

**NOW Legal Defense and Education Fund  
American Civil Liberties Union  
McAuley Institute  
National Alliance to End Homelessness  
National Coalition Against Domestic Violence  
National Housing Law Project  
National Low Income Housing Coalition  
National Network to End Domestic Violence**

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February 21, 2002

Alphonso R. Jackson  
Deputy Secretary of Housing and Urban Development  
451 7th Street S.W.  
Washington, DC 20410

Re: Protecting victims of domestic violence from discrimination

Dear Deputy Secretary Jackson:

On behalf of the undersigned domestic violence, housing advocacy, and civil rights organizations, we are writing to request a meeting at which our representatives can discuss the issue of evictions and other adverse actions improperly taken against victims of domestic violence. 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). We would like to work with HUD to accomplish this important goal. While the problem of discrimination against domestic violence victims is acute in public housing, it exists in subsidized and private housing as well. (A sampling of examples is attached.)

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 from her abuser and enhances the danger to her and her children.

We would like to discuss ways to ensure that public housing authorities, landlords subsidized through HUD (or Rural Development), and private landlords who are subject to the Fair Housing Act are all informed that HUD considers eviction of innocent victims of domestic violence, or other discrimination against them, a violation of the Fair Housing Act. We were heartened at the stance taken by HUD and the Department of Justice in the case of Tiffanie Ann Alvera, *HUD v. The CBM Group, Inc.*, HUDALJ 10-99-0538-8, and *United States and Alvera v. C.B.M. Group, Inc.*, No. 01-857-PA (D. Or. filed June 8, 2001) (copies enclosed), that a policy of evicting victims of domestic violence violates the Fair Housing Act because of the disproportionate impact upon women. It is our hope that guidance from HUD reflecting the position articulated in

HUD's "Determination of Reasonable Cause" and the Department of Justice's complaint in *Alvera* could help stop future evictions and other discrimination against innocent victims of domestic violence, and will greatly enhance their safety and that of their children.

Thank you for your consideration. We look forward to meeting with you to discuss the issues raised in this letter. Geoff Boehm, staff attorney from NOW Legal Defense and Education Fund, or LaShawn Warren, counsel at the ACLU National Legislative Office, will call your office in early March to arrange a meeting.

Sincerely,

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McAuley Institute  
National Alliance to End Homelessness  
National Coalition Against Domestic Violence  
National Housing Law Project  
National Low Income Housing Coalition  
National Network to End Domestic Violence

cc: Michael Liu, Assistant Secretary for Public and Indian Housing  
John C. Weicher, Assistant Secretary for Housing  
Kenneth Marcus, General Deputy Assistant Secretary for Fair Housing and Equal Opportunity

encl.

## Examples of evictions and discrimination against domestic violence survivors:

- Chanell Tanzy and her two daughters, ages three and four, were evicted from her federally-subsidized apartment in Grand Prairie, Texas, after her boyfriend, who did not live with her, assaulted her, causing her to receive twelve stitches in her arm.<sup>1</sup>
- Theresa Taylor was evicted from her apartment in Louisville, Kentucky when she tried to keep her ex-boyfriend out of her apartment after he was released from jail for violating her civil protection order against him. When she told him he wasn't supposed to be there, he threatened her with a gun. She escaped and called the police. The property manager of her apartment complex evicted her for permitting criminal activity on the premises.<sup>2</sup>
- Margaret Ramirez was assaulted by an ex-boyfriend while her six-year-old son attempted to fend off her attacker with a stick. She did not live with her attacker and did not see him at any time after the assault. The public housing authority in Austin, Texas, moved to evict her and her son because she allowed the man into her house.<sup>3</sup>
- Gail Stacy's abuser was arrested three times for assaulting her and for attempting to break into her residence in the middle of the night. The public housing authority in Covington, Kentucky, sought to evict her because it claimed that the assaults threatened the health, safety, or right to peaceful enjoyment of other residents.<sup>4</sup>

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<sup>1</sup> Laura Griffin, *Eviction Upheld for Woman Who Was Attacked in Home*, Dallas Morning News, May 26, 1999 at 1A. A judge upheld the eviction, but the case was eventually settled. See Laura Griffin, *Crime Victim, Complex Settle Case*, Dallas Morning News, July 15, 1999 at 23A.

