

**American Civil Liberties Union
NOW Legal Defense & Education Fund
McAuley Institute
National Housing Law Project
National Low Income Housing Coalition
National Network to End Domestic Violence
National Coalition Against Domestic Violence
Washington Lawyers Committee for Civil Rights**

September 16, 2002

Department of Housing and Urban Development
Attention: Public Housing Occupancy Guidebook Comments
Room 4224, 451 Seventh Street, S.W.,
Washington, DC 20410

Re: Comments on the Public Housing Occupancy Guidebook –
Docket No. FR-4786-N-01

On behalf of the undersigned domestic violence, housing advocacy, and civil rights organizations, we respectfully submit the following comments in support of the Department of Housing and Urban Development's (HUD) proposal to include a domestic violence section in the Public Housing Occupancy Guidebook. We believe that the inclusion of this section is important and timely because of increased reports that victims of domestic violence are experiencing housing discrimination, including evictions, across the country. In particular, "zero-tolerance" policies are being misapplied to evict innocent victims of domestic violence from federally-subsidized housing when violence occurs within the home.

Consequently, many domestic violence victims, the vast majority of whom are women, face eviction at a time in their lives when stable housing is particularly important for their safety and well-being. Living in safe and secure housing apart from her abuser is a key factor in any domestic abuse victim's success. Discrimination against domestic violence survivors in housing undermines a battered woman's efforts to successfully separate herself from the abuse and enhances the danger to her and her children. As a result, when Public Housing Authorities (PHAs) handle domestic violence cases inappropriately, by punishing the victims of domestic violence, they increase the vulnerability of women. Women are made victims twice, first to domestic violence and then to eviction or some other form of housing discrimination. It is absolutely critical for HUD to provide guidance to PHAs in handling situations where domestic violence has occurred in the home.

While section 19 of Part 6 of the guidebook is reserved to discuss domestic violence, we believe that it is important that this issue be incorporated throughout the guidebook. For example, there should be specific references to domestic violence in the section that pertains to property damage policies. Residents of public housing who are victims of domestic violence should not be required to pay for damage to a unit when the abuser caused the damage. In addition, domestic violence should be addressed in the Civil Rights and Nondiscrimination requirements of the guidebook. There should be specific language that recognizes discriminatory housing practices against domestic violence victims as discrimination on the basis of sex in violation of the Fair Housing Act, 42 U.S.C. §§ 3601-3619.

The following discussion outlines the major issues we believe should be included in the reserved section 19 on domestic violence. In bringing these issues forward, it is our expectation that these comments will provide direction to HUD in issuing guidance to PHAs when they encounter instances of domestic violence in public housing.

Public Policy

Congress has recognized that families subject to domestic violence have unique needs that should be addressed by those administering the federal housing programs. In fact, the Conference Committee Report accompanying the HUD appropriations legislation for Fiscal Year 2002 “direct[ed] 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.” Similarly, in July of this year the U.S. House of Representatives Financial Services Committee approved the Protection of Innocent Tenants Amendment to the Housing Affordability for America Act of 2002, which seeks to protect victims of domestic violence or dating violence from being evicted because of the abuse.

Congress, the Department of Justice (DOJ), the Immigration and Naturalization Service (INS), and the Department of Health and Human Services (HHS) have each promulgated laws, regulations or guidance to provide clear direction on how federal laws and agencies can best work to help deter domestic violence and offer critical life-saving assistance to its victims.

Given the important role that housing plays in the safety of domestic violence victims and their families, it is essential for HUD to follow the directive of Congress to provide clear guidance to PHAs in working with those who experience domestic abuse. When a resident of public housing is a victim of domestic violence, it is important that the PHA take appropriate steps to help the victim stay in the home or to help her relocate to a different public or assisted housing unit that will enhance her safety. When victims of domestic violence seek admission to public or assisted housing, PHAs should be encouraged to develop preferences for domestic violence victims and should not use the fact that they have suffered domestic violence or facts connected to the domestic violence

against them. It is extremely important that the PHA not exacerbate the difficulties that victims of domestic violence face by attempting to evict them, either individually or along with the abuser.

