

ACLU Women's Rights Project
125 Broad Street
New York, NY 10004
(212) 549-2644
Model letter to PHAs on domestic violence
Addresses public housing and Section 8
August 2007

Dear __:

On behalf of the undersigned domestic violence, civil rights, and legal aid organizations, we are writing to urge the __ Housing Authority to adopt policies to ensure that battered and abused women are treated fairly in their efforts to obtain and maintain public housing and housing voucher assistance. We would like to meet with you to discuss the best methods of accomplishing this goal, a goal that Congress and the United States Department of Housing and Urban Development have mandated all public housing authorities to pursue.

The ability to maintain safe and secure housing apart from the abuser is a key factor in any domestic abuse victim's success. Barriers to obtaining and maintaining housing undermine a battered woman's efforts to separate herself from abuse and increase the risk to her and her children. Indeed, a lack of safe housing can threaten domestic violence victims' very survival. For these reasons, in the Conference Report that accompanied the FY 2002 HUD appropriations bill, Congress directed HUD to "develop plans to protect victims of domestic violence from being discriminated against in receiving or maintaining public housing because of their victimization." H.R. Rep. No. 107-272, at 120. In 2003, HUD responded by issuing a new chapter in its Public Housing Occupancy Guidebook, addressing PHAs' treatment of domestic violence. The HUD Guidebook chapter encourages PHAs to develop policies and programs responsive to the needs of domestic violence victims and provides a framework by which they might do so. Most recently, in January 2006, the Violence Against Women Act of 2005 (VAWA) was enacted, containing numerous provisions guaranteeing the housing rights of victims of domestic violence, dating violence, and stalking. We urge you to implement VAWA, follow the guidance set out by HUD, and adopt, in consultation with domestic violence providers and housing advocates, a plan for addressing the needs of [LOCALITY's] domestic violence victims in their attempt to obtain and maintain public housing and voucher assistance. Such a plan should address the following issues.

Preferences for Admission for Domestic Violence Victims

HUD "strongly encourages" PHAs to consider adopting preferences for admission for victims of domestic violence. *Public Housing Occupancy Guidebook* – 19.0 Overview (June 2003); *see also* 24 C.F.R. § 960.206(b)(4). Congress has also encouraged PHAs to consider such preferences. In VAWA 2005, Congress authorized new funding for PHAs to develop programs that give preference in admission to adult and youth victims of domestic violence, dating violence, sexual assault, and stalking. Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-162, § 601 (2006) (codified at 42 U.S.C. § 14043e-4). Despite these recommendations, the __ Housing Authority has not adopted a preference for victims of domestic violence. PHAs that provide such a preference offer alternatives to women who otherwise might remain in an abusive situation because they have no other place to live

ACLU Women's Rights Project
125 Broad Street
New York, NY 10004
(212) 549-2644
Model letter to PHAs on domestic violence
Addresses public housing and Section 8
August 2007

and to women who face homelessness when they flee abuse. We urge the ___ Housing Authority to adopt such a preference, consistent with local needs and priorities.

[INCLUDE ANY LOCAL INFO RE PREVALENCE OF HOMELESSNESS AMONG WOMEN AND CHILDREN OR DOMESTIC VIOLENCE AS A CONTRIBUTOR TO HOMELESSNESS OR HOUSING INSTABILITY]

In establishing a preference for victims of domestic violence, care should be taken in defining "domestic violence" so as not to exclude those victims who have never lived or who no longer live with their abusers. Even if a victim does not live with her abuser, she may be forced to flee her residence for safety reasons, and PHAs should recognize this in their preferences.

Admissions Screening and Domestic Violence

The most recent reauthorization of the Violence Against Women Act bars the denial of public housing or Section 8 assistance based on an applicant's status as a victim of domestic violence, dating violence, or stalking. 42 U.S.C. § 1437d(c)(3) (public housing); 42 U.S.C. §§ 1437f(c)(9)(A), (d)(1)(A), (o)(6)(B) (Section 8). Thus, PHAs cannot deny assistance to an applicant because she has experienced domestic violence, dating violence, or stalking.