<sup>2</sup> Camille Barbee, *Woman Faces Eviction over Ex-Husband's Rampage: Advocates Decry Action Taken by City View Park*, Louisville Courier Journal, Oct. 22, 1998, at 1A.

<sup>3</sup> Diana Dworin, *Housing Agency Evicts More Than Lawbreakers*, Austin-American Statesman, Feb. 23, 1996, at A1.

<sup>4</sup> Defendant's Memorandum in Support of Summary Judgment at 4, *Housing Authority of Covington v. Gail Stacy*, No. 94-C-00607 (Ky. Dist. Ct. filed April 28, 1994).

## HUD MEMORANDUM

Victims of domestic violence<sup>1</sup> who are residents of public and assisted housing are being evicted or are denied access to life-saving housing services and assistance. It is often extraordinarily challenging for a victim of domestic violence to break away from a dangerous relationship, and it is even more difficult if one fears that taking appropriate measures to make oneself safe could cause one to be evicted from the home leaving one homeless.<sup>2</sup> When a resident of public housing is a victim of domestic violence, it is important that the PHA make appropriate efforts to help the victim stay in the home or to help her transfer to a different public or assisted housing unit that will enhance her safety. When victims of domestic violence seeks 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 by attempting to evict the victim either individually or along with the abuser.

Congress has recognized that victims of domestic violence need essential services to help them break the cycle of violence. We urge HUD to follow the lead of Congress, the Department of Justice (DOJ), the Immigration and Naturalization Service (INS), and the Department of Health and Human Services (HHS) which have each promulgated laws, regulations or guidance providing direction on how federal laws and agencies can best work to help deter domestic violence and offer critical life-saving assistance to its victims. HUD should provide directives to Public Housing Authorities on appropriate steps that they should take to enhance protection for and not do harm to victims of domestic violence.

Beginning in 1994 with the Violence Against Women Act (VAWA) Congress passed a series of laws designed to involve the federal government and federal agencies as partners with state-based efforts to enhance protections for victims of domestic violence. INS<sup>3</sup>, DOJ<sup>4</sup>, and HHS<sup>5</sup> have each issued policy guidance, directives and regulations implementing these protective provisions as has HUD with regard to access to emergency shelter and transitional housing for victims of domestic violence or child abuse and the homeless.<sup>6</sup> The Violence Against Women

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<sup>1</sup> Victims of domestic violence can include persons who live together and those who do not. Domestic violence victims includes victims of spousal abuse, intimate partner abuse, dating violence, elder abuse, child abuse and other forms of abuse or violence occurring within relationships covered by state protection order statutes.

<sup>2</sup> Although both women and men may be victims of domestic violence, women are the victims of the vast majority of these crimes. According to the Bureau of Justice Statistics, more than 85% of violent victimizations by intimate partners between 1993 and 1998 were perpetrated against women. Data on male victimization do not document comparable victimizations and injury levels, account for self defense, and measure financial control, intimidation, and isolation used by perpetrators of domestic violence against women. For these reasons, this guidance may refer to victims as women; however, all gender-specific references should be read to refer to women and men, without regard to gender. [Note: This language is based upon Dept. of Justice/Violence Against Women Office grant kits.]

<sup>3</sup> Memorandum, Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses and Children of U.S. Citizens or Lawful Permanent Residents, Apr. 16, 1996 [hereinafter Aleinikoff Memo].

<sup>4</sup> Immigration and Naturalization Service, "Verification of Eligibility for Public Benefits, AG Order No. 2170 -98, 63 Fed. Reg. 41662 (August 4, 1998), Interim Guidance AG Order No. 2129-97, 62 Fed.Reg. 61344 (November 17, 1997), Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits 62 Fed. Reg. 65285 (December 11, 1997).

<sup>5</sup> Department of Health and Human Services Fact Sheet on Access to HHS-Funded Services for Immigrant Survivors of Domestic Violence (January 19, 2001)

<sup>6</sup> Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19 2001).

Act of 1994 and 2000 (hereinafter VAWA), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) as well as federal agency implementing regulations and directives among other provisions, specifically address the following issues: 1) defining victims of domestic violence, 2) determining the types of evidence needed to prove incidents of domestic violence, and 3) defining the perpetrator of abuse.

