is related to an act of domestic violence, dating violence, or stalking against the applicant or any member of the applicant's household."

4. Screening Applicant's Ability to Comply (pp. 27-28)

In number 5, add: "An applicant will not be denied admission if the criminal activity is related to an act of domestic violence, dating violence, or stalking against the applicant or any member of the applicant's household."

5. Mitigating Circumstances (p. 29)

In number 4, in the examples of mitigating circumstances, add: "d.) domestic violence, dating violence, or stalking have been the cause of negative facts relating to the applicant's negative rental history or behavior."

6. Orientation of Families (p. 35)

In number 9, add: "Information about domestic violence, dating violence and stalking, and notice of VAWA protections for victims."

7. Eligibility for Continued Occupancy (p. 42)

In number 1, add: "A tenant's housing will not be terminated if the criminal activity is related to an act of domestic violence, dating violence, or stalking against the applicant or any member of the applicant's household."

8. Notice Requirements (p. 52)

In number 3, add: "A grievance procedure will be allowed to address any criminal activity related to an act of domestic violence, dating violence, or stalking against the applicant or any member of the applicant's household that is serving as the basis of a lease termination."

**B. Rental Assistance Housing Programs Administrative Plan**

1. Fair Housing and Equal Opportunity Policy (p. 1)

In paragraph 2, add: "status as a victim of domestic violence, dating violence or stalking" in the list of classifications which are the subject of AHS's nondiscrimination policy.

2. Restrictions on Portability (p. 62)

Under "New Participants," add, under "exceptions": "Portability will also be allowed in order to protect the health or safety of an individual who is or has been the victim of domestic

Mr. Jim Satterwhite  
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November 21, 2006  
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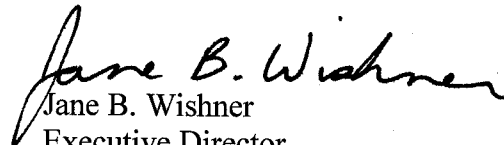
violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.”

3. Contract Terminations, Section C, “Termination by the Owner: Evictions” (p. 67)

Numbers 3, 4, and 9 are not in compliance with VAWA’s protections of victims regarding criminal activity related to domestic violence, dating violence and stalking. Add: “Tenancy will not be terminated if the criminal activity is related to an act of domestic violence, dating violence, or stalking against the applicant or any member of the applicant’s household.” You may want to include a reference here to bifurcation of the lease to clarify the new federal policy.

Thank you for your attention to this important subject. We have attempted to provide the legal authority for these recommended changes and the specific language you can use in your operative documents. We look forward to working with you to implement these changes.

Sincerely,



Jane B. Wishner  
Executive Director  
Southwest Women’s Law Center



Erin Olson  
Law Student Intern  
Southwest Women’s Law Center

Enclosures

cc: Robert M. White, City Attorney  
(without enclosures)

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

### **A: ADDRESSING DOMESTIC VIOLENCE IN OHA HOUSING**

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

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

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

On January 5, 2006 the President signed the Violence Against Women Act (VAWA) of 2005<sup>6</sup> into law. VAWA includes new housing protections and programs for victims of domestic violence, dating violence, sexual assault and stalking. This new law mandates that a PHA, in its Annual Plan, include a description of any policies or programs that help victims obtain or maintain housing, and any policies or programs to prevent domestic violence, dating violence, sexual assault, and stalking or enhance victim safety.

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

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

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

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

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

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

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

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

Additionally we suggest the following additions to its Plans:

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

The Annual Plan, Section 8 Administrative Plan and ACOP currently contain no preference for victims of domestic violence. Modifying these policies to include such a preference would accord with Congressional recognition of the unique needs faced by families subject to domestic violence. Accessing safe and affordable housing are crucial steps toward safety and stability for victims of domestic violence.

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

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

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

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

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

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

**Conclusion**

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

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

<sup>8</sup> W.I.C. § 11495.1(a)(3).





# **Sample Policies**



## **Sample Housing Policies on Domestic Violence, Dating Violence, Sexual Assault, and Stalking**

This document sets forth policies that advocates can recommend that public housing agencies (PHAs) incorporate into their Section 8 Administrative Plans and Public Housing Admissions and Continued Occupancy Policies (ACOP). The Section 8 Administrative Plan is the document that many PHA employees consult in the day-to-day operation of the Section 8 voucher program. The ACOP plays a similar role for the public housing program. The sample policies seek to improve housing access and stability for survivors of domestic and sexual violence.

### **Language to Include in the Section 8 Administrative Plan**

#### ***Admissions: Screening***

1. That an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking is not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for admission. [42 U.S.C. §§ 1437f(c)(9)(A) and (o)(6)(B).]
2. In determining eligibility for housing assistance in cases where the public housing agency (PHA) has become aware that the household includes a victim of domestic violence, dating violence, sexual assault, or stalking, and when screening reveals negative and potentially disqualifying information, such as poor credit history, previous damage to an apartment, or a prior arrest, inquiries will be made regarding the circumstances contributing to this negative history, to ascertain whether these past events were the consequence of abuse against a member of the applicant household.
3. Any such inquiries will make clear that members of applicant households have a right to keep any history of domestic violence, dating violence, sexual assault, or stalking against them confidential.
4. When inquiries reveal that the negative history was the consequence of domestic violence, dating violence, sexual assault, or stalking against a member of the applicant household, the applicant household will not be denied housing assistance on the basis of this reporting.
5. The PHA may ask for documentation establishing that the negative history was the consequence of domestic violence, dating violence, sexual assault, or stalking. The applicant shall have fourteen business days (i.e. weekends and holidays will not count in determining the deadline) to provide such documentation. The PHA will grant extensions to the 14-day-deadline if the applicant demonstrates good cause. Good cause includes, but is not limited to, cognitive limitations, limited English proficiency, absence from the unit due to hospitalization or time in an emergency shelter, failure of the victim to receive actual notice of the request, administrative delays in obtaining police or court records, the danger of further violence, and the victim's need to address health or safety issues.
6. The applicant can satisfy the documentation requirement in any of the following ways:
  - a. Completing HUD Form 50066 verifying that the individual is a victim of domestic violence, dating violence, or stalking. The PHA will accept the self-certification form as a complete request for relief, without insisting on additional documentation from the individual seeking protection. A victim will not be required to provide third-party

