

HOUSING JUSTICE

National Housing Law Project

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Senate Passes Violence Against Women Act, Including Critical Housing Protections

The Senate recently approved legislation to renew the Violence Against Women Act (VAWA). The bill, S. 1925, includes several new housing protections for survivors of domestic violence, sexual assault, and stalking. S. 1925 would substantially increase the number of survivors of domestic and sexual violence who are protected against evictions and denials of housing due to the violence committed against them. It also would help ensure that survivors of violence receive notice of their housing rights and are able to relocate within subsidized housing for their safety.

Expansion of VAWA's Housing Protections

Currently, VAWA covers only the public housing and Section 8 programs, leaving unprotected tens of thousands of domestic violence survivors in other subsidized housing programs. S. 1925 would change this by extending VAWA's protections against evictions and denials of housing to several other programs, including Low-Income Housing Tax Credit, the McKinney-Vento homelessness programs, and rural housing programs administered by the U.S. Department of Agriculture.

Further, S. 1925 would extend VAWA's housing protections to sexual assault survivors. The existing statute does not cover victims of non-intimate partner sexual assault, leaving them vulnerable to evictions related to the violence against them. S. 1925 would remedy this problem by in-

cluding sexual assault victims among those who are covered by VAWA's housing protections.

Emergency Relocation

VAWA contains no process by which survivors of domestic and sexual violence can request emergency relocation to other subsidized housing. As a result, housing providers are often unsure of how they can help these survivors. S. 1925 would require public housing agencies (PHAs) and subsidized owners and managers to adopt an emergency transfer policy for survivors of domestic violence, dating violence, sexual assault, or stalking. The policy must allow transfers if the survivor expressly requests the transfer, and the survivor reasonably believes that he or she is threatened with imminent harm if he or she remains at the current dwelling. Additionally, survivors of sexual assault can request a transfer within 90 days after the assault occurred. The emergency transfer policy must include confidentiality measures. S. 1925 also would require the Department of Housing and Urban Development to establish procedures under which a survivor seeking emergency relocation can receive a Section 8 voucher.

Notice of VAWA Rights

Currently, PHAs must give public housing and Section 8 tenants notice of their VAWA housing rights. S. 1925 would expand these obligations to subsidized owners and managers. The bill also specifies that notice of VAWA rights must be given at the time an individual applies for a unit, at the

(Continued on page 2)

IN THIS ISSUE

USDA Issues Language Access Guidance

Relocating with a Section 8 Voucher

(Continued from page 1)

time an individual is admitted to a unit, and with any notification of eviction or termination of assistance. PHAs, owners and managers would be required to provide notices in multiple languages. Additionally, housing providers would be required to post notices of VAWA protections in public areas of their housing projects.

Conclusion

VAWA's housing protections have saved many survivors from needless evictions and denials of assistance. S. 1925 would protect even more survivors by covering additional housing programs and sexual assault victims. The House now must take up its own version of the legislation. ■

Available Online: Free Housing and Domestic Violence Manual

The National Housing Law Project is pleased to announce the publication of "Maintaining Safe and Stable Housing for Domestic Violence Survivors: A Manual for Attorneys and Advocates." The manual focuses on the rights of domestic violence survivors who are facing loss of housing, who need to improve their housing safety, or who need to relocate. Topics include changing the locks; breaking the lease; defending against evictions and subsidy terminations; housing discrimination; reasonable accommodations requests for survivors with disabilities; and housing rights under the Violence Against Women Act.

The Manual is available for free at <http://www.nhlp.org/node/1745>

The Appendices to the Manual contain a number of sample advocacy documents. Access to the Appendices is limited to OVV grantees. Contact mschultzman@nhlp.org to obtain the Appendices.

USDA Issues Proposed Guidance on Language Access for Persons with Limited English Proficiency

The United States Department of Agriculture (USDA) recently published proposed guidance on access to its programs for individuals with limited English proficiency (LEP). The proposed guidance outlines how USDA funding recipients can meet their obligations to serve LEP individuals. USDA's guidance may be helpful for domestic and sexual violence advocates who are helping LEP individuals to access rural housing programs or the Supplemental Nutrition Assistance Program (SNAP).

USDA received public comments on the proposed guidance and likely will publish final guidance after it has had an opportunity to review these comments. The full guidance is available at 77 Federal Register 13,980 (March 8, 2012).

