

# Domestic Violence and Public and Subsidized Housing: Addressing the Needs of Battered Tenants Through Local Housing Policy

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In 2003 the U.S. Department of Housing and Urban Development (HUD) reissued to public housing authorities its Public Housing Occupancy Guidebook, including a chapter on domestic violence. HUD was responding to advocacy and litigation by a coalition of national civil rights, domestic violence, and housing groups. The coalition charged that discrimination against domestic violence survivors was sex discrimination under the Fair Housing Act.<sup>1</sup> The domestic violence chapter recognized the barriers that individuals experiencing domestic violence face in their attempts to find and keep public housing. The Guidebook chapter reaches out to public housing authorities attempting to institute local policies to help survivors gain access to safe, affordable housing. Here we address outreach strategies to improve access to the federal housing programs for domestic violence survivors; we focus on the federal Public Housing Program and the Section 8 Housing Choice Voucher Program administered federally by HUD and locally by public housing authorities.<sup>2</sup>



<sup>1</sup>U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 215–21 (2003) (Chapter 19: Domestic Violence)(hereinafter HUD GUIDEBOOK); *United States ex rel. Alvera v. C.B.M. Group*, No. CV 01-857-PA (D. Or. 2001) (consent decree) (Clearinghouse No. 53,895); *Alvera v. Creekside Village Apartments*, No. 10-99-0538-8 (HUD 2001) (HUD Determination of Reasonable Cause).

<sup>2</sup>On federal public housing see 42 U.S.C.A. §§ 1437 *et seq.* (2004); 24 C.F.R. pt. 960 (2004); on the Section 8 Housing Choice Voucher Program see 42 U.S.C.A. § 1437f (2004); 24 C.F.R. pt. 982 (2004). A discussion of domestic violence issues in the Project-Based Section 8 Certificate Program is beyond the scope of this article. For general background on the Project-Based Section 8 Program (also known as “site-based Sec. 8”), see 24 C.F.R. pt. 983 (2004); National Housing Law Project, *Project-Based Vouchers*, in HUD HOUSING PROGRAMS: TENANTS’ RIGHTS § 1.3.5.1.1 (3d ed. 2004). Other federal housing programs, including the Low-Income Housing Tax Credit and housing funded by the U.S. Department of Agriculture through the Rural Housing Service, are beyond the scope of this article. Many of the barriers to housing assistance identified here are also present in these programs, and the advocacy strategies described here may be a helpful guide, by analogy, to advocacy on domestic violence in these programs. The federal housing statute remains unclear regarding battered immigrant women’s eligibility for federal public and subsidized housing. A discussion of this important issue is beyond the scope of this article. See generally 8 U.S.C.A. §§ 1641(b), (c) (2004) (“qualified alien” eligibility for federal public benefits); 8 U.S.C.A. § 1611(c) (2004) (federal public and assisted housing included as federal public benefit); 42 U.S.C.A. § 1436a (2004) (HUD restrictions on immigrant eligibility for housing assistance); 24 C.F.R. § 5.500 (2004); 66 Fed. Reg. 3613 (Jan. 16, 2001) (A.G. Order 2353-2001, emergency life and safety); January 19, 2001, Letter from HUD (emergency life and safety); 62 Fed. Reg. 61344 (Nov. 17, 1997) (interim guidance on “qualified alien” eligibility); HUD GUIDEBOOK § 19.5; National Housing Law Project, *Housing Benefits for Qualified Aliens Who Are Battered Still in Question*, 33 HOUSING LAW BULLETIN 297 (2003). Native American women who experience domestic violence face unique difficulties in accessing housing. See generally National Housing Law Project, *Federal Housing Policies and Programs for Native Americans*, in HUD HOUSING PROGRAMS: TENANTS’ RIGHTS § 1.3.12 (3d ed. 2004).

Domestic violence is a leading cause of homelessness nationally. In 2003, of U.S. cities surveyed, 36 percent reported that domestic violence was a primary cause of local homelessness.<sup>3</sup> Between 22 percent and 57 percent of homeless women reported that domestic violence was the immediate cause of their homelessness in varying regions.<sup>4</sup> Between 50 percent and 100 percent of homeless women had experienced domestic or sexual violence at some point in their lives.<sup>5</sup> Some women and their families lose their homes when they flee abuse. Other domestic violence survivors become homeless after being evicted as a result of the domestic violence.<sup>6</sup>