- documentation. In addition, the PHA will work with the victim to ensure that delivery of the certification form does not endanger the victim's safety; OR
- b. Providing the PHA with documentation signed by any of the following third parties: (a) an employee, agent, or volunteer of a victim service provider; (b) an attorney; (c) a medical professional; or (d) other knowledgeable professional. The person signing the documentation must have assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of the abuse. The victim of domestic violence, dating violence, or stalking must also sign the documentation; OR
  - c. Producing a Federal, State, tribal, territorial, or local police or court record. [42 U.S.C. § 1437f(ee)(1)(C).]
7. All denial of assistance letters will notify applicants of VAWA's protections and that they may seek an informal review if they believe that the denial of assistance was related to acts of domestic violence, dating violence, or stalking committed against the applicant. In accordance with the PHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.
  8. If because of safety concerns a victim of domestic violence, dating violence, or stalking is unwilling or unable to provide information or identification ordinarily required to confirm eligibility, efforts will be made to otherwise establish eligibility, and alternative sources and methods of verification will be accepted.

### ***Admissions: Breakup of Family on the Waiting List***

If a family on the waiting list breaks up, the PHA has discretion to determine which family members will retain the family's position on the waiting list. However, if a court assigns the family's position on the waiting list to particular family members in a divorce or separation under a settlement or judicial decree, the PHA must assign the waiting list position as directed by the court.

In the absence of a judicial decision, the PHA will consider the following factors: (1) the interest of any minor children, including custody arrangements, (2) the interest of any ill, elderly, or disabled family members, (3) any possible risks to family members as a result of domestic violence or criminal activity, and (4) the recommendations of social service professionals. If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA will ensure that the victim retains his or her waiting list position.

### ***Participant Rights: Termination of Rental Assistance***

The PHA may not terminate assistance to a participant in the Section 8 voucher program on the basis of an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against that participant. [42 U.S.C. § 1437f(o)(20)(A).]

Criminal activity directly relating to actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be considered a serious or repeated violation of the lease by the victim of that criminal activity. [42 U.S.C. § 1437f(o)(20)(B).]

If there is alleged criminal activity, fraud or any other cause for termination from the Section 8 voucher program, the PHA shall consider whether domestic violence, dating violence, sexual assault, or stalking played a role in such activity prior to deciding whether to terminate the family from the program. The PHA shall not terminate a victim of domestic violence, dating violence, sexual assault, or stalking from

the program due to the criminal activity of the perpetrator. If the perpetrator is part of the family being assisted, the PHA shall consider terminating only the abuser from the program.

All termination notices will notify participants of VAWA's protections and that they may seek an informal hearing if they believe that the termination is based on acts of domestic violence, dating violence, sexual assault, or stalking committed against the participant. In accordance with the PHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

### ***Absent Family Members***

Before determining that a family member or a family has abandoned an assisted unit, the PHA shall take into account the role domestic violence, dating violence, sexual assault, or stalking played in the absence.

### ***Bifurcation of Rental Assistance***

The PHA may terminate assistance to a household member who engages in criminal acts of physical violence against family members or others, without terminating assistance to, or otherwise penalizing, the victim of such violence. The PHA's right to exercise this discretion is not dependent on a bifurcated lease or other eviction action by the owner against an individual family member. [42 U.S.C.

§§ 1437f(o)(7)(D)(ii), 1437f(o)(20)(D)(i).]

When rent for a Section 8 unit has previously been determined based on the income of an abusive family member who has left the household or been excluded from the household by a restraining order or injunction or other court order, household income will be immediately recertified and, if necessary, rent for the unit will be adjusted to ensure that the remaining household members are able to maintain their housing.

### ***Family Breakup***

The PHA has discretion to determine which members of an assisted family will continue to receive voucher assistance if the family breaks up. However, if a court determines the disposition of the voucher between members of the assisted family in a divorce or separation under a settlement or judicial decree, the PHA must assign the assistance as directed by the court.

In the absence of a judicial decision, the PHA will determine which family members will continue to receive assistance taking into consideration the following factors: (1) the interest of any minor children, including custody arrangements, (2) the interest of any ill, elderly, or disabled family members, (3) any possible risks to family members as a result of domestic violence, dating violence, stalking, sexual assault, or criminal activity, and (4) the recommendations of social service professionals. If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA will ensure that the victim retains assistance. Head of household status shall not be determinative.

If the family members are forced to leave the unit because of actual or threatened domestic violence, dating violence, sexual assault, or stalking by other members of the household, the PHA may terminate the HAP contract for the original assisted unit and transfer the assistance to the family members forced to leave.

### ***Honoring Court Orders***

Nothing in this Plan may be construed to limit the authority of the PHA to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim

and issued to address the distribution or possession of property among the household members in cases where a family breaks up. [42 U.S.C. § 1437f(o)(20)(D)(ii).]

### ***Lease Violations Unrelated to Domestic Violence***

Nothing in this Plan limits any otherwise available authority of the PHA to terminate assistance to a tenant for any violation of a lease not premised on acts of violence against the tenant or a member of the tenant's household, provided that the PHA does not subject an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than other tenants in determining whether to terminate. [42 U.S.C. § 1437f(o)(20)(D)(iii).]

