

**NEW YORK CITY HOUSING AUTHORITY  
LEASED HOUSING DEPARTMENT**

**LEASED HOUSING DIRECTIVE**

LHD Number: 2017-0003

To: Leased Housing Department Staff  
From: Cathy Pennington, Executive Vice President, Leased Housing Department  
Date: June 14, 2017  
Subject: EMERGENCY TRANSFER POLICY FOR SECTION 8 PARTICIPANTS WHO ARE:  
1. VAWA Victims  
2. Intimidated Witnesses (IW)  
3. Intimidated Victims (IV)

Related LHDs: 2004-0016 and 2006-0014

Related guidance: Emergency Transfer Guide for LHD Staff

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**I. PURPOSE**

This Leased Housing Directive (LHD) revises the current policy for Emergency Transfers for Section 8 participants who are Victims under the Violence Against Women Act (VAWA Victim), Intimidated Witnesses (IW), or Intimidated Victims (IV). This LHD rescinds LHDs 2004-0016 and 2006-0014, which are now obsolete.

**II. BACKGROUND**

In accordance with the federal Violence Against Women Reauthorization Act of 2013 and HUD's final rule, Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs (FR-5720-F-03), issued on November 16, 2016, this LHD updates NYCHA's emergency transfer policies for participants in the Section 8 program that qualify under one of the three emergency transfer categories: VAWA Victim, IW, or IV.

**III. POLICY AND PROCEDURE**

**A. ELIGIBILITY FOR AN EMERGENCY TRANSFER UNDER VAWA – VICTIM CATEGORIES**

In order to qualify for an emergency transfer under VAWA, a Section 8 participant, including the head of household, a household member, or an affiliated individual, must

be able to demonstrate that he or she meets the definition of a VAWA victim, IW, or IV described below.

### **1. VAWA Victim**

To qualify as a VAWA victim, a Section 8 participant, including the head of household, a household member, or an affiliated individual,<sup>1</sup> must be a victim of domestic violence, dating violence, sexual assault, or stalking, as defined below.

#### **a. Domestic Violence Victim**

A victim of a felony or misdemeanor crime of violence committed by:

- A family member,
- A current or former spouse or intimate partner,
- A person with whom the victim has a child in common,
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- A person similarly situated to a spouse of the victim under New York's domestic or family violence laws in the jurisdiction, or
- Any other person against a victim protected under New York's domestic or family violence laws.

#### **b. Dating Violence Victim**

A victim of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. 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; and
- The frequency of interaction between the persons involved in the relationship (24 C.F.R. § 5.2003).

The U.S. Office on Violence Against Women (OVW) further clarifies that dating violence covers a variety of actions and can include physical abuse, physiological and emotional abuse, and sexual abuse. It can also include "digital abuse," the use of technology, such as smartphones, the internet, or social media, to intimate, harass, threaten, or isolate a victim.

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<sup>1</sup> An Affiliated Individual is defined as a spouse; parent; brother; sister; child; or a person to whom the tenant stands in the place of a parent or guardian, i.e., a person in the tenant's care, custody, or control.

### **c. Sexual Assault Victim**

A victim of any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent (24 C.F.R. § 5.2003).

OVW further clarifies that the definition includes sexual activity such as forced sexual intercourse, sodomy, molestation, incest, fondling, and attempted rape. It includes sexual acts against people who are unable to consent either due to age or lack of capacity.

### **d. Stalking Victim**

A victim of a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's individual safety or the safety of others; or
- Suffer substantial emotional distress (24 C.F.R. § 5.2003).

OVW further clarifies that this course of conduct can be repetitive, and may include frightening communications, direct or indirect threats, and harassing a victim through the internet. Additionally, it is not limited to situations where the perpetrator is someone with whom the victim was in any specific type of relationship.

