

FOR ACTION

MOTION: To Adopt Administrative Policy, Programs No. 2, Relating to the Hawaii Public Housing Authority's Violence Against Women Act (VAWA) Policy, Subject to Revisions by the Department of the Attorney General

I. FACTS

- A. Pursuant to the Violence Against Women Act of 1994 and the Reauthorization Act of 2013 (VAWA), the Hawaii Public Housing Authority (HPHA) has a responsibility to ensure that certain victims of domestic violence, as well as affiliated individuals of the victim, are protected from losing their U.S. Department of Housing and Urban Development (HUD) - assisted housing as a consequence of the abuse to which they are victim.
- B. The 2013 VAWA maintains protections for public housing, Section 8 vouchers, and project based Section 8, and also expands the housing protections from VAWA 2005 to include HUD's Homeless Assistance Programs.
- C. In general, VAWA requires that an applicant for or tenant of HPHA housing and Section 8 assistance may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.
- D. The 2013 VAWA now specifically extends housing protections to survivors of sexual assault, and adds "intimate partner" to the list of eligible relationships in the domestic violence definition. Protections also now cover an "affiliated individual," which includes any person living with the survivor and related to him or her by blood or marriage including the survivor's spouse, parent, brother, sister, child, or any person to whom the survivor stands in loco parentis.

II. DISCUSSION

- A. The HPHA's proposed VAWA Policy covers the administration of the HPHA's public housing and Section 8 programs.

- B. The HPHA's proposed VAWA Policy includes the following provisions as required by the Act:
- Goals and objectives;
 - Definition of key terms;
 - Provisions for admissions and screening;
 - Requirements for verification of domestic violence, dating violence, stalking or sexual assault;
 - Protections from termination of tenancy or assistance, including lease violations distinctions and bifurcation of a lease;
 - Emergency transfers to another unit and portability of Section 8 vouchers;
 - Confidentiality of all verification information;
 - Notice of occupancy rights under VAWA; and
 - Procedures for dealing with incidents or claims of domestic violence.
- C. The proposed Policy is currently under review by the Department of the Attorney General (AG), and is subject to modification based on the AG's review.
- D. The proposed Policy shall be fully integrated into the HPHA's Admissions and Continued Occupancy Policy (ACOP), Section 8 Administrative Plan, and Administrative Rules. Any substantive changes will be provided to the HPHA Board of Directors for approval prior to public hearing.

III. RECOMMENDATION

To Adopt Administrative Policy, Programs No. 2, Relating to the Hawaii Public Housing Authority's Violence Against Women Act (VAWA) Policy, Subject to Revisions by the Department of the Attorney General

Attachment A: Draft Proposed Administrative Policy, Programs No. 2, Relating to the Hawaii Public Housing Authority's Violence Against Women Act (VAWA) Policy

Prepared by: Dawn Takeuchi Apuna, Chief Planner 

Approved by the Board of Directors
On the date set forth above



David Gierlach
Chairperson

NEIL ABERCROMBIE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

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DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
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POST OFFICE BOX 17907
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IN REPLY PLEASE REFER TO:

ADMINISTRATIVE MEMORANDUM

Programs No. 2.
September 18, 2008,
June 18, 2015

To: All HPHA Branches, Support Offices, and Asset Management Projects
From: Hakim Ouansafi, Executive Director
Subject: VIOLENCE AGAINST WOMEN ACT (VAWA) POLICY

I. PURPOSE & APPLICABILITY

The purpose of this policy (Policy) is to implement the applicable provisions of the Violence Against Women Reauthorization Act (VAWA) of 2013 (Pub. L. 113-4, 127 Stat. 54) (VAWA 2013). VAWA 2013 reauthorized and amended the Violence Against Women Act of 1994, as previously amended (title IV, sec. 40001-40703 of Pub. L. 103-322, 42 U.S.C. 13925 et seq.). This Policy generally sets forth the Hawaii Public Housing Authority's (HPHA) requirements and procedures regarding domestic violence, dating violence, stalking and sexual assault as hereinafter defined.

Notwithstanding its title, this Policy and its protections are available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, sexual orientation, disability, or age.

This Policy shall be applicable to the HPHA's administration of all its federally subsidized public housing and Section 8 rental assistance programs under the United States Housing Act of 1937 (42 U.S.C. §1437 et seq.).

This Policy shall be fully integrated into the HPHA's Admissions and Continued Occupancy Policy (ACOP), Section 8 Administrative Plan, and Administrative Rules. Any substantive changes will be provided to the HPHA Board of Directors for approval prior to public hearing.