### ***Actual and Imminent Threat to Others at the Property***

Nothing in this Plan limits the authority of the PHA to terminate the assistance of any participant who can be demonstrated to pose an "actual and imminent threat" to other tenants or the property's employees. [Department of Housing and Urban Development, Violence Against Women and Department of Justice Reauthorization Act of 2005, 72 Fed. Reg. 12,696 (Mar. 16, 2007).] 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. Furthermore, the PHA will consider the following factors to determine the existence of an "actual and imminent threat:"

- 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.

In addition, the PHA will terminate a victim's assistance only when there are no other actions that could be taken to reduce or eliminate the threat, including but not limited to helping the victim to relocate to a different unit. [24 C.F.R. § 5.2005(d), (e)]

A participant may request an informal hearing prior to termination of assistance based on a determination by the PHA that the tenant's continued presence presents an actual and imminent threat to other tenants or to those employed at or providing service to the property.

### ***Relationship to Other Laws***

Nothing in this Plan shall be construed to supersede any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking. [42 U.S.C. § 1437f(o)(20)(D)(v).]

### ***Portability***

Even if moving would otherwise constitute a violation of the lease, a Section 8 voucher family may move to another dwelling and continue to receive rental assistance if the family has complied with all program obligations and is moving to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. The PHA may request that the family provide the HUD-approved certification form or other documentation to verify the family's claim that the request to move is prompted by incidences of abuse. [42 U.S.C. § 1437f(r)(5).]

The PHA will not refuse to issue a voucher to an assisted family due to the family's failure to seek approval prior to moving to a new unit in violation of the original lease, if such move occurred to protect

the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm if he or she remained in the dwelling unit. [75 Fed. Reg. 66,254.] If it is necessary for a family member to break a lease in order to escape domestic violence, dating violence, sexual assault, or stalking, the PHA shall not terminate the victim from the Section 8 program.

PHA policies restricting the timing or frequency of moves do not apply if a family needs to relocate due to domestic violence, dating violence, sexual assault, or stalking. [24 C.F.R. § 982.314(c)(2)(iii).]

## ***Documentation of Domestic Violence, Dating Violence, or Stalking***

If an individual seeks to assert the protections of the Violence Against Women Act, the PHA may request that the individual provide documentation establishing that the individual is a victim of actual or threatened domestic violence, dating violence, sexual assault, or stalking. Requests for documentation shall be in writing. The individual shall provide such documentation within 14 business days (*i.e.*, Saturdays, Sundays, and holidays will not count in determining the number of days) after the individual receives a written request for such certification from the PHA. [42 U.S.C. § 1437f(ee)(1)(A).]

The PHA will deliver written requests for documentation, and any subsequent communications, in a manner that will not expose the participant to danger of further violence. The PHA shall document how and when the PHA requested documentation. The PHA will ask the victim to designate a method for safe communication, such as having the victim designate an attorney, advocate, friend, or family member as his or her primary contact. If no method is designated, certified mail shall be used to deliver the written request for documentation.

The PHA may extend the 14-business-day deadline for good cause. Good cause includes, but is not limited to, cognitive limitations, limited English proficiency, absence from the unit due to hospitalization or time in an emergency shelter, failure of the victim to receive actual notice of the request, administrative delays in obtaining police or court records, the danger of further violence, and the victim's need to address health or safety issues.

An individual may satisfy the certification requirement in any of the following ways:

- Completing a HUD-approved certification form verifying that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking. The PHA will accept the self-certification form as a complete request for relief, without insisting on additional documentation from the individual seeking protection. A victim will not be required to provide third-party documentation.; OR
- Providing the PHA with documentation signed by any of the following third parties: (a) an employee, agent, or volunteer of a victim service provider; (b) an attorney; (c) a medical professional; or (d) other knowledgeable professional. The person signing the documentation must have assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse. The victim of domestic violence, dating violence, sexual assault, or stalking must also sign the documentation; OR
- Producing a Federal, State, tribal, territorial, or local police or court record. [42 U.S.C. § 1437f(ee)(1)(C).]

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the PHA shall respond in writing within seven business days to acknowledge receipt of the documentation. In its response, the PHA shall indicate whether it intends to provide VAWA relief based on the documentation, or whether it intends to proceed with any proposed termination despite the documentation. If the PHA intends to proceed with termination, its response will explain why it is not providing the victim VAWA relief. The response also will state that the tenant may request an informal hearing to challenge the denial of VAWA relief.

If the PHA declines to provide VAWA relief despite documentation of domestic violence, dating violence, sexual assault, or stalking, or fails to respond to the documentation within seven business days, the voucher participant may request an expedited grievance hearing, informal hearing, or informal review with the PHA. Nothing shall preclude the tenant from using the certification form or other documentation in the expedited grievance hearing, informal hearing, informal review, or other proceedings. All hearing officers will receive training regarding domestic violence, dating violence, sexual assault, and stalking semi-annually and must have such training before hearing any cases. The PHA will coordinate such training with local or state domestic violence organizations.

An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it result in a waiver of the individual's right to assert VAWA protections at eviction or termination proceedings. If an individual fails to timely provide documentation, the PHA will provide an opportunity for an informal hearing before denying the individual VAWA's protections.

Nothing in this Plan shall be construed to require the PHA to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, sexual assault, or stalking in order to receive any of VAWA's protections. At its discretion, the PHA may provide VAWA's protections to an individual based solely on the individual's statement or other corroborating evidence. [42 U.S.C. § 1437f(ee)(1)(D).]

