

**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL'S WOMEN'S ISSUES COMMITTEE
AND SUBCOMMITTEE ON PUBLIC HOUSING:
ACCESS TO PUBLIC HOUSING FOR VICTIMS OF DOMESTIC VIOLENCE**

June 11, 2009

Legal Momentum

Legal Momentum, is the nation's oldest legal defense and education fund dedicated to advancing the rights of all women and girls. As an organization dedicated to using the power of the law to ensure rights, services, and justice for victims of violence, we are grateful for the opportunity to present this written testimony before the New York City Council on access to public housing for victims of domestic violence.

Legal Momentum's commitment to assisting victims of domestic violence and sexual assault stems from our longstanding dedication to ending violence against women and eliminating barriers that deny women economic opportunities. We helped craft and generate support for the landmark Violence Against Women Act (VAWA) of 1994 -- the first federal legislation to address domestic and dating violence, sexual assault and stalking at a national level -- and its reauthorizations in 2000 and 2005. We created and chair the National Task Force to End Sexual and Domestic Violence Against Women, the umbrella entity under which national, state, and local organizations representing hundreds of thousands of survivors, advocates, and professionals join together to work for VAWA reauthorization. We also co-chair the economic justice subcommittee of the Task Force, which specifically works to ensure that victims of domestic and sexual violence have the economic independence they need to separate effectively from an abuser or recover from a sexual assault. Through our Employment and Housing Rights for Victims of Domestic Violence program, we provide information to domestic and sexual violence survivors to help them understand their employment and housing rights and we represent individual women seeking to enforce those rights.

Legal Momentum was closely involved in drafting and advocating for the housing protections in the 2005 reauthorization of the Violence Against Women Act (VAWA 2005), and has since worked with the US Department of Housing and Urban Development (HUD), housing providers, advocates, and attorneys across the country to ensure these protections are properly implemented and enforced. This testimony provides an overview of the requirements mandated by federal law applicable to public housing authorities (PHAs) such as the New York City Housing Authority (NYCHA), and evaluates NYCHA's attempts to fulfill its obligations under VAWA 2005.

VAWA 2005 Housing Protections for Victims

Testimony presented to the Council by a variety of legal organizations, service providers, and survivors of domestic violence describes the many challenges victims face in the struggle to obtain and maintain safe and affordable housing. Congress has

recognized that domestic violence is the primary cause of homelessness for 44% of women.¹ However, compounding the problem, women and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.² Moreover, Congress and the HUD Secretary have recognized in recent years that families experiencing domestic violence have unique needs that should be addressed by housing providers administering federal housing programs.³

In an effort to address these pressing issues, during the 2005 reauthorization of VAWA, Congress created significant new housing protections that cover any victim of domestic violence, dating violence, or stalking who resides in, or seeks to reside in, federal public housing or any Section 8 housing.⁴ Any immediate family members residing with the victim also are covered.⁵ The major housing protections for victims applying for or living in federal public housing or Section 8 housing that are in VAWA 2005 can be summarized as follows:

- status as a victim of domestic or dating violence or stalking, by itself, is not an appropriate basis for denial of housing assistance or denial of an application for housing;⁶
- victims have defenses to evictions that are based on domestic violence they experience or criminal acts of third parties related to domestic violence;⁷
- a landlord may bifurcate a lease and evict a tenant who is a perpetrator of criminal acts of domestic violence or stalking, while permitting the tenant who is a victim of domestic violence to remain;⁸
- victims who participate in the Section 8 voucher program can move and use their Section 8 vouchers in a different jurisdiction (“portability”) at any time during the lease;⁹
- victims who reside or seek to reside in public housing are entitled to notice from PHAs about their rights under VAWA;¹⁰ and
- PHAs are required to discuss their goals and programs for domestic violence victims in the annual and 5-year plans they submit to HUD.¹¹

While NYCHA’s annual plan for 2009 and draft plan for 2010 (“Plans”) reference VAWA and detail programs designed to help domestic violence victims, these Plans do not comprehensively address implementation of *all* the VAWA 2005 provisions mentioned above. The Plans refer to procedures implementing the bifurcation requirement, but do not address procedures for handling evictions and asserted VAWA 2005 defenses, the documentation standards for victims asserting these defenses, portability of Section 8 vouchers to other jurisdictions, or informing victims about their VAWA 2005 rights. Until the Plans address these provisions, NYCHA cannot claim full compliance with HUD requirements.