Defining Domestic Violence or Abuse

HUD previously established a “federal preference” definition of domestic violence—many PHAs are familiar with this definition, and a number of them have continued to use it as a “local preference” after federal preferences were abolished. It defined domestic violence as “actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant’s household.”¹ Many states and localities also have definitions of domestic violence or abuse in state protection order statutes; a number of PHAs have chosen to use those definitions to the extent that they may be more expansive in coverage. Some states have mandated a domestic violence or abuse preference for state-assisted housing resources.²

With some modification, VAWA sets a useful standard for what should be used as the definition of domestic violence or abuse in the PHA’s domestic violence policy. It incorporates state law approaches to defining relationships that are broader than the relationships covered by the previous federal law definition. VAWA defines domestic violence to include acts or threats of violence committed by:

a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction... or by any other adult person against a victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction...³

1 See former 24 CFR § 5.420(b)(4)(ii) (1997). The regulation stated that an applicant was involuntarily displaced by domestic violence if she vacated a housing unit because of domestic violence, or was living in a housing unit with a person who engages in domestic violence; if the applicant was still in the housing unit, the PHA would have to determine that the domestic violence occurred recently or was of a continuing nature. See former 24 C.F.R. § 5.420(b)(4)(i), (iii)(A) (1997). The applicant would also have to certify that the person who engaged in such violence would not reside with the applicant family unless the PHA had given advance written approval for this. See former 24 C.F.R. § 5.420(b)(4)(iii)(B) (1997). It should be noted that the violence or threats of violence could be directed against household members, as well as the spouse/intimate partner.

2 Thus, in Massachusetts, for example, “emergency case” preference for state-assisted public housing includes the needs of persons in abusive situations. 760 CMR 5.11. Massachusetts has defined “abuse” to include “causing another to engage involuntarily in sexual relations by force, threat, or duress”, and has included the persons protected to be those with a child in common (regardless of whether they ever were married or lived together) or those in a substantive dating or engagement relationship. See M.G.L. c. 209A, § 1.

3 See 42 U.S.C. § 3796gg-2, subsec. (1). In addition, VAWA has recently added a definition of “dating violence”, and has directed grantees to provide protective assistance for those individuals as well. See 42 U.S.C. 3796gg-2, subsec. (9), as added in 2000.

PHAs should consider acts or threats of violence, battery, or extreme cruelty domestic violence if they were committed by any person to whom the victim is in a relationship covered by the federal Violence Against Women Act or by the state protection order statute. The relationship can qualify whether the parties currently live together, are separated, or have never lived together. The relationship can also qualify under the state protection order statute when the parties are not formally related by blood or marriage. In addition, consistent with the former federal preference definition, the PHA policy should explicitly include consideration of domestic violence or sexual abuse/exploitation directed toward other members of the household.⁴

PHAs should develop collaborative relationships with domestic violence coalitions and programs in their jurisdiction who can assist PHAs in understanding the state domestic violence laws and in training PHA staff on how they can best assist victims of domestic violence who are residents. Referrals to domestic violence programs or battered women's shelters identified by PHA staff can also help enhance victim safety.

A common situation for applicants for public housing is that the perpetrator of domestic violence or abuse may not have been a member of the household, or the victim cannot prove that the abuser was a member of the household. A number of applicants are victims of stalking—i.e., repeated violence and threats of violence by former household members. PHAs that apply the former federal preference definition of domestic violence might deny relief for these families. The former federal preference for those victims of violent crime or reprisal who have reported the crime and who need to relocate for safety reasons provided a useful means of prioritizing assistance for these families who otherwise didn't meet the "domestic violence" definition.⁵ The VAWA framework we suggest above avoids this bifurcated approach and does not require domestic violence victims to seek the assistance of law enforcement personnel in order to gain housing assistance. PHAs should be encouraged to incorporate the VAWA standard as part of the preference scheme, so that victims of stalking, or those who cannot prove that the perpetrator was part of the household, can also be provided relief.