## ***Difficulty Determining Abuser and Victim***

When the PHA 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 will use the following procedures:

- A. Where certification has been submitted by two or more tenants in the same household, each claiming to be a victim of violence perpetrated by the other, the PHA will defer to any court order regarding possession of the residence. Specifically, if there is an order of protection in force or a criminal or civil court order that determines possession of the residence or makes a finding as to which party is the perpetrator, the PHA will follow the terms of such order and abide by such determination.
- B. Where certifications have been submitted by two or more tenants in the same household, each claiming to be a victim of violence perpetrated by the other, and there is no court determination or order of protection in force, the PHA may grant relief to both of the parties, including, if necessary, bifurcation of the voucher, provision of an additional voucher, or other relief, until or unless there is a court decision regarding possession or there is a finding by a criminal or civil court that one party is the perpetrator of the violence. If the PHA is unable to provide relief to both parties due to unavailability of an additional voucher the PHA may issue a written request requiring the parties to provide third-party documentation of domestic violence, dating violence,



sexual assault, or stalking, as set forth in 24 C.F.R. § 5.2007(b)(2)-(3). If there are questions regarding the validity of the third-party documentation, the PHA may contact the person or entity that issued or signed the documentation. Before doing so, the PHA must obtain a written release from the applicant or tenant who provided the documentation. The release must be limited to the sole purpose of verifying that the person or entity issued or signed the documentation.

- C. If any questions remain about which household member is the victim, the PHA may also hold an informal hearing to pursue fact-finding and make a decision.

## **Confidentiality**

All information provided to the PHA related to an individual's status as a victim of domestic violence, dating violence, or stalking, shall be retained in confidence by the PHA, and shall neither be entered into any shared database nor provided to any related entity. Information regarding domestic violence, dating violence, sexual assault, or stalking will not be filed in an applicant or tenant's general file. Such information will be retained separately from the applicant or tenant's general file. Files containing information regarding domestic violence, dating violence, sexual assault, or stalking will be maintained in a place that assures confidentiality and that can be accessed only by authorized employees. The information will be destroyed once the purpose for which the documentation was requested has been accomplished. Employees of the PHA, owner or management agent will not have access to information regarding domestic violence, dating violence, sexual assault, or stalking unless they are specifically and explicitly authorized to access this information because it is necessary to their work. However, this information may be disclosed if it is:

- requested or consented to by the individual in writing;
- required for use in an eviction proceeding (such as to evict the perpetrator); or
- otherwise required by applicable law.

[42 U.S.C. 1437f(ee)(2)(A).]

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the PHA will inform the victim before disclosure occurs so that safety risks can be identified. If disclosure of the information would place the victim's safety at risk, the PHA will work with the victim to determine whether there are alternatives to disclosure.

Information that might endanger a victim of domestic violence, dating violence, sexual assault, or stalking, such as the address to which an individual fleeing a perpetrator has relocated, will be kept strictly confidential and will not be shared with any person outside the PHA unless the individual voluntarily waives confidentiality.

## **Voucher Program – Notification**

The PHA shall provide notice to tenants assisted under the voucher program of their rights under the Violence Against Women Act, including their right to confidentiality. [42 U.S.C. 1437(ee)(1)(B).] The PHA will provide notification of VAWA in the following ways:

- By including information regarding VAWA in orientations and briefing packets for new participants.

- By posting information regarding VAWA in the PHA's offices.
- By posting information regarding VAWA on the PHA's website.
- By informing participants of their rights under VAWA during the annual recertification.
- By including information regarding VAWA in all program violation notices, termination letters, and denial of assistance letters.

# **Language to Include in the Public Housing Admissions and Continued Occupancy Policy (ACOP)**

## ***Admission***

- a. That an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking is not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for admission. [42 U.S.C. §§ 1437f(c)(9)(A) and (o)(6)(B).]
- b. In determining eligibility for housing assistance in cases where the Public Housing Agency (PHA) has become aware that the household includes a victim of abuse, and when screening reveals negative and potentially disqualifying information, such as poor credit history, previous damage to an apartment, or a prior arrest, inquiries will be made regarding the circumstances contributing to this negative reporting, to ascertain whether these past events were the consequence of domestic violence, dating violence, or stalking against a member of the applicant household.
- c. Any such inquiries will make clear that members of applicant households have a right to keep any history of domestic violence, dating violence, sexual assault, or stalking against them confidential.
- d. When inquiries reveal that the negative reporting was the consequence of domestic violence, dating violence, sexual assault, or stalking against a member of the applicant household, the applicant household will not be denied housing assistance on the basis of this reporting.
- e. The PHA may ask for a statement or documentation establishing that the negative history was the consequence of domestic violence, dating violence, sexual assault, or stalking. The applicant shall have 14 business days (i.e. weekends and holidays will not count in determining the deadline) to provide such documentation. The PHA will grant extensions to the 14-day-deadline if the applicant demonstrates good cause. Good cause includes, but is not limited to, cognitive limitations, limited English proficiency, absence from the unit due to hospitalization or time in an emergency shelter, failure of the victim to receive actual notice of the request, administrative delays in obtaining police or court records, the danger of further violence, and the victim's need to address health or safety issues.
- f. The applicant can satisfy the documentation request in any of the following ways:
  - a. Completing a HUD Form 50066 verifying that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking. The PHA will accept the self-certification form as a complete request for relief, without insisting on additional documentation from the individual seeking protection. A victim will not be required to provide third-party documentation. In addition, the PHA will work with the victim to ensure that delivery of the certification form does not endanger the victim's safety; OR
  - b. Providing the requesting owner, manager, or PHA with documentation signed by any of the following third parties: (a) an employee, agent, or volunteer of a victim service provider; (b) an attorney; (c) a medical professional; or (d) other knowledgeable professional. The person signing the documentation must have assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse. The victim of domestic violence, dating violence, sexual assault, or stalking must also sign the documentation; OR
  - c. Producing a Federal, State, tribal, territorial, or local police or court record. [42 U.S.C. § 1437f(ee)(1)(C).]