## **2. Intimidated Victim (IV)**

A Section 8 participant who is the primary voucher holder or household member who is the victim of a violent crime or the threat of a violent crime and such crime was committed in a non-random manner as a result of a relationship between the victim and the abuser, and as a result of such crime:

- The victim suffered actual physical injury or the threat of injury against him/herself or immediate family, and
- The victim will continue to suffer if (s)he continues to live in the current residence.

## **3. Intimidated Witness (IW)**

A Section 8 participant who is the primary voucher holder or household member who cooperates with a prosecutorial or law enforcement agency, such as the NY Police Department, NY District Attorney's Office, the U.S. Attorney's office, or NYC Corporation Counsel's Office (if the perpetrator is a minor) in the arrest and prosecution of an individual(s) who committed a crime, and as a result of such cooperation:

- The witness suffered actual physical injury or the threat of injury against him/herself or immediate family, and
- The witness will continue to suffer if (s)he continues to live in the current residence.

## **B. OTHER ELIGIBILITY REQUIREMENTS**

### **1. Victims That Are Not The Voucher Holder**

If the perpetrator of the abuse is the voucher holder (sole signatory of the lease) and the victim is an authorized occupant of the voucher household, the victim may seek an emergency transfer under VAWA. An authorized occupant is a member of the voucher household approved by NYCHA under either permanent or conditional status. When a victim who is an authorized occupant of the voucher household seeks an emergency transfer under VAWA, the authorized occupant must first establish eligibility to become the voucher holder and staff must initiate proceedings to terminate the tenancy of the perpetrator. Authorized occupants have 90 calendar days from the date of the perpetrator's termination to establish eligibility to succeed to the voucher or to find alternative housing.

### **2. VAWA Victims Without Eligible Immigration Status (Only Applicable To Section 8 Participants Eligible Under The Vawa Victim Category)**

Under VAWA, if the perpetrator is the sole voucher holder and the victim is an authorized household member without eligible immigration status, he/she can self petition for eligible status if he/she is the spouse, parent or child of an abusive U.S. citizen or permanent resident and has been subjected to "battery or extreme cruelty."

### **3. Participants Not In Good Standing**

Participants who are not in good standing may request an emergency transfer.

### **4. VAWA Victims in PBV Units**

If a family has been living in a PBV unit for less than a year, and must move to protect the health and safety of a family member who is a VAWA victim, the family is not required to give advanced written notice of intent to vacate, and will receive priority to receive the next available opportunity for tenant-based assistance. If tenant-based assistance is not available at the time the family must move, the family has priority to receive the next available opportunity for tenant-based assistance.

### **5. VASH Vouchers and VAWA**

If the VASH voucher holder is the perpetrator and the VASH voucher is terminated due to the perpetrator's VAWA acts, the victim should be given a regular HCV voucher if one is available, and the perpetrator's VASH voucher should be used to assist another eligible veteran family. If a regular HCV voucher is not available for the victim, NYCHA must terminate the perpetrator's assistance and allow the victim to continue to utilize the VASH voucher. If the victim leaves the Section 8 program, the VASH voucher must be issued to another eligible veteran family upon turnover.

## **6. Family Move for Health and Safety**

NYCHA will not terminate assistance to a family if the family moves out of an assisted unit in violation of a lease, with or without prior notice to NYCHA, if (i) the family moved to protect the health or safety of a family member who is a VAWA victim; (ii) the VAWA victim reasonably believed they were imminently threatened by harm from further violence if they remained in the unit; or (iii) if any family member was the victim of sexual assault on the premises during the 90 calendar day period preceding the family's move or request to move.

## **C. REQUIRED FORMS & DOCUMENTATION**

### **1. NYCHA Forms**

Section 8 participants that meet the definition of one of the categories above and wish to request an emergency transfer must submit either a Voucher Holder Request for Transfer (059.004) or a Voucher Holder's Request for Portability (059.723). Reasonable accommodations will be provided for individuals with disabilities that are requesting an emergency transfer.