## Defining Domestic Violence

In developing federal immigration legislation, Congress for the first time articulated a federal definition of domestic violence that was to be used in immigration related domestic violence cases. This same definition was adopted by Congress for the purposes of TANF's Family Violence Option. The language Congress used to describe domestic violence is "battering or extreme cruelty." Congress addressed the plight of battered immigrants first in 1990<sup>7</sup> by enacting battered spouse waiver provisions, again in 1994 by enacting several immigration-related provisions in VAWA<sup>8</sup>, and again in 1996 when it included the family violence option in PRWORA.<sup>9</sup> It is important that federal agencies use a consistent definition of domestic violence. Currently the INS and the HHS TANF Family Violence Option definition of domestic violence are the same. We urge HUD to adopt this definition as well.

Generally the definition of domestic violence used for immigration cases and also used for welfare access<sup>10</sup> demonstrates Congress' recognition that domestic violence encompasses much more than physical and sexual abuse.<sup>11</sup> VAWA's immigration provisions set out a definition of domestic violence that includes some forms of emotional abuse that constitute "extreme cruelty."<sup>12</sup> INS regulations set forth a definition of domestic violence that has also been adopted for purposes of access to public benefits.<sup>13</sup> Battery and extreme cruelty is defined in INS regulations as:

Being a victim of any act or threatened act of violence, including detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (of the victim or a minor) or forced prostitution shall be considered an act of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but are part of an overall pattern of violence.<sup>14</sup>

The elements of this definition that are not physical or sexual abuse constitute extreme cruelty -- cruelty includes causing or threatening to cause mental injuries, psychological abuse, or actions

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<sup>7</sup> 8 U.S.C. 1186 (a)

<sup>8</sup> 8 USC §§ 1154(a)(1-2), 1186a(c)(4), 1254 (1999).

<sup>9</sup> ADD FVO CITE

<sup>10</sup> Interim Guidance AG Order No. 2129-97, 62 Fed. Reg. 61367-61371 (November 17, 1997)

<sup>11</sup> Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 870 (1993).

<sup>12</sup> 8 C.F.R. § 204.2(c)(1)(vi) & (e)(1)(vi) (1998).

<sup>13</sup> Interim Guidance 62 Fed. Reg. 61344, Immigration and Naturalization Service, "Verification of Eligibility for Public Benefits, AG Order No. 2170-98, 63 Fed. Reg. 149 (Aug.4, 1998)

<sup>14</sup> 8 C.F.R. § 204. 2 (c)(vi).

that in and of themselves may not appear violent but are part of an overall pattern of psychological violence.

Some victims may be able to prove extreme cruelty by providing evidence of only one form of abuse and its impact. Others may need to show a pattern of incidents that cumulatively, if not individually, constitute extreme cruelty. Courts and researchers have found that the following factors constitute extreme cruelty: social isolation, possessiveness and harassment, threats, economic abuse, degradation, and sexual abuse.<sup>15</sup>

### **Types of Evidence Required to Document the Abuse**

We urge HUD to direct Public Housing Authorities to 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. Thus, Congress required that victims of domestic violence in the immigration context be allowed to provide any credible evidence to prove the abuse.<sup>16</sup> One of the primary forms of proof of domestic violence considered by both INS and HHS is the credible story of the victim that can in many cases be sufficient proof of abuse. This approach 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, particularly documentation that cannot be obtained without the abuser's knowledge or consent.

We urge HUD to adopt the Immigration and Naturalization Service's approach and accept the following types of evidence of abuse:

Reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained a protection order against the abuser or taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe haven in a bettered women's shelter or similar refuge may be relevant, as may a combination of documents such as photographs of the visibly injured self-petitioner supported by affidavits. Other types of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abused also occurred.<sup>17</sup>

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<sup>15</sup> Family courts have found extreme cruelty even in the absence of physical violence against the victim. In *Veach v. Veach*, for example, the court examined "whether the acts of cruelty are of such nature and character as to destroy the peace of mind and happiness of the injured party." Similarly, in *Wolf v. Wolf*, the court scrutinized whether the perpetrator intended to distress and humiliate the victim. Courts review a range of evidence in determining whether or not there is extreme cruelty, such as immigration status, language ability, self-esteem, level of dependency on the abuser, and how the abuser exerts power and control over the victim.

Giselle A. Hass, Mary A. Dutton & Leslye E. Orloff *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications* in *Domestic Violence: Global Responses*, pp. 93-113, Academic Publishers, Great Britain 2000.