All denial of assistance letters will notify applicants of VAWA's protections and that they may seek an informal hearing if they believe that the denial of assistance was related to acts of domestic violence, dating violence, sexual assault, or stalking committed against the applicant. In

accordance with the PHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

- g. Nothing in this Plan shall be construed to require the PHA to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, sexual assault, or stalking in order to receive any of the benefits provided in this section. At its discretion, the PHA may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.
- h. If because of concerns for his or her safety a victim of domestic violence, dating violence, sexual assault, or stalking is unwilling or unable to provide information or identification ordinarily required to confirm eligibility for public housing, efforts will be made to otherwise establish eligibility and alternative sources and methods of verification will be accepted.

### ***Admissions: Breakup of Family on the Waiting List***

If a family on the waiting list breaks up, the PHA has discretion to determine which family members will retain the family's position on the waiting list. However, if a court assigns the family's position on the waiting list to particular family members in a divorce or separation under a settlement or judicial decree, the PHA must assign the waiting list position as directed by the court.

In the absence of a judicial decision, the PHA will consider the following factors: (1) the interest of any minor children, including custody arrangements, (2) the interest of any ill, elderly, or disabled family members, (3) any possible risks to family members as a result of domestic violence, dating violence, sexual assault, stalking, or criminal activity, and (4) the recommendations of social service professionals. If the family breakup results from an occurrence of domestic violence, dating violence, or stalking, the PHA will ensure that the victim retains his or her waiting list position.

### ***Tenant Rights: Eviction***

An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence. [42 U.S.C. § 1437d(1)(5).]

Criminal activity directly relating to actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be considered a serious or repeated lease violation by the victim of that criminal activity. [42 U.S.C. § 1437d(1)(6).]

In cases of criminal activity on or off the property, the PHA shall consider whether the activity in question was related to incidents of domestic violence, dating violence, sexual assault, or stalking committed against an individual or household, in its use of discretion around whether to terminate a lease. The PHA shall give tenants an opportunity, through a grievance hearing and a court proceeding, to present evidence that supports continuing the tenancy.

All eviction notices will notify participants of VAWA's protections and that they may seek a grievance hearing if they believe that the lease violation is based on acts of domestic violence, dating violence, sexual assault, or stalking committed against the participant. In accordance with the PHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

## ***Lease Violations Unrelated to Domestic Violence***

Nothing in this Plan limits any otherwise available authority of the PHA to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the PHA does not subject an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than other tenants in determining whether to terminate. [42 U.S.C. § 1437d(1)(6)(D).]

## ***Absent Family Members***

Before determining that a family member or a family has abandoned an assisted unit, the PHA shall take into account the role domestic violence, dating violence, sexual assault, or stalking played in the absence.

## ***Actual and Imminent Threat to Other Tenants or Employees at the Property***

- A. Nothing in this Plan may be construed to limit the authority of the PHA to terminate the tenancy of any tenant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated. [42 U.S.C. § 1437d(1)(6)(E).] 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.
- B. The PHA will consider the following factors to determine the existence of an "actual and imminent threat:"
  - 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.

[24 C.F.R. § 5.2005(d), (e)]

- C. The PHA will evict a victim 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. [24 C.F.R. § 5.2005(d), (e)]
- D. If the tenant wishes to contest the PHA's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the PHA's grievance procedures.

## ***Difficulty Determining Abuser and Victim***

When the PHA 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 will use the following procedures:

- A. Where certification has been submitted by two or more tenants in the same household, each claiming to be a victim of violence perpetrated by the other, the PHA will defer to any court order regarding possession of the residence. Specifically, if there is an order of protection in force or a criminal or civil court order that determines possession of the residence or makes a finding as to which party is the perpetrator, the PHA will follow the terms of such order and abide by such determination.
- B. Where certifications have been submitted by two or more tenants in the same household, each claiming to be a victim of violence perpetrated by the other, and there is no court determination or order of protection in force, the PHA may grant relief to both of the parties, including, if necessary, bifurcation of the lease, provision of an additional unit, or other relief, until or unless there is a court decision regarding possession or there is a finding by a criminal or civil court that one party is the perpetrator of the violence. If the PHA is unable to provide relief to both parties due to unavailability of an additional unit, the PHA may issue a written request requiring the parties to provide third-party documentation of domestic violence, dating violence, sexual assault, or stalking, as set forth in 24 C.F.R. § 5.2007(b)(2)-(3). If there are questions regarding the validity of the third-party documentation, the PHA may contact the person or entity that issued or signed the documentation. Before doing so, the PHA must obtain a written release from the applicant or tenant who provided the documentation. The release must be limited to the sole purpose of verifying that the person or entity issued or signed the documentation.
- C. If any questions remain about which household member is the victim, the PHA may use its grievance procedure to pursue fact-finding and to make a decision.

### ***Breakup of an Assisted Family***

The PHA has discretion to determine which members of an assisted family will continue to reside in the public housing unit if the family breaks up. However, if a court determines the disposition of the unit between members of the assisted family in a divorce or separation under a settlement or judicial decree, the PHA must assign the assistance as directed by the court.

In the absence of a judicial decision, the PHA will determine which family will continue to receive assistance taking into consideration the following factors: (1) the interest of any minor children, including custody arrangements, (2) the interest of any ill, elderly, or disabled family members, (3) any possible risks to family members as a result of domestic violence, dating violence, stalking, or criminal activity, and (4) the recommendations of social service professionals. If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA will ensure that the victim retains assistance. Head of household status shall not be determinative.