Background

Title VI of the Civil Rights Act prohibits discrimination on the basis of national origin in programs receiving federal financial assistance. In certain circumstances, failure to ensure that LEP individuals can effectively participate in federally assisted programs may constitute discrimination on the basis of national origin. As a result, recipients of federal financial assistance, including local agencies administering USDA's rural housing programs and the SNAP program, must ensure meaningful access to their programs by LEP individuals.

The Four-Factor Self-Analysis

USDA funding recipients must take reasonable steps to ensure that LEP individuals have meaningful access to their programs. The proposed guidance outlines a four-factor analysis, originally developed by the Department of Justice (DOJ), which can help recipients determine the steps they should take.

(Continued on page 3)

(Continued from page 2)

1. Number or Proportion of LEP Individuals

Recipients should consider the number or proportion of LEP persons from a language group that would be encountered in the eligible service population. The “eligible service population” is specific to the program and includes individuals in the recipient’s geographic service area, as long as those designations do not discriminatorily exclude certain populations. In analyzing this factor, recipients should examine their previous experiences with LEP individuals and determine the breadth and scope of language services that were needed. Furthermore, it is important for recipients to consider language minority populations that are eligible for programs, but are underserved due to existing language barriers. Recipients also should refine their data by comparing them against data from the census, school and community organizations, and state and local governments.

2. Frequency with which LEP Individuals Come into Contact with the Program

Recipients should assess the frequency with which they have or should have contact with LEP persons from different language groups. If a recipient has more frequent contact with a particular language group, then it is likely that enhanced services in that language are needed. However, recipients should not ignore the language needs of LEP persons with less frequent contact with a particular language group. LEP individuals with less contact with a recipient’s program may require a less intensive solution, such as telephonic interpretation services. The proposed guidance also advises that recipients consider whether outreach should be conducted to increase the frequency of contact with certain language groups.

3. Nature and Importance of the Program

Recipients should weigh the importance of the information, service or benefit provided by the program or activity by considering the possible consequences of denying or delaying such a service to LEP persons. For example, a failure to translate applications for benefits could have serious implications for LEP individuals who need

food, shelter and emergency services.

4. Resources Available to the Recipient and Costs

The ability of a recipient to pay for language services impacts the degree to which the recipient may be able to meet the LEP need. USDA does not expect smaller recipients with more limited budgets to provide the same level of language services as recipients with larger budgets. In addition, “reasonable steps” no longer may be reasonable where the costs would substantially exceed the benefits. However, recipients should explore the most cost-effective means of delivering language services before limiting services due to resource concerns. Entities serving a large number or proportion of LEP persons should ensure that the resource constraints are well-substantiated before using this reason to limit language assistance.

Quality of Language Assistance

The quality of language assistance can be critical to avoid serious consequences to LEP persons. The proposed guidance offers strategies on how recipients can ensure that they are providing competent interpretation and translation. For example, oral interpreters, while not necessarily formally certified, should be able to demonstrate ability to communicate accurately in both English and in the other language. They also should have knowledge in both languages of any technical or legal terms related to the recipient’s program. In addition, interpreters should know the rules governing confidentiality, privacy, impartiality, and conflict of interest. Importantly, the proposed guidance specifies that recipients should not rely on an LEP person’s family members, friends or other informal interpreters to provide meaningful access to important programs and activities. Recipients should exercise special caution when an LEP person wants to use a child as an interpreter. If the recipient determines that the LEP person’s interpreter is incompetent, then the recipient may need to use its own interpreter. Furthermore, when LEP services are needed, recipients should provide them for free and in a timely manner.

(Continued on page 4)

(Continued from page 3)

Vital Documents and Safe Harbor

After applying the four-factor analysis, a recipient may determine that an effective LEP plan includes the translation of vital written documents. Whether a document is considered “vital” can depend on the importance of the information and the consequence to the LEP person if the information is not provided in a timely manner. Examples of vital documents include applications to participate in a recipient’s program and notices pertaining to eligibility requirements.

The proposed guidance provides two “safe harbors,” which are strong evidence of compliance with the written translation obligations. The first safe harbor occurs when the recipient provides translations of vital documents for each eligible LEP language group that constitutes 5% or 1,000, whichever is less, of the population eligible to be served or likely to be affected. The second safe harbor occurs when there are fewer than 50 people in a language group that reaches the 5% trigger. In the second scenario, the recipient does not translate vital written materials. Instead, it provides written notice in the primary language of the LEP language group of the right to receive free oral interpretation of those written materials.