Exacerbating this crisis is the severe shortage of affordable housing for low-income individuals and families in the United States. Over five million households have “worst case” housing needs: living in substandard housing, doubled-up, or paying over one-half of their income for rent, according to a 2003 HUD report.<sup>7</sup> Federal housing assistance programs, including public hous-

ing, housing subsidy programs, transitional and supportive housing, and emergency shelter programs, are all underfunded, under increasing political attack, and insufficient to meet the rapidly growing need. For an individual who is in a violent relationship and already living in poverty, this harsh reality often means that she must choose between life with her abuser or life on the streets.<sup>8</sup>

### Domestic Violence and Public Housing

Public housing, federally funded and operated by local public housing authorities, is a critical housing resource for low-income women and their families fleeing domestic abuse. The program provides public housing units to individuals who meet the program’s income and other eligibility requirements.<sup>9</sup> However, loss and destruction of public housing units over time, dwindling federal investment, and the increasing demand for available units have led to seemingly endless waiting lists of sever-

<sup>3</sup>See U.S. Conference of Mayors, A Status Report on Hunger and Homelessness in America’s Cities: A 25-City Survey 72 (2003); Blueprint to End Homelessness: An Initiative of the Indianapolis Housing Task Force 9 (2002).

<sup>4</sup>See Wilder Research Center, Homeless in Minnesota 2003, at 22 (2004); Center for Impact Research, Pathways to and from Homelessness: Women and Children in Chicago Shelters 3 (2004); National Center on Family Homelessness and Health Care for the Homeless Clinicians’ Network, Social Supports for Homeless Mothers 14, 26 (2003); Institute for Children and Poverty, The Hidden Migration: Why New York City Shelters Are Overflowing with Families (2004); Homes for the Homeless & Institute for Children and Poverty, Ten Cities 1997–1998: A Snapshot of Family Homelessness Across America 3 (1998); Virginia Coalition for the Homeless, 1995 Shelter Provider Survey (1995), cited in National Coalition for the Homeless, Domestic Violence and Homelessness: NCH Fact Sheet No. 8 (1999); ACLU Women’s Rights Project, Domestic Violence and Homelessness, [www.aclu.org](http://www.aclu.org).

<sup>5</sup>See *supra* note 4. See also Missouri Association for Social Welfare, Homelessness in Missouri: The Rising Tide (2002); Homes for the Homeless, The Other America: Homeless Families in the Shadow of a New Economy: Family Homelessness in Kentucky, Tennessee, and the Carolinas 3 (2000); Richard Douglass, The State of Homelessness in Michigan: A Research Study (1995), cited in National Coalition for the Homeless, *supra* note 4; Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 CLEARINGHOUSE REVIEW 420 (1991) (citing 1990 study).

<sup>6</sup>See, e.g., *U.S. Department of Housing and Urban Development v. Rucker*, Nos. 00-1771 & 00-1871 (U.S. filed 2001) (brief of amici curiae National Network to End Domestic Violence et al.); *United States ex rel. Alvera* No. CV 01-; *Warren v. Ypsilanti Housing Commission* (E.D. Mich. 2003), [www.aclumich.org/pdf/briefs/Comp8feb02.pdf](http://www.aclumich.org/pdf/briefs/Comp8feb02.pdf); *Raney v. Crawford/Katica Inc.* (W.D. Wash. filed 2004) (complaint available from Northwest Women’s Law Center, [www.nwwlc.org](http://www.nwwlc.org); *Winsor v. Regency Property Management*, No. 94 CV 2349) (Wis. Cir. Ct. 7, 1995) (memorandum opinion).

<sup>7</sup>Office of Policy Development and Research Information Service, U.S. Department of Housing and Urban Development, Trends in Worst Case Needs for Housing, 1978–1999, Plus Update on Worst Case Needs in 2001 xix (2003), [www.huduser.org/publications/pdf/trends.pdf](http://www.huduser.org/publications/pdf/trends.pdf).

<sup>8</sup>In this article we refer to survivors of domestic violence as women because, at this time women disproportionately experience this violence. See CALLIE MARIE RENNISON, BUREAU OF JUSTICE STATISTICS, CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993–2001 1 (NCJ-197838, Feb. 2003); CALLIE MARIE RENNISON & SARAH WELCHANS, SPECIAL REPORT: INTIMATE PARTNER VIOLENCE 1 (NCJ-178247, May 2000); BUREAU OF JUSTICE STATISTICS, SELECTED FINDINGS: VIOLENCE BETWEEN INTIMATES 2 (NCJ-149259, Nov. 1994). We recognize that men in opposite-sex relationships are sometimes victims and that intimate partner violence occurs in same-sex relationships of either sex.

<sup>9</sup>See 42 U.S.C.A. §§ 1437 *et seq.* (2004); 24 C.F.R. pt. 960 (2004).

al years in most regions of the country, particularly in large urban areas, as well as infamously poor unit and building conditions.

