



EL Monte Office
(626) 307-3655

March 27, 2007

Housing Authority Board of Commissioners
County of Los Angeles
856 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Re.: Submission of Written Comments on the Proposed Annual Plan for Fiscal Year 2007-2009

Dear Chairman Yaroslavsky, and Commissioners Molina, Burke, Knabe, and Antonovich:

Public Counsel Law Center, Neighborhood Legal Services of Los Angeles County, and the National Housing Law Project submit the following comments in connection with the Housing Authority of the County of Los Angeles' (HACoLA) proposed Annual Plan for Fiscal Year 2007-2009, including revisions to the Section 8 Administrative and the Admissions and Continued Occupancy Policy (ACOP).

Public Counsel Law Center is a pro bono law office that serves low-income children, youth, adults, and families, as well as eligible community organizations, in Southern California. Neighborhood Legal Services of Los Angeles County (NLS) provides free legal services to low-income residents of Los Angeles County, including the San Fernando, San Gabriel, and Antelope Valleys, as well as neighboring communities. The National Housing Law Project (NHLP) is a national housing law and advocacy center that provides legal assistance, advocacy advice and housing expertise to legal services and other attorneys, low-income housing advocacy groups, and others who serve the poor. We submit these comments in the hope that they will facilitate a continued dialogue with HACoLA and assist the agency in administering its housing programs in a manner consistent with its mission of promoting adequate and affordable housing.

Our comments on the Annual Plan focus on the following areas: (1) requirements under the Violence Against Women and Department of Justice Reauthorization Act of 2005 to address the needs of domestic violence survivors¹ in housing programs administered by the public housing agency ("PHA"); (2) services for limited English proficient ("LEP") persons as required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, ("Title VI"); its implementing regulations; and Executive Order 13166; (3) public housing operating subsidies; (4) admission issues; (5) continued occupancy issues; (6) public housing vacancies; (7) the Section 3 program; (8) project-based vouchers; and (9) Resident Advisory Board (RAB) membership and outreach activities. We would welcome meeting with HACoLA to respond to any questions or concerns that the agency may have with regard to our comments.

//

¹ While federal law has separate categories for "domestic violence" and "dating violence" in Section 3 of the United States Housing Act of 1937 (42 U.S.C. § 13925), the definition of "domestic violence" in section 6211 of the California Family Code encompasses both federal categories. For simplicity, we use the term "victims of domestic violence" throughout our comments to refer to victims of domestic violence, dating violence, and stalking.

ADMINISTRATIVE OFFICE
1102 East Chevy Chase Drive
Glendale, CA 91205
Fax: (818) 291-1790

EL MONTE OFFICE
9354 Telstar Avenue
El Monte, CA 91731
Fax: (626) 307-3650

GLENDALE OFFICE
1104 East Chevy Chase Drive
Glendale, CA 91205
Fax: (818) 291-1795

PACOIMA OFFICE
13327 Van Nuys Boulevard
Pacoima, CA 91331
Fax: (818) 896-6647

Toll Free: (800) 433-6251

//
//**Comments on HACoLA's Annual Plan****1. Requirements Under the Violence Against Women and Department of Justice Reauthorization Act of 2005.**

On January 5, 2006, President Bush signed into law the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-62), and on August 12, 2006, technical corrects to the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-271) (collectively referred to as "VAWA"). Sections 606 and 607 of VAWA amend the Section 8 and public housing sections of the United States Housing Act of 1937 (42 U.S.C. 1437f and 1437d) such that victims of domestic violence, dating violence, and stalking – as well as their immediate family members - who live in public or Section 8-assisted housing are protected from losing their HUD-assisted housing as a consequence of the abuse committed against the victim. In recognition of the strong link between domestic violence and homelessness, the widespread denial of access to and eviction from HUD assisted housing to women and families because of their status as domestic violence survivors, and the lack of emergency and long-term housing opportunities for domestic violence survivors, VAWA seeks to reduce domestic violence and prevent homelessness by protecting the safety of domestic violence survivors in all types of housing and ensuring that they have access to the criminal justice system without jeopardizing their housing.

