

WORKSHOP MANUAL
VIOLENCE AGAINST WOMEN ACT (VAWA)
POLICY CHANGES & EMERGENCY TRANSFER PLAN

IMPLEMENTATION OF HUD'S RULE PERTAINING TO CHANGES IN REGULATIONS CONCERNING PHA IMPLEMENTATION OF THE VIOLENCE AGAINST WOMEN ACT)

Overview: HUD's final rule pertaining to changes in regulations concerning PHA implementation of the Violence Against Women Act (VAWA) was published in the Federal Register on November 16, 2016. This rule requires PHAs to update their Violence Against Women Act policies to reflect such changes, and to prepare and implement an Emergency Transfer Plan for victims of domestic violence, dating violence, sexual assault, or stalking.

Implementation of the Rule:

STEP 1 - PHA consultation with its resident advisory board(s) to assist with and make recommendations regarding preparation of an updated Violence Against Women Act (VAWA) policy, and preparation of an Emergency Transfer Plan for victims of domestic violence, dating violence, sexual assault, or stalking.

To assist the PHA and its resident advisory board(s) in this effort, a sample VAWA policy and Emergency Transfer Plan are attached hereto for guidance. This sample policy and transfer plan reflect all of the HUD required changes under the 11/16/16 final rule.

STEP 2 – PHA preparation or updating of its VAWA policy, and preparation of its Emergency Transfer Plan.

STEP 3 –Tenant Review Notice.

HUD regulations require that the PHA post or otherwise make available for a minimum 30 day calendar period, a notice to its public housing and Section 8 residents informing them that the PHA has prepared and proposes to adopt, subject to receipt and consideration of their written comments, an amended VAWA policy and Emergency Transfer Plan for victims of domestic violence, dating violence, sexual assault, or stalking; and specifying that all written comments should be submitted to the PHA's Management Office by _____ (insert a date which follows the end of the 30 day review and comment period).

STEP 4 – Prepare a Resolution for Adoption of the PHA's amended VAWA policy, and its Emergency Transfer Plan.

The wording of such resolution should cover the adoption/approval of both the amended policy and the emergency transfer plan, the attachment of copies of such documents to the

resolution, their incorporation therein, and their being made a part thereof by reference; the incorporation of the amended policy and the emergency transfer plan as attachments to the PHA's ACOP and Section 8 Administrative Plan, and their being made a part thereof by reference; and the effective date of the resolution.

STEP 5 Present Resolution to the Board of Commissioners for Adoption.

STEP 6 -Prepare and deliver a notice to all of the PHAs public housing and Section 8 residents informing them of the adoption of the amended policy and emergency transfer plan, and furnish them with copies of such documents.

SAMPLE

VIOLENCE AGAINST WOMEN ACT (VAWA) POLICY

I. Purpose and Applicability

The purpose of this policy (herein called "Policy") is to implement the applicable provisions of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162), as amended to date, and more generally to set forth the Housing Authority's (Hereinafter referred to as the "HA") policies and procedures regarding domestic violence, dating violence, sexual assault, and stalking, as hereinafter defined.

This Policy shall be applicable to the administration by the HA of all federally subsidized public housing and Section 8 rental assistance under the United States Housing Act of 1937 (42 U.S.C. 5437 et seq.). Notwithstanding its title, this policy is gender-neutral, and its protections are available to males who are victims of domestic violence, dating violence, sexual assault, or stalking, as well as female victims of such violence.

Consistent with HUD'S Nondiscrimination and equal opportunity requirements, victims of domestic violence, dating violence, sexual assault and stalking cannot be discriminated against on the basis of any characteristic or trait protected under law, including race, color, religion, sex, disability, familial status, national origin, or age, and HUD programs must also be operated consistently with HUD's Equal Access Rule (HUD - assisted housing must be made available to all otherwise eligible individuals and families without regard to actual or perceived sexual orientation, gender identity or marital status).