The form requires Section 8 participants to certify that:

- The victim reasonably believes that there is a threat of imminent harm from further violence if he or she remains within the same dwelling unit that they currently occupy; or
- For victims of sexual assault, the sexual assault incident occurred on the premises during the 90-calendar-day period preceding the date of the request for emergency transfer.

### **2. Additional Documentation**

VAWA victims are not required to submit third-party documentation, except in two circumstances:

- If a participant submits an emergency transfer request and certification with conflicting information, or
- If NYCHA receives cross-complaints: requests 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.

Section 8 participants eligible for an emergency transfer as an IV and IW are required to submit additional documentation as described in the Tenant Transfer Fact Sheet (059.648).

## **D. APPROVAL OF EMERGENCY TRANSFER REQUESTS**

### **1. Timing of Approval**

Emergency transfer requests receive priority over regular non-emergency transfer requests.

NYCHA cannot guarantee that an emergency transfer request will be approved or how long it will take to process a transfer request. NYCHA also cannot guarantee the safety or security of individuals and families who choose to apply and/or who are transferred under this program. Pending the review and/or processing of the participant's emergency transfer request, the participant should be urged to take reasonable precautions to be safe.

### **2. Conflicting Information & Cross-Complaints**

NYCHA may request additional documentation if an emergency transfer request includes conflicting information or if a cross-complaint is received.

- a. If documentation identifies a victim and perpetrator, NYCHA LHD staff will process the transfer for the victim and coordinate with the Law Department to commence termination proceedings against the perpetrator.
- b. If documentation does not identify a victim and a perpetrator, NYCHA will deny both of the conflicting or cross-complaint emergency transfer requests. NYCHA will not take any adverse action against the tenancy based on the emergency transfer requests.
- c. NYCHA is not permitted to bifurcate a voucher.

### **3. Discrimination in Approval/Disapproval Determination**

In making its determinations regarding emergency transfers, NYCHA does not discriminate on the basis of any protected characteristic, including race, color, religion, national origin, sex, disability, sexual orientation, age, familial status, marital status, partnership status, lawful occupation, lawful source of income, military status, alienage or citizenship status, or on the grounds that a person is a victim of domestic violence, dating violence, sexual assault or stalking. NYCHA makes assistance available to all otherwise eligible individuals regardless of actual or perceived protected status.

## **E. MOVING TO A NEW UNIT WITH AN EMERGENCY TRANSFER**

Section 8 participants who are found eligible for an emergency transfer must move to the new apartment along with other authorized family members in order to receive continued Section 8 assistance. The transfer must result in only one subsidized apartment for the household.

If a tenant seeks to apply for housing in a different NYCHA program, other than NYCHA's public housing program, or seeks to apply for housing with a different housing provider, NYCHA will

provide the tenant with information on Alternative Housing Resources, which identifies other programs and housing providers the tenant may contact for assistance.

#### **F. TERMINATION OF ASSISTANCE**

VAWA victims, IVs, and IWs are entitled to protections relating to admission, occupancy and termination of assistance. An applicant for assistance or a Section 8 participant may not be denied admission to, denied assistance under, terminated from participation in, or evicted from Section 8-assisted housing on the basis of or as a direct result of the fact that the applicant or participant is or has been a victim.

#### **G. CONFIDENTIALITY**

NYCHA will keep confidential any information and documentation that the participant submits in requesting an emergency transfer, including his/her new location and status as a victim, unless (1) the participant gives written permission to release the information in a time-limited release, (2) disclosure of the information is required by law, or (3) disclosure is required for use in a termination.

#### **IV. RELATED FORMS**

- NYCHA Form 040.683: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
- NYCHA Form 040.683A: Notice of Occupancy Rights
- NYCHA Form 059.648: Tenant Transfer Fact Sheet
- NYCHA Form 059.004 Voucher Holder Request for Transfer
- NYCHA Form 059.723 Voucher Holder's Request for Portability
- Alternative Housing Resources