<sup>16</sup> Immigration and Nationality Act § 204 (2001)

<sup>17</sup> 8 C.F.R. §204.2(e)(2)(iv)

We urge HUD to adopt the following types of information, which INS deems acceptable as proof of domestic violence:<sup>18</sup>

- Battered woman's statement,
- Restraining orders or civil protection orders obtained in any state.
- Police reports
- Photographs of any injuries
- Corroborating witness statement
- Medical records
- Criminal court records
- Statements of workers at domestic violence shelters or other domestic violence advocates
- Counseling/ mental health records
- Evidence of property damaged
- Reports, statements from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel.

## **Verification**

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 to escape abusive relationship 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. Because of this, the PHA should work in collaboration with local domestic violence programs in order to establish criteria that are sensitive to the above dynamics. For example, instead of requiring police reports or orders of protection to verify the existence of domestic violence, a PHA should also accept the victim's statement absent any reason to believe the victim is not credible, third party written verification from a domestic violence advocate, or the determination by another social service agency that the tenant household member is a victim of domestic violence. The PHA should accept any credible evidence of abuse including but not limited to the evidence listed in the "Types of Evidence Required to Document Abuse" section of this memorandum.

## **Defining the Perpetrator of Abuse**

HUD should adopt the federal law definition of the relationships covered by federal domestic violence laws. This approach sets a federal standard that incorporates state law approaches to defining relationships that are broader than the relationships covered by the federal law definition. HUD should promote a consistent policy approach by following Congress' lead in defining the family relationships that would be considered domestic violence under the Violence Against Women Act. VAWA's domestic violence definition covers 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,

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<sup>18</sup> This list is derived from evidence routinely accepted by INS and state protection order courts in domestic violence cases. 8 C.F.R. § 204.2 (C)(1).

dating 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...<sup>19</sup>

PHAs should consider acts, 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. Some states also offer protection to those that offer refuge to victims of domestic violence as well as to the victim's employers.

HUD should encourage PHAs to 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 shelter identified by PHA staff can also help enhance victim safety.

### **Treatment of Victims of Domestic Violence For Purposes of Eviction**

We want HUD to clarify that public housing authorities 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. 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 is important for PHA staff to know that any time the abuser is a citizen or lawful permanent resident and the victim and the abuser are married or formerly married, the immigrant victim can qualify for public and assisted housing as a "qualified alien" under PRWORA.<sup>20</sup> In order to be deemed a "qualified alien" under PRWORA and eligible for public and assisted housing, however, the otherwise undocumented immigrant victim must file an application with the Immigration and Naturalization Service, must have received a prima facie determination (usually within a month) or have a received an approval in a VAWA self-petition or a family based visa petition case, must remove the abuser from the residence,<sup>21</sup> and must prove that there is a substantial connection between the abuse and the need for benefits.<sup>22</sup> When a battered immigrant is abused by a citizen or lawful permanent resident spouse or former spouse or

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<sup>19</sup> 20 USC 1152(f) (2)

<sup>20</sup> As amended by Section 501 of the Illegal Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and Section 5571-72 and 5581 of the Balanced Budget Act of 1997 (BBA). Interim Guidance and Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed.Reg. at 61,344 (1997); Verification and Eligibility for Public Benefits, 63 Fed.Reg. at 41,677.

<sup>21</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 8 USC § 1252, 1255 (Sept. 20, 1996) [herein after IIRAIRA]

<sup>22</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 at 61,370. (1997).

parent (in the case of under 21 year old victims, consistent with the guidance issued by the Department of Justice,<sup>23</sup> HUD should direct PHAs not to initiate eviction proceedings against a battered immigrant who is beginning the process of filing her VAWA self-petition or VAWA cancellation of removal case. If the PHA discovers that it has already initiated an eviction action against a battered immigrant applying for relief under VAWA it should seek to dismiss the case or have the case continued for sufficient time for her to apply for immigration relief under VAWA.

## **Transfer Policy**

Domestic violence should be specifically considered when addressing transfer requests and absence from the housing unit.