**Waiting Lists and Preferences.** While waiting lists are barriers for all low-income applicants, a long wait can be especially harmful for a domestic violence victim seeking an immediate safe refuge. Before 1998, federal law required public housing authorities to employ “preferences” to ensure that certain highly disadvantaged or emergency categories of eligible applicants received priority on local waiting lists as units became available. Included in this scheme was a preference for “involuntarily displaced” families, which included victims of domestic violence.<sup>10</sup> However, in 1998 all federal preferences were repealed in favor of local public housing authority discretion. A non-binding statement in the same legislation urged that “each public housing agency ... should, consistent with the public housing agency plan of the agency, consider preferences for individuals who are victims of domestic violence,” and HUD regulations give public housing authorities the specific authority to establish a domestic-violence-victim preference.<sup>11</sup> In the 2003 Public Housing Occupancy Guidebook, HUD urged public housing authorities to adopt such a preference.<sup>12</sup> About 35 percent of public housing authorities in the public housing program maintain a domestic-violence-victim preference of some sort, while a majority do not.<sup>13</sup> The priority that public housing authorities

with a domestic-violence-victim preference give to domestic violence victims within the overall local preference scheme varies locally.

A public housing authority that has no preference at all for domestic violence victims may adopt one. Public housing authorities that maintain a domestic-violence-victim preference can improve its utility by addressing the preference’s hierarchy within the larger preference scheme and by not requiring burdensome documentation, such as a current protective order, to demonstrate eligibility for a preference.<sup>14</sup> Advocacy for adoption of a preference can be challenging because of prevalent misunderstandings of domestic violence, the length of most waiting lists and the compelling needs of many on these lists, the funding and resource constraints increasingly faced by public housing authorities and state and local governments, and the administrative burdens of instituting a new preference. While establishing preferences for domestic violence victims does not resolve these resource issues or shorten the housing waiting list, given the danger and housing discrimination faced by domestic violence survivors, public housing authorities should be made aware of these needs, their explicit authority to address them, and HUD’s explicit recommendations.

**Admissions.** Public housing authorities are permitted to screen public housing applicants for family behavior and suitability for tenancy.<sup>15</sup> Public housing authorities may consider an applicant’s

<sup>10</sup>See 61 FED. REG. 9044 (1996); National Housing Law Project, *Responding to Congressional Directive to Protect Victims of Domestic Violence*, 33 HOUSING LAW BULLETIN 43, 44 (2002).

<sup>11</sup>Pub. L. No. 276-105, 112 Stat. 2518, 2548 (1998), § 514(e), codified at 42 U.S.C.A. § 1437f note (2001); 24 C.F.R. §§ 982.207(b)(4), 960.206(b)(4) (2001); for HUD regulations, see 24 C.F.R. 960.206(b)(4) (2004).

<sup>12</sup>See HUD GUIDEBOOK §§ 19.0, 19.1. Public housing authorities also may provide a preference subgroup for immigrant victims to apply for public housing if the victim is obtaining “qualified alien” status. See *id.* § 19.5.

<sup>13</sup>See National Low-Income Housing Coalition, *A Look at Waiting Lists: What Can We Learn from the HUD-Approved Annual Plans?* 7 NLIHC RESEARCH NOTE No. 04-03 (2004), [www.nlihc.org](http://www.nlihc.org). Other local preferences may include such categories of individuals as working family, homeless, elderly, disabled, hate crime victims, veterans, having inadequate living conditions, and involuntarily displaced for reasons other than domestic violence. Domestic violence survivors coincidentally might qualify for some of these other preferences.

<sup>14</sup>The HUD GUIDEBOOK recommends that public housing authorities exercise their discretion in accepting a wide range of evidence to establish proof of domestic violence. See HUD GUIDEBOOK § 19.2.

<sup>15</sup>See 24 C.F.R. § 960.203 (2004).

rental and credit history, prior criminal activity, and public housing debts. Such screening often excludes individuals who have experienced domestic violence. A victim of domestic violence might have been arrested because she fought back in self-defense and thus may have a history of “violent criminal activity.” She might have fled a previous unit in violation of her lease for the sake of her safety. She might have been evicted from public housing in the past because of domestic violence in her unit. Any of these events may lead to a domestic violence victim being denied public housing as an indirect or direct result of the violence against her.<sup>16</sup>

As the Public Housing Occupancy Guidebook explains, public housing authorities have the authority to, and should, address these barriers.<sup>17</sup> When a negative history would otherwise disqualify an individual from being admitted, public housing authorities may adopt a policy of inquiring whether any member of the applicant household is, or has been, a victim of domestic violence (while making clear that an individual has the right not to reveal a history of abuse). If a member of the household reveals that she is a survivor of domestic violence, the authority may determine whether there is a substantial connection between the violence and the negative history. If there is, the authority in most instances may inherently disregard the adverse information and approve admission of the applicant. The guidebook also recommends that, upon learning of an applicant’s experience of domestic violence, public housing authorities refer domestic violence survivors to appropriate domestic violence services in the community.

