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# ALBUQUERQUE HOUSING AUTHORITY

## APPENDIX I

### VIOLENCE AGAINST WOMEN ACT (VAWA) POLICY

#### I. Purpose and Applicability

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

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, approved August 28, 2006), as amended by the U.S. Housing Act of 1937 (42U.S.C. 1437 d and 42 U.S. 1437f) and more generally to set forth Albuquerque Housing Authority (herein called “AHA”) policies and procedures regarding domestic violence, sexual assault, dating violence, and stalking, as hereinafter defined.

#### II. Goals and Objectives

This policy has the following principal goals and objectives:

- A. Maintaining compliance, including training of appropriate staff managing AHA properties, with all applicable legal requirements imposed by VAWA;
- B. Participating, with others, in protecting the physical safety of victims of actual or threatened domestic violence, sexual assault, dating violence, or stalking who are assisted by AHA;
- C. Providing and maintaining housing opportunities for victims of domestic violence, sexual assault, dating violence, or stalking;
- D. Cooperating, with others, information and maintenance of collaborative arrangements between AHA, law enforcement authorities, victim services providers, and others to promote the safety and well-being of victims of actual and threatened domestic violence, sexual assault, dating violence and stalking, who are assisted by AHA; and
- E. Responding in accordance with AHA policies and procedures to incidents of domestic violence, sexual assault, dating violence, or stalking, affecting individuals assisted by AHA.

### III. Other AHA Policies and Procedures

This policy shall be referenced in and attached to AHA Five-Year PHA Plan and, where appropriate, provisions consistent with this Policy shall be incorporated in and made a part of AHA Admissions and Continued Occupancy Policy (ACOP), AHA Section 8 Administrative Plan (Admin Plan), and other AHA policies. AHA annual public housing agency plan shall also contain information concerning AHA activities, services or programs relating to domestic violence, sexual assault, dating violence, and stalking.

### IV. Definitions

As used in this Policy:

- 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 certain tenants can be evicted or removed while the remaining affiliated members, lease and occupancy rights are allowed to remain in tact.
- B. *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.’”
- C. *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 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.
- D. *Stalking – means –*
  1. 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 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;
- E. *Immediate 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 of that person.
- F. *Perpetrator* - means person who commits an act of domestic violence, dating violence or stalking against a victim.

## V. Admissions and Screening

- A. *Non-Denial of Assistance.* AHA will not deny admission to public housing or to the Section 8 rental assistance programs 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.
- B. *Admissions Preference.* Applicants for housing assistance from AHA will receive a preference in admissions by virtue of their status as victims of domestic violence. Applicant **MUST** certify to that effect and provide the required documentation (i.e., referral letter) from the District Attorneys office.
- C. *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, AHA, 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, AHA 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. AHA 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 AHA:
  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.
  2. The victim of domestic violence, once housed under the “preference” category, will be required to cooperate fully with the District Attorneys Office in the prosecution of the alleged domestic violence perpetrator(s). Failure to cooperate with the district attorney shall be cause to terminate housing assistance and the dwelling lease that was provided under the “preference” category of the ACOP.
  3. In addition to the foregoing, tenancy or assistance will not be terminated by AHA 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 affiliated 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:
    - i. Nothing contained in this paragraph shall limit any otherwise available authority of AHA’ 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 AHA 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.

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

B. *Removal of Perpetrator.* Further, notwithstanding anything in paragraph VI.A.2. or Federal, State or local law to the contrary, AHA 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 AHA. Leases used for all public housing operated by AHA 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 AHA, 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, AHA 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., AHA shall require verification in all cases where an individual claims protection against an action involving such individual proposed to be taken by AHA. Section 8 owners or managers receiving rental assistance administered by AHA may elect to require verification, or not to require it as permitted under applicable law.

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 AHA 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 AHA or to the requesting Section 8 owner or manager 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 AHA 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.
- 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 or stalking, and who is requested by AHA, 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.
- C. *Waiver of verification requirement.* The AHA Division or his/her designee, or a Section 8 Owner or property 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 Division Manager or his/her designee, owner or property 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 AHA or to a Section 8 owner or manager 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 or in connection with termination of Section 8 assistance, 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 AHA shall be notified in writing concerning their right to confidentiality and the limits on such rights to confidentiality.

## **IX. Transfer to New Residence**

- A. *Requests for transfer.* The opportunity to transfer in Public Housing due to incidents of domestic violence, dating violence and/or stalking is described in the ACOP. The opportunity to relocate in the Section 8 rental assistance programs due to incidents of domestic violence, dating violence and/or stalking is described in the Admin Plan. Except with respect to portability of Section 8 assistance, as provided in section D below, the decision to approve or disapprove a transfer shall be made in accordance with the ACOP or Admin Plan, as applicable. This policy does not create an additional right on the part of any public housing tenant or Section 8-assisted tenant to be granted a transfer.
- B. *Action on Request for Transfer.* AHA will act upon such a request promptly.
- C. *Family rent obligations.* If a family occupying AHA public housing moves before the expiration of the lease term in order to protect the health or safety of a household member, the affiliated member will remain liable for the rent during the remainder of the lease term unless released by AHA. In cases where AHA determines that the family's decision to move was reasonable under the circumstances, AHA 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.
- D. *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 AHA policy to honor orders entered by courts of competent jurisdiction affecting individuals assisted by AHA 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 AHA policies regarding family break-up are contained in AHA ACOP and its Section 8 Administrative Plan.

## **XI. Relationships with Service Providers**

It is the policy of AHA to cooperate with organizations and entities, both private and governmental that provides shelter and/or services to victims of domestic violence. If AHA staff becomes aware that an individual assisted by AHA is a victim of domestic violence, dating violence or stalking, AHA 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 AHA 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.

## **XII. Notification**

AHA 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 AHA.