4 It may be that neither the former federal preference definition nor VAWA are broad enough to include all of the types of child or elder abuse that a jurisdiction may want to safeguard against. Therefore, HUD and PHAs should consider appropriate revisions to help protect these individuals. See, for example, 42 U.S.C. § 13031(c) (child abuse or exploitation definitions); 42 U.S.C. § 10408 (definition of family violence); 42 U.S.C. § 3002 (definitions related to elder abuse or exploitation).

5 See former 24 CFR § 5.420(b)(5) (1997). The regulation required that the victim provide a document from a law enforcement agency that s/he had provided information on criminal activity to a law enforcement agency, and as a result of such report, was in danger of reprisal and needed relocation for safety reasons. Since the regulation is no longer in effect, more flexibility is possible. Other sources besides law enforcement officials may provide credible substantiation of the threat and need for relocation. See Proof of Domestic Violence or Abuse, *infra*.

Proof of Domestic Violence or Abuse

PHAs should accept a broad range of evidence as proof of domestic violence. The dynamics of domestic violence often make it difficult for victims to access specific forms of proof. The abuser may have isolated the victim totally from police, courts, health professionals and others who could provide corroborative evidence of abuse. One of the primary forms of proof of domestic violence considered by both INS and HHS is the credible story of the victim, which can in many cases be sufficient proof of abuse. This reliance on the victim's own reports has also been adopted by all state protection order statutes, which do not require as a matter of law any evidence of domestic violence beyond the victim's testimony about the facts of the abuse. Further, the INS regulations state that adjudicators should give due consideration to the difficulties some victims may experience in acquiring documentation of domestic violence, particularly documentation that cannot be obtained without the abuser's knowledge or consent. These approaches should provide important guidance to HUD and to PHAs in determining what evidence is necessary to demonstrate domestic violence.

Accepting the victim's credible statement is consistent with best practices in the field of domestic violence. If additional evidence is necessary, the following are examples of documentation that could be accepted as evidence of domestic violence or abuse without requiring any single type of evidence⁶:

- Reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, workers at domestic violence shelters or other domestic violence advocates, and other social service agency personnel.
- Protection orders against the abuser, participation in criminal prosecution, or proof that other legal steps were taken to end the abuse.
- Evidence that the abuse victim sought safe haven in a battered women's shelter or similar refuge.

Other types of credible relevant evidence should also be considered, including a statement from the battered woman, photographs of any injuries, corroborating witness statements, counseling or mental health records (to the extent that there is consent to share this information), or evidence of property damaged.

Verification of domestic violence can be a difficult issue due to the complex dynamics of abusive relationships and the fact that victims of domestic violence choose

⁶ This is similar to the broad range of verifications that HUD found acceptable under the former federal preference for those involuntarily displaced by domestic violence. See former 24 CFR § 5.420(c)(4) (1997). Here again, since the regulation is no longer in effect, PHAs may be more flexible, and may accept other forms of verification that are credible.

to escape abusive relationships in a variety of different ways. For example, some victims of domestic violence may have police reports documenting the abuse and/or orders of protection that have been obtained against their abuser. However, other victims of domestic violence may have chosen not to seek assistance from the criminal justice system or the courts for fear of reprisal from the abuser. Instead of requiring police reports or orders of protection to verify the existence of domestic violence, a PHA should also accept any credible evidence of abuse including but not limited to the evidence listed above. PHAs should work in collaboration with local domestic violence programs in order to establish criteria that are sensitive to the above dynamics.

Treatment of Victims of Domestic Violence/Abuse For Purposes of Lease Enforcement or Eviction

PHAs may not discriminate against residents or applicants because they are victims of domestic violence. Therefore, a PHA must not seek to terminate a tenancy or evict a resident because she has been a victim of domestic violence or threatened with domestic violence.⁷ A PHA must not seek to evict or terminate the tenancy of a domestic violence victim because of the actions of the abuser. Therefore, if a resident of a household perpetrates domestic violence, and takes actions that are a proper ground for eviction, the PHA may seek to evict or remove the perpetrator of the domestic violence from the premises but should not seek to evict the victim of the violence; it should exercise its discretion to allow the victim to remain in occupancy.