II. GOALS & OBJECTIVES

This Policy has the following principal goals and objectives:

- A. Maintaining compliance, including training of appropriate staff managing the HPHA public housing and Section 8 Vouchers, 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; and
- C. Responding in accordance with HPHA policies and procedures to incidents of domestic violence, dating violence, stalking, or sexual assault affecting individuals assisted by the HPHA.

III. DEFINITIONS

As used in this Policy:

Affiliated Individual means, with respect to an individual –

- 1. *A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent to a child; or*
- 2. *Any individual, tenant, or lawful occupant living in the household of that individual.*

Bifurcate means dividing a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable covered housing program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Dating Violence means violence committed by a person:

- 1. *Who is or has been in a social relationship of a romantic or intimate nature with the victim; and*
- 2. *Where the existence of such relationship is determined based on a consideration of the following factors:*
 - a. *The length of the relationship;*
 - b. *The type of relationship; and*
 - c. *The frequency of interaction between the persons involved in the relationship.*

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, by a person who is cohabitating with or has cohabitated 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 act under the domestic or family violence laws of the jurisdiction.

Perpetrator means any person who commits an act of domestic violence, dating violence, stalking or sexual assault against a victim.

Sexual Assault means any nonconsensual sexual act proscribed by Federal, tribal or State law, including when the victim lacks capacity to consent.

Stalking means

- 1. To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person 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 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:
 - a. That person;*
 - b. A member of the immediate family of that person; or*
 - c. The spouse or intimate partner of that person.**

IV. ADMISSIONS & SCREENING

- A. *In General.* The HPHA will not deny admission to public housing or to the Section 8 rental assistance program to any person because that person is or has been a victim of domestic violence, dating violence, stalking, or sexual assault provided that such person is otherwise qualified for such admission.
- B. *Preference.* An applicant will be granted a preference eligible status as a victim of domestic violence, dating violence, sexual assault, or stalking, with certification or documentation verifying current actual or threatening abuse.
- C. *Mitigation of Disqualifying Information.* In reviewing preference eligibility, the HPHA must determine whether negative suitability was a consequence of domestic violence against the applicant. An applicant will not be denied admission if the unfavorable (negative report) screening factors of the applicant are related to acts of domestic violence, dating violence, sexual assault, or stalking against the applicant or any member of the family household. The HPHA shall be entitled to conduct such inquiries as are reasonably necessary to verify the claimed history of domestic violence, dating violence, stalking and/or sexual assault and its probable relevance to the potentially disqualifying information.

- D. *Break Up of Family on the Waiting List.* If a family on the waiting list breaks up, the HPHA has discretion to determine which family members will retain the family's position on the waiting list. However, if a court assigns the family's position on the waiting list to particular family members in a divorce or separation under a settlement or judicial decree, the HPHA must assign the waiting list position as directed by the court.

In the absence of a judicial decision, the HPHA will consider the following factors:

1. The interest of any minor children, including custody arrangements;
2. The interest of any ill, elderly, or disabled family members;
3. Any possible risks to family members as a result of domestic violence or criminal activity; and
4. The recommendations of social service professionals.

The HPHA will prioritize victims of actual or threatened domestic violence, dating violence, or stalking where that violence is a contributing cause of the household breakup. However, if there are minor children in the family and the children do not primarily reside with the victim, the HPHA may choose not to apply this subsection in order to keep the assistance with the children.

V. VERIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING OR SEXUAL ASSAULT

- A. *Requirements for Verification.* For those seeking protection under this Policy, the HPHA shall verify that an incident or incidents of actual or threatened domestic violence, dating violence, stalking or sexual assault claimed by a tenant or other lawful occupant is bona fide and meets the requirements of the applicable definitions set forth in this Policy.

If there is reason to believe that verification is incomplete or inaccurate, the HPHA may require additional documentation of the incident(s). Such documentation requirement shall not place the victim in danger.

Verification may be made with at least one of the following:

1. *HUD-approved form* – Completing a U.S. Department of Housing and Urban Development (HUD) - approved certification from verifying 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 actual or threatened abuse. The incident or incidents in question must be described in reasonable detail as required in the HUD-approved form, and the completed certification must include the name of the perpetrator if the name of the perpetrator

is safe to provide and is known to the victim. The HUD-approved form shall be made available in multiple languages, consistent with guidance issued by HUD in accordance with Executive Order 13166;
OR

