

# HOUSING JUSTICE

National Housing Law Project

Newsletter September 2011

## HUD Issues Notice on Equal Opportunity Requirements for Public Housing Agencies

The Department of Housing and Urban Development (HUD) has issued PIH Notice 2011-31, a comprehensive notice that provides guidance on non-discrimination and equal opportunity requirements for public housing agencies (PHAs). The guidance covers numerous areas of civil rights protections, summarizing rules and giving examples of implementation of the rules. While it does not provide new information, the guidance highlights a number of civil rights laws to remind PHAs of their duties, many of which may have been ignored for some time.

The guidance includes several sections briefly explaining the civil rights rules that apply to PHAs. This article focuses on the areas that are most relevant to advocates serving survivors of domestic violence.

### Applicable Laws and Resources

The first two sections of the notice primarily identify applicable laws and resources. The guidance lists the particular HUD regulations that deal with nondiscrimination and equal opportunity laws and how they apply to PHAs. Notably, the guidance also emphasizes that PHA plan documents must include certifications stating that the PHA is complying with civil rights laws. Because these plans require public participation in their development, the requirements provide an opportunity for advocates to ensure that PHAs have

written policies describing how they are complying with civil rights laws. The second section addresses the Fair Housing Act (FHA). This section lists the specific HUD regulations applying the FHA and the types of housing discrimination that it prohibits.

### Persons with Limited English Proficiency

The notice discusses the rights of individuals with limited English proficiency (LEP). These rights arise out of Title VI of the Civil Rights Act of 1964 and its prohibition on discrimination on the basis of national origin, as well as Executive Order 13166, which requires federally assisted programs to be accessible to LEP persons. PHAs must engage in a four-factor analysis to assess the language needs of the population they should be serving. The guidance lays out the factors in this analysis and states that once it is completed, the PHA should take steps to ensure meaningful language access. To do this, a PHA will likely need to adopt a language access plan (LAP) and then implement that plan. The LAP should include the language spoken by program participants, language-assistance measures, training goals for staff, how the PHA will provide notice to individuals of the translation and interpretation services. The LAP must be monitored and updated. The notice further explains guidance for translating documents and oral interpretation.

Finally, the notice states that PHAs can seek technical assistance from fair housing organizations that receive Fair Housing Initiatives Program and Fair Housing Assistance Program grants. They also may contact their local HUD Office of Fair

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Housing and Equal Opportunity for training and technical assistance.

### **Rights of People with Disabilities**

The guidance devotes a section to the rights of people with disabilities. The section discusses Section 504 of the Rehabilitation Act of 1973 (Section 504), the FHA, the Americans with Disabilities Act (ADA) and the right to reasonable accommodation. Under Section 504, PHAs are required to modify rules, policies, practices or physical features of a building if necessary to accommodate a person with a disability. Among other things, PHAs must evaluate their programs to ensure they do not discriminate on the basis of disability. Further, PHAs must take steps to make their properties physically accessible. They also must disseminate information about accessible units to people with disabilities. The notice then explains in more depth the right people with disabilities have to a reasonable accommodation—a change in rules, policies, practices and procedures needed to afford an applicant or resident with a disability an equal opportunity to use and enjoy a housing unit. This section explains the standards and provides examples of accommodations, such as exceptions to no-pet policies for service animals. Similarly, the guidance points to accessibility and reasonable accommodation requirements under the FHA and ADA. Section 504 requires compliance reporting. This report is submitted to the HUD field office, like the Title VI compliance reports discussed below, and has similar requirements.

### **Title VI of the Civil Rights Act of 1964**

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin and applies to all recipients of federal financial assistance. In the context of Title VI, this means that federal programs must be accessible to all persons regardless of whether they fall into a protected category. As part of its Title VI obligations, a PHA must submit a report to the local HUD field office that includes racial and ethnic

### **NHLP Available to Provide Assistance to OVW Transitional Housing Grantees**

The National Housing Law Project (NHLP) is pleased to announce that it is now available to provide training, technical assistance, and materials to OVW Transitional Housing grantees. NHLP will continue to provide these services to Legal Assistance to Victims grantees.

NHLP has provided numerous trainings and extensive technical assistance on the housing rights of survivors of domestic violence, sexual assault, and stalking. We are available to provide technical assistance consultations via phone and email regarding a variety of subjects, including legal rights of survivors whose housing is at risk.

For more information regarding NHLP's services, please contact Meliah Schultzman at (415) 546-7000 x. 3116 or [mschultzman@nhlp.org](mailto:mschultzman@nhlp.org), or visit our website at <http://www.nhlp.org/OVWgrantees>.

data on the program participants. If program participants refuse to identify their race or ethnicity, the PHA is instructed to mark a category based on its perception, which may or may not be accurate. If a PHA fails to comply with these requirements, HUD has enforcement authority.

### **Conclusion**

While none of the statutes, regulations or policies discussed in the notice is new, the notice provides a comprehensive review of the rules that PHAs should follow to live up to HUD's promise of providing safe, decent, and sanitary housing for everyone, regardless of race, color, national origin, disability, sex, religion or familial status. The guidance also identifies the places in which public participation is required, providing advocates an opportunity to push for equitable communities and to hold PHAs accountable to the families and communities that they serve. It is available at [www.hud.gov/hudclips](http://www.hud.gov/hudclips). ■

## Court Rules that Termination of Tenant's Section 8 Voucher Did Not Violate VAWA's Protections

A court recently rejected a tenant's argument that a housing authority's termination of her voucher violated the Violence Against Women Act (VAWA). In *Hammond v. Akron Metropolitan Housing Authority*, 2011 WL 2175801 (Ohio Ct. App. 2011), the housing authority terminated tenant Lisa Hammond's Section 8 voucher on grounds that she allowed an unauthorized person named Dalton Snow to reside in her unit. The housing authority found that Ms. Hammond violated its Section 8 Administrative Plan, which prohibited voucher tenants from having visitors staying in a unit for more than four consecutive days or a total of 15 days in a 12-month period. Ms. Hammond alleged that Mr. Snow had committed acts of domestic violence against her and that the housing authority terminated her voucher for reasons related to the violence. Ms. Hammond filed suit in state court to have her voucher reinstated.