Language Assistance Plan

After completing the four-factor analysis and determining the language assistance services that are needed, a recipient should develop a plan to address the needs of the LEP population. The proposed guidance provides five steps for recipients in designing an effective LEP plan.

1. Identifying LEP Persons Who Need Assistance

The first two factors of the four-factor analysis discussed above help to determine the number or proportion of LEP individuals who are eligible to be served and frequency of the encounters. In addition, the recipient should outline methods that it will employ to determine what languages are spoken by LEP persons encountered.

2. Language Assistance Measures

An effective LEP plan should include information about the ways in which language assistance will be provided. For example, recipients may want to include information on at least the following: types of language services available; how staff can obtain those services; how to respond to LEP callers; how to respond to written communications from LEP persons; how to respond to LEP persons who have in-person contact with recipient staff; and how to ensure competency of interpreters and translation services.

3. Training Staff

Recipients should train existing and new staff regarding their responsibilities to provide meaningful access to LEP persons. This training should be included in the LEP plan. Training should ensure that staff know LEP procedures and how to work effectively with interpreters.

4. Providing Notice to LEP Persons

Recipients should notify LEP individuals that language assistance is available for free. This notice should be provided in a language understood by the LEP person.

5. Monitoring and Updating the LEP Plan

Where appropriate, recipients also should have a process to determine whether new documents, programs, and services need to be accessible for LEP individuals. The proposed guidance recommends consulting with the community.

Enforcement

USDA will investigate complaints that a funding recipient is violating language access obligations. If USDA finds noncompliance, it will issue a letter identifying the areas of noncompliance and remedial steps. If the matter cannot be resolved informally, then the recipient must be provided an administrative hearing. USDA may seek compliance by terminating federal assistance, referring the matter to DOJ or pursuing other enforcement proceedings. ■

Technical Assistance Question: A Survivor's Right to Move With a Section 8 Voucher

The following is a summary of a technical assistance request submitted to the National Housing Law Project regarding the rights of a domestic violence survivor to move to another jurisdiction while keeping her Section 8 voucher assistance. The process of moving with a Section 8 voucher to a jurisdiction outside of the initial public housing agency (PHA) where a tenant received her voucher is referred to as "portability."

Question:

I have a question regarding the rights of a victim of domestic violence to move with her Section 8 voucher. Our public housing agency (PHA) is requiring victims of domestic violence to gather proof that they are victims, including restraining orders and letters from the estranged partners' probation officer, before they will allow victims to port their Section 8 vouchers to another jurisdiction. What types of proof can the PHA request before granting the victim's portability request?

Answer:

Victims of domestic violence, dating violence, and stalking may relocate with their Section 8 vouchers to protect their health or safety. If moving would otherwise violate the lease or the PHA's restrictions on timing and frequency of moves, the PHA can request documentation of the domestic violence, dating violence, or stalking. The tenant has the option of providing any of the following: a HUD-approved certification form, a police report or court record, or documentation signed by a victim service provider, medical professional, or attorney. The documentation requirements are explained in the Department of Housing and Urban Development's (HUD) Violence Against Women Act (VAWA) regulations, which are found at 24 C.F.R. § 5.2007. HUD's guidance has made clear that PHAs must accept any of the types of docu-

mentation discussed above. As a result, the PHA cannot demand documentation beyond the types discussed above (such as a letter from a probation officer), and it cannot demand that the survivor produce a particular form of documentation (such as a restraining order).

Additionally, HUD issued a notice, PIH 2011-3, stating that a PHA can only deny portability if it has grounds to do so under HUD regulations. Thus a PHA does not have limitless discretion to deny portability moves. It has to have one of the grounds listed in the HUD regulations. A domestic violence survivor's refusal to provide a letter from a probation officer is not one of the grounds for denying portability that is contemplated by HUD regulations. Therefore, a survivor's inability to provide a particular form of documentation requested by a PHA is an impermissible reason for denying the survivor's request to move with her Section 8 voucher.

Finally, if a PHA is holding domestic violence survivors to a higher standard than other Section 8 voucher participants when assessing requests to move, this may constitute sex discrimination under fair housing laws. At least one legal services program has filed a fair housing complaint against a PHA that refused to allow a domestic violence survivor to move with her voucher. ■

For technical assistance or requests for trainings or materials, please contact:

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