2. Other documentation – Providing the HPHA, owner or manager with documentation signed by any of the following third parties: (a) an employee, agent, or volunteer of a victim service provider; (b) an attorney; (c) a medical professional; or (d) other knowledgeable professional. The person signing the documentation must have assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of the abuse. The person signing the documentation must attest under penalty of perjury to his or her belief that the incident or incidents in question are bona fide incidents of abuse. The victim of domestic violence, dating violence, sexual assault or stalking must also sign the documentation; OR
 3. Police or court record – Producing a Federal, State, tribal, territorial, or local police or court record describing the incident or incidents in question.
- B. Time allowed to provide verification/failure to provide documentation. An individual who claims protection against adverse action based on an incident or incidents of actual or threatened domestic violence, dating violence, stalking or sexual assault, and who is requested by the HPHA, or a Section 8 owner or manager to provide verification, must provide such verification within 14 business days (i.e., 14 calendar days, excluding Saturdays, Sundays, and federally-recognized holidays) after receipt of the request for verification. Failure to provide verification, in proper form within such time will result in loss of protection under VAWA and this Policy against a proposed adverse action. Time for response may be extended upon a showing of good cause.
- C. Waiver of verification requirement. The HPHA Executive Director or his/her Designee, or a Section 8 owner or manager, may, with respect to any specific case, waive the above stated requirements for verification and provide the benefits of this policy based on the victim's statement or other corroborating evidence. Such waiver may be granted in the sole discretion of the Executive Director/Designee, owner or manager. Any such waiver must be in writing. Waiver in a particular instance or instances shall not operate as precedent for, or create any right to, waiver in any other case or cases, regardless of similarity in circumstances.
- D. Additional third party documentation - If the HPHA receives documentation that contains conflicting information, the HPHA, owner, or

manager may require an applicant or tenant to submit third-party documentation.

VI. TERMINATION OF TENANCY or ASSISTANCE

- A. Termination Notices. All termination notices will notify participants of VAWA's protections and that they may seek an informal hearing if they believe that the termination is based on acts of domestic violence, dating violence, sexual assault or stalking committed against the participant.
- B. VAWA Protections. Under VAWA, public housing residents and persons assisted under the Section 8 program, have the following specific protections, which will be observed by the HPHA in administration of its programs:
1. An incident(s) of actual or threatened domestic violence, dating violence, stalking or sexual assault will not be considered to be 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 or assistance to the victim of that violence.
 2. In addition, criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is 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, tenancy, or occupancy rights of the tenant or affiliated individual of the tenant that is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking.
- C. VAWA Limitations.
1. The HPHA or a Section 8 owner or manager may terminate tenancy, evict, or to terminate assistance, for any violation of a lease or program requirement not premised on the act or acts of domestic violence, dating violence, stalking or sexual assault in question against the tenant or a member of the tenant's household. However, neither the HPHA nor a Section 8 manager or owner may apply a more demanding standard to the victim of domestic violence, dating violence, stalking or sexual assault than that applied to other tenants.
 2. The HPHA or a Section 8 owner or manager may evict or terminate from assistance any tenant or lawful applicant if the owner, manager or the HPHA can demonstrate an actual and imminent threat to other tenants or to those employed at or providing service to the property if the tenant is not evicted or terminated from assistance.

- D. *Bifurcation of Lease*. The HPHA or a Section 8 owner or manager, may bifurcate or divide a lease to remove a household member from a lease 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 activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual.
1. Removal of the perpetrator of physical violence may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also the tenant or a lawful occupant. Leases used for all public housing operated by the HPHA and leases for dwelling units occupied by families assisted with Section 8 rental assistance administered by the HPHA, shall contain provisions setting forth the substance of this paragraph or as required by the U.S. Department of Housing & Urban Development.
 2. If a bifurcation or division occurs, and the removed tenant or lawful occupant was the sole tenant eligible to receive assistance under a covered housing program, the HPHA, owner, or manager shall provide any remaining tenant the opportunity and reasonable time to establish eligibility for the covered housing program. If the remaining tenant cannot establish eligibility, the HPHA, owner, or manager is required to provide the tenant reasonable time to find new housing or to establish eligibility under another covered housing program.
 3. If the HPHA seeks to terminate the tenancy of a victim of domestic violence, dating violence, sexual assault, or stalking for lease violations unrelated to the domestic violence, dating violence, or stalking, the HPHA may not hold the individual to a more demanding set of rules than applied to tenants who are not victims of domestic violence, dating violence, sexual assault, or stalking.
 4. In cases where the HPHA receives conflicting certification documents from two 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, the HPHA may determine which is the true victim by requiring third-party documentation.
 5. The HPHA will recommend that the victim seek assistance from local service providers of domestic violence.
 6. When rent for a Section 8 unit has previously been determined based on the income of an abusive family member who has left the household or been excluded from the household by a domestic

violence restraining order or injunction or other court order, rent for the unit will immediately be adjusted to reflect the household's changed circumstances.

