

Survivors Have Rights and Protections to Move with a Voucher

The hallmark of the voucher program is the ability of families to select a unit and to move from one unit to another and not forfeit the rental assistance. HUD generally refers to the process of relocating with a voucher as a “move with continued tenant-based assistance.”¹ Moves with continued assistance can occur both within and outside the jurisdiction of the public housing agency (PHA) that issued the family’s voucher. The term “portability” refers to those moves with a voucher outside of the jurisdiction of the issuing PHA.

Moves with continued assistance are often critical for survivors. They raise a host of issues for survivors, primarily of three types: (1) issues that are typical of any move for a survivor; (2) issues related to the applicability of the Violence Against Women Act (VAWA); and (3) issues involving unique features of the voucher program. The first two categories of issues include safety planning for survivors to move with the voucher, documenting that the individual has experienced domestic violence and is subject to the protections of VAWA, confidentiality of the information that is provided, and possibly removing the perpetrator from the voucher. These issues are all discussed in *Maintaining Safe and Stable Housing for Domestic Violence Survivors, A Manual for Attorneys and Advocates*.² Note however that the manual has not been updated since the enactment of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).³ For a summary of VAWA 2013’s key housing provisions, please see NHLP’s article *VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards*.⁴

This memo highlights some of the unique issues, policies and procedures that apply to voucher holders who have experienced domestic violence and seek to move with continued assistance. When advising survivors in this situation, advocates should become familiar with various rules and policies governing such moves. HUD has published regulations and sub-regulatory issuances regarding moving with continued assistance and portability. In addition, each PHA’s policies regarding moves with continued assistance and portability are included in the PHA’s Administrative Plan for the voucher program.⁵ Advocates should seek improvements

¹ 42 U.S.C.A. § 1437f(r) (West 2014) (portability); 24 C.F.R. § 982.314 (2014).

² <http://www.nhlp.org/files/NHLP%20Domestic%20Violence%20and%20Housing%20Manual%202.pdf> [hereinafter referred to as “NHLP, DV Manual”.] See, e.g., § 2.5 (safety planning for survivors moving with a voucher), § 6.4 (documenting domestic violence for VAWA eligibility), § 6.5 (confidentiality of documentation and information), and § 6.9.2 (removing perpetrator from the voucher).

³ 42 U.S.C.A. §§ 14043e-11, 1437d note (West 2014).

⁴ [http://nhlp.org/files/VAWA%202013%20Bulletin%20Article%20\(Jan%202014\).pdf](http://nhlp.org/files/VAWA%202013%20Bulletin%20Article%20(Jan%202014).pdf)

⁵ See, e.g., Boston Housing Authority, Leased Housing Division Administrative Plan for Section 8 Programs As Amended December 6, 2011, Chapter 12, Portability, available at <http://www.bostonhousing.org/pdfs/LHS2012AdminPlan.pdf>

to the Administrative Plan if it is inconsistent with the HUD regulations or to address gaps in the HUD regulations.⁶

When a Family May Move

The voucher regulations state that a family is permitted to move with continued assistance in any of the following situations:⁷

- The PHA has terminated the Housing Assistance Payments (HAP) contract between the owner and the PHA.
- The owner and the tenant mutually agree to terminate the lease.
- The owner has given the tenant a notice to vacate, commenced an eviction action or obtained a judgment of possession.
- The tenant has the right to terminate the lease and has given the owner a notice of lease termination.
- A family member has been a victim of domestic violence, dating violence, or stalking,⁸ and the move is needed to protect the family member's health or safety.

A survivor's right to move may be precipitated by any of these reasons. However, if the precipitating event is additionally related to the fact that a family member is a victim of domestic violence, dating violence or stalking, that fact should be brought to the attention of the PHA and/or the landlord because survivors have additional protections. For example, if the landlord has commenced an eviction against the family because of the acts of the abuser, the survivor could assert that she is entitled to a bifurcation of the lease.⁹ If the abuser is evicted, the survivor benefits not only because the abuser may no longer live in the unit, but also because it should strengthen her claim to retain the voucher, which may then be used to move. Additionally, if the PHA is terminating the HAP contract with the owner because of actions by the abuser, the survivor could inform the PHA of the relationship between the abuse and the reasons for the HAP termination and seek appropriate relief, which may include preserving housing assistance for the survivor.