**Transfers.** For a domestic violence victim fleeing abuse, moving out of the

public housing unit—especially, but not only, if she shared the unit with her abuser—is a necessary step toward safety. Many public housing authorities maintain policies to ensure that a public housing resident can move in an emergency or other special situation, such as disability. Public housing authorities have the discretion to adopt such a policy for domestic violence victims.<sup>18</sup> Through the guidebook, HUD urges that public housing authorities do so by, for example, issuing a voucher to the resident to ensure that she can move.<sup>19</sup> In recognition of the emergency health and safety considerations underlying a victim’s request for an emergency transfer, public housing authorities adopting such emergency transfer policies must further adopt procedures to avoid long delays in approving and expediting emergency transfers; delays can further endanger victims. When a resident seeks an emergency transfer based on domestic violence, a public housing authority or its staff should accept a wide range of “proof” of domestic violence, and a public housing authority’s policies should acknowledge that the credible statement of the victim can be sufficient proof.<sup>20</sup> In addition to establishing or maintaining a meaningful transfer policy, public housing authorities should make certain that residents are actually aware of transfer options available to them in situations of domestic or sexual violence.

**Family Breakup.** When a family in a public housing unit breaks up as a result of domestic violence, public housing authorities are often asked to determine which family member has a right to remain in the unit. Public housing authorities should adopt family breakup policies that prefer the victim to the abuser in such circumstances and affirm

<sup>16</sup>For background on the direct and indirect effects of domestic violence on a victim’s financial independence, see Jennifer S. Matel, *Economic Literacy*, in *THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE* 400–402 (ABA Commission on Domestic Violence 2d ed. 2004).

<sup>17</sup>See HUD GUIDEBOOK § 19.0.

<sup>18</sup>*Id.* § 19.4.

<sup>19</sup>See *id.*

<sup>20</sup>The HUD GUIDEBOOK recommends that public housing authorities exercise their discretion in accepting a wide range of evidence to establish proof of domestic violence. See *id.* § 19.2.

that it will abide by any judicial order, including a protective order, regarding occupancy of the unit. To simplify such determinations, public housing authorities should also ensure that all adult members of a household are included in a lease.

**Eviction and Termination.** Federal law permits eviction of a public housing resident for any violent activity of the resident, her guest, or any other person under her control.<sup>21</sup> Some public housing authorities have used and continue to use this discretion to evict domestic violence victims because of the violent actions of their abusers.<sup>22</sup> A public housing authority that has a policy of evicting or otherwise discriminating against domestic violence victims may be in violation of the federal Fair Housing Act, state fair housing laws, and its own required certification to HUD, all of which prohibit sex discrimination, as well as state and local laws that prohibit some forms of housing discrimination against domestic violence victims.<sup>23</sup> Public housing authorities can and should adopt policies stating that such policies constitute sex discrimination prohibited by their required certification to HUD.<sup>24</sup>

Through the Public Housing Occupancy Guidebook, HUD encourages public housing authorities to avoid evicting victims of domestic violence because of circumstances beyond their control and urges

public housing authorities to consider, where appropriate, alternatives to eviction in situations of domestic violence.<sup>25</sup> HUD also makes clear that in such situations a public housing authority may remove a perpetrator from the unit while allowing the victim to remain.<sup>26</sup> HUD again recommends that, upon learning of a resident's experience of domestic violence, the authority should refer her to appropriate domestic violence services.<sup>27</sup> All public housing authorities should adopt these recommendations.

### Domestic Violence and Section 8 Housing Choice Vouchers

The Section 8 Housing Choice Voucher Program provides qualifying low-income households with vouchers to cover a portion of housing costs.<sup>28</sup> HUD funds the program, which is administered by local public housing authorities. When a public housing authority issues a voucher to a household, the household must find in the private market housing that meets quality standards and rent guidelines set by HUD and the public housing authority. When the household finds a unit, the household signs a lease with the landlord, while the landlord and the public housing authority enter into a housing assistance payment contract. The public housing authority pays the landlord directly while the household remains in tenancy.

