

August 26, 2008

Housing Authority of the City of Los Angeles  
Attn: Juan Garcia  
2600 Wilshire Blvd—3d Floor, Planning  
Los Angeles, CA 90057

Re: Comments on 2009 Draft Agency Plan; Section 8 Administrative Plan;  
and Public Housing Admissions and Continued Occupancy Policy

Dear Mr. Garcia,

Peace Over Violence and the National Housing Law Project submit the following comments in connection with the Housing Authority of the City of Los Angeles' 2009 Draft Agency Plan. We are also submitting comments on the Section 8 Administrative Plan and the public housing Admissions and Continued Occupancy Policy (ACOP).

Peace Over Violence is a non-profit organization dedicated to a building healthy relationships, families and communities free from sexual, domestic and interpersonal violence. Peace Over Violence serves communities in Los Angeles and West San Gabriel Valley. The National Housing Law Project is a housing law and advocacy center that provides legal assistance, advocacy advice, and housing expertise to organizations that serve underrepresented communities throughout California. We submit these comments in the hope that they will facilitate a continued dialogue with HACLA and assist the agency in administering its housing programs in a manner that serves the needs of survivors of domestic violence, dating violence, and stalking.

**Agency Plan, page 70**

The Agency Plan does not currently describe any services that HACLA offers to victims of domestic violence, dating violence, or stalking. Instead, the Agency Plan states that staff refers victims to 211.

**COMMENT:**

The Violence Against Women Act of 2005 (VAWA) requires a public housing agency to describe in its annual plan any activities, services, or programs that help victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing. *See* 42 U.S.C. § 1437c-1(d)(13). HACLA should therefore describe the services it provides to domestic violence survivors that are directly related to housing. Examples of these services include emergency transfers for domestic violence victims living in public housing, portability for voucher families who must move to preserve their safety, availability of staff members who have received training on VAWA and domestic violence, and the protections

available to victims who are at risk of losing their housing due to the acts of their abusers. HACLA should also indicate the steps it has taken to make victims of domestic violence aware of these services.

Additionally, while we appreciate that HACLA is referring clients to 211, it would be more effective for HACLA to directly refer victims of domestic violence to agencies that specialize in providing assistance to victims. We encourage HACLA to develop a domestic violence service provider list for both its staff and its clients. Peace Over Violence has previously prepared such lists and can assist HACLA in developing this resource.

## **Section 8 Administrative Plan**

### 6.17.2 Allowable Absence from the Unit (pg. 6-16)

The Administrative Plan provides that a family may be absent from the unit for any reason for up to 30 consecutive days. Periods of absence between 31 days and 90 consecutive days are termed “extended absence” and require the prior approval of the HACLA. Extended absence may be approved by an appropriate supervisor for reasons of health, rehabilitation, convalescence, incarceration or the personal needs of the family.

#### **COMMENT:**

We encourage HACLA to add domestic violence, sexual assault, and stalking to the list of reasons why a supervisor may approve an extended absence from the unit. As you may be aware, violence often escalates once a domestic violence survivor takes steps to leave the batterer. As a result, a domestic violence survivor may be forced to enter a shelter or other safe location while she develops a safety plan, obtains a protective order, and/or waits for law enforcement to apprehend the perpetrator. The survivor may fear disclosing her location to any outside entity, such as housing authority staff, due to concerns that the batterer will be able to track her location. In these circumstances, HACLA should not terminate assistance.

### 6.18.4 Family Breakup: Actual or Threatened Physical Violence (pg. 6-17)

The Administrative Plan provides that if a family member or group of members is forced to leave an assisted unit due to threatened or actual physical violence by another member of the assisted family, the HACLA may, at its discretion, and based on a preponderance of evidence, terminate the participation of the member remaining in the assisted unit because of violent criminal activity and award the voucher to the other remaining members of the tenant family.

The Administrative Plan also provides that “The HACLA may impose, as a condition of continued assistance for the other (remaining) family members, that the family member who was responsible for the actual or threatened physical violence will not reside in the unit.”

