

Lorain Metropolitan Housing Authority (LMHA)
Public Housing Violence Against Women Act (VAWA) Policy
Revised July 2017

I. Applicability

The applicability of this paragraph addresses the protections for victims of domestic violence, dating violence, stalking, or sexual assault residing in public and Section 8 housing, as provided in the 1937 Act, as amended by the Violence Against Women Act (VAWA) (42 U.S.C. 1437f and 42 U.S.C. 1437d).

This applies to the public housing admission and occupancy requirements under 24 CFR part 960, the Housing Choice Voucher program under 24 CFR part, 982, the project-based voucher and certificate programs under 24 CFR part 983, and renewed funding or leases of the Section 8 project-based program under 24 CFR parts 880, 882, 883, 884, 886, and 891.

II. This Policy has the following principal goals and objectives:

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

III. Definitions

Definitions used in the VAWA act include but are not limited to:

- A. **Bifurcate** means, with respect to a public housing or a Section 8 lease, to divide a lease as a matter of law such that a certain tenant can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact. Housing Authorities should consider lease bifurcation when a tenant engages in criminal activity directly relating to domestic violence, dating violence, stalking, or sexual assault against an affiliated individual or other individual.
- B. **Dating Violence** means 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.

- C. Domestic Violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- D. Affiliated Family Member** – means, with respect to a person –
- (1) A spouse, parent, brother, sister, or child of that person, or an individual to whom that person stands in loco parentis; or
 - (2) Any other person living in the household or lawful occupant living in the household of the individual.
- E. Stalking** – means
- (1) (i) To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; and
(ii) To place under surveillance with the intent to kill, injure, harass or intimidate another person; and
 - (2) In the course of, or as a result of, such following, pursuit, surveillance or repeatedly commit acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or 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;
- F. Sexual Assault** – Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent.
- G. Perpetrator** - means a person who commits an act of domestic violence, dating violence, stalking, or sexual assault against a victim.
- H. VAWA** – means the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162, approved August 28, 2006), as amended by the U.S. Housing Act of 1937 (42 U.S.C. 1437d and 42 U.S. 1437f).

Notwithstanding its title, this policy is gender-neutral and its protections are available to males who are victims of domestic violence, dating violence, stalking, or sexual assault as well as female victims of such violence.

IV. VAWA protections.

A. Notice of VAWA protections.

- (1) PHAs must provide notice to public housing and Section 8 tenants of their rights under VAWA, including the right to confidentiality and the exceptions; and
- (2) PHAs must provide notice to owners and management agents of assisted housing, of their rights and obligations under VAWA and;
- (3) Owners and management agents of assisted housing administering an Office of Housing project-based Section 8 program must provide notice to Section 8 tenants of their rights and obligations under VAWA.
- (4) The HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, stalking, or sexual assault.

B. Applicants. Admission to the program shall not be denied on the basis that the applicant is or has been a victim of domestic violence, dating violence, stalking, or sexual assault, if the applicant otherwise qualifies for assistance or admission.

C. Tenants.

- (1) Domestic violence, dating violence, stalking, or sexual assault
An incident or incidents of actual or threatened domestic violence, dating violence, stalking, or sexual assault will not be construed as a serious or repeated lease violation by the victim or threatened victim of the domestic violence, dating violence, stalking, or sexual assault as good cause to terminate the tenancy of, occupancy rights of, or assistance to the victim.
- (2) Criminal activity related to domestic violence, dating violence, stalking, or sexual assault
Criminal activity directly related to domestic violence, dating violence, stalking, or sexual assault 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 tenancy of, occupancy rights of, or assistance to the victim, if the tenant or immediate family member of the tenant is the victim.

D. Limitations of VAWA protections.

- (1) Nothing in this section limits the authority of the PHA, Owner, or management agent to evict a tenant or terminate assistance for a lease violation unrelated to domestic violence, dating violence, stalking, or sexual assault provided that the PHA, Owner, or management agent does not subject such a tenant to a more demanding standard than other tenants in making the determination whether to evict, or to terminate assistance or occupancy rights;
- (2) Nothing in this section may be construed to limit the authority of a PHA, Owner, or management agent to evict or terminate assistance to any tenant or lawful occupant if the PHA, Owner, or management agent can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the public housing or Section 8 assisted property if that tenant or lawful occupant is not terminated from assistance. In

this context, words, gestures, actions, or other indicators will be considered an “actual imminent threat” if they meet the standards provided in paragraph (e) of this section.

(3) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section, should be utilized by a PHA, Owner, or management agent only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

Actual and imminent threat.

An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual an imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

V. Documenting the occurrence of domestic violence, dating violence, stalking, or sexual assault

(1) Request for documentation.

A PHA, Owner, or management agent presented with a claim for continued or initial tenancy or assistance based on status as a victim of domestic violence, dating violence, stalking, sexual assault, or criminal activity related to domestic violence, dating violence, stalking, or sexual assault may request that the individual making the claim document the abuse. The request for documentation must be in writing. The PHA, Owner, or management agent may require submission of documentation within fourteen (14) business days after the date that the individual received the request for documentation. The PHA, Owner, or management agent may extend this time period at its discretion.

