

HUD Issues VAWA Guidance for Project-Based Section 8 Owners

Nearly three years after the Violence Against Women Act of 2005 (VAWA)¹ became effective, the Department of Housing and Urban Development's Office of Housing has issued guidance on the statute to project-based Section 8 owners and managers. On September 30, 2008, the Office of Housing published a notice, certification form, and lease addendum implementing VAWA's housing provisions.² This is the first notice that HUD has issued that is specifically tailored to the project-based Section 8 program. The notice is particularly significant given that HUD field offices had previously misinformed project-based owners that they were not obligated to implement VAWA,³ several advocates have reported that project-based owners are unaware of their obligations under the statute, and at least one case has been brought against a project-based owner alleging violations of VAWA.⁴

Applicability

The notice applies to all project-based Section 8 owners participating in the New Construction, State Agency Financed, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition Set-Aside programs.⁵ The notice also applies to Section 202 projects receiving Section 8 assistance as well as Rural Housing Service Section 515 projects with Section 8 assistance.⁶ HUD's Office of Public and Indian Housing has previously issued notices implementing VAWA in the public housing and Housing Choice Voucher programs.⁷ Additionally, on March 2007, HUD published a Federal Register notice providing a general overview of VAWA's protections.⁸

¹Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006). For more information on VAWA and HUD's implementation, see NHLP, *Reauthorized Violence Against Women Act Protects Housing Rights of Domestic Violence Survivors*, 36 HOUS. L. BULL. 53 (Mar. 2006); Naomi Stern, *HUD Begins VAWA Implementation*, 36 HOUS. L. BULL. 181 (Sept. 2006); NHLP, *HUD Continues VAWA Implementation*, 37 HOUS. L. BULL. 7 (Jan. 2007); NHLP, *PHAs and Advocates Begin Early Efforts to Implement VAWA*, 37 HOUS. L. BULL. 193 (Dec. 2007).

²Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005 for the Multifamily Project-Based Section 8 Housing Assistance Payments Program, H 08-07 (Sept. 30, 2008) [hereinafter Notice H 08-07].

³See HUD San Francisco Multifamily Hub, *Violence Against Women's Act*, 9 PACIFIC CURRENTS 12 (Oct. 2007).

⁴Legal Momentum, *Brooklyn Landlord v. R.F.* (2007), available at http://legalmomentum.org/legalmomentum/inthecourts/2007/06/brooklyn_landlord_v_rf_2007.php.

⁵Notice H 08-07 at 2.

⁶*Id.*

⁷Revised Voucher Housing Assistance Payments Contract (Form HUD 52641) and Tenancy Addendum (form HUD 52641A), PIH 2007-5 (Feb. 16, 2007); Violence Against Women and Justice Department Reauthorization Act 2005 Form HUD-50066 Certification of Domestic Violence, Dating Violence, or Stalking, PIH 2006-42 (Dec. 27, 2006).

⁸72 Fed. Reg. 12,696 (Mar. 16, 2007) (The Violence Against Women and

Protections for Victims

In describing VAWA's protections, the notice closely tracks the statute's language, stating that an applicant's or participant's status as a victim of domestic violence, dating violence, or stalking is not a basis for denial of rental assistance or for denial of admission.⁹ Similarly, the notice provides that incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as serious or repeated violations of the lease or other "good cause" for terminating the victim's assistance or tenancy.¹⁰ Additionally, the notice states that criminal activity directly related to domestic violence, dating violence, or stalking shall not be cause for termination of the assistance or tenancy of the victim of those criminal acts.¹¹ Furthermore, the notice prohibits owners from subjecting victims to a more demanding standard than other tenants.¹²

The notice incorporates VAWA's language regarding bifurcation of leases and rental assistance, stating that if an individual commits a criminal act of violence against family members, owners may terminate the perpetrator's assistance or bifurcate the lease to remove the perpetrator from the home.¹³ The notice directs owners to take this action while allowing the victim to remain in the assisted unit.¹⁴ Additionally, owners should process an interim recertification reflecting the change in household composition.¹⁵

The notice acknowledges that VAWA does not limit an owner's authority to evict or terminate assistance to victims who commit criminal activity that is unrelated to their status as victims of domestic violence, dating violence, or stalking.¹⁶ The notice also states that if an owner can show an actual or imminent threat to other tenants or employees at the property if a tenant's residency is not terminated, "then evicting a victim is an option, the VAWA notwithstanding."¹⁷

Rights and Responsibilities of Owners

One of the most significant features of the notice is its guidance to owners regarding actions they should take to be in compliance with VAWA. This guidance extends beyond VAWA's statutory language and includes practical steps for implementing the statute. The notice directs owners to update their tenant selection plans and house

Department of Justice Reauthorization Act of 2005: Applicability to HUD Programs).