When a PHA May Deny or Delay Granting a Request to Move

⁶ See NHLP, DV Manual, *supra* note 2, at Ch. 8, for a discussion of the PHA Plan process and Administrative Plan.

⁷ 24 C.F.R. § 982.314(b) (2014).

⁸ Under VAWA 2005, HUD regulations provided protections for victims of domestic violence, dating violence and stalking regarding moving with continued voucher assistance. 24 C.F.R. 982.314(b)(4) (2014). VAWA 2013 did not change these statutory provisions concerning moving with continued assistance/portability. Therefore, there is no mention of extending coverage for victims of sexual assault in the portability context. Nevertheless, it appears that HUD agrees that victims of sexual assault also should be on the list of those permitted to move with continued assistance.

⁹ 24 C.F.R. § 5.2009 (2014).

Generally, PHAs are prohibited from discouraging a family from choosing to live anywhere within the PHA’s jurisdiction or outside the PHA’s jurisdiction (at least as permitted under the portability rules).¹⁰ In limited circumstances, however, a PHA may deny a voucher family’s request and thereby refuse to issue the family a voucher to move. HUD guidance authorizes a PHA to deny a family’s request to move only if it has grounds to do so under the voucher regulations.¹¹ However, as explained below, the VAWA rules may provide separate grounds to revisit a PHA’s denial of the request to move that was made under the ordinary voucher rules.

A PHA may deny a voucher family’s request to move only for one of the following six reasons:

(1) Program Violations. A PHA may deny the move because of the voucher family’s action or failure to act in accordance with program regulations.¹² This very broad category includes the obligation of the household not to engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity. Another obligation is that the family may not commit a serious or repeated violation of the lease. In these situations, VAWA protections may provide significant rights to survivors. If there is a lease violation, an incident of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed as a serious or repeated lease violation by the victim.¹³ In the case of crimes by household members or guests, any offending activity directly related to domestic violence, dating violence, sexual assault or stalking cannot generally be cause for termination of the tenancy or assistance of the victim.¹⁴

Unfortunately, the VAWA protections do not directly address other program violations, such as failure to report that a family member no longer resides in the unit and/or absences from the unit, as well as failure to allow an inspection of the unit. Nevertheless, if there is a link between the domestic violence and the program violation, those facts should be asserted to support a policy argument that the purpose of VAWA is to protect the survivor. Hence, a

¹⁰ *Id.* § 982.301(a)(2).

¹¹ Housing Choice Voucher Family Moves with Continued Assistance, PIH 2012-42 (Oct. 2, 2012), 12 [hereinafter PIH 2012-42]

¹² *Id.* (citing 24 C.F.R. §§982.552, 982.553); *see also* NHLP, DV Manual, *supra* note 2, at Ch. 7, Evictions and Subsidy Terminations in Federally Subsidized Housing and § 6.8, VAWA’s Protections Against Evictions and Subsidy Terminations.

¹³ 42 U.S.C.A. § 14043e-11(b)(1), (b)(2) (West 2014); 24 C.F.R. § 982.551(e) (2014); *see* NHLP, DV Manual, *supra* note 2, at § 6.8, discussing VAWA’s Protections Against Evictions and Subsidy Terminations.

¹⁴ 42 U.S.C.A. § 14043e-11(b)(3)(A) (West 2014); 24 C.F.R. § 982.551(l) (2014); *see also* NHLP, DV Manual, *supra* note 2, at § 6.8, discussing VAWA’s Protections Against Evictions and Subsidy Terminations.

survivor should not be denied a moving voucher because of the domestic violence, especially if the domestic violence caused the other program violations and the failure of the PHA to issue the voucher results in the termination of the family from the program.¹⁵

(2) *Non-resident Applicants.* PHAs may adopt policies limiting a family’s right to move out of the jurisdiction for a period of 12 months, if the head of household or spouse did not have legal residence in the PHA’s jurisdiction at the time that the family submitted the voucher application.¹⁶ This provision is often referred to as an initial 12-month residency requirement. It was enacted in reaction to families seeking vouchers in jurisdictions with short waiting lists, where they did not live and had no intention of residing. A PHA with such a policy may reject a family’s request to move if the family did not initially reside in the PHA’s jurisdiction and is seeking to move outside of the jurisdiction during their first year in the voucher program. Denying the move would violate VAWA, which provides that an applicant may not be denied admission or assistance, terminated from participation in or evicted because the tenant is or has been a victim of domestic violence, dating violence, sexual assault or stalking. Denying such a request to port is also inconsistent with HUD’s directive regarding other portability rules.¹⁷