In screening potential tenants for eligibility for public housing and voucher assistance, PHAs can properly consider factors such as an applicant's previous rent-paying history and criminal history. Such screening, however, may reveal negative information about domestic violence victims that is itself the result of the violence. A history of domestic violence can therefore directly or indirectly keep battered women from gaining access to housing assistance. When screening reveals negative information such as a poor credit history, previous damage to an apartment, a troubled employment history, or a past arrest, HUD has encouraged PHA staff to inquire about the circumstances that contributed to the negative information, to ascertain whether these past events were the consequence of domestic violence against the applicant. *Public Housing Occupancy Guidebook* – 19.3 Screening and Admission. Congress also has expressed support for looking beyond negative histories caused by abuse, when it authorized funding to PHAs to develop programs to enable victims of domestic violence, dating violence, stalking and sexual assault to obtain public housing or housing assistance despite adverse records. Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-162, § 601 (2006) (codified at 42 U.S.C. § 14043e-4). This new grant program also requires PHAs to permit applicants for housing or housing assistance to provide incomplete rental and employment histories, which would otherwise be required as a condition of admission or assistance, if the victim believes that providing such histories would endanger her or her children's safety. *Id.*

ACLU Women's Rights Project
125 Broad Street
New York, NY 10004
(212) 549-2644
Model letter to PHAs on domestic violence
Addresses public housing and Section 8
August 2007

The ___ Housing Authority currently does not undertake any inquiry relating to domestic violence when examining applicants' rental, employment, or financial records. As a result, poor credit histories and other negative information often prevent victims of domestic violence from gaining admission to public housing or access to housing assistance, even when these poor histories are attributable to the victims' abusers or there is otherwise a substantial connection between the abuse and the negative information. Such screening unfairly penalizes victims for the actions of their abusers and places substantial obstacles to women's attempts to obtain safe, affordable housing separate from abusers. It is also important to note that a denial of assistance based on factors relating to abuse may fall within VAWA's prohibition of discrimination against victims.

We urge the ___ Housing Authority to inquire whether any member of the applicant household is a victim or has previously been a victim of domestic violence when a screening reveals negative information, while making clear that an individual has the right not to reveal a history of abuse. The ___ Housing Authority should also provide all adult members of applicant households with notice of its screening policy and any exceptions that might be made to that screening policy on the basis of domestic violence. If a member of the household reveals she or he is or has previously been a victim of domestic violence, the ___ Housing Authority should inquire about the circumstances behind the negative information revealed in the screening, for the purposes of determining whether there is a substantial connection between the violence and the negative information. Such situations might include, for example: an abuser may have damaged a former apartment during a violent outburst; a victim may have had to flee a former apartment for safety reasons, thus failing to continue to pay her rent and breaking the lease; an abuser may have kept the victim from having any access to money and may have refused to pay the household bills himself, thus resulting in a poor credit history; or a victim of domestic violence may have been arrested when she summoned the police for help because she had fought back against her abuser in self-defense. When an inquiry determines that there is a substantial connection between domestic violence and the negative information, the ___ Housing Authority should disregard the adverse information and consider the applicant eligible for admission or assistance unless other information unrelated to the domestic violence would disqualify the applicant.

In undertaking such screening it is important to remember the importance of confidentiality and the fear victims may quite reasonably have for their safety in providing the requested information. VAWA requires that PHAs keep confidential information relating to domestic violence, dating violence, or stalking. 42 U.S.C. § 1437d(u)(2); 42 U.S.C. § 1437f(ee)(2). As HUD has directed:

PHAs should . . . be cognizant of a victim's need to feel safe . . . [S]he/he may be apprehensive about providing certain requested information such as current and previous address. In such cases, PHA staff should consider alternatives to

ACLU Women's Rights Project
125 Broad Street
New York, NY 10004
(212) 549-2644
Model letter to PHAs on domestic violence
Addresses public housing and Section 8
August 2007

verifying suitability. . . . PHAs may want to consult with domestic violence providers to obtain guidance on appropriate types of identification.

Public Housing Occupancy Guidebook – 19.3 Screening and Admission. Consultation with local domestic violence service providers, such as _____, can assist a PHA both in determining whether negative reported history is substantially connected to domestic violence, and in undertaking alternative methods of verifying suitability when safety concerns limit the PHA's ability to verify relevant information. All such information revealed in the admission process regarding victimization must be kept in the strictest of confidence as mandated by law and in order to protect the safety of the victim and the victim's privacy.