When rent for a public housing unit has previously been determined based on the income of an abusive family member who has left the household or been excluded from the household by a restraining order or injunction or other court order, household income will be immediately recertified and, if necessary, rent for the unit will be adjusted to ensure that the remaining household members are able to maintain their housing.

### ***Bifurcation of the Lease***

The PHA may remove a household member from a lease, without regard to whether the household member is a signatory to a lease, in order to evict, remove, or terminate the occupancy rights of any individual who engages in criminal acts of physical violence against family members or others, without terminating the tenancy rights of the victim of such violence. Eviction of the perpetrator shall be effected

in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing. [42 U.S.C. § 1437d(l)(6)(B).]

### ***Obligation to Honor Court Orders***

Nothing in this Plan may be construed to limit the authority of the PHA, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up. [42 U.S.C. § 1437d(l)(6)(C).]

### ***Relationship to Other Laws***

Nothing in this Plan shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this Plan for victims of domestic violence, dating violence, sexual assault, or stalking. [42 U.S.C. § 1437d(l)(6)(F).]

### ***Documentation of Domestic Violence, Dating Violence, and Stalking*** ***[42 U.S.C. § 1437d(u)(1)(A), (B)]***

If an individual seeks to assert the protections of the Violence Against Women Act, the PHA may request that the individual provide documentation establishing that the individual is a victim of actual or threatened domestic violence, dating violence, sexual assault, or stalking. Requests for documentation shall be in writing. The individual shall provide such documentation within 14 business days (*i.e.*, weekends and holidays will not count in determining the number of days) after the individual receives a written request for such certification from the PHA. [42 U.S.C. § 1437d(u)(1)(A).]

The PHA will deliver written requests for documentation, and any subsequent communications, in a manner that will not expose the applicant or tenant to danger of further violence and shall document how and when a written request was made. The PHA will ask the victim to designate a method for safe communication, such having the victim designate an attorney, advocate, friend, or family member as his or her primary contact. If no method is designated, certified mail shall be used to deliver the written request for documentation.

The PHA will extend the 14-business-day deadline for good cause. [42 U.S.C. § 1437d(u)(1)(B).] Good cause includes, but is not limited to, cognitive limitations, limited English proficiency, absence from the unit due to hospitalization or time in an emergency shelter, failure of the victim to receive actual notice of the request, administrative delays in obtaining police or court records, the danger of further violence, and the victim's need to address health or safety issues.

An individual may satisfy the certification request in any of the following ways –

- Completing HUD Form 50066 verifying that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking, and that the incident or incidents in question are bona fide incidents of actual or threatened abuse. Such certification shall include the name of the perpetrator. The PHA will accept the self-certification form as a complete request for relief, without insisting on additional documentation from the individual seeking protection. A victim will not be required to provide third-party documentation; OR
- Providing the requesting PHA with documentation signed by any of the following third parties: (a) an employee, agent, or volunteer of a victim service provider; (b) an attorney; (c) a medical

professional; or (d) other knowledgeable professional. The person signing the documentation must have assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse. The person signing the documentation must attest under penalty of perjury to his or her belief that the incident or incidents in question are bona fide incidents of abuse. The victim of domestic violence, dating violence, sexual assault, or stalking must also sign the documentation; OR

- Producing a Federal, State, tribal, territorial, or local police or court record. [42 U.S.C. § 1437d(u)(1)(C).]

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the PHA shall respond in writing within seven business days to acknowledge receipt of the documentation. In its response, the PHA shall indicate whether it intends to provide VAWA relief based on the documentation, or whether it intends to proceed with any proposed eviction despite the documentation. If the PHA intends to proceed with eviction, its response must explain why it is not providing the victim VAWA relief. The response also must state that the tenant may use the grievance procedure to challenge the denial of VAWA relief.

If the PHA declines to provide VAWA relief despite documentation of domestic violence, dating violence, sexual assault, or stalking, or fails to respond to the documentation within seven business days, the tenant may request an expedited grievance procedure with the PHA. Nothing shall preclude the tenant from using the certification form or other documentation in the expedited grievance hearing, informal hearing, informal review, or other proceedings.

All hearing officers will receive training regarding domestic violence, dating violence, sexual assault, and stalking semi-annually and must have such training before hearing any cases. The PHA must coordinate such training with local or state domestic violence organizations.

An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the eviction, nor does it result in a waiver of the individual's right to assert VAWA protections at eviction proceedings. If an individual fails to timely provide documentation, the PHA will provide an opportunity for a grievance before denying the individual VAWA's protections.

Nothing in this Plan shall be construed to require the PHA to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, sexual assault, or stalking in order to receive any of VAWA's protections. At its discretion, the PHA may provide VAWA's protections to an individual based solely on the individual's statement or other corroborating evidence. [42 U.S.C. § 1437d(u)(1)(D).]

### ***Confidentiality [42 U.S.C. § 1437d(u)(2)(A)]***

All information provided to the PHA related to an individual's status as a victim of domestic violence, dating violence, sexual assault, or stalking shall be retained in confidence by the PHA, and shall neither be entered into any shared database nor provided to any entity. Information regarding domestic violence, dating violence, sexual assault, or stalking will not be filed in an applicant or tenant's general file. Such information will be retained separately from the applicant or tenant's general file. Files containing information regarding domestic violence, dating violence, sexual assault, or stalking will be maintained in a place that assures confidentiality and that can be accessed only by authorized employees. The information will be destroyed once the purpose for which the documentation was requested has been accomplished. Employees of the PHA will not have access to information regarding domestic violence,



dating violence, sexual assault, or stalking unless they are specifically and explicitly authorized to access this information because it is necessary to their work. However, this information may be disclosed if disclosure is:

- requested or consented to by the victim in writing;
- required for use in an eviction proceeding; or
- otherwise required by applicable law.

