

Comments in response to Docket No. FR-5056-I-01
HUD Programs: Violence Against Women Act Conforming Amendments
January 27, 2009

Submitted by:

American Civil Liberties Union
Alabama Coalition Against Domestic Violence
Arizona Coalition Against Domestic Violence
Break the Cycle
California Partnership to End Domestic Violence
Colorado Coalition Against Domestic Violence
Community Legal Services, Inc. of Philadelphia
DC Coalition Against Domestic Violence
District Alliance for Safe Housing, Inc.
Family Violence Prevention Fund
Florida Coalition Against Domestic Violence
HELP USA
Illinois Coalition Against Domestic Violence
Iowa Coalition Against Domestic Violence
Jewish Board of Family and Children's Services
Legal Aid Society of Minneapolis
Legal Aid Society of Southwest Ohio
Legal Momentum
Michigan Coalition Against Domestic and Sexual Violence
Minnesota Coalition for Battered Women
National Center on Domestic and Sexual Violence
National Coalition Against Domestic Violence
National Housing Law Project
National Latino Alliance for the Elimination of Domestic Violence
National Law Center on Homelessness & Poverty
National Network to End Domestic Violence
National Resource Center on Domestic Violence/PCADV
New Jersey Coalition for Battered Women
New York State Coalition Against Domestic Violence
Northwest Women's Law Center
Pennsylvania Coalition Against Domestic Violence
Sargent Shriver National Center on Poverty Law
South Carolina Appleseed Legal Justice Center
Texas Council on Family Violence
Vermont Network Against Domestic and Sexual Violence
Washington Legal Clinic for the Homeless
Washington State Coalition Against Domestic Violence
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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW., Room 10276
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Re: Docket No. FR-5056-I-01
HUD Programs: Violence Against Women Act Conforming Amendments

Dear Sir or Madam:

The undersigned thirty-eight organizations respectfully submit the following comments regarding the Interim Rule titled HUD Programs: Violence Against Women Act Conforming Amendments, Docket No. FR-5056-I-01, published at 73 Federal Register 72,336 (Nov. 28, 2008) (“Interim Rule”). Given the January 20, 2009 Memorandum for Heads of Executive Departments and Agencies issued by White House Chief of Staff Rahm Emanuel, we present the following comments for consideration as you review the Interim Rule and develop further regulation.

The Interim Rule is the first attempt by the Department of Housing & Urban Development (“HUD”) to address through regulation the housing rights created by the Violence Against Women and Department of Justice Reauthorization Act (“VAWA”) of 2005, Pub. L. 109-162 (2006). As legal services providers, housing advocates, and representatives of victims of domestic violence, dating violence, and stalking, we commend HUD for beginning the rule-making process. However, we believe the Interim Rule fails to provide adequate guidance to public housing authorities (“PHAs”), owners, and survivors of violence who seek to protect the rights guaranteed under VAWA. The Federal Register notice states that “HUD specifically welcomes comments on the clarity of the conforming amendments, as well as on any other aspect of the rule.”¹ We respond to that invitation with these comments, and make a strong appeal for the issuance of a final rule that fully effectuates VAWA. Our comments focus on four major areas:

- 1) The Interim Rule is inadequate because it provides little guidance beyond VAWA’s existing statutory language.
- 2) Certain provisions of the Interim Rule are inconsistent with VAWA’s statutory language.
- 3) The Interim Rule omits some of VAWA’s statutory language.
- 4) There are specific areas where PHAs, owners, and advocates could benefit from additional guidance in implementing VAWA.

1. To realize the promise of VAWA, HUD must issue regulations that provide guidance regarding how to implement the statute. “Conforming” regulations are insufficient.

VAWA 2005 recognized, for the first time, important new housing protections for survivors of violence. These protections were based on congressional findings regarding the

¹ 73 Fed. Reg. 72,339.

strong link between domestic violence and homelessness and the compelling federal interest in preventing violence by ending discrimination against abuse survivors.² Congress stated that the purpose of the law “is to reduce domestic violence, dating violence, sexual assault, and stalking, and to prevent homelessness,” by protecting the safety of victims, creating long-term housing solutions for victims, building collaborations among victims’ service providers and housing providers, and enabling PHAs and owners to respond appropriately to domestic violence, dating violence, sexual assault, and stalking.³

VAWA has a multi-pronged approach to protecting survivors of violence.⁴ The law bars PHAs and section 8 owners from discriminating against housing applicants or tenants based on status as a victim of domestic violence, stalking, or dating violence. VAWA prohibits the eviction of public housing and section 8 tenants based on the criminal activity perpetrated against them by their batterers. Furthermore, VAWA permits PHAs to “bifurcate” a victim’s lease, thereby removing an abuser from tenancy while allowing the rest of the family to remain, and to allow a voucher holder to move with her voucher to another unit if necessary to ensure safety. To implement these protections, the law provides a mechanism by which a tenant could certify that he or she has been a victim of one of these crimes and ensures that his or her information will be confidential.

VAWA also requires PHAs to provide notice of VAWA’s protections to tenants and owners. Congress obligated PHAs to describe the programs provided to child and adult victims of domestic violence, dating violence, sexual assault, and stalking in their Annual and Five-Year Plans. In addition, Consolidated Plans must identify the housing needs of these survivors.

Through VAWA, Congress enacted rights and processes that are entirely new to public and Section 8 housing. For example, lease bifurcation is a concept that is unique to the VAWA context and has never been employed in any other federal housing law. Similarly, VAWA explicitly recognizes voucher portability in violation of a lease term and the importance of a high level of confidentiality afforded to information provided by victims, neither of which existed prior to VAWA’s enactment.

Despite the novelty of VAWA’s provisions, the Interim Rule characterizes them as “self-implementing.” HUD justified the issuance of an Interim Rule here by stating:

HUD is simply conforming its existing regulations to statutory provisions that are legally effective. In doing so, HUD is not exercising agency discretion, but rather merely following the statutory mandate. Because this is a conforming regulation, advance public notice and comment is unnecessary. However, while HUD found the statutory language to be clear as to meaning and intent *and has incorporated the language without change*, PHAs, owners, management agents, tenants, or interested members of the public may not find the language as helpful as is, and may need further clarification.⁵

² 42 U.S.C. § 14043e.

³ 42 U.S.C. § 14043e-1.

⁴ Pub. L. No. 109-162, §§ 606, 607 (2006).

⁵ 73 Fed. Reg. 72,339 (emphasis added).

Contrary to the assertion that statutory language has been incorporated without change, the Interim Rule omits some statutory language, changes other language significantly, and provides new definitions for some statutory terms. For that reason, we recommend that the Interim Rule be examined during HUD's review of recent regulation and that a final rule be issued expeditiously, in accordance with these comments. The omissions in the Interim Rule and discrepancies between the rule and the statute are described below.