(3) *Income Ineligibility.* The initial PHA must deny portability if the family has never leased up in the initial PHA’s jurisdiction and is not income-eligible in the jurisdiction to which the family wants to move.¹⁸ Such a decision would not prevent the family, including a survivor family, from porting to another jurisdiction where it is income-eligible or moving elsewhere within the jurisdiction of the initial PHA. If necessary, survivors should ask the PHA for assistance in identifying jurisdictions where they are income-eligible to facilitate the move.

(4) *Timing and Frequency of Moves.* PHAs may adopt policies restricting the timing and frequency of voluntary moves, such as prohibiting more than one voluntary move in a 12-month period.¹⁹ However, these restrictions do not apply if a family member has been a victim of domestic violence, dating violence or stalking and the move is needed to protect the family member’s health or safety.²⁰

¹⁵ NHLP, DV Manual, *supra* note 2, at § 6.8.2 Limitations on VAWA Protections.

¹⁶ 42 U.S.C.A. § 1437f(r)(1)(B)(i) (West 2014); 24 C.F.R. § 982.353(c) (2014); PIH 2012-42, *supra* note 11, at 13; *see also* 42 U.S.C.A. § 1437f(r)(1)(B)(i) (West 2014).

¹⁷ *Compare*, 24 C.F.R. § 982.314(c)(2) (2014) (Move with continued tenant-based assistance) and Streamlining Administrative Practices in Housing Choice Voucher Program, PIH Notice 2012-15 (Feb. 27, 2012), 4-5 [hereinafter PIH Notice 2012-15] (interpreting 24 C.F.R. § 982.314(c) which states that a PHA “must not deny moves . . . for a family requesting assistance under the Violence Against Women Act (VAWA)”) with 24 C.F.R. § 982.353(c), which does not reference VAWA. Section 982.314 requires that the move is needed to protect the health or safety of the family or family member. A similar regulatory requirement may be necessary to convince a PHA to waive the 12-month residency requirement.

¹⁸ 24 C.F.R. § 982.353(d) (2014).

¹⁹ *Id.* § 982.314(c)(2). The housing authority’s Administrative Plan must state any restrictions on the number of times a voucher family may move. *Id.* § 982.54(d)(19).

²⁰ *Id.* § 982.314(c)(2) (2014) and PIH Notice 2012-15, *supra* note 17, at 4-5.

(5) *Moving Out During the Lease Term.* The PHA may ordinarily deny a voucher family's request to relocate if the family moved out of its assisted unit in violation of the lease.²¹ However, this provision does not apply if the family has complied with all other program obligations and moved to protect a victim of domestic violence, dating violence or stalking upon a reasonable belief that he or she was imminently threatened by further violence if he or she remained in the assisted dwelling unit.²² Although the survivor does not jeopardize her voucher and her right to portability if she breaks the lease, she may still have financial obligations under the lease, such as remaining rent or other fees, for which VAWA does not resolve liability. Nevertheless, an advocate should assist the survivor in negotiating a reduction or elimination of the charges, since in most states the landlord has an obligation to mitigate damages by taking reasonable steps to re-rent the premises. Additionally, advocates should evaluate whether the family has rights under state fair housing or other laws (including state domestic violence laws) to end the lease without further liability, such as where the move is needed as a reasonable accommodation for a tenant with disabilities.²³

(6) *Insufficient Funding.* A PHA may deny a voucher family's request to move if the PHA does not have sufficient funding within the budgetary allocation, including any voucher Housing Assistance Payment (HAP) reserves to support the move.²⁴ Generally, a PHA cannot deny a request to move simply because the family is moving to a higher cost unit or a higher cost area.²⁵ The PHA can deny the move only if, because of the move, it would be unable to avoid terminations of other voucher participants in the current calendar year.²⁶ The PHA must notify the local HUD office that it is denying the move due to insufficient funds and submit financial documentation.²⁷ In addition, the PHA must include in its Administrative Plan a policy regarding denials of moves due to insufficient funds and may not admit other families to its voucher

²¹ 42 U.S.C.A. § 1437f(r)(5) (West 2014); 24 C.F.R. § 982.353(a) (2014).