We commend HACoLA for including in its annual plan the goal of implementing policies intended to protect victims of domestic violence and a description of services it plans to offer to victims of domestic violence, sexual assault, or stalking. However, the policies described in the annual plan are not implemented in the Section 8 Administrative Plan ("Administrative Plan") and Admissions and Continued Occupancy Policy ("ACOP"), as required by federal law. When policies described in the PHA Plan are not reflected in the supporting documentation, HUD regulations require that the PHA alert readers of such differences. Public Housing Agency [PHA] Plan, Desk Guide at ¶ 3.23.1 (Sept. 20, 2001).

Request for information or action: Accordingly, please provide an explanation for these discrepancies.

The Administrative Plan and ACOP lack provisions required under VAWA, and several provisions violate or are otherwise inconsistent with VAWA requirements. In order to comply with federal law, HACoLA must make significant amendments to the Administrative Plan and ACOP.

VAWA Provisions Must Be Incorporated into the Administrative Plan and ACOP.

Included below are statutory provisions that HACoLA must incorporate into its program policies. The statutory language has been edited without changing it substantively in anticipation that this proposed language can be incorporated into the Administrative Plan and ACOP. We have also presented the material in two sections, that which should be incorporated into the Administrative Plan followed by the recommended changes to the ACOP.

To the extent that HACoLA administers or owns project based Section 8 developments, it must also incorporate the VAWA requirements into its policies for those programs. In addition, HACoLA has an obligation to notify owners and managers of housing assisted under project based Section 8 programs of

their rights and obligations with respect to the changes in the law regarding victims of domestic violence. 42 U.S.C. § 1437f(ee).

A. Proposed Language to Include in the Administrative Plan

Definitions. [42 U.S.C. §§ 1437f(f)(8)-(11).]

1. The term "domestic violence" has the same meaning given the term in 42 U.S.C. § 13925.
2. The term "dating violence" has the same meaning given the term in 42 U.S.C. § 13925.
3. The term "stalking" means –
 - a. (i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or
 - (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
 - b. 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 –
 - (i) that person;
 - (ii) a member of the immediate family of that person; or
 - (iii) the spouse or intimate partner of that person.
4. The term "immediate family member" means, with respect to a person –
 - a. a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or
 - b. any other person living in the household of that person and related to that person by blood or marriage.

Denial of Admission.

That an applicant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for admission. [42 U.S.C. §§ 1437f(c)(9)(A) and (o)(6)(B).]

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking. [42 U.S.C. §§ 1437f(c)(9)(C)(vi) and (o)(6)(B).]

Termination of Assistance.

An incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be good cause for terminating the assistance of the victim of such violence. [42 U.S.C. § 1437f(c)(9)(B).]

The Housing Authority may not terminate assistance to a participant in the voucher program on the basis of an incident or incidents of actual or threatened domestic violence, dating violence, or stalking against that participant. [42 U.S.C. § 1437f(o)(20)(A).]

Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered a serious or repeated violation of the lease by the victim or threatened victim of that criminal

activity justifying termination of assistance to the victim or threatened victim. [42 U.S.C. § 1437f(o)(20)(B).]

Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered cause for termination of assistance for any participant or immediate member of a participant's family who is a victim of the domestic violence, dating violence, or stalking. [42 U.S.C. § 1437f(o)(20)(C).] Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of assistance, if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking. [42 U.S.C. §§ 1437f(c)(9)(C)(i) and (d)(1)(B)(iii)(I).]

Notwithstanding this provision, or any Federal, State, or local law to the contrary, the Housing Authority may terminate assistance to, or an owner or manager may bifurcate a lease under this provision, or remove a household member from a lease under this provision, without regard to whether the household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without terminating assistance to, or otherwise penalizing, the victim of such violence who is also a tenant or lawful occupant. Such eviction shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing. [42 U.S.C. § 1437f(d)(1)(B)(iii)(II).]

Nothing in this provision may be construed to limit the authority of the Housing Authority to terminate voucher assistance to individuals who engage in criminal acts of physical violence against family members or others. [42 U.S.C. § 1437f(o)(20)(D)(i).]