II. Goals and Objectives

This Policy has the following principal goals and objectives:

- A. Maintaining compliance with all applicable legal requirements imposed by VAWA;
- B. Ensuring the physical safety of victims of actual or threatened domestic violence, dating violence, sexual assault, or stalking who are assisted by the HA;
- C. Providing and maintaining housing opportunities for victims of domestic violence dating violence, sexual assault; or stalking.
- D. Creating and maintaining collaborative arrangements between the HA, law enforcement authorities, victim service providers, and others to promote the safety and well-being of victims of actual and threatened domestic violence, dating violence, sexual assault, or stalking who are ssisted by the HA; and
- E. Taking appropriate action in response to an incident or incidents of domestic violence, dating violence, sexual assault, or stalking, affecting individuals assisted by the HA.

III. Related NBHA Policies and Procedures

This Policy shall be referenced in and attached to the HA's Five-Year Public Housing Agency Plan and shall be incorporated in and made a part of the HA's Admissions and Continued Occupancy Policy and the HA's Section 8 Administrative Plan. The HA's annual public housing agency plan shall also contain information concerning HA's activities, services or programs relating to domestic violence, dating violence, sexual assault, and stalking. To the extent any provision of this policy shall vary or contradict any previously adopted policy or procedure of the HA, the provisions of this Policy shall prevail.

IV. Definitions

As used in this Policy:

A. Domestic Violence - The term "domestic violence" includes felony or misdemeanor crimes committed by a current or former spouse, by an intimate partner 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 or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction."

B. Dating Violence - means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (i) The length of the relationship.
- (ii) The type of relationship.
- (iii) The frequency of interaction between the persons involved in the relationship.

C. Sexual Assault - means any type of sexual contact or behavior that occurs without the explicit consent of the recipient of the unwanted sexual activity.

D. Stalking - means to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or to place under surveillance with the intent to kill, injure, harass or intimidate another person; or in the course of, or as a result of, such following, pursuit, surveillance or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to that person; a member of the immediate family of that person; or the spouse or intimate partner of that person.

E. Immediate Family Member - means a spouse, parent, brother, sister, or child of the person, or an individual to whom that person stands in loco parentis; or any other person living in the household of that person and related to that person by blood or marriage.

F. Perpetrator - means a person who commits an act of domestic violence, dating violence, sexual assault, or stalking against a victim.

G. Bifurcate - means the owner/agent has the right to divide a lease as a matter of law so that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

V. Admissions and Screening

Non-Denial of Assistance - The HA will not deny admission to public housing or to the Section 8 rental assistance program to any person because that person is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, provided that such person is otherwise qualified for such admission.

Mitigation of Disqualifying Information - When so requested in writing by an applicant for assistance whose history includes incidents in which the applicant was a victim of domestic violence, the HA, may, but shall not be obligated to, take such information into account in mitigation of potentially disqualifying information, such as poor credit history or previous damage to a dwelling. If requested by an applicant to take such mitigating information into account, the HA shall be entitled to conduct such inquiries as are reasonably necessary to verify the claimed history of domestic violence and its probable relevance to the potentially disqualifying information. The HA will not disregard or mitigate potentially disqualifying information if the applicant household includes a perpetrator of a previous incident or incidents of domestic violence.

VI. Termination of Tenancy or Assistance

A. VAWA Protections - Under VAWA, public housing residents and persons assisted under the Section 8 rental assistance program have the following specific protections, which will be observed by the HA :

1. Public housing and Section 8 rental assistance applicants may not be denied assistance and public housing and Section 8 assisted tenants may not have assistance terminated for factors resulting from the fact that the applicant or tenant is or has been a victim of a VAWA crime.
2. An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be considered to be a "serious or repeated" violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of or assistance to the victim of that violence.
3. In addition to the foregoing, tenancy or assistance will not be terminated by the HA as a result of criminal activity, if that criminal activity is directly related to domestic violence, dating violence, sexual assault, or stalking engaged in by a member of the assisted household, a guest or another person under the tenant's control, and the tenant or an immediate family member is the victim or threatened victim of this criminal activity. However, the protection against termination of tenancy or assistance described in this paragraph is subject to the following limitations:

(a) Nothing contained in this paragraph shall limit any otherwise available authority of the HA or a Section 8 owner or manager to terminate tenancy, evict, or to terminate assistance, as the case may be, for any violation of a lease or program requirement not premised on the act or acts of domestic violence, dating violence, sexual assault, or stalking in question against the tenant or a member of the tenant's household. However, in taking any such action, neither the HA nor a

Section 8 manager or owner may apply a more demanding standard to the victim of domestic violence, dating violence, sexual assault, or stalking than that applied to other tenants.

(b) Nothing contained in this paragraph shall be construed to limit the authority of the HA or a Section 8 owner or manager to evict or terminate from assistance any tenant or lawful applicant if the owner, manager or the HA, as the case may be, can demonstrate an actual and imminent threat to other tenants or to those employed at or providing service to the property, if the tenant is not evicted or terminated from assistance.

B. Removal of Perpetrator - Further, notwithstanding anything in paragraph VI.A.2. or Federal, State or local law to the contrary, the HA or a Section 8 owner or manager, as the case may be, may bifurcate a lease, 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 acts of physical violence against family members or others. Such action against the perpetrator of such physical violence may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also the tenant or a lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by law applicable to terminations of tenancy and evictions by the HA. Leases used for all public housing operated by SAHA and, at the option of Section 8 owners or managers, leases for dwelling units occupied by families assisted with Section 8 rental assistance administered by the HA, shall contain provisions setting forth the substance of this paragraph.

If a housing provider bifurcates a lease under VAWA, any remaining tenants without established program eligibility must be given either the maximum time permitted by program statute to establish eligibility, or find alternative housing. If no statutory prohibitions exist, at least 90 calendar days from the date of bifurcation or until expiration of the lease, depending on the program, must be provided.

VII. Verification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

A. Requirement for Verification - In cases of conflicting evidence, tenants and applicants who may need to submit third-party documentation to document occurrences of a VAWA crime, have 30 calendar days to submit the third-party documentation to the HA. Tenants and applicants may choose which of the following forms of verification to give to the HA:

1. A written certification, on a form approved by the U.S. Department of Housing and Urban Development (HUD), certifying that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking; and that the incident or incidents in question are bona fide incidents of actual or threatened abuse meeting the requirements of the applicable definition(s) of VAWA crime set forth in this policy. The incident or incidents in question must be described in reasonable detail as required in the HUD-approved form, and the completed certification must include the name of the perpetrator.

2. Documentation signed by an a service provider, an attorney, a medical professional, or other responsible professional from whom the victim has sought assistance in addressing the domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse, described in such documentation. The professional providing the documentation must sign and attest under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse meeting the requirements of the applicable definition(s) set forth in this policy. The victim of the incident or incidents of domestic violence, dating violence or stalking described in the documentation must also sign and attest to the documentation under penalty of perjury.

3. A law enforcement agency incident report or a court record describing the incident or incidents of VAWA crime.

The Executive Director of the HA, may, with respect to any specific case, waive the above-stated requirements for verification and provide the benefits of this policy based on the victim's self-certification or other corroborating evidence. Waiver in a particular instance or instances shall not operate as precedent for, or create any right to, waiver in any other case or cases, regardless of similarity in circumstances.

VIII. Confidentiality

A. Right of Confidentiality - All information (including the fact that an individual is a victim of domestic violence, dating violence or stalking) provided to the HA or to a Section 8 owner or manager in connection with a survivor's self-certification or other form of verification required under this policy, or provided in lieu of such verification where a waiver of verification is granted, shall be retained by the receiving party in confidence and shall neither be entered in any shared database nor provided to any related entity, except where disclosure is:

1. Requested or consented to by the individual in writing, or
2. Required for use in a public housing eviction proceeding or in connection with termination of Section 8 housing assistance, as permitted in VAWA, or
3. Otherwise required by law.