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the PHA will inform the victim before disclosure occurs so that safety risks can be identified. If disclosure of the information would place the victim's safety at risk, the PHA will work with the victim to determine whether there are alternatives to disclosure.

Information that might endanger a victim of domestic violence, dating violence, sexual assault, or stalking, such as the address to which an individual fleeing a perpetrator has relocated, will be kept strictly confidential and will not be shared with any person outside the PHA unless the individual voluntarily waives confidentiality.

### ***Notification [42 U.S.C. § 1437d(u)(2)(B).]***

The PHA shall provide notice to tenants assisted under the public housing program of their rights under the Violence Against Women Act, including their right to confidentiality. The PHA will provide notification of VAWA in the following ways:

- By including information regarding VAWA in orientations and briefing packets for new participants.
- By posting information regarding VAWA in the PHA's offices.
- By posting information regarding VAWA on the PHA's website.
- By informing tenants of their rights under VAWA during the annual recertification.
- By including information regarding VAWA in all program violation notices, eviction notices, and denial of assistance letters.

### ***Transfers***

- A. In situations that involve significant risk of harm to an individual as a result of incidents or threats of domestic violence, dating violence, sexual assault, or stalking, the PHA will, if an approved unit size is available at a location that may reduce the risk of harm, approve transfer by a public housing tenant to a different unit in order to reduce the level of risk to the individual. A tenant who requests a transfer must attest that the requested transfer is necessary to protect the health or safety of the tenant or another member of the household who is or was the victim of domestic violence, dating violence, sexual assault, or stalking.
- B. The PHA will act upon a request for a transfer due to domestic violence, dating violence, stalking, or sexual assault within 10 business days.
- C. The PHA will take reasonable precautions to reduce the possibility of domestic violence, dating violence, sexual assault, or stalking pending the transfer, including rekeying the locks on the unit's doors.

- D. Families have the right to refuse an offer if they have good cause for refusal of the unit. For example, a family will have good cause to deny a transfer if accepting the offer will place the applicant or a family member's life, health, or safety in jeopardy.
- E. Due to the emergency nature of the transfer, recertification and other lease compliancy requirements shall be stayed until the victim and/or household is safely relocated to other housing. A resident requesting a transfer to escape domestic violence, dating violence, sexual assault, or stalking will not be charged for damage caused by the perpetrator.
- F. The address to which an individual fleeing domestic violence, dating violence, sexual assault, or stalking has relocated will be kept strictly confidential and will not be shared with any person outside the PHA unless the individual consents to disclosure in writing.

## **Language to Include in Both the Section 8 Administrative Plan and the Public Housing Admissions and Continued Occupancy Policy (ACOP)**

### ***Commitment to Serving Victims of Domestic Violence, Dating Violence, and Stalking***

The PHA intends to ensure that applicants and recipients who are victims of domestic violence, dating violence, sexual assault, and stalking are not placed at further risk or unfairly penalized by its policies and practices. The PHA recognizes that the victim's safety is of utmost importance. The PHA shall maintain updated referral/resource information and place posters on domestic violence, dating violence, sexual assault, and stalking at its offices. The PHA shall give resources on domestic violence, dating violence, sexual assault, and stalking to all residents during recertification interviews, and to current and new residents in their orientation packets. Finally, the PHA shall collaborate with domestic and sexual violence advocacy groups on individual cases, on providing outreach to residents, and on meeting the ongoing training needs of PHA staff.

### ***Definitions (Glossary) [42 U.S.C. § 13925(a)(6)-(8), (23); 42 U.S.C. § 1437f(f)(8)-(11)]***

“Domestic violence” is defined as felony or misdemeanor crimes of violence committed by:

- (1) a current or former spouse of the victim;
- (2) a person with whom the victim shares a child in common;
- (3) a person who is cohabitating with or has cohabitated with the victim as a spouse;
- (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies;
- (5) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

“Dating violence” is defined as violence committed by a person--

- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; AND
- (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - (i) The length of the relationship.
  - (ii) The type of relationship.
  - (iii) The frequency of interaction between the persons involved in the relationship.

“Sexual assault” means any conduct proscribed by chapter 109A of title 18 of the United States Code, whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States or in a Federal prison and includes both assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim.

“Stalking” is defined as:

(A) (i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; OR

(ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person;

AND

(B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to--

(i) that person;

(ii) a member of the immediate family of that person; OR

(iii) the spouse or intimate partner of that person

“Immediate family member” means, with respect to a person –

(1) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or

(2) any other person living in the household of that person and related to that person by blood or marriage.

# **Notice to Tenants Regarding the Violence Against Women Act (VAWA)**

**To all participants in the Section 8 voucher and public housing programs:**

A federal law protects individuals who are victims of domestic violence, dating violence, and stalking. The name of the law is the Violence Against Women Act, or “VAWA.” This notice explains your rights under VAWA.

## **1. Am I covered by VAWA’s housing protections?**

VAWA protects victims of domestic violence, dating violence, and stalking. It also covers the victim’s immediate family members, except for the abuser. You don’t have to be married to or living with the abuser to be covered by VAWA.

## **2. What rights does VAWA offer?**

Rights for victims of domestic violence, dating violence, and stalking include:

- If you are applying for housing, you can’t be denied simply because you are a victim.
- You can’t be evicted or lose your voucher based solely on violence against you.
- Acts of violence against you cannot be “serious or repeated violations” of your lease or “good cause” for evicting you or ending your voucher.

## **3. What if I need to get the abuser out of the home?**

If a member of your household uses violence against you, the housing authority or your landlord may evict the abuser alone, and let you and your family stay in the home.