<sup>21</sup>See 42 U.S.C.A. § 1437d(l)(6) (2004); *U.S. Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002).

<sup>22</sup>See *Rucker*, 535 U.S. at 125; *United States ex rel. Alvera*, CV 01-857-PA; *Warren v. Ypsilanti Housing Commission*; *Raney v. Crawford/Katica Inc.*; *Winsor v. Regency Property Management*, No. 94 CV 2349

<sup>23</sup>Such a policy would likely be discriminatory and unlawful because of its disparate impact on women. See *United States ex rel. Alvera*, No. CV 01-857-PA (consent decree); *Alvera*, No. 10-99-0538-8; *Winsor*, No. 94 CV 2349; 1985 Op. N.Y. Att'y Gen. 45, Formal Op. No.85-F15, 1985 N.Y. AG LEXIS 8 (refusal to rent to victims of domestic violence or requiring abused applicants to obtain a divorce from the abuser violates the state human rights law because of the disparate impact upon women); Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 35 CLEARINGHOUSE REVIEW 708 (March–April 2002); for state and local discrimination laws, see R.I. GEN. LAWS §§ 34-37-1, -2, -2.4, -3, -4; E.H.B. 1645, 58th Leg. (Wash. 2003); MINN. STAT. § 504B.205 (ensuring victims' right to summon police); S.B. 92, 78th Reg. Sess. (Tex. 2003) (same); H.B. 2021, 22d Leg. (Haw. 2004) (pending antidiscrimination legislation); S.B. 707, 163d Gen. Ct. (Mass. 2003) (same); Intro 305 of 2004 (New York City Council 2004) (same); S.B. 4812/A.B. 8135, 2003–2004 Reg. Sess. (N.Y. 2003) (same); H.B. 3290, 72d Leg. Ass. (Ore. 2003) (same).

<sup>24</sup>See 42 U.S.C.A. § 1437(c-1)(d)(15) (2004).

<sup>25</sup>See HUD GUIDEBOOK § 19.5.

<sup>26</sup>See *id.* See also H.B. 1583, 2004 Reg. Sess. (La. 2004).

<sup>27</sup>See HUD GUIDEBOOK § 19.5.

<sup>28</sup>See 42 U.S.C.A. § 1437(o); 24 C.F.R. pt. 982.



Serving over two million households a year, vouchers are the most common form of rental assistance in the country. The program is also chronically oversubscribed. Most jurisdictions have years-long waiting lists for receiving voucher assistance, and recent moves to restrict federal funding for the program have further reduced the availability of vouchers in many jurisdictions. Unlike in the public housing program, HUD has no guidance to public housing authorities regarding domestic violence and the voucher program. As in public housing, however, individuals who have experienced domestic violence face a variety of obstacles in obtaining and maintaining voucher-assisted housing.

**Waiting Lists and Preferences.** As in public housing, while Congress and HUD have strongly urged public housing authorities administering voucher programs to consider granting preferences to victims of domestic violence, no such preference is required.<sup>29</sup> Thus, while about 28 percent of public housing authorities have adopted preferences for domestic violence victims seeking voucher assistance, most have not.<sup>30</sup> In these jurisdictions, domestic violence victims seeking voucher assistance in order to leave a violent relationship find themselves at the bottom of a long waiting list.<sup>31</sup>

**Admissions.** Public housing authorities may screen voucher applicants for family behavior or suitability for tenancy.<sup>32</sup> HUD regulations specify various bases on which public housing authorities may deny voucher assistance to a family—for example, public housing authorities may

decline to assist individuals who have been evicted from public housing in the last five years or who have engaged in “violent criminal activity.”<sup>33</sup> In determining whether to deny assistance, public housing authorities may consider all relevant circumstances, including the culpability of individual family members, and public housing authorities may require the culpable family member not to reside in the unit as a condition of providing the voucher.<sup>34</sup> Landlords may adopt and employ their own additional screening for voucher-assisted families. As in the public housing program, many of these requirements can work directly or indirectly to screen out victims of domestic violence. Likewise, public housing authorities have the authority to address most of these barriers. When domestic violence is related substantially to information that otherwise would disqualify an applicant for voucher assistance, public housing authorities in most instances may inherently disregard the adverse information and issue a voucher.

**Leaving a Voucher-Assisted Unit.** Vouchers are portable. In general, a household with a voucher may move and retain its voucher both within the jurisdiction that issued the voucher and outside it.<sup>35</sup> However, the public housing authority may prohibit a family from moving during the initial lease term and prohibit more than one move by the family each year.<sup>36</sup> The public housing authority may deny permission to move with the voucher if the public housing authority has any independent grounds, such as a serious violation of the lease by

<sup>29</sup>Pub. L. No. 105-276, 514, 112 Stat. 2461, 2547 (1998); 24 C.F.R. § 982.207.