Many of the statutory provisions are far from "self-implementing." Collectively, we have represented hundreds of individual domestic violence survivors who faced dire housing consequences as a result of the abuse they experienced, even after VAWA was enacted. The undersigned national groups consulted with advocates from across the country who reported problems with the implementation and enforcement of the law. The organizations that provide direct services to survivors know their clients are endangered because VAWA is not fully understood or enforced by PHAs, landlords and management agents. These experiences illustrate the need for guidance beyond a reiteration of the statute. For that reason, we have included our suggested model regulations ("Model Regulations") as Appendix 1 and hope that HUD will consider them in formulating a final rule. As we discuss the areas in need of further guidance below, we will refer to the section of the Model Regulations that contains our proposed language. We urge HUD to consider the Model Regulations as a whole and draw on them as a helpful resource for rulemaking.

In asking for clearer guidance, we do not seek to impose undue burdens on housing agencies or providers. We have worked with many PHAs and other providers who reported uncertainty regarding VAWA's scope and meaning. We believe that more guidance will benefit all parties, by explaining what VAWA guarantees and how it should be implemented. Until this happens, the statute, while extremely helpful in many situations, will fall short of its purpose to ensure housing stability for survivors of violence.

2. Portions of the Interim Rule Are Inconsistent with VAWA's Statutory Language.

Although the Interim Rule's preamble states that the rule incorporates VAWA's language without change, it contains several provisions that significantly depart from the statute. Two of the most significant departures include the Interim Rule's provisions on "actual and imminent threat" and certification of domestic violence, dating violence, or stalking.

a. The Interim Rule's Language Regarding "Actual or Imminent Threat" Departs from VAWA's Statutory Language.

Survivors of domestic violence are protected from denial of housing assistance and from termination of housing assistance due to incidents of domestic violence, dating violence, or stalking. VAWA provides an exception to these protections when the PHA or owner can demonstrate an "actual and imminent threat to other tenants or those employed at or providing service to the property."⁶ In contrast, HUD's Interim Rule incorrectly states the exception to cover the disjunctive "actual *or* imminent threat."⁷ A housing provider's decision based on this

⁶ 42 U.S.C. §§ 1437d(1)(6)(E), 1437f(c)(9)(C)(v), 1437f(d)(1)(B)(iii)(V), 1437f(o)(7)(D)(v), 1437f(o)(20)(D)(iv).

⁷ 73 Fed. Reg. 72,341, col. 2-3 (emphasis added).

incorrect statement of the statutory standard is likely to result in litigation. To avoid this action, the Interim Rule must be revised with the correct language.

In the Interim Rule, HUD has chosen to go beyond quoting VAWA's language to interpret the meaning of "imminent threat," a definition that is not provided in the statute. The Interim Rule states that "words, gestures, actions, or other indicators will be considered an 'imminent threat' if a reasonable person, considering all of the relevant circumstances, would have a well-grounded fear of death or bodily harm as a result." The Interim Rule's interpretation of "imminent threat" is problematic because it fails to emphasize the need for immediacy and objective, admissible evidence. Legislative history is instructive in interpreting Congress' intended meaning of "actual and imminent threat." The Extension Remarks by Rep. John Conyers on March 14, 2006 state:

Congress notes that under these sections, in order to show an 'actual and imminent threat,' a housing or subsidy provider must demonstrate, using forms of evidence admissible under current law, that the tenant's continued tenancy or assistance directly and imminently causes a distinct harm to the safety of the landlord, the subsidy or service provider, other tenants, or those employed at or providing services to the property, but not necessarily a specific physical harm to the intended victim.⁸

The Interim Rule should specifically describe the analysis of actual and imminent threat so that housing providers know they must have objective evidence that demonstrates that the continued tenancy of the victim poses a real and immediate threat to other tenants or the provider and its employees.⁹ There must be an objectively proven imminence, not an assumption based on fear or conjecture, for a housing provider to make an exception to the statutory protections of VAWA. As it currently stands, the definition of imminent threat is problematic because it fails to specify a time component or evidentiary standard. Thus, a threat by an abuser who is now incarcerated could potentially be used as the basis for eviction under this provision, as could something that might qualify as an "indicator." For that reason, in Model Regulation § 5.2005(f)(1), the definition of "actual and imminent threat" requires a showing that the threat will occur if immediate action is not taken to remove the tenant, and describes the type of evidence that can satisfy that threshold. The Model Regulation also lays out the procedure for

⁸ 152 Cong Rec. E353-01 (March 14, 2006) (Extension of Remarks by Rep. Conyers).

⁹ The actual and imminent threat exception in VAWA is analogous to similar exceptions in the Fair Housing Act and reasonable accommodations analyses under the Rehabilitation Act and the Americans with Disabilities Act. The Fair Housing Act codifies the factors of *Sch. Bd. of Nassau County, Fla. v. Arline*, 480 U.S. 273, 107 S.Ct. 1123 (1987) (an employment discrimination case under the Rehabilitation Act) in 42 U.S.C. § 3604 (f) (9). HR Rep. No. 100-711 at 29 (1988), reprinted in 1988 U.S.C.C.A.N. 2173. *Arline* enumerated the factors that should be considered in the ADA context, 480 U.S. at 287:

an individualized inquiry that considers

- (1) the nature of the risk,
- (2) the duration of the risk,
- (3) the severity of the risk or the potential harm to third parties; and
- (4) the probability of harm.

ADA regulations spell out these factors. 28 C.F.R. § 36.208 (2007); 29 C.F.R. § 1630.2(r) (2007).

determining when the actual and imminent threat will lead to eviction or termination.¹⁰ If the PHA or owner has met the heavy burden of establishing an actual and imminent threat by clear and convincing evidence, the burden will then shift to the victim to show there is no actual and imminent threat or that there is a reasonable alternative to eviction or termination that will mitigate the threat. This process will ensure that an eviction or termination will only occur when the continued tenancy of the victim poses an actual and imminent threat.

The Interim Rule instructs that an “imminent threat” refers to a well-grounded fear of death or bodily harm.¹¹ We believe this definition is overbroad and particularly that the term “bodily harm” may be too vague and general. We recognize that the Interim Rule cannot offer a precise definition applicable in every case, but we believe that a more focused term, such as “serious bodily harm” will signal the need for a clear and confined interpretation of this provision.¹²

HUD’s interpretation of actual and imminent threat must be revised to properly interpret VAWA and to provide clearer guidance to housing providers. Otherwise, stereotypes and subjective fear about domestic violence, dating violence and stalking may overwhelm the law’s intent, resulting in evictions and terminations based on vague, amorphous, or dated threats.

b. The Interim Rule’s Language Regarding Certification Departs from VAWA’s Statutory Language.¹³

The process for certifying a victim’s status is a key component of VAWA housing provisions. For that reason, HUD must issue clear instructions to PHAs, landlords, and survivors of abuse. The language in § 5.2007 regarding the certification procedures is ambiguous and in some places is inconsistent with the statutory provisions of VAWA.