Nothing in this provision may be construed to limit the authority of the Housing Authority, when notified, to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up. [42 U.S.C. §§ 1437f(c)(9)(C)(iii), (d)(1)(B)(iii)(III), and (o)(20)(D)(ii).]

Nothing in this provision limits any otherwise available authority of the Housing Authority to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the Housing Authority does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to terminate. [42 U.S.C. §§ 1437f(d)(1)(B)(iii)(IV), and (o)(20)(D)(iii).]

Nothing in this provision may be construed to limit the authority of the Housing Authority to terminate assistance to a tenant if the Housing Authority can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property or Housing Authority if that tenant is not evicted or terminated from assistance. [42 U.S.C. §§ 1437f(c)(9)(C)(v), (d)(1)(B)(iii)(V), and (o)(20)(D)(iv).]

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking. [42 U.S.C. §§ 1437f(c)(9)(C)(vi), (d)(1)(B)(iii)(VI), and (o)(20)(D)(v).]

Termination of Tenancy.

An incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence. [42 U.S.C. § 1437f(c)(9)(B).]

During the term of a lease under the voucher program, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence. [42 U.S.C. §§ 1437f(d)(B)(ii) and (o)(7)(C).]

Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking. [42 U.S.C. §§ 1437f(c)(9)(C)(i) and (o)(7)(D).] The lease shall provide that, during the term of the lease, criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or an immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking. [42 U.S.C. § 1437f(d)(B)(iii).]

Notwithstanding this provision, an owner or manager may bifurcate a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant. Such eviction shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing. [42 U.S.C. §§ 1437f(c)(9)(C)(ii), (d)(B)(iii)(II), and (o)(7)(D)(ii).]

Nothing in this provision may be construed to limit the authority of an owner or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up. [42 U.S.C. §§ 1437f(c)(9)(C)(iii), (d)(B)(iii)(III), and (o)(7)(D)(iii).]

Nothing in this provision limits any otherwise available authority of an owner or manager to evict a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict. [42 U.S.C. §§ 1437f(c)(9)(C)(iv), (d)(B)(iii)(IV), and (o)(7)(D)(iv).]

Nothing in this provision may be construed to limit the authority of an owner or manager to evict any tenant or lawful occupant if the owner or manager can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted. [42 U.S.C. §§ 1437f(c)(9)(C)(v), (d)(B)(iii)(V), and (o)(7)(D)(v).]

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking. [42 U.S.C. §§ 1437f(c)(9)(C)(vi), (d)(B)(iii)(VI), and (o)(7)(D)(vi).]

Portability. [42 U.S.C. § 1437f(r)(5).]

A family may not receive a voucher from the Housing Authority and move to another jurisdiction under the tenant-based assistance program if the family has moved out of the assisted dwelling unit of the family in violation of a lease, except that a family may receive a voucher from the Housing Authority and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

Certification.

Where applicable, the owner, manager, or the Housing Authority may request that an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in this Plan. Such certification shall include the name of the perpetrator. The individual shall provide such certification within 14 business days after the individual receives a request for such certification from the owner, manager, or Housing Authority. [42 U.S.C. § 1437f(ee)(1)(A).]

If the individual does not provide the certification within 14 business days after the individual receives a request in writing for such certification from the owner, manager, or Housing Authority, nothing in this Plan may be construed to limit the authority of the owner or manager to evict, or the Housing Authority to terminate voucher assistance for, the tenant or lawful occupant that commits violations of a lease. The owner, manager, or Housing Authority may extend the 14-day deadline at their discretion. [42 U.S.C. § 1437f(ee)(1)(B).]

An individual may satisfy the certification requirement by –

1. providing the requesting owner, manager, or Housing Authority with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse, in which the professional attests 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, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or
2. producing a Federal, State, tribal, territorial, or local police or court record. [42 U.S.C. § 1437f(ee)(1)(C).]

Nothing in this section shall be construed to require the owner, manager, or Housing Authority to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this Plan. At their discretion, the owner, manager, or Housing Authority may provide benefits to an

individual based solely on the individual's statement or other corroborating evidence. [42 U.S.C. § 1437f(ee)(1)(D).]