<sup>30</sup>See National Low-Income Housing Coalition, *supra* note 13.

<sup>31</sup>As in public housing, some jurisdictions have other preferences—such as preferences for homeless families or for individuals who have reported violent crimes—for which domestic violence survivors may coincidentally qualify.

<sup>32</sup>24 C.F.R. § 982.552(e).

<sup>33</sup>24 C.F.R. §§ 982.552; 982.553.

<sup>34</sup>24 C.F.R. § 982.552-53. Public housing authorities must deny voucher assistance in some circumstances, including when any member of an applicant family fails to consent to the public housing authority's efforts to obtain information regarding the family's income or if any family member fails to establish citizenship or eligible immigration status.

<sup>35</sup>24 C.F.R. § 982.314.

<sup>36</sup>*Id.*

the tenant.<sup>37</sup> Thus, if a tenant household moves out of a unit in violation of its lease, the public housing authority may terminate assistance. A public housing authority may prohibit any household living outside its jurisdiction at the time the household applies for voucher assistance from taking the voucher outside the jurisdiction for one year after receiving a voucher.<sup>38</sup> A family may not move with its voucher to another jurisdiction if the family has moved out of its previous voucher-assisted housing in violation of a lease.<sup>39</sup>

When a public housing authority chooses to impose such restrictions on moving, it may endanger domestic violence victims who need to leave their current housing quickly to protect their safety. However, public housing authorities may adopt policies that recognize the need to relocate quickly while maintaining housing assistance. For instance, public housing policies can make clear that tenants who move during the initial lease term or more than once a year to protect their own safety will not lose voucher assistance as long as the tenant notifies the authority of the situation within a reasonable period. Public housing authorities may prioritize these emergency moves and approve them expeditiously.

The only portability restriction that the voucher statute or the regulations require public housing authorities to adopt is the prohibition on moving to another jurisdiction with a voucher if a family has moved out of a previous unit in violation of a lease.<sup>40</sup> However, every

housing assistance payment contract entered into by the public housing authority and the landlord states that the landlord must offer to assisted tenants leases consistent with state and local law.<sup>41</sup> Public housing authorities may decline to approve any unlawful lease.<sup>42</sup> A few jurisdictions have adopted laws requiring landlords to release domestic violence victims from their leases in certain emergency circumstances, and in such jurisdictions public housing authorities may and should refuse to approve any lease that conflicts with these laws.<sup>43</sup>

**Family Breakup.** As in the public housing context, when domestic violence results in the breakup of a household receiving housing assistance, a public housing authority must determine who will continue to receive that assistance. Unlike in the public housing program, HUD regulations require public housing authorities to set forth their voucher program family breakup policies in their administrative plans.<sup>44</sup> The regulations make clear that a public housing authority may consider whether family members are forced to leave the unit as a result of actual or threatened physical violence by another member of the household.<sup>45</sup> Consistent with these regulations, public housing authorities should adopt family breakup policies making clear that a voucher stays with the victim of domestic violence when violence is a factor in the breakup of a family whether or not the victim is the “head of household” or the individual remaining in the unit. To simplify imple-

<sup>37</sup>24 C.F.R. § 982.314; 982.551–52.

<sup>38</sup>42 U.S.C.A. § 1437f(r)(1).

<sup>39</sup>42 U.S.C.A. § 1437f(r)(5).

<sup>40</sup>*Id.*

<sup>41</sup>42 U.S.C.A. § 1437f(o)(7)(B)(ii)(I).

<sup>42</sup>24 C.F.R. § 982.308(c).

<sup>43</sup>See OR. REV. STAT. § 90.453 (2003); WASH. REV. CODE § 59.18.575 (2004); WASH. REV. CODE ANN. § 59.18.352 (2004) (threats by another tenant). Similar bills have been proposed in several other jurisdictions. See, e.g., Intro 305 of 2004 (New York City Council 2004).

<sup>44</sup>24 C.F.R. § 982.315.

<sup>45</sup>*Id.*

mentation of this policy, public housing authorities should routinely issue vouchers in the name of all adults in a household.