⁹Notice H 08-07 at 3.

¹⁰*Id.* at 3-4.

¹¹*Id.* at 4.

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.* at 7.

¹⁶*Id.* at 4.

¹⁷*Id.*

rules to incorporate VAWA.¹⁸ It also encourages owners to establish policies that will protect victims from losing their subsidized housing as a consequence of domestic violence, dating violence, or stalking.¹⁹ Advocates should consider using this language to press project-based owners to revise their admissions and terminations policies so that they better serve survivors' housing needs.

Certification and Confidentiality

The notice transmits form HUD-91066, which can be used to certify that an individual is a victim of domestic violence, dating violence, or stalking. Although HUD had previously transmitted certification form HUD-50066 for use in the public housing and Housing Choice Voucher programs, no certification form previously existed for the project-based Section 8 program. Form HUD-91066 is substantially similar to form HUD-50066. Both forms require that victims provide the name and their relationship to the abuser, as well as the date, time, and location of the incident of domestic violence, dating violence, or stalking.²⁰ Victims must describe the incident and sign the forms under penalty of perjury.²¹ The forms also notify victims of VAWA's confidentiality requirements, which are discussed below. The notice suggests making the certification form available to all eligible families at the time of admission, or enclosing the form with termination notices.²²

The notice states that owners responding to an incident of domestic violence, dating violence, or stalking that could impact a tenant's housing assistance may request in writing that the tenant complete form HUD-91066.²³ Owners are not required to request official documentation and may provide VAWA's protections based solely on the victim's statement or other corroborating evidence.²⁴ If an owner chooses to request documentation, the victim must respond to the written request within 14 business days.²⁵ Owners are free to extend this time period at their discretion.²⁶ Both the notice and certification form state that in lieu of form HUD-91066, victims may provide a police or court record, or documentation signed by a victim service provider, attorney, or medical professional.²⁷ This is notable because advocates have reported several instances in the public housing and Housing Choice Voucher context

where housing authorities and owners have requested that victims provide both the certification form and additional documentation. The notice reminds owners that mailing the certification form to victims may place them at risk if the abuser is monitoring the mailing.²⁸ The notice therefore recommends that owners consult with victims in making delivery arrangements, such as having them pick up the notice at the management office.²⁹

The notice encourages owners "to carefully evaluate abuse claims as to avoid conducting an eviction based on false or unsubstantiated accusations."³⁰ This statement is somewhat troubling in that it does not explain what factors an owner would consider in determining whether an accusation of abuse is false. Further, given that many property managers are not trained in the dynamics of domestic violence, it is unclear what knowledge they would rely on in assessing the veracity of an accusation. This illustrates the need for advocates to train Section 8 property managers on the fundamentals of domestic violence and to establish relationships between these managers and domestic violence service providers so that they can appropriately respond to abuse at their properties.

The notice closely tracks VAWA's confidentiality language, reminding owners that information regarding domestic violence must be retained in confidence and must not be entered into any shared database or provided to a related entity.³¹ The information may be disclosed only if: (1) the victim requests or consents to disclosure in writing; (2) the information is required for use in an eviction proceeding or termination of assistance; (3) disclosure is otherwise required by applicable law.³² The notice directs owners to keep documentation regarding incidents of domestic violence, dating violence, and stalking in a secure location that is separate from other tenant files.³³

Lease Addendum

The notice transmits a lease addendum, form HUD-91067, which must be distributed to all new and existing tenants and signed by the owner and the tenant. The addendum explains that incidents of domestic violence, dating violence, or stalking may not be considered serious or repeated lease violations or other good cause for terminating the victim's assistance or tenancy.³⁴ The addendum also informs tenants that landlords may request in writing that tenants certify that they are victims of abuse, and that failure to provide the certification form or other

¹⁸*Id.* at 4-5.