²² 42 U.S.C.A. § 1437f(r)(5) (West 2014); 24 C.F.R. § 982.353(b) (2014); Housing Choice Voucher Family Moves with Continued Assistance, PIH 2012-42, *supra* note 11, at 13. VAWA 2013 did not change this provision. Thus, victims of sexual assault are not expressly protected. Nevertheless, it is anticipated that such victims will be protected pursuant to HUD rules and PHA rules and practice.

²³ *See, e.g.,* Rodriguez v. Morgan, 2012 WL 253867 (C.D. Cal. Jan. 26, 2012) (landlord failed to reasonably accommodate tenant with disabilities when he failed to respond to tenant's request for mutual rescission of the lease).

²⁴ 24 C.F.R. § 982.314(e)(1) (2014), *see* HUD VMS Data Reports at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/psd (which provide some information regarding voucher usage and reserves).

²⁵ PIH 2012-42, *supra* note 11, at 13.

²⁶ *Id.*

²⁷ *Id.*; *see also* Public Housing and Section 8 Programs: Housing Choice Voucher Program: Streamlining the Portability Process, 77 Fed. Reg. 18,731 (Mar. 28, 2012) (proposed rule requiring PHA to provide written notification to local HUD field office when the PHA determines it is necessary to deny moves based on insufficient funding).



program until it complies with that policy.²⁸ Unless the PHA's policy makes an exception for domestic violence survivors, a policy of denying moves for insufficient funding is not affected by VAWA. If the PHA denies the move because of expense, the survivor could still move to a safe unit that costs the same or less than the current unit.

Significantly, a HUD notice provides if the PHA has approved a family's request to move, it may withdraw the approval due to insufficient funds only if the family can remain in the original unit.²⁹ A survivor may have to argue that the family cannot remain because it would be unsafe to stay in the unit.

What Should a Family Consider Prior to or When Moving?

Survivors should take numerous steps involving the PHA and the landlord when moving. If the family wants to move to a new unit, the family must notify both the PHA that issued the voucher to the family and the owner before moving.³⁰ Typically, if the family has a long-term lease, it must determine if it can terminate the lease and what liabilities might result, or it must get the owner's agreement to break the lease mid-term. As noted above, a survivor has unique rights to break a lease and not lose the voucher.

Requesting a voucher to move may be the first time that the survivor is confronted with the need to provide documentation of domestic violence.³¹ If the family is moving, it should consider where it wants to move and look for a unit before informing the owner or the PHA. A survivor will want to take into consideration whether the location is safe. PHAs are required to have a policy in the Administrative Plan regarding absence from the unit.³² If the survivor must temporarily relocate for safety reasons, she should promptly inform the PHA and such notice ought to be in writing.³³ Moreover, many PHAs have policies limiting the number of days a tenant may be absent from a voucher unit before her assistance will be terminated. Furthermore,

²⁸ PIH 2012-42, *supra* note 11, at 14. The Administrative Plan must address how the PHA will inform families of moves denied for financial reasons, how long a request to move will be held open and how the family will be notified when funds become available. Moreover, the 5 Year Plan for the PHA must include a statement regarding domestic violence.

²⁹ *Id.* at 14-15. *But see* Koroma v. Richmond Redev. & Hous. Agency, 2010 WL 1704745 (E.D. Va. Apr. 27, 2010) (prior to issuance of PIH 2012-42, PHA that initially stated it would absorb porting tenant's voucher could reverse its decision because of funding shortfalls).

³⁰ 24 C.F.R. § 982.314(d)(2) (2014); *see also* Cain v. Allegheny Hous. Auth., 986 A.2d 947 (Pa. Commw. Ct. 2009) (reversing voucher termination based on tenant's alleged failure to notify PHA that she was moving, because tenant had previously notified PHA that she needed to move because landlord had threatened her with eviction).

³¹ *See* NHLP, DV Manual, *supra* note 2.

³² 24 C.F.R. §§ 982.54(d)(10) and 982.312(d)(1) (2014).