First, the Interim Rule should make clear, as indicated in the VAWA statute, that the request for certification must be in writing.¹⁴

Second, in addition to discussing certification in the context of “continued tenancy,” the Interim Rule should also discuss certification in situations involving voucher terminations or denials of housing to applicants.¹⁵

Third, the Interim Rule fails to make clear that, as indicated in the VAWA statute, a PHA or owner does not have to require that a person seeking VAWA protections produce documentation of his/her status as a victim of domestic violence, dating violence, or stalking. PHAs and owners may provide VAWA protections to individuals based solely on their own

¹⁰ See Model Regulations § 5.2005(f)(4).

¹¹ 24 C.F.R. §5.2005(e) found at 73 Fed. Reg. 72,341.

¹² See Model Regulations § 5.2005(f)(1).

¹³ A few of the undersigned groups have previously filed comments disagreeing with HUD’s interpretation of the statute barring PHAs and owners from requiring third-party verification. These groups continue to disagree with this interpretation. The Model Regulations, however, have been written to reflect HUD’s current interpretation of the law on whether anything beyond self-certification can be required.

¹⁴ See 42 U.S.C. § 1437d(u)(1)(B).

¹⁵ See 42 U.S.C. § 1437f(ee)(1).

statements or other corroborating evidence.¹⁶ Additionally, HUD has made clear in its previous guidance that PHAs or owners are not required to demand official documentation.¹⁷

Further, HUD must clarify in the regulations that, if a PHA or owner *does* wish to obtain verification of a victim's status, the PHA or owner need not require the individual to use the official certification form.¹⁸ VAWA provides that the tenant may fulfill the certification requirement by providing either third-party certification, or a police or court record.¹⁹ In fact, HUD's prior guidance provides "**in lieu of the certification form or in addition to it**, owners and management agents may accept a) a police or court record or b) third party certification."²⁰ At a minimum, the Interim Rule must accord with VAWA's statutory language.

While we commend the inclusion of the notice requirement and the compliance provisions of the certification procedures,²¹ HUD must provide further guidance as necessary to protect victims' confidentiality and safety. The regulations must include limitations on the information that the PHA or landlord may request if it does not use the HUD-approved form. Given the sensitive nature of the crimes of domestic violence, dating violence, and stalking, HUD must include safeguards to ensure that the landlord does not require additional information that goes beyond the scope of that requested in the form.²²

In addition, the interim regulations do not include a procedure for dealing with competing certifications from two or more tenants involved in the same incident of domestic violence, dating violence or stalking. If two or more tenants are involved in the same incident, it can be a difficult process for PHAs and Section 8 landlords and management to identify the victim and the perpetrator. The Model Regulations attached to this comment contain provisions for dealing

¹⁶ 42 U.S.C. §§ 1437d(u)(1)(D), 1437f(ee)(1)(D).

¹⁷ See Notice: H 08-07 Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005 for the Multifamily Project-Based Section 8 Housing Assistance Payments Program. (Sept. 30, 2008).

¹⁸ Although the Interim Rule's preamble makes clear that a PHA or owner may not require the victim to provide the certification form, this language is nowhere in the text of the Interim Rule itself.

¹⁹ "Third-party certification" refers to "documentation signed by an employee, agent, volunteer of a victim service provider, an attorney, or medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence or stalking or in addressing the effects of abuse in which the professional attests under the penalty of perjury under 28 USC 1746 to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation." See 24 C.F.R. § 5.2007(a)(1)(iii) at 73 Fed. Reg. 72,336 (Nov. 28, 2008). See also 42 U.S.C. §§ 1437d(u)(1)(C)(i), 1437f(ee)(1)(C)(i).

"Police or court record" refers to "federal, state, tribal, territorial or local police or court record." See 24 C.F.R. § 5.2007(a)(1)(ii) at 73 Fed. Reg. 72,336 (November 28, 2008). See also 42 U.S.C.A. §§ 1437d(u)(1)(C)(ii), 1437f(ee)(1)(C)(ii).

²⁰ See Notice: H 08-07 Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005 for the Multifamily Project-Based Section 8 Housing Assistance Payments Program (Sept. 30, 2008) (emphasis added). See also Notice PIH 2006-42 (Dec. 27, 2006); Form HUD-50066.

²¹ See 24 C.F.R. § 5.2007(a)(3) of the Interim Rule outlining the notice requirement of the certification procedures and 24 C.F.R. § 5.2007(a)(3)(b) indicating that a "PHA's, owner's or management agent's compliance with this section, whether based solely on the tenant's statement or on other corroborating evidence, shall not be sufficient to constitute evidence of an unreasonable act or omission by a PHA, PHA employee, owner or employee or agent of the owner." The inclusion of these provisions is essential to effective VAWA implementation.

²² See Model Regulations § 5.2007(b), (c).

with this concern.²³ To prevent arbitrary and capricious results, HUD must include a procedure in the regulations for handling two or more certifications from the same household.²⁴

3. The Interim Rule Omits Several Key VAWA Provisions.

Although the Interim Rule incorporates the bulk of VAWA’s housing provisions, it omits several crucial provisions, which are discussed in detail below.

a. The Interim Rule Should Incorporate VAWA’s Requirements Regarding Public Housing Leases.

The Interim Rule does not propose any amendments to 24 C.F.R. Part 966, which sets forth the provisions that must be included in public housing leases. VAWA requires that public housing leases include the statute’s eviction protections for survivors of domestic violence, dating violence, and stalking.²⁵ Advocates have observed that several PHAs have not yet updated their public housing leases to include these protections. To remind PHAs of their obligations under the statute, 24 C.F.R. § 966.4 should incorporate VAWA’s public housing lease requirements.

b. The Interim Rule Omits Certain VAWA Provisions Regarding Admissions and Voucher Terminations.

There are areas where the Interim Rule incorporates VAWA’s protections regarding evictions, but omits VAWA’s protections regarding admissions and voucher terminations.

For instance, 24 C.F.R. § 5.2005(b) states that it does not limit the authority of a PHA, owner, or management agent “to evict a tenant for a lease violation unrelated to domestic violence, provided that the PHA, owner, or management agent does not subject such a tenant to a more demanding standard than other tenants, in making the determination *whether to evict or terminate tenancy or occupancy rights*” (emphasis added). Under VAWA, this language applies not only to evictions, but also to voucher terminations.²⁶ Accordingly, 24 C.F.R. § 5.2005(b) should be reworded to include voucher terminations.