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking. [42 U.S.C. § 1437f(ee)(1)(F).]

Confidentiality. [42 U.S.C. § 1437f(ee)(2)(A).]

All information provided to the owner, manager, or Housing Authority pursuant to the certification requirement in paragraph __, including the fact that an individual is a victim of domestic violence, dating violence, or stalking, shall be retained in confidence by the owner, manager, or Housing Authority, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is –

1. requested or consented to by the individual in writing;
2. required for use in an eviction proceeding under 42 U.S.C. § 1437f(c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), or (o)(20), or
3. otherwise required by applicable law.

Voucher Program – Notification. [42 U.S.C. § 1437f(ee)(1)(B).]

The Housing Authority shall provide notice to tenants assisted under the voucher program of their rights under 42 U.S.C. §§ 1437f(c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), (r)(5), and (ee), including their right to confidentiality and the limits thereof, and to owners and managers of their rights and obligations under 42 U.S.C. §§ 1437f(c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), (r)(5), and (ee). Attached hereto are examples of letters which could be sent to voucher tenants and letters that could be sent to owners and managers of project based Section 8 as well as to the residents of such housing, informing them of the rights and responsibilities with respect to treatment of victims of domestic violence. [note this duplicates what I said previously with respect to just the owners and managers. But is may not hurt to say it twice as it is very unusual to have HA have responsibilities with respect to project based Section 8 that is not project based vouchers.]

B. Proposed Language to Include in the ACOP

Definitions. [42 U.S.C. § 1437d(u)(3).]

1. The term "domestic violence" has the same meaning given the term in 42 U.S.C. § 13925.
2. The term "dating violence" has the same meaning given the term in 42 U.S.C. § 13925.
3. The term "stalking" means –
 - a. (i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or
 - (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person;
 and

- b. 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 –
 - (i) that person;
 - (ii) a member of the immediate family of that person; or
 - (iii) the spouse or intimate partner of that person.
4. The term "immediate family member" means, with respect to a person –
- a. a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or
 - b. any other person living in the household of that person and related to that person by blood or marriage.

Admission.

The Housing Authority shall not deny admission to the project to any applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking if the applicant otherwise qualifies for assistance or admission. [42 U.S.C. § 1437d(c)(3).]

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking. [42 U.S.C. § 1437d(c)(3).]

Termination of Tenancy.

The Housing Authority shall utilize leases that require (i) that the Housing Authority may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause and (ii) that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence. [42 U.S.C. § 1437d(l)(5).]

The Housing Authority shall utilize leases that provide that criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or an immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking. [42 U.S.C. § 1437d(l)(6).]

Notwithstanding this provision or any Federal, State, or local law to the contrary, the Housing Authority may bifurcate a lease, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant. [42 U.S.C. § 1437d(l)(6)(B).]

Nothing in this provision may be construed to limit the authority of the Housing Authority, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or

possession of property among the household members in cases where a family breaks up. [42 U.S.C. § 1437d(l)(6)(C).]

Nothing in this provision limits any otherwise available authority of the Housing Authority to evict a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the Housing Authority does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate. [42 U.S.C. § 1437d(l)(6)(D).]

Nothing in this provision may be construed to limit the authority of the Housing Authority to terminate the tenancy of any tenant if the Housing Authority can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated. [42 U.S.C. § 1437d(l)(6)(E).]

Nothing in this provision shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking. [42 U.S.C. § 1437d(l)(6)(F).]

Certification.

Where applicable, the Housing Authority may request that an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in 42 U.S.C. §§ 1437d(1)(5) and (6). Such certification shall include the name of the perpetrator. The individual shall provide such certification within 14 business days after the individual receives a request for such certification from the Housing Authority. [42 U.S.C. § 1437d(u)(1)(A).]