The PHA should recognize that a victim of domestic violence may need to remove herself and her children from the unit for an extended period of time as a result of actual or threatened violence against family members by a spouse or other family members. Where the occupant has removed herself from the unit without prior notice, or very short notice, to the PHA, the PHA should consider whether domestic violence has forced the occupant to leave the rental unit. In the instance where 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 occupant can return to the rental unit within a reasonable time, the PHA must continue assistance. Alternatively, if the occupant is not able to return to the rental unit within a reasonable period of time, the PHA must offer the occupant a Section 8 voucher or whatever will best enhance the safety of the victim.

A PHA's transfer policy must allow a tenant the right to immediate transfer with continued assistance where moving allows the tenant and their family members- to escape or remain free from- actual or threatened domestic violence. The transfer policy should include a category in the emergency transfer section for those tenants who are victims of domestic violence and are forced to leave their rental unit because of actual or threatened physical violence that poses an immediate threat to them or to their children's lives and well being and for those tenants whose abuser has discovered their location. PHAs should allow the tenant to terminate the lease and relocate to another jurisdiction if the tenant has concerns regarding her ability to safely remain in that unit.

## **Continuation of Assistance**

When considering whether or not to evict a tenant household for a lease violation or violation of family obligations, the PHA must exercise discretion and common sense. When the lease violation or violation of family obligation arises out of the context of domestic violence, the PHA must allow the innocent family members to remove the offending family member from the lease and continue assistance to the remaining family members. In no case should the victim of domestic violence or a victim of a crime be faced with the termination of assistance solely because of the domestic violence or the criminal activity. If the lease violation includes damages to the rental unit as a result of domestic violence, the PHA should seek recovery against the abuser who committed the damage to the property.

Where the potential termination of housing assistance is premised upon late payment or non-payment of rent, the PHA should immediately conduct a review

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<sup>23</sup> 63 FR 41662 (August 4, 1998)

in cases where the tenant household asserts that the difficulty in paying rent is the result of domestic violence. In this instance, 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. 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.

## **Admission Policy**

A PHA may not deny admission, discriminate or impose unique requirements on applicants, or otherwise exclude or penalize a family in admission to public housing, solely because the applicant or members of the applicant family are victims of domestic violence. If domestic violence is an issue for the family and the PHA becomes aware of it, the PHA must 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. If a PHA determines that there is a substantial connection, it must disregard the adverse information and consider the applicant eligible unless other information unrelated to the domestic violence would disqualify the applicant.

[I still find this very confusing. What is the sentence if you fill in these examples? “the PHA must 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” “the PHA must determine if BECOME SELF-SUFFICIENT FOLLOWING SEPARATION FROM THE ABUSER between the adverse information and the fact that a member . . .” Substantial connection includes but is not limited to the following examples:

- Become self-sufficient following separation from the abuser;
- Escape the abuser and/or the abuser’s community;
- Ensure the safety of the victim, the victim’s child, or the victim’s parent;
- Compensate for the loss of financial support resulting from the separation;
- Because the victim lost her job or earns less because of the battery or cruelty or because of the involvement in legal proceedings relating them (child custody, divorce actions etc.);
- Because the victim had to leave her job for safety reasons;
- Because the victim needs medical attention or mental health counseling or has become disabled;
- Because the victim loses a dwelling or a source of income following separation;
- Because the victim’s fear of the abuser jeopardizes the victim’s ability to take care of her children;
- To alleviate nutritional risk or need resulting from the abuse or following separation;
- To provide medical care during a pregnancy resulting from the relationship with the abuser, the abuse, or abuser’s sexual assault; or
- To replace medical coverage or health care services lost following the separation with the abuser.<sup>24</sup>

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<sup>24</sup>Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 at 61,370. (1997).

## **Notice to All Applicants**

PHAs must provide each applicant family with a statement of the PHA's 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. Literature about protections for battered tenants should be distributed in public locations in the public housing property.

## **Preferences**

A PHA may establish a preference system to admit families with certain characteristics from the waiting list. (See discussion of preferences in \_\_\_\_ of this Guide) PHAs are urged to provide a preference to families with members who are victims of domestic violence. 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 the need for housing by such victims. 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.

A PHA may establish local preferences, such as a preference for working families. An applicant family with members who are victims of domestic violence may have difficulty qualifying for such local preferences because of the domestic violence. 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. Any applicant who is denied a preference, should be informed of the PHAs policy regarding domestic violence. If domestic violence is present and the PHA becomes aware of it, the PHA must 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. If a PHA determines that there is a substantial connection, it must disregard the adverse information and consider the applicant eligible for the preference unless other information unrelated to the domestic violence would disqualify the applicant.