7. The HPHA will recommend that the victim contact police and obtain a temporary restraining order against the abuser.

VII. EMERGENCY TRANSFER & PORTABILITY

- A. Eligibility for transfer. A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking is eligible for an emergency transfer, if:
 1. The tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit;
 2. The tenant is a victim of a sexual assault, and the sexual assault occurred on the premises within the 90-day period preceding a request for an emergency transfer.
- B. Emergency transfer request. To request an emergency transfer, the tenant shall notify the HPHA's property management and submit a written request for a transfer. The tenant's request for an emergency transfer should include either:
 1. A statement expressing why the tenant reasonably believes that there is a threat of imminent harm of further violence if the tenant were to remain in the same dwelling unit.
 2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the tenant's request for an emergency transfer.
- C. Emergency transfer timing and availability. HPHA cannot guarantee that an emergency transfer request will be approved or how long it will take to process a transfer request. The HPHA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit.
- D. Portability. Even if moving would otherwise constitute a violation of the lease, a Section 8 voucher family may move to another dwelling and continue to receive rental assistance if the family has complied with all program obligations and is moving to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, or stalking. The HPHA may request that the family provide the

HUD-approved certification form or other documentation to verify the family's claim that the request to move is prompted by incidences of abuse.

If it is necessary for a family member to break a lease in order to escape domestic violence, dating violence, or stalking, the HPHA shall not terminate the victim from the Section 8 program.

Under extraordinary circumstances, including situations involving domestic violence, dating violence, sexual assault or stalking, the HPHA may consider allowing more than one move in a 12-month period.

VIII. CONFIDENTIALITY

A. Right of confidentiality. All information (including the fact that an individual is a victim of domestic violence, dating violence, stalking or sexual assault) provided to the HPHA or to a Section 8 owner or manager in connection with a verification required under section V of this Policy or provided in lieu of such verification where a waiver of verification is granted, shall be retained by the receiving party in confidence and shall not be entered in any shared database nor provided to any other entity or individual, except where disclosure is:

1. Requested or consented to by the individual in writing; or
2. Required for use in a public housing eviction proceeding or in connection with termination of Section 8 assistance, as permitted in VAWA; or
3. Otherwise required by applicable law.

IX. COURT ORDERS

A. Court orders. The HPHA shall honor orders entered by courts of competent jurisdiction affecting individuals assisted by the HPHA. This includes cooperating with law enforcement authorities to enforce civil protection orders issued for the protection of victims and addressing the distribution of personal property among household members in cases where a family breaks up.

X. NOTICE

The HPHA shall provide a "Notice of Occupancy Rights under VAWA" to applicants, tenants, and Section 8 owners and managers, concerning the rights and obligations created under VAWA as to confidentiality, denial of assistance and termination of tenancy or assistance. The Notice will be provided:

1. At the time the applicant is denied assistance or admission for residency in a dwelling unit;
2. At the time the individual is provided assistance or admission to a dwelling unit; and
3. With any notification of eviction or notification of termination of assistance.

The Notice shall be made available in multiple languages, consistent with guidance issued by HUD in accordance with Executive Order 13166.

XI. PROCEDURES FOR DEALING WITH INCIDENTS OR CLAIMS OF DOMESTIC VIOLENCE

In addition to the foregoing provisions and requirements, the HPHA shall adhere to the following VAWA Policy procedures:

- A. The HPHA manager will encourage victims to seek professional assistance by referring them to the appropriate victim service providers.
- B. If police are involved, the HPHA manager should obtain a copy of the police report for its files, and request that the perpetrator is issued a temporary restraining order.
- C. Once a temporary restraining order is issued, and the victim has provided a certification of domestic violence, the HPHA or manager may remove the abuser from the lease. The HPHA or manager will make available to the victim the option to change existing unit entry locks at their cost, if desired.
- D. In cases where the facts are unclear, staff may liberally apply VAWA procedures and then seek immediate consultation with the Property Management and Maintenance Services Branch.
- E. The HPHA or manager will issue a written "Trespass Warning Notice" when deemed appropriate. Staff shall cooperate and coordinate with police and on-site security, if any, to the issuance and enforcement of trespass notices.
- F. The manager will keep written log of actions taken, including referrals to social service organizations, to police, or to other state agencies; to document efforts made to assist victims assisted under VAWA.
- G. The HPHA or manager may issue a Notice of Violation to one of the tenants of a lease in order to evict, remove, 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.

- H. The HPHA and managers are required to maintain confidential information in separate files and stored in a locked restricted access cabinet.