¹⁹*Id.* at 5.

²⁰Form HUD-91066 Certification of Domestic Violence, Dating Violence, or Stalking (9/2008) [hereinafter Form HUD-91066]; Form HUD-50066 Certification of Domestic Violence, Dating Violence, or Stalking (11/2006) hereinafter Form HUD-50066].

²¹Form HUD-91066; Form HUD-50066.

²²Notice H 08-07 at 5.

²³*Id.*

²⁴*Id.*

²⁵*Id.*

²⁶*Id.*

²⁷*Id.*; Form HUD-91066.

²⁸Notice H 08-07 at 6.

²⁹*Id.*

³⁰*Id.* at 5-6.

³¹*Id.* at 6.

³²*Id.*

³³*Id.*

³⁴Form HUD-91067, Lease Addendum: Violence Against Women and Justice Department Reauthorization Act of 2005 (9/2008).

supporting documentation within fourteen business days may result in eviction.³⁵ Owners “must expeditiously begin to notify existing tenants” of the lease addendum.³⁶ The notice instructs owners to forward the addendum to tenants with a letter stating that tenants can either accept the modification or move, and that a response is due within thirty days.³⁷

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Conclusion

Although the notice is an important development in implementing VAWA in the project-based Section 8 program, many owners will remain unaware of their obligations under the statute unless advocates step in. To improve project-based owners’ and tenants’ awareness of VAWA, advocates should consider: (1) providing domestic violence and VAWA training to property managers; (2) working with owners to revise admissions and occupancy policies as well as termination notices; (3) reminding owners of their duty to distribute the lease addendum to new and existing tenants; (4) urging owners to include information about VAWA in briefing packets and termination notices; and (5) encouraging owners to post notices of tenants’ VAWA rights in the lobbies, hallways, and lounges of their buildings.

For additional information regarding VAWA implementation, please contact Meliah Schultzman, NHLP Equal Justice Works Fellow, at 510-251-9400 x3116 or mschultzman@nhlp.org. ■

Court Finds Voucher Tenant Properly Asserted Section 1983 Action

In *Stevenson v. Willis*¹, a federal district court held that a tenant’s claims under the United States Housing Act challenging a housing authority’s termination of her voucher were enforceable via 42 U.S.C. § 1983. The court also found that the tenant had stated a cause of action under § 1983 for violation of her constitutional right to procedural due process.

Factual Background

The tenant, a disabled single mother of four children, rented an apartment in 2002 under a lease approved by the housing authority.² When the tenant sought to move, the housing authority required her to obtain written approval from the landlord stating that she owed no money for back rent or damage to the property.³ The landlord claimed that the tenant caused damage to the property and refused to provide written approval unless she agreed to be responsible for repairs.⁴ The tenant denied that she had caused any damage, but signed an agreement to pay for the repairs.⁵ When she failed to pay, the landlord served her with a notice to vacate.⁶ The tenant moved out of the apartment to stay with her mother and subsequently received a notice that the housing authority planned to terminate her voucher on two grounds: (1) “moving in lieu of eviction” and (2) “damages to the unit.”⁷

During the informal hearing, the hearing officer both presented the housing authority’s case and adjudicated the issues.⁸ The hearing officer presented no witnesses and instead relied on an internal record of a telephone conversation between the landlord and a housing authority case manager, in which the landlord stated that the tenant owed \$3,500 in damages.⁹ The hearing officer also presented the repair agreement between the tenant and the landlord.¹⁰ However, no proof of the alleged damages was presented, and the landlord did not attend the hearing. The hearing officer issued a written decision requiring the tenant to enter into a repayment agreement with

¹2008 WL 4346512 (N.D. Ohio Sept. 18, 2008).

²*Id.* at *1.

³*Id.*

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷*Id.*

⁸*Id.*

⁹*Id.*

¹⁰*Id.*

³⁵*Id.*

³⁶Notice H 08-07 at 6.

³⁷*Id.*