Below we highlight a few issues of concern regarding NYCHA's compliance with VAWA 2005.

Emergency Transfer Plan

While neither federal law nor HUD require PHAs to have an emergency transfer program for victims of domestic violence, NYCHA is one of several PHAs around the country, including Oakland, San Diego, San Francisco, Chicago¹² and Seattle,¹³ which do have such a program. However, the HUD Public Housing Authority Handbook chapter on domestic violence encourages PHAs to be flexible and creative in implementing transfer policies,¹⁴ offering suggestions such as the implementation of a transitional home for victims, development of a facility to shelter victims, or partnering with existing shelters in the area.¹⁵ Significantly, HUD also does not prescribe a single standard for documentation requirements in these programs, instead offering a variety of options.¹⁶

As the testimony presented at the hearing highlights, NYCHA's choice of documentation requirements presents a significant barrier between victims and the emergency transfers they are seeking. A tenant seeking such a transfer will face more stringent documentation requirements¹⁷ than those outlined in VAWA 2005 for asserting protection of the federal law.

NYCHA requires at least two pieces of documentation, consisting of (among other things) a criminal or family court order of protection, a police report, or a letter from a hospital.¹⁸ By contrast, under VAWA 2005 a victim responding to a landlord's written request¹⁹ for documentation of the domestic violence can satisfy this requirement with either a HUD-approved form, or at the landlord's discretion, with the individual's own statement or other corroborating evidence.²⁰ This evidence can include a single police or court record that documents the violence, or a single statement from a victim service provider, an attorney, or a medical professional from whom the victim has sought assistance in dealing with the violence or the effects of the abuse.²¹ VAWA 2005 also requires that documentation or certification of the violence provided to the landlord must be kept confidential, including the individual's status as a victim.²²

Given HUD's statement about flexibility in the emergency transfer process, and VAWA 2005's varied documentation options, we strongly urge NYCHA to adopt more flexible documentation standards to assist victims of domestic violence obtain a safe place to live.

Lack of Awareness Among Victims and Housing Providers of VAWA 2005 Provisions²

A recent case litigated by the Legal Aid Society of New York illustrates how vital VAWA 2005 protections are to help domestic violence victims maintain housing, and why NYCHA's Plan must include provisions to proactively educate victims and housing providers about their obligations under the law. In *Metro North Owners v. Thorpe*, 2008

² Sandra Park of the ACLU Women's Rights Project contributed to this testimony.

N.Y. Slip Op. 28522 (N.Y. Civ. Ct. Dec. 25, 2008), Sonya Thorpe, a Section 8 tenant, was served with a notice of termination on the ground that she had violated her lease by creating a “nuisance” – a domestic violence incident. The court dismissed the notice of termination, finding that evicting Ms. Thorpe for the domestic violence incident would violate VAWA 2005 because she was the victim, not the perpetrator, of the violence. While the landlord apparently acted based on the accusation made by Ms. Thorpe’s ex-partner that she had stabbed him, Ms. Thorpe submitted three police reports, a criminal court order of protection, and a statement from the New York District Attorney’s Office declining to prosecute her based on his allegations to document the extensive domestic violence she had experienced.

This case clearly illustrates why the VAWA 2005 protections are so important for victims, and why NYCHA must take a more proactive role in disseminating information about VAWA 2005 and domestic violence to housing providers. The landlord apparently unquestioningly accepted the word of the perpetrator that Ms. Thorpe -- the victim -- was to blame. Despite all the varied documentation Ms. Thorpe was able to produce to rebut that allegation and show she was victim, the landlord blamed her for the “problem” and punished her by attempting to evict her. Not all survivors will have access to able and knowledgeable legal counsel and judges. NYCHA should review VAWA 2005 and the *Thorpe* decision and ensure that Section 8 landlords are aware that they should not be terminating the tenancy of survivors of violence. NYCHA also should examine notifications of proposed evictions from landlords for cases where domestic violence appears to be the basis for termination and should object to these proposed evictions, as outlined in its Leased Housing Memorandum LHD #07-17.²³

In closing, we urge NYCHA to modify its documentation standards for the emergency transfer program in light of HUD’s preference for flexibility and the more varied VAWA 2005 documentation requirements. We also strongly recommend that NYCHA revise its current and proposed Plans to detail how it intends to implement *all* VAWA 2005 provisions, especially educating housing providers about the legal provisions of VAWA 2005. Adopting such measures would bring the Plans closer to complying with HUD’s reporting requirements.