## **Screening**

A PHA may screen families on the basis of their family behavior and suitability for tenancy. A PHA may consider past rent-paying history of an applicant family and tenancy history and inquire about such factors as criminal activity. (For a fuller discussion of screening see section \_\_\_\_\_ of this Guide). 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, for example, characteristics such as the prior poor rent-paying or tenancy history may not be attributable to the victim but rather to the abuser. 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 PHAs 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. If a PHA determines that there is a substantial connection, it must 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 such information if verified 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.

## **Privacy**

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. Revelation of domestic violence information may endanger the safety, security and life of the victim.

## **WE RESERVE THIS SECTION FOR ADDITIONAL COMMENTS**

## **Qualified Immigrants Eligibility for Public and Assisted Housing**

HUD has adopted regulations implementing Section 214 of the Housing and Community Development Act of 1980, which provides that certain noncitizens are eligible for public housing. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) as amended dealt with immigrant restrictions and federal public benefits.<sup>25</sup> PRWORA broadly established that "qualified aliens" were eligible for federal public benefits. (8 U.S.C. 1641(b)) The federal public benefits that qualified aliens are entitled to access include "public and assisted housing."<sup>26</sup> Under PRWORA, 8 U.S.C. 1641 (b)&(c), "qualified alien" includes:

- (1) a lawful permanent resident,<sup>27</sup>
- (2) an asylee,<sup>28</sup>
- (3) a refugee,<sup>29</sup>
- (4) an alien parolee granted parole for at least one year,<sup>30</sup>
- (5) an alien granted withholding of deportation<sup>31</sup>
- (6) a refugee given conditional entry under the Immigration and Nationality Act as in effect prior

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<sup>25</sup> Section 401(a) of the Personal Responsibility and Work Opportunity Act of 1996, 8 U.S.C. 1611(a). Public and assisted housing are among the federal public benefits to be provided to qualified aliens in Section 431 of PRWORA. 8 U.S.C. 1611(c).

<sup>26</sup> ADD CITE

<sup>27</sup> See 8 U.S.C. § 1101(a) (15)&(20); INA § 101(a)(20).

<sup>28</sup> See 8 U.S.C. § 1158; INA § 208.

<sup>29</sup> See 8 U.S.C. § 1157; INA § 207..

<sup>30</sup> See 8 U.S.C. § 1182(d)(5).

<sup>31</sup> See INA § 243(h) as in effect before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

to April 1, 1980,<sup>32</sup>  
(7) a Cuban or Haitian entrant,<sup>33</sup>

or

(c)(1) an alien who-- (A) has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided, and the alien has an approved VAWA petition, family-based visa, or petition pending which sets forth a prima facie case.<sup>34</sup>

PHAs should ensure that all "qualified aliens", including battered immigrants who become qualified aliens under § 431(c) of PRWORA, are deemed clearly eligible for both public and assisted housing. Battered immigrants who are qualified aliens under PRWORA also must be able to retain the public housing units they shared with their abusers and enforce protection order cases removing the abuser from the family home without losing their right to remain in the public or assisted housing units in which they have been living. When determining eligibility for public or assisted housing PHAs must follow the definition of qualified aliens as defined by PRWORA and IIRAIRA.

PRWORA, as amended by IIRAIRA, should be interpreted as adding two new categories of immigrants who must be eligible for public and assisted housing under both the HCDA and PRWORA. All but two of the groups defined as qualified aliens were also listed in the 1980 HCDA as immigrants eligible to receive public or assisted housing.<sup>35</sup> These two groups are battered immigrants (including the children of battered immigrants) and certain Cuban Haitian entrants.<sup>36</sup> HUD should inform PHAs that battered immigrants and Cuban Haitian Entrants are eligible for public and assisted housing and may continue in occupancy with a full subsidy and no rent proration.<sup>37</sup>

## **Retention of Qualified Aliens in Public or Assisted Housing**

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<sup>6</sup> See 8 U.S.C. § 1153(a)(7).

<sup>7</sup> See § 501(e) of the Refugee Education Assistance Act of 1980, 111 Stat. 598, Pub. L. No. 105-33, § 5302(c)(3)(C).

