

Appendix VIII

Prohibition Against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking [24 CFR Part 5, Subpart L]

The Violence Against Women Act (VAWA), as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.) protects tenants, participants, and "affiliated individuals" of tenants and participants who are victims of domestic violence, dating violence, sexual assault, or stalking from being evicted or terminated from HUD's federally subsidized public housing, Housing Choice Voucher program, and other federally subsidized housing programs administered by the Housing Authority of the County of Kern (HACK) based on actual or threatened acts of such violence against them.

Additionally, VAWA prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of violence, dating violence or stalking [24 CFR 5.2005]. Notwithstanding its title, this provision is gender-neutral and its protection is available to male victims of domestic violence, dating violence, Sexual Assault, or stalking as well as female victims of such violence.

1. Definitions [24 CFR 5.2003]

As used in VAWA:

- **The Term Domestic Violence:** Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, 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. The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.
- **The Term Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- **The Term Sexual Assault** means any nonconsensual sexual act proscribed

by Federal, tribal, or State law, including when the victim lacks capacity to consent.

- ***The Term Stalking:***
 - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
 - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
 - 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 (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.
- ***The Term Affiliated individual, with respect to an individual, means:***
 - A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
 - Any individual, tenant, or lawful occupant living in the household of that individual.
- ***The Term Bifurcate:*** With respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- ***The Term Perpetrator:*** The person who commits an act of domestic violence, dating violence, or stalking against a victim.

2. Notification

HACK shall provide the notice developed by HUD pursuant to 42 U.S.C. 14043e-11(d)(1) to an applicant for or tenant of housing assisted under a covered housing program:

- At the time the applicant is denied residency in a dwelling unit assisted under the covered housing program;
- At the time the individual is admitted to a dwelling unit assisted under the covered housing program;
- With any notification of eviction or notification of termination of assistance; and
- In multiple languages, consistent with HACK's Limited English Proficiency Plan (LEP)

Together with such notice, HACK shall provide a certification form approved by HACK that may be used by an applicant or tenant to self-identify as a victim of domestic violence, dating violence, sexual assault, or stalking. (42 U.S.C. 140432e-11(c)(3)(a)).

This policy shall be incorporated in and made part of the Admissions and Continued Occupancy Policy for HACK's Low-Income Public Housing Program and referenced in and attached to the five-year and annual public housing agency plan concerning HACK's activities, services, or programs relating to domestic violence, dating violence, sexual assault, and stalking.

3. Admissions and Screening

A. **Non-Denial of Assistance.** HACK will not deny admission to the low-income public housing program to any person because that person is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, provided that such person is otherwise qualified for such admission.

1. **Mitigation of Disqualifying Information.** When requested by an applicant for assistance whose history includes incidents in which the applicant was a victim of domestic violence, dating violence, sexual assault, or stalking, HACK may take such information into account in mitigation of potentially disqualifying information, such as poor credit history or previous damage to a dwelling. If requested by an applicant to take such mitigating information into account, HACK shall be entitled to conduct such inquiries as are reasonably necessary to verify the claimed history of domestic violence, dating violence, sexual assault, or stalking and its probable relevance to the potentially disqualifying information.

4. Termination of Tenancy or Assistance

A. **VAWA Protections.** Under VAWA, persons assisted under the low-income public housing program have the following specific protections, which will be observed by the Housing Authority of the County of Kern:

1. An applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact 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.
2. An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking 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.
3. In addition to the foregoing, tenancy or assistance will not be

terminated by the Housing Authority of the County of Kern as a result of criminal activity, if that criminal activity is directly related to domestic violence, dating violence, sexual assault or stalking engaged in by a member of the assisted household, a guest or another person under the tenant's control, and the tenant or an immediate family member is the victim or threatened victim of this criminal activity. However, the protection against termination of tenancy or assistance described in this paragraph is subject to the following limitations:

- a. Nothing contained in this paragraph shall limit any otherwise available authority of the Housing Authority of the County of Kern or a Section 8 owner or manager to terminate tenancy, evict, or to terminate assistance, as the case may be, for any violation of a lease or program requirement not premised on the act or acts of domestic violence, dating violence, or stalking in question against the tenant or a member of the tenant's household. However, in taking any such action, neither the Housing Authority of the County of Kern nor a Section 8 manager or owner may apply a more demanding standard to the victim of domestic violence, dating violence, sexual assault, or stalking than that applied to other tenants.
 - b. Nothing contained in this paragraph shall be construed to limit the authority of the Housing Authority of the County of Kern or a Section 8 owner or manager to evict or terminate from assistance any tenant or lawful applicant if the owner, manager or Housing Authority of the County of Kern, as the case may be, 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.
 - c. 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 and 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.
- B. ***Removal of Perpetrator.*** Notwithstanding anything in the paragraph above or Federal State or local law to the contrary, HACK or a Section 8 owner or manager, may bifurcate a lease, or 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 acts of physical violence against family members or others. Such

action against the perpetrator of such 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. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by law applicable to terminations of tenancy and evictions by the Housing Authority of the County of Kern.

- C. If HACK evicts, removes, or terminates assistance to a perpetrator of domestic violence, dating violence, sexual assault, or stalking, and the individual is the sole tenant eligible to receive assistance under a covered housing program, the public housing agency or owner or manager of housing assisted under the covered housing program shall provide any remaining tenant an opportunity to establish eligibility for the covered housing program. If a tenant described in the preceding sentence cannot establish eligibility, the public housing agency or owner or manager of the housing shall provide the tenant a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program.
- D. **Remaining Tenants.** If HACK or a Section 8 owner or manager bifurcates a lease under VAWA, any remaining tenants who had not already established eligibility for assistance must be given either the maximum time permitted by statute, or, if there are no statutory prohibitions, at least 90 calendar days from the date of bifurcation of the lease or until expiration of the lease, depending on the covered housing program, to establish eligibility for a covered housing program, or find alternative housing.
1. If a family in a HOME-assisted unit separates under this provision, the remaining tenant(s) will retain the unit.
 2. If a family receiving HOME tenant-based assistance separates under this provision, the tenant(s) who are not removed will retain the HOME tenant-based rental assistance and the participating jurisdiction must determine whether a tenant who was removed from the unit will receive HOME tenant-based assistance.

5. Verification of Domestic Violence, Dating Violence or Stalking

- A. **Requirement for Verification.** The Housing Authority shall require verification in all cases where an individual claims VAWA protection. Any such incident(s) must have occurred within six months. Section 8 owners or managers receiving rental assistance administered by HACK may elect to require verification, or not to require it as permitted under applicable law. Tenants and applicants may choose any of the forms of documentation listed below to document the occurrence of a VAWA crime.

Verification of a claimed incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may be

accomplished by the following:

1. **HUD-Approved form** – by providing to HACK or to the requesting Section 8 owner or manager a written certification, on a form approved by the U.S. Department of Housing and Urban Development (HUD):
 - i. That the individual is a victim of domestic violence, dating violence, sexual assault or stalking;
 - ii. That the incident or incidents in question are bona fide incidents of actual or threatened abuse meeting the requirements of the applicable definitions set forth in this policy.
 - iii. Includes the name of the perpetrator, if the name is known to the tenant or applicant and safe to provide.
2. **Other Documentation-** In lieu of the certification form or in addition to the certification form HACK may accept documentation signed by both:
 - i. 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 the domestic violence, dating violence, sexual assault or stalking; and
 - ii. The applicant or tenant

The documentation shall state, under penalty of perjury, the professional's belief that the incident or incidents in question meet the requirements of the applicable definition(s) set forth in this policy.

3. **Police or Court Record-** by providing to HACK or to the requesting Section 8 owner or manager a Federal, State, tribal, territorial, or local police or court record describing the incident or incidents in question.

4. A statement or other evidence provided by an applicant or tenant.

B. Time allowed to provide verification/ failure to provide. An individual who claims protection against adverse action based on an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking, and who is requested by HACK, 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). 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. In cases of conflicting evidence, tenants and applicants who may need to submit third-party documentation to document occurrence of a VAWA crime have 30 calendar days to submit the third-party documentation.

6. PHA Confidentiality Requirements [24 CFR 5.2007(a)(1)(v)]

All information provided to the PHA regarding domestic violence, dating violence or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared database nor provided to any related entity, except to the extent that the

disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is 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 and addressed.