

Chapter 23

23.00 VIOLENCE AGAINST WOMEN ACT (VAWA) POLICY

I. Purpose and Applicability:

The purpose of this policy (herein called “Policy”) is to implement the applicable provisions of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162) and more generally to set forth IHFA (IHFA) policies and procedures regarding domestic violence, dating violence, and stalking, as hereinafter defined. This Policy shall be applicable to the administration by IHFA of all federally subsidized public housing and Section 8 rental assistance under the United States Housing Act of 1937 (42 U.S.C. §1437 et seq.). Notwithstanding its title, this policy is gender-neutral, and its protections are available to males who are victims of domestic violence, dating violence, or stalking as well as female victims of such violence.

II. Goals and Objectives:

This Policy has the following principal goals and objectives:

Maintaining compliance with all applicable legal requirements imposed by VAWA;

Ensuring the physical safety of victims of actual or threatened domestic violence, dating violence, or stalking who are assisted by IHFA;

Providing and maintaining housing opportunities for victims of domestic violence dating violence, or stalking;

Creating and maintaining collaborative arrangements between IHFA, law enforcement authorities, victim service providers, and others to promote the safety and well-being of victims of actual and threatened domestic violence, dating violence and stalking, who are assisted by IHFA; and

Taking appropriate action in response to an incident or incidents of domestic violence, dating violence, or stalking, affecting individuals assisted by IHFA.

III. Other IHFA Policies and Procedures:

Intent to establish this policy was initially included in IHFA’s 2007 Annual Agency Plan. Since implementation, the policy has been updated and this new policy will be referenced in and attached to IHFA’s 2008 Annual Agency Plan and shall be incorporated in and made a part of IHFA’s Admissions and Continued Occupancy Policy and the Section 8 Administrative Plan. IHFA’s Annual Public Housing Agency Plan shall also contain information concerning IHFA’s activities, services or programs relating to domestic violence, dating violence, and stalking, as appropriate. To the extent any provision of this policy shall vary or contradict any previously adopted policy or procedure of IHFA, the provisions of this Policy shall prevail.

IV. Definitions - As used in this Policy:

Domestic Violence – The term ‘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.

Dating Violence – means 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:

- (i) The length of the relationship.
- (ii) The type of relationship.
- (iii) The frequency of interaction between the persons involved in the relationship.

Stalking – means –

(A) (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

(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;

Immediate Family Member - means, with respect to a person –

- a spouse, parent, brother, sister, or child of that person, or an individual to whom that person stands in loco parentis; or
- any other person living in the household of that person and related to that person by blood or marriage.

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

V. Admissions and Screening:

Non-Denial of Assistance: IHFA 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, or stalking, provided that such person is otherwise qualified for such admission.

Admissions Preference: Applicants for rental assistance from IHFA will not receive a preference in admissions by virtue of their status as victims of domestic violence.

Mitigation of Disqualifying Information: When so requested in writing by an applicant for assistance whose history includes incidents in which the applicant was a victim of domestic violence, IHFA, may but shall not be obligated to, 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, IHFA shall be entitled to conduct such inquiries as are reasonably necessary to verify the claimed history of domestic violence and its probable relevance to the potentially disqualifying information. IHFA will not disregard or mitigate potentially disqualifying information if the applicant household includes a perpetrator of a previous incident or incidents of domestic violence.

VI. Termination of Tenancy or Assistance:

A. VAWA Protections. Under VAWA, public housing residents and persons assisted under the Section 8 rental assistance program have the following specific protections, which will be observed by IHFA:

1. An incident or incidents of actual or threatened domestic violence, dating violence, 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.

In addition to the foregoing, tenancy or assistance will not be terminated by IHFA as a result of criminal activity, if that criminal activity is directly related to domestic violence, dating violence 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:

Nothing contained in this paragraph shall limit any otherwise available authority of IHFA 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 IHFA nor a Section 8 manager or owner may apply a more demanding standard to the victim of domestic violence dating violence or stalking than that applied to other tenants.

Nothing contained in this paragraph shall be construed to limit the authority of IHFA or a Section 8 owner or manager to evict or terminate from assistance any tenant or lawful applicant if the owner, manager or IHFA, 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.

2. Removal of Perpetrator. Further, notwithstanding anything in paragraph VI.A.2. or Federal, State or local law to the contrary, IHFA or a Section 8 owner or manager, as the case may be, 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 IHFA. Leases used for all public housing operated by IHFA and, at the option of Section 8 owners or managers, leases for dwelling units occupied by families assisted with Section 8 rental assistance administered by IHFA, shall contain provisions setting forth the substance of this paragraph.

VII. Verification of Domestic Violence, Dating Violence or Stalking:

A. Requirement for Verification. The law allows, but does not require, IHFA or a section 8 owner or manager to verify that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking claimed by a tenant or other lawful occupant is bona fide and meets the requirements of the applicable definitions set forth in this policy. Subject only to waiver as provided in paragraph VII. C., IHFA shall require verification in all cases where an individual claims protection against an action involving such individual proposed to be taken by IHFA. Section 8 owners or managers receiving rental assistance administered by IHFA may elect to require verification, or not to require it as permitted under applicable law.