Thank you for this opportunity to present testimony.

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¹ 42 U.S.C. §§ 14043d(e)(1) and 14043d(e)(2) (stating Congressional findings on the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking).

² 42 U.S.C. § 14043d(e)(3).

³ 42 U.S.C. § 14043d(e)(12).

⁴ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub.L. 109-162, 119 Stat. 2960.

⁵ The protections were effective as of enactment in January 2006, although as of June 2009 HUD had not issued any final regulations.

⁶ See 42 U.S.C. §§ 1437d(c)(3) and 1437f(c)(9)(A).

⁷ An incident of actual or threatened domestic violence, dating violence, or stalking will not be considered a serious or repeated violation of the lease by the victim, and is not good cause for terminating the victim's housing assistance or lease. 42 U.S.C. §§ 1437d(l)(5) and 1437f(c)(9)(B). Similarly, criminal activity directly relating to the domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, is not cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim. 42 U.S.C. §§ 1437d(l)(6)(A) and 1437f(c)(9)(C)(i).

⁸ See 42 U.S.C. §§ 1437d(l)(6)(B) and 1437f(c)(9)(C)(ii). However, a landlord can evict or terminate assistance to a tenant who is a victim if the landlord can demonstrate "an actual and imminent threat" to other people at the property if the tenant is not evicted or assistance terminated. 42 U.S.C. §§ 1437d(l)(6)(E) and 1437f(c)(9)(C)(v). The landlord bears the burden of demonstrating the existence of such a threat.

⁹ 42 U.S.C. § 1437f(r)(5).

¹⁰ 42 U.S.C. § 1437f(ee)(2)(B).

¹¹ 42 USC §§ 1437c-1(a)(2) and 1437c-1(d)(13). For a recent evaluation of PHAs' compliance with this provision, as well as with other VAWA 2005 housing protections, see NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, INSULT TO INJURY: VIOLATIONS OF THE VIOLENCE AGAINST WOMEN ACT (2009).

¹² See NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, ADVOCACY MANUAL: VAWA 2005 AND PUBLIC AND SECTION 8 HOUSING (2009), <http://wiki.nlchp.org/display/Manual/VAWA+2005+and+Public+and+Section+8+Housing#VAWA2005andPublicandSection8Housing-HUDGuidanceandNoticesonVAWA>.

¹³ COUNCIL OF LARGE PUBLIC HOUSING AUTHORITIES and NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, SAFE AT HOME: PUBLIC HOUSING AUTHORITIES RESPOND TO VICTIMS OF DOMESTIC VIOLENCE 2-3 (2006).

¹⁴ See U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK, CHAPTER 19 DOMESTIC VIOLENCE, 218-219 (2003), available at <http://www.hud.gov/utilities/intercept.cfm?offices/pih/programs/ph/rhiip/phguidebooknew.pdf>.

¹⁵ *Id.* at 220-21.

¹⁶ *Id.* at 217-18.

¹⁷ NYCHA EMERGENCY TRANSFER PROGRAM REQUIRED DOCUMENTS LIST, available at <http://www.nyc.gov/html/nycha/downloads/pdf/088120.pdf>.

¹⁸ *Id.*

¹⁹ 42 U.S.C. §§ 1437d(u)(1)(A) and 1437f(ee)(1)(A).

²⁰ 42 U.S.C. §§ 1437d(u)(1)(A) and (D); 42 U.S.C. §§ 1437f(ee)(1)(A) and (D).

²¹ 42 U.S.C. §§ 1437d(u)(1)(C) and 1437f(ee)(1)(C). The professional making the statement must attest under penalty of perjury that he or she believes that the incidents in question are *bona fide* incidents of abuse, and must name the perpetrator. The victim also must sign or attest to any documentation provided. The certification must list the name of the perpetrator. *Id.*

²² 42 U.S.C. §§ 1437d(u)(2)(A) and 1437f(ee)(2)(A).

²³ Memorandum from Gregory A. Kern, Director of NYCHA Leased Housing Dep't, to Leased Housing Supervisors (May 11, 2007), available at https://a996-housingauthority.nyc.gov/Landlord/view_doc.aspx?id=1.