In addition, 24 C.F.R. § 5.2005(c) provides that “a PHA, owner, or management agent may bifurcate a lease, or remove a household member from a lease” to evict a perpetrator of violence without penalizing the victim of such violence. This provision omits language that bifurcation can also occur in the voucher context. While the preamble states that PHAs already have that authority under 24 C.F.R. § 982.552(c)(2)(ii), we recommend that this rule, for the sake of completeness, include language that vouchers can also be bifurcated.

²³ See Model Regulations § 5.2007(e).

²⁴ See Model Regulations § 5.2007(e)(2)-(3).

²⁵ See 42 U.S.C. § 1437d(1)(5)-(6).

²⁶ See 42 U.S.C. § 1437f(o)(7)(D).

c. Miscellaneous Omissions

There are several places in the Interim Rule that address domestic violence but omit the crimes of dating violence and stalking. The first sentence of 24 C.F.R. § 5.2001 omits the words “dating violence, or stalking.” Similarly, 24 C.F.R. § 5.2007(a)(1) and 24 C.F.R. § 5.2005(b) omit these terms.²⁷ These provisions should be amended to comply with the VAWA statutory language.

Furthermore, 24 C.F.R. § 5.2007(a)(3)(b) omits VAWA’s language stating that nothing in its certification provisions “shall be construed to limit liability for failure to comply with the requirements of [VAWA].”²⁸ Accordingly, 24 C.F.R. § 5.2007(a)(3)(b) should be amended to state that “Nothing in this subparagraph should be construed to limit liability for failure to comply with the requirements of 24 C.F.R. Part 5.”

4. There Are Several Areas Where Additional Guidance Is Needed In Implementing VAWA and Promoting Housing Opportunities for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking.

Our experience working on behalf of victims and with PHAs and owners has taught us that regulations must speak to several issues that are not directly addressed in VAWA’s statutory language. Areas that require clarification include: notice of VAWA rights and obligations; enforcement of VAWA rights; confidentiality; portability; emergency transfers in public housing and project-based Section 8; admissions; family break-up policies; PHA plans; and battered immigrants’ eligibility to subsidized housing. To ensure consistency, fairness, and efficiency, PHAs, advocates, owners, and victims could all benefit from additional guidance on how to address these issues. These areas are discussed in detail below.

a. Notice of VAWA Rights and Obligations

VAWA requires that PHAs and landlords notify tenants about the VAWA law and certain protections afforded under it. The Interim Rule is generally consistent with VAWA’s notice requirements.²⁹ In fact, the Interim Rule in one area helpfully clarifies how notice should

²⁷ The last sentence of 24 C.F.R. § 5.2005(b) omits the words “dating violence, or stalking.” 24 C.F.R. § 5.2007(a)(1) should be amended as follows (amendments are italicized): “A PHA, owner, or management agent presented with a claim for continued tenancy based on status as a victim of domestic violence, *dating violence, or stalking*, or criminal activity related to domestic violence, *dating violence, or stalking*.”

²⁸ See 42 U.S.C. §§ 1437d(u)(1)(F), 1437f(ee)(1)(E).

²⁹ There is a small clerical error on page 72339 of Federal Register Notice. The first paragraph contains a sentence beginning “*Specifically, the notice must cover the rights under sections 42 USC 1437d(l)(5), (6)(1)(6) and 6(u).*” This citation is incorrect. The sentence should read, “*Specifically, the notice must cover the rights under sections 42 USC 1437d(l)(5), (l)(6) and (u).*”

For the VAWA notice requirements, see VAWA §§ 606 and 607. VAWA requires that PHAs provide notice to tenants assisted under Section 8 housing of their rights under VAWA, specifically 42 U.S.C §§ 1437f(c)(9), (d)(1)(B)(ii), (o)(7)(C), (o)(7)(D), (o)(20), (r)(5) and (ee). Further, PHAs must provide notice to tenants of their rights under VAWA included in section 6 of the U.S. Housing Act of 1937, namely 42 U.S.C. §§ 1437d(l)(5), (l)(6) and (u).

be given.³⁰ However, the notice requirements are only addressed in the Interim Rule preamble and do not form part of the actual regulations, with the exception of the notice requirement regarding the certification process in 24 C.F.R. § 5.2007(a)(3).

The Interim Rule must establish general guidelines for the contents of the notices to landlord and tenants and the timing and process for issuing them. For instance, PHAs and landlords should give tenants notice of VAWA provisions at various instances, including orientations and recertifications. Notices to tenants may be coordinated with other HUD-required notices. They should describe tenants' rights under VAWA, procedures for exercising those rights, and contact information for appropriate domestic violence, legal, and social service providers. HUD should include provisions in the regulations for posting notices in public areas and establishing guidelines for making notices accessible to tenants with disabilities and limited English proficiency to increase awareness of VAWA's protections.³¹

With regard to notification of landlords participating in Housing Choice Voucher Program and project-based Section 8, it is essential that PHAs provide these landlords with notices of their obligations under VAWA in the Housing Assistance Payment contract and as a separate notification on an annual basis.³²

The Model Regulations attached to these comments provide further suggestions, including language concerning the notification provisions of VAWA.³³ Proper notice is vital for PHAs, Section 8 owners, management agents and tenants to be fully aware of their rights and responsibilities under VAWA. For this reason, HUD must incorporate the notice provisions of VAWA into the regulations and provide further guidance as to the form and procedures for appropriate VAWA notification.

b. Enforcement of VAWA Rights

The failure to provide clear guidelines concerning the enforcement and oversight of VAWA could result in the PHA's or owner's non-compliance with the statute, as well as the inability of victims to assert their rights under VAWA in cases where those rights have been overlooked or denied. Because the proposed Interim Rule is ambiguous, we suggest inclusion of the following explicit guidelines for the enforcement of VAWA protections.

First, the PHAs shall provide informal review, hearing or grievance procedures for persons who have been denied assistance or been refused a rental unit, or had their assistance terminated or been evicted because of factors that may have been the result of domestic violence, dating violence or stalking.³⁴ For example, an applicant's or tenant's negative credit or rental history may be due in whole or in part to his or her need to flee a previous rental because of

³⁰ The interim regulation's preamble indicates that while the VAWA statute at 42 U.S.C. § 1437f(ee)(2)(B) requires that PHAs provide VAWA notifications, owners and management agents administering an Office of Housing project-based Section 8 program are also required to provide tenant notification.

³¹ See Model Regulations § 5.2008(a).

³² See Model Regulations § 5.2008(c).

³³ See Model Regulations § 5.2008.

³⁴ See Model Regulations § 5.2005(d).

abuse. Without an established procedure allowing an applicant or tenant to demonstrate such facts, certain protections afforded by VAWA may be overlooked.