B. Verification of a claimed incident or incidents of actual or threatened domestic violence, dating violence or stalking may be accomplished in one of the following three ways:

1. HUD-approved form - by providing to IHFA 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), that the individual is a victim of domestic violence, dating violence or stalking that the incident or incidents in question are bona fide incidents of actual or threatened abuse meeting the requirements of the applicable definition(s) set forth in this policy. 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.

2. Other documentation - by providing to IHFA 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 the domestic violence, dating violence or stalking, or the effects of the abuse, described in such documentation. The professional providing the documentation must sign and attest 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 meeting the requirements of the applicable definition(s) set forth in this policy. The victim of the incident or incidents of domestic violence, dating violence or stalking described in the documentation must also sign and attest to the documentation under penalty of perjury.

3. Police or court record – by providing to IHFA a Federal, State, tribal, territorial, or local police or court record describing the incident or incidents in question.

A. 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 or stalking, and who is requested by IHFA 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.

Waiver of verification requirement. The Rental Assistance Programs Manager of IHFA, 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 IHFA Rental Assistance Programs 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.

VIII. Confidentiality:

A. Right of confidentiality. All information (including the fact that an individual is a victim of domestic violence, dating violence or stalking) provided to IHFA in connection with a verification required under section VII 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 neither be entered in any shared database nor provided to any related entity, 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, as permitted in VAWA, or
3. otherwise required by applicable law.

B. Notification of rights. All tenants of public housing and tenants participating in the Section 8 rental assistance program administered by IHFA shall be notified in writing concerning their right to confidentiality and the limits on such rights to confidentiality.

IX. Transfer to New Residence:

A. 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, or stalking, IHFA will, if an approved unit size is available at a location that may reduce the risk of harm, approve transfer by a public housing or Section 8 tenant to a different unit in order to reduce the level of risk to the individual. A tenant who requests transfer must attest in such application that the requested transfer is necessary to protect the health or safety of the tenant or another member of the household who is or was the victim of domestic violence, dating violence 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.

B. Action on applications. IHFA will act upon such an application promptly, which shall be defined as 10 business days.

C. No right to transfer. IHFA will make every effort to accommodate requests for transfer when suitable alternative vacant units are available and the circumstances warrant such action. However, except with respect to portability of Section 8 assistance as provided in paragraph IX. E. below the decision to grant or refuse to grant a transfer shall lie within the sole discretion of IHFA, and this policy does not create any right on the part of any applicant to be granted a transfer.

B. Family rent obligations. If a family occupying IHFA public housing moves before the expiration of the lease term in order to protect the health or safety of a household member, the family will remain liable for the rent during the remainder of the lease term unless released by IHFA. In cases where IHFA determines that the family's decision to move was reasonable under the circumstances, IHFA may wholly or partially waive rent payments and any rent owed shall be reduced by the amounts of rent collected for the remaining lease term from a tenant subsequently occupying the unit.

C. Portability. Notwithstanding the foregoing, a Section 8-assisted tenant will not be denied portability to a unit located in another jurisdiction (notwithstanding the term of the tenant's existing lease has not expired, or the family has not occupied the unit for 12 months) so long as the tenant has complied with all other requirements of the Section 8 program and has moved from the unit in order to protect a health or safety of an individual member of the household who is or has been the victim of domestic violence dating violence 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.

X. Court Orders/Family Break-up:

A. Court orders. It is IHFA's policy to honor orders entered by courts of competent jurisdiction affecting individuals assisted by IHFA and their property. 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.

B. Family break-up. Other IHFA policies regarding family break-up are contained in IHFA's Public Housing Admissions and Continuing Occupancy Plan (ACOP) and its Section 8 Administrative Plan.

XI. Relationships with Service Providers:

It is the policy of IHFA to cooperate with organizations and entities, both private and governmental, that provide shelter and/or services to victims of domestic violence. If IHFA staff becomes aware that an individual assisted by IHFA is a victim of domestic violence, dating violence or stalking, IHFA will refer the victim to such providers of shelter or services as appropriate. Notwithstanding the foregoing, this Policy does not create any legal obligation requiring IHFA either to maintain a relationship with any particular provider of shelter or services to victims or domestic violence or to make a referral in any particular case. IHFA's annual public housing agency plan shall describe providers of shelter or services to victims of domestic violence with which IHFA has referral or other cooperative relationships.

XII. Notification:

IHFA shall provide written notification to applicants, tenants, and Section 8 owners and managers, concerning the rights and obligations created under VAWA relating to confidentiality, denial of assistance and, termination of tenancy or assistance.

XIII. Relationship with Other Applicable Laws:

Neither VAWA nor this Policy implementing it shall preempt or supersede any provision of Federal, State or local law that provides greater protection than that provided under VAWA for victims of domestic violence, dating violence or stalking.

XIV. Amendment:

This policy may be amended from time to time by IHFA as approved by the IHFA Board of Commissioners or its designated official.