³³ *But see* 24 C.F.R. § 982.314 (2014) (a PHA may not terminate assistance if the family already moved out, regardless of prior notification to the PHA). *See also* Cain v. Allegheny Hous. Auth., 986 A.2d 947 (Pa. Commw. Ct. 2009) (reversing voucher termination based on tenant's alleged failure to notify PHA that she was moving, because tenant had previously notified PHA that she needed to move because landlord had threatened eviction).

the voucher regulations provide that in no case may a unit be without a household member for more than 180 consecutive days.³⁴ If the survivor has moved out, she should also promptly inform the PHA as one of the tenant obligations is to inform the PHA of changes in family composition.³⁵ When the survivor informs the PHA that she will move or will be absent from the unit, she should tell the PHA that the information as to where she will move must remain confidential and that no one should be informed of her new or prior address.³⁶ In addition, she should ask for the voucher in her name.

Timing of Moves

Often a voucher holder who is a survivor must move quickly. HUD regulations do not provide a timeframe for how quickly a PHA must respond to a voucher family's request to move.³⁷ There may be some guidance in the PHA Administrative Plan.

The PHA must give the family at least an initial 60-day search time, which may be extended for another 60 days or longer.³⁸ Families may find the standard search time of 60 days insufficient.³⁹ There may be reasons that the survivor will need more time, because she was unable to search due to the abuse, including fear of being followed or physical harm. Therefore, it is important to know the PHA's standard practice and to determine what is needed to get extensions of the search time. For example, if the PHA routinely extends the voucher search time for new applicants, it ought to extend the search time for current families who want to move. Even if the PHA is less generous in extending the voucher search time for applicants, there are arguments for allowing longer extensions for a current tenant.⁴⁰

³⁴ 24 C.F.R. § 982.312(a) and (c) (2014).

³⁵ *Id.* § 982.551 (h)(3) and (i).

³⁶ 24 C.F.R. § 982.307(b) requires the PHA to inform the new owner of the family's current and prior address, but it also states that in cases involving domestic violence, dating violence, and stalking, 24 C.F.R. part 5, subpart L, applies. From this language, advocates should argue that the PHA ought not to release such information for a survivor.

³⁷ As a reference point, if there is too much delay, it may be helpful to point out that HUD rules require in the portability context that the receiving PHA issue a voucher within two weeks after it has received the relevant documentation. PIH 2012-42, *supra* note 11, at 4.

³⁸ 24 C.F.R. § 982.302 (2014).

³⁹ *See Jackson v. Jacobs*, 971 F. Supp. 560 (N.D. Ga. 1997) (preliminary injunction ordering initial PHA to restore Voucher tenant's assistance after she was unable to find housing in receiving PHA's jurisdiction).

⁴⁰ There is no harm in extending the search time for a current voucher resident, who is still in the unit. A search voucher for an existing tenant does not deprive someone else on the waiting list of a voucher, it merely provides an opportunity to transfer the current voucher to another landlord. If the survivor has already moved out of the unit, arguably 180 days should be allowed by reference to the time period for when a voucher automatically terminates. *See e.g.*, 24 C.F.R. 982.312(a), (c) (2014).

In addition, PHAs have discretion to adopt policies that suspend the voucher search term while the family is waiting for the unit to be approved,⁴¹ as well as other policies responsive to survivors' needs. Advocates should urge PHAs to adopt such responsive policies. For example, the issuance of vouchers to move should be expedited in the case of domestic violence, extensions should be freely granted and policies allowing for suspension or tolling of the search time should be adopted. Such policies are consistent with the objectives of the voucher program and the PHA's obligation not to discourage a family from moving,⁴² as well as with VAWA.

PHAs' Additional Responsibilities Regarding Portability

Special portability procedures apply if a family is moving outside of the jurisdiction of the PHA that initially issued the voucher.⁴³ A family may use its voucher to lease a unit anywhere in the United States where there is a PHA operating a voucher program.⁴⁴ Because portability involves two PHAs, HUD has issued guidance regarding the responsibilities of the agencies. The PHA that issued the voucher to the family is known as the "initial PHA."⁴⁵ The PHA in the jurisdiction where the family will be moving is called the "receiving PHA."⁴⁶

Portability begins when a voucher family contacts the initial PHA and expresses interest in moving to the jurisdiction of another PHA. The portability rules provide that the initial PHA must promptly notify the receiving PHA that the family will move to the jurisdiction of the receiving PHA and provide the family with contact information for the receiving PHA.⁴⁷ The receiving PHA *must* provide a porting family with voucher assistance and may not delay issuing a voucher for purposes of conducting background checks.⁴⁸ Further, the receiving PHA's local preferences or priorities for selecting applicants are not relevant to the porting family, and the receiving PHA may not place the porting family on its voucher waiting list.⁴⁹ HUD guidance provides that the receiving PHA *must* issue a voucher to the porting tenant within two weeks of

⁴¹ 24 C.F.R. § 982.303(c) (2014); *see also* Public Housing and Section 8 Programs: Housing Choice Voucher Program: Streamlining the Portability Process, 77 Fed. Reg. 18,731, 18732 (Mar. 28, 2012).