Second, HUD must create an opportunity for an informal hearing prior to eviction or termination of assistance based on a determination by the PHA, Section 8 owner, or management agent that the tenant's continued presence presents an actual and imminent threat to other tenants or to those employed at or providing service to the property.³⁵ In such a hearing, the burden of proof would be on the PHA, Section 8 owner or management agent to demonstrate by clear and convincing evidence that an actual and imminent threat exists. If such a showing were made, the burden would shift to the challenging party to demonstrate that the showing does not sufficiently justify eviction or termination of assistance.³⁶

Third, HUD should explicitly provide that the HUD office of Fair Housing and Equal Opportunity ("FHEO") has authority to receive complaints, investigate, and prosecute cases where VAWA rights have not been afforded to a victim by a PHA, Section 8 owner or management agent.³⁷ The lack of a clear, central oversight authority could seriously impede the uniform application of VAWA and related regulations or rules. As the FHEO procedures already exist, it would be most efficient to add VAWA enforcement to their mandate in order to ensure full compliance with VAWA.

Fourth, the Interim Rule should specifically provide that: (1) failure to exhaust any available administrative remedies does not preclude the use of VAWA as an affirmative defense in an eviction or other court proceeding; and (2) FHEO jurisdiction does not preclude any other right under the law to seek redress where VAWA rights have not been afforded to a victim.³⁸

c. Confidentiality

The Interim Rule should explicitly state that any release of information pursuant to the statute about an individual's status as a victim of domestic violence, dating violence or stalking for the purpose of enforcing that person's rights under VAWA is limited in time and scope.³⁹ Without clearly articulating these limitations, the rights afforded under VAWA may undermine the privacy of the victims the statute is intended to protect.

Additionally, PHAs should take precautions when communicating with a victim to ensure the victim's confidentiality and safety, particularly if she is asserting that she is the victim of abuse by a member of her household. For instance, care should be taken not to mail materials to a household where an abuser also resides. The Model Regulations provide additional guidelines in this regard.⁴⁰

³⁵ See Model Regulations § 5.2005(f)(2).

³⁶ See Model Regulations § 5.2005(f)(4).

³⁷ See Model Regulations § 5.2010.

³⁸ See Model Regulations § 5.2010.

³⁹ See 42 U.S.C. §§ 1437d(u)(2)(A), 1437f(ee)(2)(A). See also Model Regulations § 5.2007(f).

⁴⁰ See Model Regulations § 5.2007(b), (c).

d. Portability

VAWA provides specific provisions for portability in the Housing Choice Voucher Program when a family has moved out of the assisted unit to protect the health or safety of a victim of domestic violence, dating violence or stalking who reasonably believed she would be imminently threatened by harm if she remained in the assisted dwelling unit.⁴¹ The Interim Rule incorporates these provisions at 24 C.F.R. § 982.353. However, when § 982.353 is read in conjunction with Notice PIH 2008-43 Housing Choice Voucher Portability Procedures and Corrective Actions, it appears that a PHA could continue to deny a victim's request for portability if the PHA has established a policy that prohibits any move by the family during the initial lease term, or prohibits more than one move by the family during any one year period.⁴² Because the intent behind 42 U.S.C. § 1437f(r)(5) was to protect families who moved out of their units to prevent further violence, it is disconcerting that PHAs could still use § 982.314(c)(2) to deny portability requests. To address this problem, an exception should be expressly recognized in § 982.314(c) for voucher participants utilizing 42 U.S.C. § 1437f(r)(5) and 24 C.F.R. § 982.353.

e. Emergency Transfers in Public Housing and Project-Based Section 8

As discussed, VAWA provides specific provisions for portability in the Housing Choice Voucher Program. While the statute is less explicit regarding safety moves for victims residing in public or project-based Section 8 housing units, the purpose of the legislation is clearly to ensure that victims secure safe housing without losing their subsidies. Thus, HUD should require that PHAs provide emergency transfers to victims of domestic violence, dating violence, and stalking who live in Public Housing and project-based Section 8 housing.

For public housing, HUD took the first step in this process in the Public Housing Occupancy Guidebook, Part 7, Chapter 19: Domestic Violence. In this chapter of the Guidebook, HUD urges PHAs to develop transfer policies for victims of violence, stating that "PHAs may assist these victims in avoiding their abusers and continuing occupancy in public housing by adopting a special transfer policy that take into account the victim's circumstances. A special transfer policy would assist victims, who are seeking to flee their abusers, in accessing and maintaining stable housing."⁴³ Unfortunately, many PHAs have failed to adopt a transfer policy for victims.

While there is no direct guidance by HUD's Office of Housing on the problems facing victims of violence who need to flee their project-based Section 8 housing without jeopardizing their subsidies, there is general recognition of the problem by HUD, owners, and advocates. Ignoring this growing problem only further jeopardizes the safety and security of victims and their families, other tenants, and on-site management. For project-based Section 8 housing, the issue is complicated by the fact that transferring a resident to another unit within the

⁴¹ See 42 U.S.C. § 1437f(r)(5).

⁴² See 24 C.F.R. § 982.314(c)(2).

⁴³ Public Housing Occupancy Guidebook at 218.

development will likely do very little to improve safety and each project, even if owned by the same entity, will have its own waiting list.

For these reasons, Model Regulation § 5.2005(l) provides for emergency transfers in public housing and project-based section 8 housing. These proposed federal regulations would ensure that Public Housing and project-based Section 8 tenants have the same or similar options as Voucher tenants to escape their abusers and keep their families safe.

f. Admissions

Generally, the Interim Rule complies with the non-discrimination provisions of VAWA and amends the PHA and Section 8 housing programs to incorporate the statutory language.⁴⁴

HUD has long recognized the necessity of having a preference category for victims of domestic violence in admissions to public and Section 8 housing. Following the Quality Housing and Work Responsibility Act of 1998 and in subsequent regulations, HUD encouraged PHAs to adopt admission preferences for victims of domestic violence.⁴⁵ However, the Interim Rule omits this language establishing preferences.⁴⁶ Securing safe and stable housing is vital and often extremely difficult for survivors of domestic violence, dating violence and stalking. For this reason, HUD should encourage PHAs, through regulation, to adopt these preference categories to better serve survivors of violence.⁴⁷

g. Family Break-Up Policies

Advocates often encounter problems with VAWA implementation when members of the household separate. For that reason, we believe that regulations must require PHAs to explicitly address domestic violence, dating violence, and stalking as part of any family break-up policy. Housing assistance to the victim should be preserved whenever a family breaks up as a result of violence.

Two recent cases illustrate the need for guidance:

- 1) Following Hurricane Katrina, a married couple relocated to Ohio where they obtained a Section 8 voucher. After domestic violence occurred, the wife wanted to move but was unable to obtain the voucher. She stayed in the residence far longer than she otherwise would have had the PHA applied a family break-up policy that considered domestic violence in assigning the voucher.