### Housing Authority Hearing

During an informal hearing on the voucher termination, a housing authority police officer testified that he had received a complaint from Mr. Snow's mother that he was residing in Ms. Hammond's unit in violation of housing authority rules. The officer also verified with the post office that Mr. Snow used Ms. Hammond's address as his mailing address. Ms. Hammond admitted that Mr. Snow had stayed at her apartment one or two nights per week, but testified that he had moved out because he was incarcerated due to domestic violence against her. Ms. Hammond also testified that she had tried to keep Mr. Snow away, but he kept coming back. The housing authority hearing officer found that Ms. Hammond had violated voucher program rules by allowing Mr. Snow to reside with her and that her voucher should be terminated. Ms. Hammond appealed this decision to the state court.

## Statistic of the Month

Access to shelter services led to a 60% to 70% reduction in incidence and severity of re-assault during a 3- to 12-month follow-up period, as compared to women who did not access shelter.

Johns Hopkins University School of Nursing, Protective Action and Re-Assault: Findings from the RAVE Study

## State Court Decision

In her state court appeal, Ms. Hammond argued that the termination of her voucher violated her rights under the Violence Against Women Act (VAWA), because the housing authority terminated her subsidy due to violence perpetrated against her by Mr. Snow. VAWA provides that acts of domestic violence are not grounds for terminating the Section 8 voucher assistance of the victim of such violence.

The court found no evidence that incidents of domestic violence had prompted the housing authority to investigate Mr. Snow's presence at the unit. The court noted that the housing authority had investigated Ms. Hammond because Mr. Snow's mother had informed the housing authority that he was living in the unit. The court found no indication that Mr. Snow's mother had notified the housing authority of the violence or that the housing authority had treated Ms. Hammond differently from other voucher holders in its decision to terminate her assistance. Accordingly, the court found that Ms. Hammond failed to show that the termination of her voucher violated VAWA. The court also concluded Ms. Hammond was afforded due process because the housing authority presented sufficient evidence that there was an unauthorized adult who had frequently stayed at the residence, creating a presumption of residency. Further, the court found she was given an opportunity to refute the housing authority's evidence through testifying, presenting a witness, cross-examining the housing authority's witnesses, and filing a post-hearing brief.

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## Conclusion

The *Hammond* case illustrates the importance of demonstrating a link between domestic violence and housing program violations. It may have been helpful if Ms. Hammond had presented evidence supporting that she feared retaliation from Mr. Snow if she did not allow him to stay in the unit and use her address as his mailing address. Declarations or testimony from domestic violence advocates, social workers, therapists, or other service providers may help establish that a victim's fears of retaliation were justified and caused the victim to allow the abuser to visit the victim's home or commit other program violations.

An issue the court did not address is whether Mr. Snow's mother reported the violation to the housing authority in retaliation for her son's alleged incarceration due to domestic violence. The court noted that Ms. Hammond did not provide evidence of the domestic violence beyond her own testimony, such as police reports or criminal charges of domestic violence. Such evidence may have been helpful in arguing that Ms. Snow's complaint to the housing authority was biased because she was angry or upset at Ms. Hammond regarding Mr. Snow's domestic violence arrest. ■

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

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## Court Reinstates Section 8 Voucher in Case Where Both Parties Claimed Domestic Violence

A court reinstated a Section 8 voucher tenant's assistance in a case where there were conflicting claims of domestic violence. The court found that the public housing agency (PHA) failed to provide adequate procedural protections to the tenant before terminating his assistance. In *Badri v. Mobile Housing Board*, 2011 WL 3665340 (S.D. Ala. Aug. 22, 2011), Mohammed Badri's voucher was terminated after his wife notified the PHA that Mr. Badri had committed acts of domestic violence against her. The wife provided documentation that she and the couple's children had entered a domestic violence shelter and that she had made a police report regarding the violence. Based on these documents, the PHA transferred the voucher solely to Mr. Badri's wife.

Mr. Badri filed suit against the PHA, alleging due process violations in the termination of his voucher. Mr. Badri alleged that prior to the voucher termination hearing, the PHA failed to give him the documents it planned to rely on during the hearing. Mr. Badri further alleged that the PHA relied solely on hearsay evidence during the hearing, which included a letter from the wife, an email from the property manager stating that the police had removed the wife and children from the unit and taken them to a shelter, a letter from the shelter confirming the wife and children's residence, and the police report. Mr. Badri alleged that his wife had abused him for years.

The court ordered the PHA to restore Mr. Badri's assistance. The court found that the hearsay evidence the PHA presented was unreliable, and that Mr. Badri did not have an adequate opportunity to confront and cross-examine the witnesses against him. The court did not indicate whether the PHA should continue to provide assistance to Mr. Badri's wife. It is unclear whether the PHA will hold an additional hearing to determine whether the wife committed acts of domestic violence, or whether the housing authority will provide voucher assistance to both parties. ■