Where the potential termination of housing assistance is premised upon late payment or non-payment of rent, the PHA should immediately conduct a review in cases where the tenant household asserts that the difficulty in paying rent is the result of domestic violence. As noted above, where domestic violence is confirmed to be the cause of late payment or non-payment, immediate adjustment in prospective rent should be made. The PHA should refer the tenant family members to social service agencies for assistance with income and/or rent, exclude the abusive family member from the tenant household and allow the remaining family members to enter into a payment agreement if necessary to make up for lost rent.⁸ The agreement should allow sufficient time for the remaining family members to attempt to have the abuser pay the lost rent if this can be accomplished safely. In the alternative, the PHA could seek payment for any lost rent from the abuser, not from the remaining family members, or could grant retroactive rent relief where the circumstances might warrant it (for example, the abuser left the household a while ago, did not notify the PHA, and the victim only recently discovered this).

7 Cite Alvera.

8 For example, the household may be eligible for TANF benefits, or for Emergency Assistance that could be used to pay a rent arrearage.

There may be times when domestic violence becomes a lease enforcement issue in contexts other than eviction. Thus, for example, an abuser who is excluded by a protective order may come to the development seeking entry, and damage PHA property. The victim should not be blamed for this conduct, and should not be liable for maintenance/damage charges arising out of this. Similarly, charges should be waived if the damage occurred while the abuser was part of the household, but has subsequently been excluded.

Preferences in Admission

As mentioned above, PHAs are should be urged to provide a preference to families with members who are victims of domestic violence, and we recommend adoption of a preference consistent with the definitions and verifications discussed above. Any system of local preference must be based on local housing needs and priorities as determined by the PHA. In determining whether to provide a preference for families with victims of domestic violence, PHAs should review all available local data and consult with local domestic violence programs regarding domestic violence victims' need for housing. The data considered must include generally accepted data sources and current relevant local data, the information in the Consolidated Plan under which the local PHA jurisdiction is covered, comments to the Consolidated Plan, and any comments provided to the PHA on the PHA annual and five year plan.

In addition, there may be cases where a PHA utilizes some other sort of ranking preference, but a victim of domestic violence is unable to qualify for this preference (either at the time of application or upon update) because of the domestic violence. Thus, a victim may have had to leave employment for safety reasons, and thus not meet a PHA's requirement of current employment for an employment preference. A woman who separates from her employed husband due to domestic violence may lose the employment preference that she already had while on the waiting list. Where a PHA uses a residency preference, a victim may have had to flee the area for safety, and thus may be residing outside the community temporarily. If an applicant family cannot qualify for a particular preference, the PHA should seek to determine if the applicant or a member of the applicant household is a victim of domestic violence and if the domestic violence has created extenuating circumstances that would justify granting the preference.⁹ Any applicant who is denied a preference should be informed of the PHA's policy regarding domestic violence and extenuating circumstances.

Screening; Need to Observe Safety and Confidentiality Precautions

A PHA may screen families on the basis of family behavior and suitability for tenancy. A PHA may consider past rent-paying history of an applicant family and

⁹ This is similar, for example, to the policy of some welfare agencies, who have granted "waivers" to work activity requirements or time limits on benefits for victims of domestic violence who temporarily are unable to work.

tenancy history and inquire about such factors as criminal activity. Victims of domestic violence may have poor rent-paying history, employment history or credit; may be poor housekeepers; or may have a criminal record. In addition, characteristics such as prior poor rent-paying or tenancy history may not be attributable to the victim but rather to the abuser, or may be the foreseeable result of having to seek relief against the abuser. (Thus, for example, if the victim removes the abuser from her household with an abuse prevention order, and he thereafter refuses to continue to pay toward the rent, she may well be unable to afford the rent and face eviction. Similarly, a victim may not be able to pay her rent if she has to leave her employment for safety reasons.) If adverse information comes to the attention of the PHA, the PHA should seek to determine if the applicant or a member of the applicant household is a victim of domestic violence by asking the family if there is domestic violence or a history of domestic violence and by providing all adult members with the PHA's domestic violence policy. If domestic violence is present, the PHA must then determine if there is a substantial connection between the adverse information and the fact that a member of the applicant household is a victim of domestic violence. Once PHAs have been trained to understand the basic dynamics of domestic violence, it becomes less difficult to assess cases for a substantial connection. If a PHA determines that there is a substantial connection, it should disregard the adverse information and consider the applicant eligible for admission unless other information unrelated to the domestic violence would disqualify the applicant.