⁴⁴ See 42 U.S.C. § 1437f(c)(9)(A) (indicating that an applicant or participant is or has been a victim of domestic violence, dating violence or stalking is not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission). See also 42 U.S.C. §§ 1437d(c)(3), 1437f(o)(6)(B).

⁴⁵ Quality Housing and Work Responsibility Act (QHWRA), P.L. 105-276 § 514(e). See also 24 C.F.R § 960.206(b)(4) (stating “PHAs should consider whether to adopt a local preference for admission of families that include victims of domestic violence”).

⁴⁶ See 42 U.S.C. § 1437f(o)(6)(A).

⁴⁷ See Model Regulations § 5.2005(i).

- 2) A wife obtained a protection order against her husband and was awarded exclusive possession of an apartment subsidized by a Section 8 voucher. The abusive husband was head of household on the voucher, and their children were listed on the lease, but she was not. While the mother and children were living in the apartment pursuant to the court order, the PHA stopped paying the voucher without notice or hearing and would not recognize the family's right to retain the voucher. The PHA refused to pay rent for six months, and the family faced eviction twice. Eventually, the mother was awarded the voucher but no refund for the lost rent.

These are just two examples of why guidance is needed in this area. In Model Regulations § 5.2005(g), we lay out several provisions that would help clarify how PHAs should respond when violence leads to family break-up. For example, the Model Regulations provide that: family break-up cannot result in an eviction or termination in violation of VAWA; survivors of violence can be treated as the highest priority in determining receipt of housing assistance; PHAs shall bifurcate vouchers and leases to allow victims to retain their homes; and the immigration status of the household or family member (such as a domestic violence survivor) cannot be used in determining allocation of housing, unless otherwise required by law. All of these measures are needed to prevent further violence.

h. PHA Plans

HUD should be explicit as to what information regarding VAWA implementation is included in the annual, 5-year and consolidated plans. For instance, the proposed rule should mandate that the annual, 5-year and consolidated plans discuss the existence and extent of VAWA protections, as well as the types of services offered to victims by PHAs.⁴⁸

i. Battered Immigrants' Eligibility

The Interim Rule fails to address housing eligibility for battered immigrant qualified aliens, an omission that has far-reaching consequences for these victims and their children. Battered immigrant qualified aliens were made statutorily eligible to receive public and assisted housing as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996. In 2003, Congress directed HUD and the Justice Department to interpret housing statutes consistently with immigration and public benefits statutes so that qualified alien battered immigrants would be eligible for federally subsidized housing.⁴⁹ In 2005, the Department of Homeland Security complied with Congress' directive by issuing a letter informing HUD how to process immigration status verifications of battered immigrant qualified aliens.

Despite Congress' directive, there has been no further progress on this issue, and qualified alien battered immigrants continue to be denied housing benefits they desperately need. Those who are unable to access public or assisted housing are often forced to return to their

⁴⁸ See Model Regulations PART 91.

⁴⁹ H.R. 108-10, 108 Cong. 1st Sess. 476, 1495 (Feb. 12, 2003), Making Further Continuing Appropriations for Fiscal Year 2003, and for Other Purposes.

abusers or face homelessness. HUD must inform all programs administering federally subsidized housing that battered immigrant qualified aliens are statutorily eligible to receive housing benefits.

Conclusion

For all of the reasons above, the undersigned organizations urge HUD to issue a final rule that both corrects the Interim Rule where it is inconsistent with the statute and provides much needed guidance on how to implement VAWA. Areas that require clarification include: certification, notice of rights and obligations, enforcement, confidentiality, voucher portability, admissions, emergency transfers, family break-up policies, PHA planning, and qualified battered immigrants' eligibility for public and section 8 housing.

We appreciate your consideration of these comments. If you have any questions, please contact:

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Cecelia Friedman Levin, Domestic Violence Staff Attorney, National Law Center on Homelessness & Poverty, 1411 K St., N.W. Suite 1400, Washington, D.C. 20005; t (202) 638-2535; f (202) 628-2737; clewin@nlchp.org; and

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We are committed to working with HUD on this important issue and look forward to a final rule that fully implements VAWA.

Sincerely yours,

American Civil Liberties Union
Alabama Coalition Against Domestic Violence
Arizona Coalition Against Domestic Violence
Break the Cycle
California Partnership to End Domestic Violence
Colorado Coalition Against Domestic Violence
Community Legal Services, Inc. of Philadelphia
DC Coalition Against Domestic Violence
District Alliance for Safe Housing, Inc.
Family Violence Prevention Fund
Florida Coalition Against Domestic Violence
HELP USA

Illinois Coalition Against Domestic Violence
Iowa Coalition Against Domestic Violence
Jewish Board of Family and Children's Services
Legal Aid Society of Minneapolis
Legal Aid Society of Southwest Ohio
Legal Momentum
Michigan Coalition Against Domestic and Sexual
Violence
Minnesota Coalition for Battered Women
National Center on Domestic and Sexual Violence
National Coalition Against Domestic Violence
National Housing Law Project
National Latino Alliance for the Elimination of
Domestic Violence
National Law Center on Homelessness & Poverty
National Network to End Domestic Violence
National Resource Center on Domestic
Violence/PCADV
New Jersey Coalition for Battered Women
New York State Coalition Against Domestic
Violence
Northwest Women's Law Center
Pennsylvania Coalition Against Domestic Violence
Sargent Shriver National Center on Poverty Law
South Carolina Appleseed Legal Justice Center
Texas Council on Family Violence
Vermont Network Against Domestic and Sexual
Violence
Washington Legal Clinic for the Homeless
Washington State Coalition Against Domestic
Violence
Wisconsin Coalition Against Domestic Violence

Attachment 1: Model VAWA regulations

Attachment 1 – Model Regulations

PART 5 – GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

Subpart L – Protection for Victims of Domestic Violence, Dating Violence, and Stalking in Public and Section 8 Housing

§ 5.2001 Applicability.

This subpart addresses the protections for victims of domestic violence, dating violence, and stalking residing in public and Section 8 housing, as provided in the 1937 Act, as amended by the Violence Against Women Act (VAWA) (42 U.S.C. 1437f and 42 U.S.C. 1437d). This subpart applies to the Housing Choice Voucher program under 24 CFR part 982; the project-based voucher and certificate programs under 24 CFR part 983, the public housing admission and occupancy requirements under 24 CFR part 960, and renewed funding or leases under 24 CFR parts 880, 882, 883, 884, 886, 891, and 966.

§ 5.2003 Definitions.

The definitions of *1937 Act*, *PHA*, *HUD*, *household*, *responsible entity*, and *other person under the tenant's control* are defined in subpart A of this part.