## **4. What if I need to move to escape the abuse?**

VAWA states that the housing authority may permit you to move and keep your voucher, even if your lease has not ended. The housing authority may ask you to prove that you are moving because of violence.

VAWA does not cover emergency moves for public housing tenants. You can still ask the housing authority to transfer you to another unit. The housing authority may ask you to put your request in writing and to prove that you are moving for safety reasons.

## **5. How do I prove that I can use VAWA's protections?**

To see if you can use VAWA, the housing authority or your landlord may ask for a document showing that you are a victim of domestic violence, dating violence, or stalking. There are three ways you can show that you are a victim:

- Complete a certification form. The form will ask for your name, the name of your abuser, the abuser's relationship to you, the date, time and place of the violence, and a description of the violence. To get the form, call the housing authority or a legal aid office.
- Provide a letter signed by a victim service provider, attorney, or medical professional who has helped you with the abuse. You must also sign this letter.
- Provide a police or court record, such as a restraining order.

The housing authority or your landlord must give you at least 14 business days (weekends and holidays do not count) to provide proof of the violence.

## **6. Can a housing provider share the information I provide about the abuse with others?**

No, except in limited cases. The housing authority or landlord cannot give the information you provide about the abuse to others. The information may be shared only if you agree in writing, if it is needed to evict the abuser from the housing, or if disclosure is required by law.

## **7. Does this mean that a victim of domestic violence, dating violence, or stalking cannot be evicted at all?**

No. You still can be evicted for serious or repeated lease violations that aren't related to the abuse. The landlord or housing authority must hold you to the same standard as other tenants. The landlord also may be able to evict if there is a real and immediate threat to other tenants if you are not evicted.

## **For Additional Information**

If you have any questions regarding VAWA, please contact \_\_\_\_\_ at \_\_\_\_\_.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

# **The Violence Against Women Act (VAWA): Facts for Housing Providers**

**When did the Violence Against Women Act (VAWA) become effective, and who is required to comply with the law?**

VAWA's housing provisions became effective January 2006. Housing authorities, landlords, owners, and managers operating public housing, Section 8 voucher units, project-based Section 8 projects, and supportive housing for the elderly or disabled must comply with VAWA.

**What types of housing does VAWA cover, and whom does VAWA protect?**

VAWA applies to public housing, the Section 8 voucher program, project-based Section 8 units, and supportive housing for the elderly or disabled. VAWA protects anyone who is:

- (1) A victim of actual or threatened domestic violence, dating violence, or stalking, or an immediate family member of the victim (spouse, parent, sibling, child, or any other person living in the household who is related by blood or marriage); AND
- (2) Living in, or seeking admission to, public, Section 8 voucher, or project-based Section 8 housing.

**How does VAWA affect admissions and terminations?**

An individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of admission or denial of housing assistance.

VAWA establishes an exception to the "one-strike" criminal activity eviction rule. Actual or threatened criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for terminating assistance, tenancy, or occupancy rights of the victim or an immediate family member of the victim.

Despite the protections described above, a housing provider may still evict the victim if the housing provider can demonstrate an "actual and imminent threat" to other tenants or employees of the property if the victim is not evicted. 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. A housing provider can evict or terminate a victim's assistance only when there are no other actions that could be taken to reduce or eliminate the threat.

**What about criminal activity unrelated to abuse?**

VAWA does not protect tenants if the criminal incident for which they are being evicted or denied admission is unrelated to domestic violence, dating violence, or stalking. In determining whether to evict, a housing provider may not hold a victim of abuse to a more demanding standard than other tenants.

## **Can the abuser alone be evicted or terminated?**

A housing provider may bifurcate (split) a lease to evict or terminate assistance to a tenant who commits acts of violence against family members. This action may be taken without evicting or terminating assistance to the victim who is also a tenant. Bifurcation applies to all leases in the public housing or Section 8 programs. The eviction or termination must comply with federal, state, and local law.

## **Can a housing provider ask for proof of the abuse?**

Housing providers may, but are not required to, ask an individual for documentation that he or she is a victim of abuse if the individual seeks to assert VAWA's protections. At their discretion, housing providers may apply VAWA to an individual based solely on the individual's statement.

If a housing provider requests documentation, the victim may provide:

- A HUD-approved certification form (Form HUD-50066 or Form HUD-91066)
- Documentation signed by the victim and a victim service provider, an attorney, or a medical professional who has assisted the victim in addressing the abuse.
- A federal, state, tribal, territorial, or local police or court record.

After a housing provider requests certification, an individual has 14 business days to respond. If an individual fails to respond, a housing provider may terminate assistance. However, a housing provider is free to extend this timeframe.

Any information a victim provides regarding domestic violence, dating violence, or stalking must be kept confidential. Housing providers may not enter the information into any shared database or provide it to any related entity. A housing provider's employees cannot have access to information regarding domestic violence, dating violence, or stalking unless they are specifically and explicitly authorized to access this information because it is necessary to their work. The only exceptions to the confidentiality rules are: (1) the victim consents to disclosure in writing; (2) the information is required for use in an eviction proceeding; or (3) disclosure is otherwise required by law.

## **Where can I find this law?**

- VAWA's public housing provisions are at 42 U.S.C. § 1437d; the project-based Section 8 provisions are at 42 U.S.C. § 1437f(c), (d); the voucher provisions are at 42 U.S.C. § 1437f(o).
- HUD has published regulations regarding VAWA at 75 Federal Register 66,246 (Oct. 27 2010).
- Form HUD-50066 is the form that applicants and tenants in public housing and the Section 8 voucher program may use to certify that they are victims of abuse.
- Form HUD-91066 is the form that applicants and tenants in the project-based Section 8 program may use to certify that they are victims of abuse.