<sup>34</sup> Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 amended the Personal Responsibility and Work Opportunity Act of 1996 adding a new paragraph 431(c) granting certain battered immigrants qualified alien status. 8 U.S.C. 1641(c).

<sup>35</sup> Aliens granted conditional entry under § 203(a)(7) of the INA as in effect prior to April 1, 1980 are also included as qualified aliens. Although this group is missing from those immigrants enumerated in HCDA, they are actually refugees. Conditional entry was the precursor to the creation of refugee status in U.S. immigration law. These immigrants would have access to public and assisted housing along with other refugees listed in the Housing and Community Development Act of 1980. 111 Stat. 598, Pub. L. No. 105-33, § 5302(c)(3)(C).

<sup>36</sup> Section 431(b)(7) was added to PRWORA by Section 5302(c)(3) of the Balanced Budget Act of 1997; Public Law 105-33 August 5, 1997; 111 STAT 599-600.

<sup>37</sup> These battered immigrants and Cuban and Haitian entrants are also eligible for other HUD assisted housing such as vouchers, and HUD assisted and subsidized housing.

We seek HUD's assistance to 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.

All battered immigrant qualified aliens are spouses, children, or former spouses of U.S. citizen- or lawful permanent resident-abusers. In order to attain the qualified alien status necessary to have access to federal public benefits, including public and assisted housing, battered immigrants must first file a case with the Immigration and Naturalization Service (INS) or an immigration judge. Battered immigrants must have filed one of the following types of cases – a VAWA self-petition, a VAWA cancellation of removal application, a VAWA suspension of deportation case, or a family based visa petition (I-130) demonstrating a marital or parent/child relationship.

HUD should instruct PHAs that they should not terminate or reduce the assistance of a resident who has filed a case and is seeking “qualified alien” status during the pendency of the immigrant’s case. In addition, in the case of a public housing resident who is seeking such “qualified alien” status, the family should be entitled to full housing benefits for all the individuals who are included in the case, not a proration of rent for those individuals, during the pendency of the immigrant’s case. For admission and transfer purposes, battered immigrants should be treated in the same manner as the PHA treats other victims of abuse and noncitizens who are eligible for assistance in accordance with 24 C.F.R. § 5.500—528.

Specifically, PHAs should provide battered immigrants the opportunity and time to:

- file cases with INS, receive their prima facie determinations or approvals;
- apply to have the public or assisted housing unit in which they live transferred to their name;
- have their application processed without their abuser’s knowledge;
- receive confirmation that they otherwise qualify for public and assisted housing except for the fact that they still share a home with their abuser;<sup>38</sup>
- obtain a protection order from the local family court that removes the abuser from the public or assisted housing unit that serves as their home; and
- upon supplying proof that the abuser has been removed from the home by the

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<sup>38</sup> The Attorney General of the United States’ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, AG Order 2129-97. 62 Fed. Reg. 61344, 61,367. (Nov. 17, 1997). [hereinafter Interim Guidance] explicitly authorizes public benefits providers to process and application for public benefits submitted by a battered immigrant and inform that battered immigrant that has been approved to receive the public benefit before the battered immigrant has separated from her abuser. She can then be provided benefits for 30 days during which time she must remove the abuser from the home in order to continue receiving the benefits. In the alternative, she can be informed that she qualifies and asked to return with proof that the abuser has been removed from the unit in order to start receiving benefits on her own.

protection order have the public housing unit transferred to her name.

- Have the public housing unit transferred to her name.

Additionally, PHAs should not displace battered women and children from public or assisted housing without receiving information about their legal rights to VAWA immigration benefits and without having an opportunity to apply for them. If battered immigrants who are eligible to be qualified aliens are not provided with this opportunity and proration is applied to them, many will be forced to pay over 100% of their income for rent when, in fact, they are eligible to receive a subsidy. PHAs should create procedures to enable battered immigrants to learn about and file for public and assisted housing benefits, otherwise they will be forced to return to their abusers because of financial constraints, the real possibility of homelessness, and the inability to support themselves and their families without the aid they deserve. Battered immigrant women who are eligible to be qualified aliens should be encouraged, not discouraged, from leaving their abusive citizen- and lawful permanent resident-spouses.

PHAs should inform immigrant women married to U.S. citizens or lawful permanent residents about VAWA's immigration protections and the access to public benefits that may be open to them if their spouses have filed cases for them with INS.