The following terms are defined in part 982, subpart A of this title: Administrative plan, admission, applicant (applicant family), common space, family, family unit size, jurisdiction, lease, owner, PHA plan, portability, program, Public housing agency (PHA), tenant, voucher holder, voucher (rental voucher).

As used in this subpart L:

Annual recertification means the annual process for determining continued eligibility for PHA or Section 8 housing pursuant to Sec. 982.516.

Bifurcate means, with respect to a public housing or Section 8 lease, and irrespective of any state or local law to the contrary, to divide a lease as a matter of law such that certain tenants (such as perpetrators of domestic violence, dating violence, or stalking) can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

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: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

See 42 U.S.C.A. § 13925(a)(8). Where a jurisdiction provides a more expansive definition, that definition shall apply.

Denial letter means the letter provided to an applicant for public housing by the PHA when the application is rejected.

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 cohabitating with or has cohabitated 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. See 42 U.S.C.A. § 13925(a)(6). Where a jurisdiction provides a more expansive definition, that definition shall apply.

Eviction notice means all notice, informal or formal, provided to a tenant by a PHA, Section 8 owner, private landlord or management agent participating in the Housing Choice Voucher Program advising the tenant that it proposes to terminate the lease and/or that the lease is terminated.

Family break-up policy means the policy that a PHA uses to determine which household members, whether or not they are on the lease, will continue to receive assistance in the program if the family breaks up, pursuant to Sec. 982.315.

Immediate family member means, with respect to a person: A spouse, parent, brother or 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. See 42 U.S.C.A. §§ 1437d(u)(3)(D), 1437f(f)(11).

Notice of termination means the notice provided to a tenant that the PHA intends to terminate federal housing benefits.

Sexual assault means any conduct prescribed by chapter 109A of title 18, United States Code, whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States or in a Federal prison and includes both assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim. See 42 U.S.C.A. § 13925(a)(23). Where a jurisdiction provides a more expansive definition, that definition shall apply.

Stalking means: to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and in the course of, or as the result of, such following, pursuit, surveillance, or

repeatedly committed acts, to place a person in reasonable fear of the death of, or seriously bodily injury to, or to cause substantial emotional harm to that person, a member of the immediate family of that person, or the spouse or intimate partner of that person. *See* 42 U.S.C.A. §§ 1437d(u)(3)(C), 1437f(f)(10), 13925(a)(24). Where a jurisdiction provides a more expansive definition, that definition shall apply.

Section 8 owner, except where otherwise indicated in these regulations, refers to both an owner or operator of a project-based Section 8 property and a private landlord participating in the Housing Choice Voucher Program.

§ 5.2005 Protection of victims of domestic violence, dating violence, and stalking in public and Section 8 housing.

(a) PHAs, Section 8 owners, or management agents must make all reasonable efforts to ensure that victims of domestic violence, dating violence, and stalking do not face discrimination when applying for housing. PHAs, Section 8 owners, or management agents may not deny housing to a victim of domestic violence, dating violence or stalking due to the applicant's status as a victim.

(b) PHAs, Section 8 owners, or management agents must not evict or terminate assistance to a victim of domestic violence, dating violence, or stalking as a result of his or her status as a victim, including, but not limited to the following circumstances:

(1) PHAs, Section 8 owners, or management agents must make all reasonable efforts to ensure that existing tenants of federally subsidized housing are not evicted as a result of domestic violence, dating violence, or stalking except where it is shown that allowing the victim to remain would pose an actual and imminent threat to staff or other tenants as defined by § 5.2005(f)(1).

(2) PHAs, Section 8 owners, or management agents must not evict a victim of domestic violence, dating violence, or stalking because of an incident of domestic violence, dating violence or stalking; noise, nuisance or damages resulting from an incident; calls for emergency services; or for other reasons directly related to the domestic violence, dating violence or stalking, except where it is shown that allowing the victim to remain would pose an actual and imminent threat to staff or other tenants as defined by § 5.2005(f)(1).

(3) PHAs, Section 8 owners, or management agents must not hold victims of domestic violence, dating violence, or stalking liable for damages to the unit caused during an incident of domestic violence, dating violence, or stalking, but may litigate civilly against the perpetrator for any damages caused during the incident instead.

(c) PHAs, Section 8 owners, or management agents shall consider domestic violence, dating violence, or stalking as a mitigating factor for otherwise

disqualifying credit, rental, or criminal histories or any other circumstances relevant during the application, termination, or eviction process.

(d) PHAs shall provide each tenant family an opportunity for an informal review, informal hearing, or grievance hearing if a determination to deny or terminate assistance or to evict or refuse to rent is based on an unfavorable history that may be the result of domestic violence, dating violence, or stalking.

(e) PHAs, Section 8 owners, or management agents have the authority to extend all VAWA protections to victims of sexual assault.

(f) (1) Prior to any eviction of a victim of domestic violence, dating violence, or stalking on the basis of incidents of violence, PHAs, Section 8 owners, or management agents must show an actual and imminent threat to other tenants or those employed at or providing service to the property in the event such victim is not evicted or terminated from assistance. An actual and imminent threat consists of physical danger that: is not hypothetical, remote, or speculative; is extremely likely to happen in the event immediate action is not taken to remove the victim from the premises; and could result in death or serious bodily harm. An actual and imminent threat cannot be based solely upon a prior incident; however, prior incidents may be used as evidence bearing on whether there is a real physical danger of immediate injury.

(2) PHAs, Section 8 owners, or management agents seeking to evict a tenant or terminate a Section 8 voucher program participant's rental assistance on the basis of an actual and imminent threat must provide the tenant or Section 8 voucher program participant an opportunity for an informal hearing.

(3) PHAs, Section 8 owners, or management agents must determine whether an actual and imminent threat exists on a case-by-case basis. The PHA, Section 8 owner, or management agent seeking the eviction or denial of rental assistance must consider: if the risk of injury to the third party is serious; if the risk of injury to the third party is ongoing; and if there is a high probability the injury will occur.

(4) The PHA, Section 8 owner, or management agent shall bear the burden of proof to demonstrate an actual and imminent threat. If the PHA, Section 8 owner, or management agent shows the existence of an actual and imminent threat by clear and convincing evidence, the burden shifts to the challenging party to show that there is no actual and imminent threat or that there is a reasonable alternative to eviction or termination that will mitigate the threat in order to be afforded the protections under VAWA.

(g) Family Break-up Policy. (1) PHAs must establish a family break-up policy in relation to public housing and the Housing Choice Voucher Program housing pursuant to Sec. 982.315 and as follows:

(i) PHAs, Section 8 owners, or management agents may make survivors of domestic violence, dating violence, or stalking the highest priority recipient of housing assistance.