#### **COMMENT:**

In cases of actual or threatened physical violence, the Administrative Plan seems to suggest that HACLA will terminate the perpetrator's assistance and award the voucher to the victimized family members only if the victimized family members have left the unit. HACLA should also award the voucher to victimized family members in cases where the perpetrator has vacated the unit. In many instances, the perpetrator will have left the unit after being barred from the residence by a protective order, or after being incarcerated. In these cases, the remaining family members should be awarded the voucher even if they have not fled the unit. This approach is consistent with VAWA, which provides that "a public housing agency may terminate assistance to, or an owner or manager may bifurcate a lease under this section, 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. § 1437f(o)(7)(D)(ii).

We are concerned with HACLA's policy requiring that nonculpable family members exclude the abuser from the unit to receive continued assistance. In many cases, victims of domestic violence will be unable to exclude the abuser from the unit due to threats of violence and retaliation if the victim does not allow the abuser to return. We have also seen cases in jurisdictions with similar policies where abusers have retaliated against victims by falsely reporting to housing authorities that they had moved back into the unit, putting victims in jeopardy of losing their housing. Because this policy could result in needless terminations of assistance for victims, we recommend that HACLA discontinue this policy and instead refer nonculpable family members to domestic violence service providers if the family has separated due to domestic violence.

#### 6.18.5 Certification of Domestic Violence (pg. 6-18)

The Administrative Plan states that "The HACLA does not accept self certification of domestic violence, dating violence, sexual assault or stalking." The Administrative Plan also states that as verification of domestic violence, dating violence, or stalking, HACLA will accept "A HUD approved certification form that includes the name of the perpetrator."

#### COMMENT:

Due to the language stating that HACLA will not accept "self-certification," it is unclear whether HACLA will accept the HUD-approved certification form, standing alone, as verification of domestic violence. However, HUD has made clear that its certification form, standing alone, is sufficient to verify domestic violence, dating violence, or stalking. As stated by HUD in the Federal Register:

*[VAWA] allows for the victim to self-certify and also allows for the certification requirement to be satisfied 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. The statute also allows for the certification requirement to be satisfied by producing a federal, state, tribal, territorial, or local police or court record.

The Violence Against Women and Department of Justice Reauthorization Act of 2005: Applicability to HUD Programs, 72 Fed. Reg. 12,696 (Mar. 16, 2007) (italics added). HUD has also stated that documentation signed by a professional or a police or court record may be provided "[i]n lieu of a certification form." See Notice PIH 2006-42 (Dec. 27, 2006); Form HUD-50066. HACLA should therefore delete the sentence stating that it will not accept self certification.

#### 6.18.5 Certification of Domestic Violence: Confidentiality (pg. 6-19)

The Administrative Plan states that information provided by a family to certify domestic violence, dating violence, or stalking "shall be retained in confidence and shall not be entered into a shared database nor provided to any related entity." The Administrative Plan also states that "Information on domestic violence, dating violence or stalking shall be entered into the Client Notes of the HACLA business system."

#### COMMENT:

It is unclear to us what the "Client Notes of the HACLA business system" are. If this is a shared database, then VAWA prohibits HACLA from entering information regarding domestic violence into the Client Notes. Further, we hope that HACLA has trained its staff regarding the importance of keeping strictly confidential any information regarding domestic violence, dating violence, or stalking. A batterer may attempt to contact HACLA to obtain information about the victim's whereabouts, or to see if the victim has taken steps to relocate. If a batterer obtains this information, the victim's safety will be jeopardized. Peace Over Violence and National Housing Law Project are happy to work with HACLA to train its staff on steps it can take to protect victims' safety.]

#### Definitions of domestic violence, dating violence, and stalking

The Administrative Plan and ACOP do not define domestic violence, dating violence, or stalking. Program staff and participants often have questions as to whom can be considered a victim of dating violence, domestic violence, or stalking, and HACLA should include VAWA's definitions of these terms in the Administrative Plan and ACOP. Please note that VAWA's definition of "domestic violence" also incorporates state law definitions of the term, so HACLA should also include California's definition of domestic violence in the Administrative Plan and ACOP.