If the individual does not provide the certification within 14 business days after the individual has received a request in writing for such certification from the Housing Authority, nothing in 42 U.S.C. § 1437d(1)(5), (1)(6), or (u) may be construed to limit the authority of the Housing Authority to evict any tenant or lawful occupant who commits violations of a lease. The Housing Authority may extend the 14-day deadline at its discretion. [42 U.S.C. § 1437d(u)(1)(B).]

An individual may satisfy the certification requirement by –

1. providing the Housing Authority with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse, in which the professional attests 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, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or
2. producing a Federal, State, tribal, territorial, or local police or court record. [42 U.S.C. § 1437d(u)(1)(C).]

Nothing in this section shall be construed to require the Housing Authority to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in 42 U.S.C. §

1437d. At the Housing Authority's discretion, the Housing Authority may provide benefits to an individual based solely on the individual's statement or other corroborating evidence. [42 U.S.C. § 1437d(u)(1)(D).]

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking. [42 U.S.C. § 1437d(u)(1)(E).]

Confidentiality. [42 U.S.C. § 1437d(u)(2)(A).]

All information provided to the Housing Authority pursuant to the certification requirement in paragraph ___, including the fact that an individual is a victim of domestic violence, dating violence, or stalking, shall be retained in confidence by the Housing Authority, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is –

1. requested or consented to by the individual in writing;
2. required for use in an eviction proceeding under 42 U.S.C. § 1437f(1)(5) or (6); or
3. otherwise required by applicable law.

Notification. [42 U.S.C. § 1437d(u)(2)(B).]

The Housing Authority shall provide notice to tenants assisted under the public housing program of their rights under 42 U.S.C. §§ 1437d(1)(5) and (6) and 1437d(u), including their right to confidentiality and the limits thereof.

A. Sections of the Administrative Plan and ACOP Must Be Amended to Comply with VAWA.

HACoLA must also carefully review and amend its Section 8 Administrative Plan (“Administrative Plan”), Admissions and Continued Occupancy Policy (“ACOP”), Housing Assistance Payment contracts, and/or lease agreements as described below to ensure that they are consistent with VAWA. We reference below a number of the provisions that must be modified.

Information about VAWA Rights and Obligations

HACoLA has the responsibility of informing all participants, tenants, owners, and managers participating in its programs about the VAWA requirements. 42 U.S.C. §§ 1437d(u)(2)(B) and 1437f(ee)(2)(B); HUD Notice PIH 2006-23 (February 16, 2007). As part of its duty, HACoLA must inform Section 8 Voucher participants of their right to port a voucher between jurisdictions in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believes he or she is imminently threatened by harm from further violence if he or she remains in the assisted dwelling unit. 42 U.S.C. § 1437f(ee)(2)(B). HACoLA should inform participants, tenants, owners, and managers of their rights and obligations under VAWA through initial briefing sessions or other orientation meetings, written materials included in the briefing packets, newsletters produced by HACoLA, re-examination correspondence and interviews, and other appropriate forms of communication. In particular, the provisions of the Administrative Plan regarding portability must be revised to explain that a victim of domestic violence may breach a lease when fleeing the violence and not lose their voucher for failure to provide adequate notice to the landlord or the housing authority.

Contracts

The Housing Assistance Payment Contract between HACoLA and participating owners and managers in the Section 8 Tenant-Based Assistance Housing Choice Voucher Program (as well as contracts in the Section 8 Project-Based Assistance Voucher Program) and the HACoLA Public Housing Lease Agreement, must all explicitly include information on protections for victims of abuse. 42 U.S.C. §§ 1437 f(c), (d), (o)(7)(C), (o)(7)(D), (o)(20), and 1437d(l)(5) and (6). If it has not already done so, HACoLA should use the most recent revised Voucher Assistance Payments Contract (Form HUD-52641) and Tenancy Addendum (Form HUD-52641-A) (dated 1/2007). HUD Notice PIH 2007-5 (HA) (February 16, 2007). These forms include revisions that reflect the statutory requirements of VAWA. By using the new Voucher Assistance Payments Contract and lease, care should be taken to ensure that no tenant loses their housing because of a landlord's failure to sign the new lease addendum or Voucher Assistance Payments Contract.