**Eviction and Termination.** Federal law prohibits a landlord from terminating a voucher holder's tenancy during the term of the lease except for serious or repeated violation of the lease, violation of law, or other good cause.<sup>46</sup> "Other good cause" includes "a family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises."<sup>47</sup> As in public housing, all leases must also provide that "any violent or drug-related activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy."<sup>48</sup> If a landlord evicts a voucher-holding family for a "serious violation" of the lease, the public housing authority must terminate voucher assistance.<sup>49</sup>

The mandated lease provision permitting eviction and termination for any violent activity of the tenant, a guest, or any other person under the tenant's control has been used to evict domestic violence victims for the actions of their abusers. The regulations' broad definition of good cause for eviction may also invite evictions of individuals who have experienced domestic violence. However, public housing authorities may prevent domestic violence victims from losing their homes or their vouchers because of their abusers' actions. First, in the growing number of jurisdictions that explicitly offer domestic violence victims some protection from eviction, public housing authorities may review any leases offered

to assisted tenants to ensure that they comply with these laws. As in the case of public housing tenants, a landlord with a policy of evicting or otherwise discriminating against domestic violence victims may be in violation of the Fair Housing Act, state fair housing laws, and its housing assistance payment contract with HUD, all of which prohibit sex discrimination, as well as state and local laws that prohibit some forms of housing discrimination against domestic violence victims.<sup>50</sup> Public housing authorities may consider such actions to constitute sex discrimination prohibited by the housing assistance payment contract and may exclude from the voucher program a landlord that discriminates against a voucher holder because she has experienced domestic violence. A public housing authority may consider that an owner's eviction of a domestic violence victim because of the violence is not an eviction for a "serious lease violation" and is not grounds for terminating the victim's voucher.

### Removing the Obstacles: Advocacy Strategies

Domestic violence organizations, women's rights groups, housing advocates, and others are continuing to explore promising legislative and litigation responses to housing discrimination, including discrimination in the public housing and voucher programs, against domestic violence survivors. However, because public housing authorities have the discretion to address many of the obstacles that domestic violence survivors face in the public housing and voucher programs, additional advocacy strategies targeting local public housing authorities have the potential to make a meaningful difference for individuals experiencing

<sup>46</sup>42 U.S.C.A. § 1437f(o)(7)(C); see 24 C.F.R. § 982.310(a).

<sup>47</sup>24 C.F.R. § 982.310(d)(1)(ii).

<sup>48</sup>42 U.S.C.A. § 1437f(o)(7)(D).

<sup>49</sup>24 C.F.R. § 982.552(b)(2).

<sup>50</sup>Such a policy would likely be discriminatory and unlawful because of its disparate impact on women. See Weiser & Boehm, *supra* note 23. See state and local laws, 24 C.F.R. § 982.308(c); see, e.g., R.I. GEN. LAWS §§ 34-37-1 *et seq.*; WASH. REV. CODE § 59.18.580; N.M. STAT. ANN. § 47-8-33(J); WIS. STAT. ANN. § 106.50(5m)(d). Similar laws have been proposed in several other jurisdictions. See, e.g., H.B. 2021, 22d Leg. (Haw. 2004).



abuse. The recent Public Housing Occupancy Guidebook can serve as a springboard for local discussions and assist in crafting domestic violence policies in the context of both public housing and the voucher program. Indeed, in response to this guidance, organizations in cities including Lansing (Michigan), Chicago, Milwaukee, and Washington (D.C.) are reaching out to their local public housing authorities to begin conversations about how better to serve the needs of individuals who have experienced domestic violence.

**Building a Coalition.** Because of the recent trend toward local control in the federal housing programs, local coalitions with detailed understanding of the effects of local decision making on housing policy may be best qualified to advocate meaningful reform. These coalitions may include domestic violence legal and social service providers (because of their intimate understanding of the dynamics of domestic violence and the needs of survivors locally), legal aid offices with housing or landlord-tenant practices, domestic violence practices, or both (because of their likely familiarity with the workings and policies of the local public housing authority), and local civil rights or fair housing organizations (because of their knowledge about the potential interaction between antidiscrimination laws and treatment of women who have experienced domestic violence). Poverty groups and housing and homelessness organizations may also bring valuable insight to the table. Just as a coalition of national organizations on domestic violence, housing advocacy, and women's rights successfully urged HUD to issue the domestic violence chapter of the guidebook, analogous local coalitions can help public housing authorities understand domestic violence survivors' housing needs

and their capacity to make a meaningful, systemic difference. Such coalitions are also well prepared to define local issues and needs and prioritize advocacy objectives.

**Reaching out to Public Housing Authorities.** One strategy to frame a proposed agenda is through a letter (from the coalition to the public housing authority) that sets forth the specific policy barriers that domestic violence survivors experience and requests a meeting with the authority to address these policies.<sup>51</sup> The relevant guidebook chapter can draw the public housing authority's attention to domestic violence, as can a description of the public housing authority's legal obligation not to discriminate against domestic violence survivors.