In the admission process, a PHA may require that an applicant family provide information such as the family's current and prior address. An applicant family with members who are victims of domestic violence may not want to provide such information because verification of such information may alert an abuser to the whereabouts of the victim. An applicant family with members who are victims of domestic violence should not be required to provide such information and should not be penalized for not providing the information. Instead, the PHA should develop alternative means of verifying suitability. The PHA should advise applicants of how it will generally seek to verify information and of their right, if they have a history of domestic violence and verification may pose a safety risk, to propose alternative means of verification.

PHA staff should be reminded that information received in the admission process concerning the victimization of a member of an applicant family should be kept in the strictest confidence and should not be revealed to others, unless otherwise required by state law. While confidentiality of information is important for ALL applicants, revelation of domestic violence information may endanger the safety, security and life of the victim.¹⁰

Assistance for Victims of Domestic Violence/Abuse Who Are in Public Housing

¹⁰ See 42 U.S.C. §§ 13957 and 14014 regarding the confidentiality of addresses and other information regarding victims of domestic violence.

If a victim of domestic violence or abuse is a public housing resident, the PHA must do whatever it can to help safeguard the victim. It should change the locks where needed to enforce protective orders, and should waive the charges for the cost.¹¹ If a transfer is needed, either to another PHA development or, through the use of a Section 8 Voucher, to a different location, city or state, the PHA should have expedited emergency procedures to provide such relief. Some PHAs have, from time to time, established inter-PHA transfer policies, allowing a victim of domestic violence who is a public housing tenant in one jurisdiction to relocate on an expedited basis elsewhere. PHA admissions and transfer policies should have sufficient flexibility to permit this.¹²

In many cases, domestic violence or abuse will lead to family break-up. Often the victim of domestic violence may not have been the head of household. PHAs should be advised that, when a family breaks up, the unit does not “automatically” go to the head of household. Instead, as has been done in the Section 8 Voucher program, PHAs should establish family break-up policies.¹³ As in the Section 8 Voucher program, these policies would involve consideration of a number of circumstances, including the interest of minor children or of ill, elderly or disabled family members, and whether there is domestic violence or abuse. If there is a court determination of the family members’ rights, the PHA should follow the court’s decision. Such policies are not new—PHAs have existing authority to decide, in the case of lease violations (which would include family violence), to allow certain members of the household to remain on the condition that the wrongdoer is excluded.¹⁴

There may also be cases where rent has been determined based on the income of a violent or abusive household member who has left the family or who has been excluded by a protective order. PHAs should immediately adjust the rent to reflect the changed circumstances. While PHAs may ordinarily require proof from the departing household member of his/her new residence, the perpetrator may be unwilling to provide this, or attempted contact with the perpetrator may put the family at risk. PHAs should exercise wise and humane judgment in accepting alternative verification of the changed circumstances and making the necessary adjustments.¹⁵

11 In Massachusetts, for example, the state housing agency has provided for this in its state-assisted public housing lease regulations. See 760 CMR 6.06(4)(r).

12 Thus, for example, such a transfer should not be considered a “new admission”, for which income targeting or admission income limits would apply, and such a household should be considered continuously assisted.

13 See 24 CFR §§ 982.54(d)(11), 982.315.

14 See 24 CFR § 966.4(1)(5)(vii). Here again, Massachusetts has already incorporated into its state public housing admissions and continued occupancy standards the notion that if there is a divorce or separation between spouses who are both household members, or the entry of a protective order, the PHA will follow the decision of the court regarding continued occupancy. See 760 CMR 5.03 (definition of family).