(2) Forms of documentation. The documentation required under this section:

(1) May consist of a HUD-approved certification form (HUD form 50066) indicating that the individual is a victim of domestic violence, dating violence, stalking, or sexual assault and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse. Such certification must include the name of the perpetrator, only if the name is known to the victim and safe to provide,, and may be based solely on the personal signed attestation of the victim

(2) May consist of a Federal, State, tribal, territorial, or local police report or court record; or

(3) May consist of documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, medical professional, administrative agency or mental health professional from whom the victim has sought assistance in addressing domestic violence, dating violence, stalking, sexual assault, or the

effects of abuse, in which the professional attests under penalty of perjury under 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, stalking, or sexual assault has signed or attested to the documentation; and

(4) Shall be kept confidential by the PHA, Owner, or management agent. The PHA, owner, or management agent shall not:

- (i) Enter the information contained in the documentation into any shared database;
- (ii) Allow employees of the PHA, Owner, or management agent, or those within their employ (e.g., contractors) to have access to such information unless explicitly authorized by the PHA, owner, or management agent for reasons that specifically call for these employees or those within their employ to have access to this information; and
- (iii) Disclose this information to any other entity or individual, except to the extent that disclosure is:
 - (A) Requested or consented to by the individual making the documentation, in writing;
 - (B) Required for use in an eviction proceeding, or
 - (C) Otherwise required by applicable law.

(3) Failure to provide documentation.

In order to deny relief for protection under VAWA, a PHA, owner, or management agent must provide the individual with a written request for documentation of the abuse. If the individual fails to provide the documentation within fourteen (14) business days from the date of receipt of the PHAs, Owner's, or management agent's written request, or such longer time as the PHA, Owner, or management agent at their discretion may allow, VAWA protections do not limit the authority of the PHA, Owner, or management agent to evict or terminate assistance of the tenant or a family member for violations of the lease or family obligations that otherwise would constitute good cause to evict or grounds for termination. The fourteen (14)-business day window for submission of documentation does not begin until the individual receives the written request. The PHA, owner, or management agency has discretionary authority to extend the statutory fourteen (14)-day period.

(4) Discretion to provide relief.

At its discretion, a PHA, Owner, or management agent may provide benefits to an individual based solely on the individual's verbal statement or other corroborating evidence. A PHA's, Owner's, or management agent's compliance with this section, whether based solely on the individual's verbal statements or other corroborating evidence, shall not alone be sufficient to constitute evidence of an unreasonable act or omission by a PHA, PHA employee, owner, or employee or agent of the owner. Nothing in this subparagraph shall be construed to limit liability for failure to comply with these requirements.

(5) Response to conflicting certification.

In cases where the PHA, Owner, or management agent receives conflicting certification documents from two (2) or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, a PHA, Owner, or management agent may determine which is the true victim by requiring third-party documentation as described in this section and in accordance with any HUD guidance as to how such determinations will be made. A PHA, Owner, or management agent shall honor any 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.

VI. Remedies available to victims of domestic violence, dating violence, stalking, or sexual assault in HUD-assisted housing.

A. Lease bifurcation.

Notwithstanding any Federal, State, or local law to the contrary, a PHA, Owner, or management agent should consider bifurcation of a lease, or removal of a tenant or household member from a lease without regard to whether the household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any tenant or lawful occupant who engages in criminal activity directly relating to domestic violence, dating violence, stalking or sexual assault against family members or other, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be in effect in accordance with the procedures prescribed by Federal, State, or local law for termination of assistance or leases under the relevant public housing, Section 8 Housing Choice Voucher, and Section 8 project-based programs.
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B. Court orders.

Nothing in this subpart may be construed to limit the authority of a PHA, Owner, or management agent, when notified, to honor court orders addressing the rights of access to or control of the property, including civil protection orders issued to protect the victim and to address the distribution of property among household members in a case where a family breaks up.

VII. Effect on other laws.

Nothing in this subpart 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, stalking, or sexual assault.

VIII. Other LMHA Policies and Procedures

This Policy shall be referenced in and attached to LMHA's Five-Year Public Housing Agency Plan and shall be incorporated in and made a part of LMHA's Admissions and Continued Occupancy Policy and LMHA's Section 8 Administrative Plan. LMHA's annual public housing agency plan shall also contain information concerning LMHA's activities, services or programs relating to domestic violence, dating violence, stalking, or sexual assault, if any.

IX. Transfer to New Residence

Application for transfer. In situations that involve significant risk of violent harm to an individual as a result of previous incidents or threats of domestic violence, dating violence, stalking, or sexual assault LMHA may, if an approved unit size is available at a location that may reduce the risk of harm, approve a transfer by a public housing resident to a different unit in order to reduce the level of risk to the individual. The request to transfer must be accompanied by documentation/certification of the incident as set forth in this policy.

Refer to the Emergency VAWA Transfer Plan in the LMHA Transfer Policy for situations involving emergency situations.

X. Move with continued tenant-based assistance

A. When the family may move.

A family may move to a new unit if:

The family or a member of the family is or has been the victim of domestic violence, dating violence, stalking, or sexual assault as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, already moved out of a unit in violation of the lease, if such move occurred to protect the health of safety of a family member who is or has been the victim of domestic violence, dating violence, stalking, or sexual assault and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the dwelling unit.

XI. Relationships with Service Providers

It is the policy of LMHA to cooperate with organizations and entities, both private and governmental that provides shelter and/or services to victims of domestic violence. At their discretions, if LMHA staff becomes aware that an individual assisted by LMHA is a victim of domestic violence, dating violence, stalking, or sexual assault LMHA may make the victim aware of such providers of shelter or services as appropriate. This policy does not create a legal obligation requiring LMHA either to maintain a relationship with any particular provider of shelter or services to victims of domestic violence or to make a referral in any particular case. LMHA's annual public housing agency plan shall describe providers of shelter or services to victims of domestic violence with which LMHA has referral or other cooperative relationships and/or agreements.