⁴² *See* 24 C.F.R. § 982.301(a)(2) (2014).

⁴³ PIH 2012-42, *supra* note 11, at 2.

⁴⁴ 24 C.F.R. § 982.1 (2014).

⁴⁵ *Id.* § 982.4.

⁴⁶ *Id.*

⁴⁷ *Id.* § 982.355(c)(2); PIH 2012-42, *supra* note 11, at 5.

⁴⁸ 24 C.F.R. § 982.355(c)(4), (10) (2014); PIH 2012-42, *supra* note 11, at 5 (requiring receiving PHA to promptly issue Voucher to porting family, but allowing PHA to conduct screening after voucher is issued); *see also* Miller v. McCormick, 605 F. Supp. 2d 296, 310 (D. Me 2009) ("[O]nce admitted, a family's status as a participant becomes portable and it may transfer its eligibility from jurisdiction to jurisdiction without undergoing a new eligibility assessment."); 64 Fed. Reg. 56,894, 56,902 (Oct. 21, 1999) (receiving PHA may screen only if the family is not a participant).

⁴⁹ 24 C.F.R. § 982.355(c)(10) (2014).

obtaining all of the tenant’s documentation.⁵⁰ The receiving PHA determines the unit size and payment standard for which the family is eligible under its own Administrative Plan policies.⁵¹

Although the receiving PHA may not delay in issuing a voucher to a porting family, it may take subsequent action. For example, the receiving PHA may seek to terminate the family after it has ported for program violations committed during the family’s tenure in the receiving jurisdiction.⁵² Some receiving PHAs may go further, by screening families’ criminal history after they already have ported.⁵³ If the receiving PHA has more stringent criteria than the initial PHA, it may attempt to terminate the family’s assistance due to criminal history involving acts prior to the porting.⁵⁴ This practice arguably violates HUD regulations, which state that the receiving PHA “does not redetermine eligibility for a portable family,”⁵⁵ and the voucher statute, which limits PHAs’ authority to conduct elective screening to “applicants” for the voucher program.⁵⁶ In any case, survivor families porting with a voucher should become familiar with the screening policies of the receiving PHA, especially if a member of the survivor family has a criminal background.

The receiving PHA may choose to either bill the initial PHA for assistance on behalf of the porting family or absorb the family into its program.⁵⁷ If the receiving PHA agreed to absorb the family, it cannot reverse that decision due to insufficient funding.⁵⁸ If billing issues arise, the PHAs ought to resolve the problem while the family continues to be served.⁵⁹

Hearing Requirements

⁵⁰ PIH 2012-42, *supra* note 11, at 4.

⁵¹ 24 C.F.R. § 982.355(c)(7) (2014).

⁵² *Id.* § 982.355(c)(10).

⁵³ PIH 2012-42, *supra* note 11, at 4-5 (stating that a receiving PHA may take subsequent action against a porting family based on their criminal background).

⁵⁴ See *Binns v. City of Marietta Hous. Assist. Program*, 2010 WL 1138453 (N.D. Ga. Mar. 22, 2010) (challenging receiving PHA’s refusal to issue voucher to porting family, allegedly due to disabled family member’s criminal record); *Lawrence v. Brookhaven Dep’t of Hous., Cmty. Dev. & Intergovernmental Affairs*, 2007 WL 4591845 (E.D.N.Y. Dec. 26, 2007) (holding that the receiving PHA was acting within its authority to reexamine the voucher holder’s eligibility when she moved into its jurisdiction, and that it was also within its authority to terminate her assistance after discovering a prior drug conviction); *Public Housing and Section 8 Programs: Housing Choice Voucher Program: Streamlining the Portability Process*, 77 Fed. Reg. 18,731, 18733 (Mar. 28, 2012) (acknowledging that screening by receiving PHAs has created hardships for families).

⁵⁵ 24 C.F.R. § 982.355(c)(1) (2014); see also *Miller v. McCormick*, 605 F. Supp. 296, 310 (D. Me 2009).