Certification of Domestic Violence

As stated in Section 7.5.1 of the Administrative Plan, HACoLA may request that an applicant/participant certify that he or she is victim of domestic violence. The individual may use a Certification of Domestic Violence, Dating Violence, or Stalking (Form HUD-50066) to self-certify that he or she has been a victim of domestic violence. In lieu of such certification, a family member may submit as verification of domestic violence a Federal, State, tribal, territorial, or local policy or court record; or documentation signed by a provider or victim services, an attorney or medical professional, from whom the victim has sought assistance with addressing domestic violence, or the effects of abuse, in which the professional verifies incidents of abuse, and the victim of domestic violence signs or attests to the documentation. However, the obligation of an individual to provide certification or verification of domestic violence does not arise until HACoLA has requested such documentation in writing. Accordingly, sections of the Administrative Plan and/or ACOP dealing with verification of preference, self-certification, verification of non-financial factors, and determination of voucher issuance or admission/continued occupancy for split households must be amended to clarify the policy on collection of information related to domestic violence and reflect these provisions.

Termination or Denial of Assistance/Admission for Violent Criminal Activity

The Administrative Plan and ACOP currently provide that HACoLA may terminate assistance to the family or terminate the lease if any member of the family engages in violent criminal activity. The Administrative Plan further provides that violent criminal activity includes "activity which occurs within the family, such as during domestic violence disputes." These provisions directly contravene VAWA requirements, which prohibit the eviction of or termination of assistance to victims of domestic violence who live in HUD-assisted housing. Similarly, HACoLA may not deny assistance or admission to nonculpable members of a family for domestic violence committed against them. The Administrative Plan and ACOP and must be amended accordingly.

Information Shared with Prospective Landlords

The Annual Plan states that HACoLA may share with prospective landlords information regarding prior landlords, if available. To the extent that this statement reflects a policy of requiring tenants to disclose prior landlords or mandates that the information be shared if available, it may cause serious problems for victims of domestic violence. Creating a trail for an abuser to follow to track down a victim may interfere with the victim seeking housing or may frustrate the victim's use of the portability feature of the program. We recommend that all applicants be informed of the fact that they do not need to reveal prior

landlords if they are victims of domestic violence and that information regarding prior landlords, if in the file not be passed on to prospective landlords, if the tenant is a victim of domestic violence, as a reference check may alert the abuser to the whereabouts of the victim.

2. Requirements Under Title VI of the Civil Rights Act of 1964.

Pursuant to section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, (“Title VI”) and its implementing regulations, no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” HUD regulations promulgated pursuant to section 602 of Title VI forbid recipients from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishments of the objectives of the program as respects individuals of a particular race, color, or national origin.” 24 C.F.R. § 1.4. Title VI and its implementing regulations require that all recipients of federal financial assistance, including PHAs that receive HUD assistance, such as HACoLA, must provide meaningful access to limited English proficient (“LEP”) persons. On, January 22, 2007, HUD published its “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (“HUD Final LEP Guidance”). 72 FR 2732. This guidance clarifies legal authority and describes steps that recipients of HUD assistance should take to provide better access to programs and services, including oral interpretation or written translations of important information about their programs, where appropriate.

While most individuals living in the United States read, write, speak and understand English, there are many for whom English is not their primary language. When an individual has a limited ability to read, write, speak or understand English, he or she is considered limited English proficient (LEP). For LEP persons, language can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information relevant to the program, activity or services. In certain circumstances, failure to ensure that LEP persons can effectively participate in, or benefit from, federally-assisted programs and activities may violate the Title VI prohibition against discrimination on the basis of national origin.

HACoLA’s Administrative Plan states that all briefing sessions will be conducted in English without regard to the language spoken by the family. In their notices of scheduled informal hearings, HACoLA also directs participants to bring their own interpreters if they do not speak or understand English. These policies violate Title VI and are potentially discriminatory. The Administrative Plan and ACOP are otherwise silent on the provision of linguistically appropriate services to LEP applicants, participants, and tenants. The following sections describe steps that HACoLA should take to ensure that it is complying with Title VI and its implementing regulations.

A. The Four-Factor Self-Analysis.