A local coalition also should aim to persuade the public housing authority to address the needs of domestic violence survivors in the administrative and annual plans that the authority is required to submit to HUD. Federal law requires public housing authorities to plan annually for operations in consultation with voucher recipients and public housing residents.<sup>52</sup> The general public must also be permitted to review and comment on such a plan in a public hearing.<sup>53</sup> Public housing plans must describe the public housing authority's admission preferences, eligibility rules, and screening requirements.<sup>54</sup> They must certify that the public housing authority is fulfilling its legal obligation of affirmatively advancing fair housing opportunity.<sup>55</sup> Public housing authorities operating voucher programs must create a further, more detailed administrative plan setting out public housing policies, appended to the annual plan submitted to HUD.<sup>56</sup>

<sup>51</sup>For a sample outreach letter (from the ACLU Women's Rights Project to local public housing authorities) addressing the public housing program and the needs of domestic violence survivors, see [www.aclu.org/WomensRights/WomensRights.cfm?ID=16972&c=173](http://www.aclu.org/WomensRights/WomensRights.cfm?ID=16972&c=173).

<sup>52</sup>42 U.S.C. § 1437c-1.

<sup>53</sup>*Id.* § 1437c-1(f).

<sup>54</sup>*Id.* § 1437c-1(d).

<sup>55</sup>*Id.* § 1437c-1(d)(15).

<sup>56</sup>24 C.F.R. § 982.54; see also U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, VOUCHER PROGRAM GUIDEBOOK: HOUSING CHOICE 3-1 to 3-6 (2001).

The public housing authority's annual planning and the requirement that a public housing authority give the public notice and an opportunity for comment on its annual plan can open the door to a coalition's presentation of the needs of domestic violence survivors. In some instances, advocates can frame addressing domestic violence as a way for the public housing authority to meet its obligation of affirmatively furthering fair housing. In many instances, the local coalition should reach out not only to the governing body and managers of the public housing authority, but also to the public housing authority's resident advisory board because of the board's role in the planning. At the very least, a coalition will find it helpful to familiarize itself with the public housing authority's annual schedule for creating and submitting its plan to HUD so that the coalition may approach the authority at a time that permits inclusion of policy changes in the next plan.

**Correcting Misperceptions.** Different public housing authorities react differently to advocacy on behalf of individuals who have experienced domestic violence. In some instances, advocates can make a difference by helping public housing governing boards and managers understand the scope of their own positive discretion. For example, a public housing manager may not be aware that a public housing authority may evict an abuser who resides in the household, while permitting the rest of the family to stay. Or a voucher administrator may not realize that a voucher need not remain with the "head of household" in the event of a family breakup. Sometimes resistance to proposed policies may be addressed through information about the dynamics of domestic violence. For instance, a public housing authority may be concerned about the risk of ongoing violence if it allows an individual who has experienced domestic violence to remain in public housing. Information about the efficacy of safe, secure housing and referrals to other supports in helping battered individuals end violent relationships may respond to this concern. Resident advisory boards may be concerned about the potential disruption due to domestic violence in their communities. Advocates can explain that

when individuals must keep the violence a secret in order to preserve their housing, victims are less able to take the steps necessary to end the violence. In other words, a failure to help individuals experiencing domestic violence may lead to more crime in the community. Unlike other crimes, domestic violence typically is highly targeted toward specific intimate partners or family members, not at random tenants or individuals.

**Training and Ongoing Partnerships.** In addition to efforts to persuade public housing authorities to adopt helpful policies, a coalition can train public housing managers and decision makers on the dynamics of domestic violence and propose an ongoing partnership to address the needs of residents and voucher recipients who experience violence. Many public housing authorities gladly accept the assistance of domestic violence organizations that offer to serve as a referral resource for residents and to consult with public housing authorities on productive responses to questions involving domestic violence.

**Value of Best Practices.** While advocacy vis-à-vis individual public housing managers is a localized response to a problem that extends beyond local boundaries, such localized advocacy also has the potential to make a broader impact. Examples of best practices by which public housing authorities have successfully addressed domestic violence are invaluable in efforts to persuade other public housing authorities to undertake similar efforts. Such successes help demonstrate that practical, effective responses are available for many of the housing barriers that survivors of domestic violence face, thus strengthening arguments for legislative or regulatory measures responding to these needs more broadly. The needs of domestic violence survivors can sometimes motivate policymakers who are otherwise hostile to low-income housing programs or civil rights enforcement. However, in the face of such ongoing hostility at the federal level, local efforts may hold increased value as a practical strategy for addressing the housing needs of domestic violence survivors.