Housing Termination and Domestic Violence

The recent VAWA reforms prohibit PHAs from terminating public housing or assistance to victims of domestic violence, dating violence, or stalking based on the abuse. PHAs are specifically instructed that “an incident or incidents of actual or threatened domestic violence, dating violence, 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 shall not be good cause for terminating” the assistance, tenancy, or occupancy rights of the victim of such violence. 42 U.S.C. § 1437d(1)(5) (public housing); 42 U.S.C. §§ 1437f(c)(9)(B), (d)(1)(B), (o)(7)(C), (o)(20)(A) (Section 8). Furthermore, VAWA modified the federal “one-strike” rule, by stating that “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 other person under the tenant's control, shall not be cause for termination . . . if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking.” 42 U.S.C. § 1437d(1)(6) (public housing); 42 U.S.C. §§ 1437f(c)(9)(C), (d)(1)(C), (o)(7)(D), (o)(20)(B) (Section 8). Thus, a victim of abuse cannot be evicted because of the crimes her abuser inflicts against her. The only exception to this rule is a narrow one, that applies “if the public housing agency 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.” *Id.*

When abuse occurs, VAWA authorizes PHAs to bifurcate leases or remove a household member from a lease “without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, 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 other penalizing the victim of such violence who is also a tenant or lawful occupant.” *Id.* Thus, once a PHA becomes aware that a tenant or household member has been violent to another, it may take action against the perpetrator by removing him or her from the lease or voucher, or bifurcating the lease so

ACLU Women's Rights Project
125 Broad Street
New York, NY 10004
(212) 549-2644
Model letter to PHAs on domestic violence
Addresses public housing and Section 8
August 2007

that the other family members maintain their occupancy rights. In doing so, PHAs may consider court orders addressing rights of access to the property, including civil protection orders issued to protect the victim or orders directing possession of the property. *Id.*

Therefore, the ___ Housing Authority's policy and practice must be to take appropriate action against the perpetrator of the violence, but not the victim, when domestic violence occurs on the premises. Nor may the ___ Housing Authority legally evict a victim of domestic violence for seeking the assistance of the police or courts, and its policies should make clear that it will not attempt to do so. In addition, as a standard policy, the ___ Housing Authority should provide referrals and linkages to appropriate law enforcement agencies and local services for victims of domestic violence, to further enhance victims' safety in the home.

As HUD has pointed out, when an abuser is evicted from or otherwise leaves a "mixed" family (a family whose members include those with U.S. citizenship or eligible immigrant status and those without), restrictions on the housing assistance available to noncitizens raise special issues. *Public Housing Occupancy Guidebook* – 19.5 Eviction and Termination. It is possible that the immigrant victim of domestic violence can qualify for immigration relief and housing assistance as a "qualified alien." The ___ Housing Authority should provide the immigrant victim with referrals to agencies that can help her petition for this status and should ensure that in the meantime the immigrant victim is not required to leave public housing.

Proof of Domestic Violence, Dating Violence, and Stalking

As policies protecting victims of domestic violence, dating violence, and stalking are implemented, it becomes necessary for a PHA to determine whether an individual is in fact a victim of these crimes. VAWA states that PHAs may, but are not required to, request certification from the individual that she is a victim of domestic violence, dating violence, or stalking when determining whether an individual qualifies for protection under the VAWA housing provisions. Forms of certification may include: the individual's statement; documentation signed by an employee or volunteer of a victim service provider, attorney, or medical professional under penalty of perjury and also signed by the victim; or any police or court record. HUD has released a draft certification form, HUD-50066, for use by PHAs and landlords. While VAWA described the forms of certification that must be taken as proof of an individual's eligibility for protection, VAWA does not mandate any single type of evidence to prove the existence of abuse, and rightly so. While some victims may seek police help or civil protective orders, others do not, because of reasonable fears of retaliation by the abuser. Therefore it is important that PHAs accept all forms of credible evidence of domestic violence, dating violence, and stalking, rather than requiring a particular type of evidence. We call on ___ Housing Authority to put into place this method of certification, and to apply it

ACLU Women's Rights Project
125 Broad Street
New York, NY 10004
(212) 549-2644
Model letter to PHAs on domestic violence
Addresses public housing and Section 8
August 2007

when administering protections that go beyond VAWA, such as an admissions preference or screening policy that takes into account domestic violence, dating violence, sexual assault, or stalking.