B. Notification of Rights - All tenants of public housing and tenants participating in the Section 8 rental assistance program administered by the HA shall be notified in writing concerning their right to confidentiality and the limits on such rights.

C. Security - All information pertaining to the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained separately and securely by the HA, unless such information is subject to the disclosure exceptions noted in this section.

IX. Emergency Transfers to New Residence

A. Application for Emergency Transfer - In situations that involve significant risk of violent harm to an individual as a result of previous incidents or threats of domestic violence, dating violence, sexual assault, or stalking, the HA will, if an approved unit size is available at a location that may reduce the risk of harm, approve transfer by a public housing or Section 8 tenant to a different unit in order to reduce the level of risk to the individual. A tenant who requests transfer must attest in such application that the requested transfer is necessary to protect the health or safety of the tenant or another member(s) of the household who is or was the victim of domestic violence, dating violence, or stalking and who reasonably believes that the tenant or other household member will be imminently threatened by harm from further violence if the individual remains in the present dwelling unit.

B. Action on Applications for Transfer - The HA will act promptly upon such application. Requests for emergency transfers must comply with the applicable requirements of the HA's Emergency Transfer Plan, see copy attached hereto under Appendix A.

C. No Right to Transfer - The HA will make every effort to accommodate requests for transfer when suitable alternative vacant units are available and the circumstances warrant such action. However, except with respect to portability of Section 8 assistance as provided in paragraph E. below the decision to grant or refuse to grant a transfer shall lie within the sole discretion of the HA, and this policy does not create any right on the part of any applicant to be granted a transfer.

D. Family Rent Obligations - If a family occupying public housing moves before the expiration of the lease term in order to protect the health or safety of a household member, the family will remain liable for the rent during the remainder of the lease term unless released by the HA. In cases where the HA determines that the family's decision to move was reasonable under the circumstances, the HA may wholly or partially waive rent payments and any rent owed shall be reduced by the amounts of rent collected for the remaining lease term from a tenant subsequently occupying the unit.

E. Portability - Notwithstanding the foregoing, a Section 8-assisted tenant will not be denied portability to a unit located in another jurisdiction (notwithstanding the term of the tenant's existing lease has not expired, or the family has not occupied the unit for 12 months) so long as the tenant has complied with all other requirements of the Section 8 program and has moved from the unit in order to protect the health or safety of an individual member of the household who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believes that the tenant or other household member will be imminently threatened by harm from further violence if the individual remains in the present dwelling unit.

X. Court Orders/Family Break-up

A. Court Orders - It is the HA's policy to honor orders entered by courts of competent jurisdiction affecting individuals assisted by the HA and their property. This includes cooperating with law enforcement authorities to enforce civil protection orders issued for the protection of victims and addressing the distribution of personal property among household members in cases where a family breaks up.

B. Family Break-up - Other HA policies regarding family break-up are contained in the HA's Public Housing Admissions and Continuing Occupancy Policy (ACOP) and its Section 8 Administrative Plan.

XI. Relationships with Service Providers

It is the policy of the HA to cooperate with organizations and entities, both private and governmental, which provide shelter and/or services to victims of domestic violence. If the HA staff become aware that an individual assisted by the HA is a victim of domestic violence, dating violence, sexual assault or stalking, the HA will refer the victim to such providers of shelter or services as appropriate. Notwithstanding the foregoing, this Policy does not create any legal obligation requiring the HA either to maintain a relationship with any particular provider of shelter or services to victims of domestic violence, dating violence, sexual assault, or stalking, or to make a referral in any particular case. The HA's annual public housing agency plan shall describe providers of shelter or services to victims of domestic violence with which the HA has referral or other cooperative relationships.

XII. Notification

The HA shall provide its public housing residents and Section 8 recipients with the Notice of Occupancy Rights and accompanying certification form at the time of lease-up and in conjunction with the annual recertification process.