15 See *Housing Authority of St. Louis County v. Boone*, 747 S.W.2d 311 (Mo. Ct. App. 1988).

Where it is not safe for the victim of domestic violence to remain in the apartment, she may move elsewhere while seeking relocation to other public housing or through the Section 8 program. Where the victim has removed herself from the unit without prior notice, or very short notice, to the PHA, the PHA should not automatically apply policies that would take adverse action based on the lack of sufficient notice, but should consider whether domestic violence has forced the victim to leave the rental unit, and should waive notice requirements for good cause. When a victim of domestic violence leaves the unit and goes to a domestic violence shelter or other temporary housing, the PHA should determine whether or not the victim would be able to return to the unit within a reasonable period of time. If the victim can return to the rental unit within a reasonable time, the PHA should offer the option of continued assistance at that unit to her, but should waive rental charges to the victim in the interim. (Such ongoing charges should also be waived as a condition of transfer.) Alternatively, if the occupant is not able to return to the rental unit within a reasonable period of time, the PHA should offer the occupant a Section 8 voucher or whatever will best enhance the safety of the victim. At the same time, the PHA should ask the victim if she wants a referral to a program that can provide her with additional information about her legal options. The PHA should not judge, however, whether it is “wiser” for the victim to stay or go—this is a judgment call that must be left with the victim.

Notice to All Applicants and to Tenant Households

PHAs must provide each applicant family with a statement of the PHA’s domestic violence policy and if the applicant requests, a copy of the relevant admission procedures, regarding admission, preferences and screening as they relate to families with members who are victims of domestic violence. Similar information should be made available to all tenant households and resident councils, and should be posted so that household members who are not the head of household may become aware of the policies. Wherever the presence of domestic violence might make a difference in a determination of an applicant’s or resident’s status, the PHA should state this in the notice, and should explain how to request assistance. PHA staff should be trained to be sensitive to help identify domestic violence, and should bring up the topic as a basis for relief/discussion in private conferences. Literature about protections and referral sources for battered tenants should be distributed in public locations at PHA sites.

Special Issues Relating to Mixed Families and Domestic Violence/Abuse

Some special issues may come up for mixed families (families with members who have differing statuses under U.S. Immigrant laws) residing in public housing (as the term is defined under HUD’s non-citizen rule)¹⁶ where there is domestic violence or abuse. If the abuser is a citizen or lawful permanent resident and the victim and the abuser are

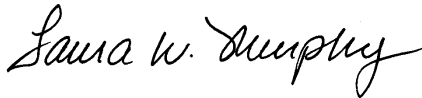
¹⁶ See 24 C.F.R. Part 5, Subpart E.

married or formerly married, an immigrant victim can qualify for immigration relief as a “qualified alien” and eventually obtain legal permanent resident status. Such victims should be referred to those agencies that are familiar with immigration laws and VAWA so that they take the proper steps to obtain status. PHAs should ensure that battered immigrants who are in the process of obtaining qualified alien status are not required to leave public or assisted housing or are not threatened with proration without sufficient time to pursue adjustment options.

Conclusion

The inclusion of a discussion on handling domestic violence victims in the HUD guidebook will make a marked difference in the ability of victims to secure and maintain housing in a safe environment. We urge you to use the outline above in structuring the domestic violence provisions of the guidebook and in integrating discussion of domestic violence into the remainder of the guidebook, where relevant. If we can provide additional information on these issues, please do not hesitate to contact LaShawn Warren, American Civil Liberties Union at (202) 675-2317, Catherine Bishop, National Housing Law Project at (510) 251-9400 ext. 105, or Ellen Johnson, Legal Aid Services at (503) 640-8228 ext. 104.

Sincerely,



Laura W. Murphy, Director,
ACLU Washington National Office

American Civil Liberties Union
NOW Legal Defense & Education Fund
McAuley Institute
National Housing Law Project
National Low Income Housing Coalition
National Network to End Domestic Violence
National Coalition Against Domestic Violence
Washington Lawyers Committee for Civil Rights