In its Notice accompanying the issuance of the certification form, HUD encourages PHAs to make the certification form available to all eligible families at the time of admission. U.S. Dep't of Housing and Urban Dev., Violence Against Women and Justice Department Reauthorization Act 2005, Form HUD-50066 Certification of Domestic Violence, Dating Violence, or Stalking, PIH 2006-42 (Dec. 27, 2006). HUD also advises PHAs that they may enclose the form with the appropriate notice in the event of an a termination proceeding or include language discussing the VAWA protections in termination/eviction notices and request that a tenant come into the office to pick up the form if the tenant believes the VAWA protections apply. *Id.* We urge the __ Housing Authority to consider adopting these suggestions as policy.

Emergency Transfers and Voucher Portability

When an abuser knows where a victim of domestic violence lives, and chooses to attack her there, a victim may find herself in desperate need for new housing. The latest VAWA legislation clarifies that a family with a Section 8 voucher may move to another jurisdiction prior to the end of the lease term if the family has complied with all other obligations of the program and is 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 believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit." 42 U.S.C. §§ 1437f(r)(5), (ee). Furthermore, HUD has suggested that PHAs institute emergency transfer plans for residents of public housing who must move to flee their abusers. *Public Housing Occupancy Guidebook* – 19.4 Continued Occupancy and Transfer Policies. Even small PHAs that do not have another site at a sufficient distance to ensure victim safety may develop effective transfer policies that, for instance, permit a public housing resident to receive an expedited emergency Section 8 voucher to transfer to a different location. In addition, PHAs have from time to time established inter-PHA emergency transfer policies, allowing a victim of domestic violence who is a resident in one public housing jurisdiction to transfer on an expedited basis to public housing in a different jurisdiction. We urge you to meet with us to discuss the best way for __ Housing Authority to craft voucher portability and emergency transfer policies.

Facilitating Continued Occupancy

As HUD has noted, a PHA can undertake several steps to assist residents who experience domestic violence remain safe and retain their public housing. For instance, as noted before, it can take appropriate actions against an abuser by removing him from the lease or voucher and continuing the housing assistance to the victim and other family

ACLU Women's Rights Project
125 Broad Street
New York, NY 10004
(212) 549-2644
Model letter to PHAs on domestic violence
Addresses public housing and Section 8
August 2007

members. HUD also suggests that PHAs donate old cell phones to victims for use in case of emergency. PHAs should also change the locks of units when necessary to enforce protection orders, without cost to the victim. The ___ Housing Authority should undertake such steps to reduce crime in their units and keep victims of domestic violence safe.

When domestic violence leads families living in public housing to break up, questions about who has the right to remain in the public housing unit may arise. The ___ Housing Authority should adopt a family break-up policy outlining how this determination will be made. Federal regulations outlining the factors that a PHA may take into account in designing a family break-up policy in the voucher program are a useful guide for designing such policies for public housing as well. *See* 24 C.F.R. § 982.315. These factors include actual or threatened domestic violence. In addition, the family break-up policy should acknowledge and make clear that if there is a court determination of the family members' respective rights, the ___ Housing Authority must follow that determination. The policy should also make clear that when rent for a public housing unit has previously been determined based on the income of an abusive family member who has been excluded from the household by a protective order, that the ___ Housing Authority will immediately adjust the rent for the unit to reflect the household's changed circumstances.

Conclusion

The foregoing catalogs the issues and questions that all PHAs should consider as they comply with HUD's and Congress's instructions to adopt policies and practices that assist victims of domestic violence in obtaining and maintaining public housing. We request a meeting with you to discuss the manner in which ___ Housing Authority may address these issues and the most effective methods of partnering with local advocates in achieving these goals.

Thank you for your consideration of these issues. _____ of ___ will contact you in the coming weeks to arrange a meeting.

Sincerely,