Public housing and Section 8 applicants, tenants, and Section 8 property owners and managers, will also be provided with informational material concerning the rights and obligations of occupancy created under VAWA, and the specific protections afforded to victims under the VAWA.

XIII. Relationship with Other Applicable Laws

Neither VAWA nor this Policy implementing it shall preempt or supersede any provision of Federal, State or local law that provides greater protection than that provided under VAWA for victims of domestic violence, dating violence, sexual assault or stalking.

XIV. Amendment

This policy may be amended from time to time by the HA as approved by the HA Board of Commissioners.

Appendix A

**Emergency Transfer Plan
For
Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

The _____ Housing Authority (HA) is concerned about the safety of tenants under its public housing and Section 8 programs, and such concerns extend to tenants under such programs who are victims of domestic violence, dating violence, sexual assault, or stalking. In accord with the Violence Against Women Act (VAWA), the HA allows its tenants and Section 8 recipients who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from their current dwelling unit to another public housing or Section 8 assisted rental unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation. The ability of the HA to honor such request for public housing tenants and Section 8 recipients currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether the HA has another dwelling unit that is available and is safe to offer the tenant/Section 8 recipient for temporary or more permanent occupancy.

This plan identifies tenants/Section 8 recipients who are eligible for emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants/Section 8 recipients on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the Federal agency that oversees the HA's compliance with the VAWA.

Eligibility for Emergency Transfers - A public housing tenant or Section 8 recipient who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L is eligible for an emergency transfer, if: The tenant/Section 8 recipient reasonably believes that there is a threat of imminent harm from further violence if the tenant/Section 8 recipient remains within the same dwelling unit. If the tenant/Section 8 recipient is a victim of sexual assault, the tenant/Section 8 recipient may also be eligible if the sexual assault occurred on the premises during the 90 calendar-day period preceding a request for an emergency transfer.

A tenant/Section 8 recipient requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this Emergency Transfer Plan.

Tenants/Section 8 recipients who are not in good standing with the HA may still request an emergency transfer if they meet the eligibility requirement set forth in this Emergency Transfer Plan.

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant/Section 8 recipient shall notify the HA's management office and submit a written request for a transfer. The HA will provide reasonable accommodations to this policy for individuals with disabilities.

The written request for an emergency transfer should include either:

1. A statement expressing that the tenant/Section 8 recipient reasonably believes that there is a threat of imminent harm from further violence if the tenant/Section 8 recipient were to remain in the same dwelling unit currently assisted by the HA; or
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's/Section 8 recipient's request for an emergency transfer.

Confidentially

The HA will keep confidential any information that the tenant/Section 8 recipient submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant/Section 8 recipient gives the HA written permission to release the information on a limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the location of the new dwelling unit of the tenant/Section 8 recipient, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault or stalking against the tenant/Section 8 recipient. See the Notice of Occupancy Rights under the Violence Against Women Act For All Tenants for more information about the HA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

The HA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The HA will, however, act as quickly as possible to move a tenant/Section 8 recipient who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant/Section 8 recipient reasonably believes a proposed transfer would not be safe, the tenant/Section 8 recipient may request a transfer to a different unit. If a unit is available, the transferred tenant/Section 8 recipient must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant/Section 8 recipient has been transferred. The HA may be unable to transfer a tenant/Section 8 recipient to a particular unit if the tenant /Section 8 recipient has not or cannot establish eligibility for that unit.

If the HA has no safe and available units for which a tenant/Section 8 recipient who need an emergency unit is eligible, the HA will assist the tenant/Section 8 recipient in identifying other housing providers who may have safe and available units to which the tenant/Section 8 recipient could move. On request, the HA will also assist tenants/Section 8 recipients in contacting local and state organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or king. A list of local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking is also available on request, at the HA's main administrative office.

Safety and Security of Tenants

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant/Section 8 recipient is urged to take all reasonable precautions to be safe.

Tenants/Section 8 recipients who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://chl.reinn.org/online/>.

Tenants/Section 8 recipients who are or have been victims of stalking and are seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at: <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.