⁵⁶ See 42 U.S.C.A. § 1437f(o)(6)(B) (West 2014).

⁵⁷ 24 C.F.R. § 982.355(c)(5) (2014).

⁵⁸ *Id.*

⁵⁹ See *Avanesova v. Hous. Auth. of City of Los Angeles*, 2004 WL 5913378 (C.D. Cal. Dec. 20, 2004); PIH 2012-42, *supra* note 11, at 4.

Hearing requirements vary depending upon the situation. HUD regulations state that a PHA's refusal to process or provide assistance under portability procedures constitutes termination of assistance for an applicant as well as a participant.⁶⁰ As a result, in any case where an initial or receiving PHA refuses to process or provide assistance under portability procedures, the family must be given the opportunity for an informal review or hearing.⁶¹

The right to a hearing for refusal to process a request to move should also apply to other moves.⁶² Moreover, if the move is needed to escape domestic violence and to protect the family member's health or safety, the refusal to process a request is tantamount to a termination. If the PHA refuses to process or provide the family a moving packet, it must offer the family a hearing.⁶³

In practice, however, beyond the grounds specified in the rules for when a family may move, PHAs may sometimes delay issuing a voucher when it determines that the family owes money to the owner or that there are outstanding issues between the owner and the family regarding tenant damage to the unit or generally whether the family is in "good standing" with the owner. The PHA may be concerned that the family is moving from unit to unit leaving behind disgruntled owners, who will discredit the program and make it harder to recruit new owners to the program. These policies can endanger a survivor's safety by unnecessarily preventing the family from moving. Although the rules are insufficiently clear about whether the PHA may delay issuing a voucher in such a situation, the survivor could request a hearing.⁶⁴ Advocates should urge PHAs to consider the safety needs of domestic violence survivors when they consider a request to move, including portability. Advocates can also refer to VAWA provisions that a victim should not be denied assistance or terminated due to domestic violence and that the federal housing agencies are obligated to develop emergency transfer plans for use by PHAs.⁶⁵

⁶⁰ 24 C.F.R. § 982.552(a)(2), (3) (2014).

⁶¹ PIH 2012-42, *supra* note 11, at 5 (receiving PHA must provide a hearing); *See also* Orullian v. Hous. Auth. of Salt Lake City, 2011 WL 6935039 (D. Utah Dec. 30, 2011) (tenant required to move because of an eviction notice should have been given a moving packet or the right to a hearing); *Avanesova*, 2004 WL 5913378 (porting tenant was denied due process when receiving PHA refused to enter into a contract with the landlord); *but see* Koroma v. Richmond Redev. & Hous. Agency, 2010 WL 1704745 (E.D. Va. Apr. 27, 2010) (porting tenant was not entitled to a hearing from receiving PHA that refused to process his portability request; note however that the ruling was prior to PIH 2012-42, *supra* note, 11, which states a contrary policy position).

⁶² 42 U.S.C.A. 1437f(r) (West 2014) (statutory language treats all moves as portability moves and makes no distinction between moves within or outside the jurisdiction of the PHA).

⁶³ Orullian v. Hous. Auth. of Salt Lake City, 2011 WL 6935039 (D. Utah Dec. 30, 2011).

⁶⁴ 24 C.F.R. § 982.552(a)(3) (2014) (termination of assistance includes refusing to process or provide assistance under portability procedures).

⁶⁵ 42 U.S.C.A. § 14043e-11(e) (West 2014).



Unfortunately, the federal rules are also not clear regarding the timing of the requested hearing. Additionally, survivors should be aware that when a voucher is awarded to the survivor, the abuser, who is on the same voucher, will have a right to a hearing to challenge the withdrawal of the voucher.⁶⁶ Such a challenge may delay the issuance of the voucher.⁶⁷ In the event that the PHA is unable to determine which household member is the victim, both parties may also seek a hearing.⁶⁸ Some PHAs resolve this issue by giving both parties a voucher.

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⁶⁶ See, e.g., *Badri v. Mobile Housing Board*, 2011 WL 3665340 (S.D. Ala. Aug. 22, 2011).

⁶⁷ *In re Herman v. NYC Dep't of Hous. Pres. & Dev.*, 2012 WL 3984482 (Sept. 10, 2012).

⁶⁸ *Id.*