VAWA defines "domestic violence" as felony or misdemeanor crimes of violence committed by:

- (1) a current or former spouse of the victim;
- (2) a person with whom the victim shares a child in common;
- (3) a person who is cohabitating with or has cohabitated with the victim as a spouse;
- (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies;
- (5) 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 [i.e., California].

California law defines "domestic violence" as abuse perpetrated against the victim by:

- (1) The victim's spouse or former spouse.
- (2) Someone the victim lives with or lived with in the past.
- (3) Someone the victim is dating or has dated.
- (4) Someone the victim has a child with.
- (5) Someone to whom the victim is related by blood, marriage, or adoption (including the victim's parent, grandparent, child, grandchild, brother, or sister)

VAWA defines "dating violence" as violence committed by a person--

- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) 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.

VAWA defines "stalking" as

- (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

## **Public Housing Admissions and Continued Occupancy Policy (ACOP)**

### Emergency Transfers (pg. 28)

The ACOP states that emergency transfers are available "To protect a Resident or a Household Member from a factually verifiable or documented threat of real and imminent criminal attack."

COMMENT:

To better serve the needs of victims, we recommend that HACLA amend its emergency transfer policy to explicitly recognize that an emergency transfer may be granted to protect the health or safety of a victim of domestic violence, dating violence, or stalking. Such a policy is consistent with HUD's Public Housing Guidebook, which states that "PHAs may assist these victims in avoiding their abusers and continuing occupancy in public housing by adopting a special transfer policy that takes into account the victim's circumstances." HUD, Public Housing Guidebook Ch. 19, pg. 218 (June 2003). Accordingly, we propose the following language:

"An emergency transfer may be granted to protect the health or safety of a tenant or another household member who is or was 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. In making such a determination, the Executive Director or designee may request that the tenant provide documentation including, but not limited to, a HUD-approved certification form, a signed statement from a domestic violence service provider, attorney, medical or other professional, or a police or court record. For purposes of this section, the definitions of "domestic violence," "dating violence", and "stalking" found at page \_\_\_ of the ACOP shall apply, and the definition of "sexual assault" as defined at California Penal Code § 261 shall apply.

#### Incorporating VAWA into the ACOP

HACLA should incorporate VAWA's requirements throughout the public housing ACOP so that they are readily accessible to staff members who handle admissions and terminations. It is unreasonable to expect that staff members will comply with VAWA if the statute's provisions are left out of the housing authority's major policy document for the public housing program. Including VAWA's provisions in the ACOP would also demonstrate that HACLA is committed to preserving housing opportunities for victims of domestic violence, dating violence, and stalking.

Included below are the statutory provisions that HACLA should incorporate into its ACOP. The statutory language has been edited without changing it substantively in anticipation that this proposed language can be incorporated into the ACOP.

#### *Admission.*

The Housing Authority shall not deny admission 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*

When an individual seeks to assert VAWA's protections, the Housing Authority may request that the individual provide one of any of the following three types of documentation:

- (1) A HUD-approved certification form verifying 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 actual or threatened abuse. Such certification shall include the name of the perpetrator; or
- (2) 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
- (3) A Federal, State, tribal, territorial, or local police or court record.

The individual shall provide certification within 14 business days after the individual receives a written request for such certification from the Housing Authority. If the individual does not provide the certification within 14 business days after the individual has received a request in writing for such certification, the Housing Authority may evict any tenant who commits violations of a lease. The Housing Authority may extend the 14-business-day deadline at its discretion. The Housing Authority will provide extensions if good cause is demonstrated.

The Housing Authority is not required 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 VAWA's protections. At its 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).]

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

All information provided to the Housing Authority in response to a request for certification, 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; or
3. otherwise required by applicable law.

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the PHA will inform the victim before disclosure occurs so that safety risks can be

identified. If disclosure of the information would place the victim's safety at risk, the PHA will work with the victim to determine whether there are alternatives to disclosure.

*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.

## **Conclusion**

Thank you for the opportunity to submit these comments. We look forward to discussing these issues with you in greater depth. Peace Over Violence is willing to assist HACLA in providing training on domestic violence and the related issues that impact the day-to-day lives of victims of abuse and their children.

Sincerely,

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