(ii) PHAs, Section 8 owners, or management agents shall not terminate housing assistance of an individual who qualifies for protection as a victim of domestic violence, dating violence, or stalking. PHAs, Section 8 owners, or management agents have the authority to determine which other family members should continue to receive housing assistance if the family is separated as a result of protection being granted to a family member based on domestic violence, dating violence, or stalking.

(iii) The PHA's administrative plan must state its policies on how it will determine who continues to receive assistance in the event of such separation. Factors that may be considered in making the decision under the PHA policy include: whether the assistance should remain with family members remaining in the original assisted unit; the interests of minor children or of ill, elderly, or disabled family members; whether family members are forced to leave the unit as the result of actual or threatened violence by a spouse or other household member; and any other factors specified by the PHA.

(iv) The Family Break-up plan may not result in an eviction or termination of assistance in violation of VAWA. In such cases, the PHA must continue to serve the victim in accordance with VAWA.

(v) Where there is no existing policy as to bifurcation, the PHA shall grant bifurcation of Section 8 vouchers and leases permitting the victim of domestic violence, dating violence, or stalking, or the parent or guardian of the minor victim to retain the voucher or housing unit in the absence of any court order to the contrary.

(vi) All policies must contain a statement that the immigration status of a household member or family member will not be used against him or her in determining allocation of the housing, unless otherwise required by law.

(2) PHAs, Section 8 owners, and management agents must give notice to all tenants regarding the family break-up policy.

(3) The family break-up policies specified under this section must be implemented according to the requirements of 24 CFR 903.17(a) or the HUD Multifamily Handbook.

(h) If a household's composition has changed due to domestic violence, dating violence, or stalking, the PHA, Section 8 owner, or management agent must, if appropriate, adjust the tenant's rent based on the family unit size. If the apartment is too large for the new composition of the family, the tenants must be allowed to

stay in their current residence until appropriate and safe housing is available. Appropriate and safe housing must be suitable for the family size and composition, as required by law, and located in an area in which the victim and, where applicable, family can reasonably expect to be safe from continued danger by the abuser. Where no such appropriate and safe housing is immediately available, the tenant shall be permitted a brief absence, as defined below, without forfeiting the voucher or lease. The portion of the rent paid by the household must be adjusted based upon the date of notification by the victim to the PHA that the abuser is no longer residing on the property.

(i) PHAs, Section 8 owners, or management agents may make status as a victim of domestic violence, dating violence, or stalking a priority or preference in the application process for public and subsidized housing. When giving a priority or preference, as well as when considering applications, emergency transfers, and voucher waiting lists, they may use the certification process described in section 5.2007, or use other reasonable documentation requirements, taking into account that it is not safe or possible for some survivors to seek orders of protection or police assistance.

(j) Brief absences from a unit due to an incident of domestic violence, dating violence or stalking necessitated because a tenant is fleeing to safe housing, receiving medical assistance, or is absent for other related reasons are not a sufficient basis to deem that the property or voucher has been abandoned by the victim. The tenant may be required to notify the PHA prior to leaving the premises when possible, but where such notifications are not feasible, the tenant shall be permitted to notify the PHA of such absence within a reasonable time after leaving the property.

(k) (1) A tenant who is or has been a victim of domestic violence, dating violence, or stalking may request portability of a Section 8 voucher for safety reasons, pursuant to Sec. 982.353, if the tenant has complied with all other obligations of the Section 8 program and if the tenant provides any requested documentation, as may be requested by PHAs. PHAs, Section 8 owners, or management agents shall allow a family to move regardless of whether the owner and tenant have come to a mutual agreement regarding such a transfer. Tenants are permitted to move to a different neighborhood, city, or state, or any other jurisdiction in which there is available housing and the voucher will be accepted.

(2) In connection with any tenant relocation pursuant to subsection (1), the PHA, or Section 8 owner must ensure that all information regarding the new location of the household is kept confidential unless that disclosure is requested or consented to by the tenant in writing or otherwise required by applicable law. Only PHAs or Section 8 owners who need access to such information to perform the relocation shall have access to this information. The PHA, Section 8 owner, or management agent of the property where the tenant originally resided must redact all information about the tenant's new location upon release of the tenant's

file, unless otherwise required by applicable law, and no information about the new location must be entered into any shared computer system.

(l) (1) Victims of domestic violence, dating violence, and stalking shall be eligible for emergency transfers in public housing where remaining in the current housing would present a danger to the health or safety of the victim or the family. Emergency transfers should be permitted in the most expedient manner possible. Where no safe or appropriate housing is available, the tenant(s) shall be permitted a brief absence to access safe housing or medical services as necessary. This brief absence will not constitute abandonment of the property. The tenant may be required to notify the PHA prior to leaving the premises when possible, but where such notifications are not feasible, the tenant shall be permitted to notify the PHA of such absence within a reasonable time after leaving the property.

(2) Victims of domestic violence, dating violence, and stalking shall be eligible for emergency transfers in project-based Section 8 housing where remaining in the current housing would present a danger to the health or safety of the victim or the family. Emergency transfers should be executed in the most expedient manner possible. Where no safe or appropriate housing is available, the tenant(s) shall be permitted a brief absence to access safe housing or medical services as necessary. This brief absence will not constitute abandonment of the property. The tenant may be required to notify the Section 8 owner prior to leaving the premises when possible, but where such notifications are not feasible, the tenant shall be permitted to notify the owner of such absence within a reasonable time after leaving the property.

(m) Any contract between a PHA and Section 8 owner must reflect the owner's obligations to abide by the protections afforded tenants under VAWA and any relevant state laws. The contract shall also provide that where emergency transfer or portability of the voucher is approved by the PHA, the landlord must release victims from the lease within 14 days of notification in writing by the PHA. After such time, neither the PHA nor the tenant shall be liable for any additional rent to the landlord. Any PHA that is party to a contract with a Section 8 owner, either in the Housing Choice Voucher Program or through Project-Based Section 8, must include in the contract the appropriate contractual language regarding the Section 8 owner's obligation. Where HUD has contracted directly with a Section 8 owner, HUD must include in this contract the relevant contractual provisions pursuant to this subsection.

(n) Where there is no provision in the state or local law providing for breaking a lease without penalty due to domestic violence, dating violence, or stalking, a PHA may include a provision in the contract with the Section 8 owner that the lease shall be terminated without penalty against the tenant if necessary to protect the health or safety of a victim of domestic violence, dating violence or stalking. A PHA may also provide that it will make reasonable efforts to mitigate damages to landlords by attempting to place a new tenant in the unit as soon as possible.

§ 5.2007

Certification of status and confidentiality.

(a) Any tenant in public or Section 8 housing may request protection from eviction or termination of assistance as a victim of domestic violence, dating violence, or stalking either orally or in writing.

(b) Written Certification. (1) Following a request for protection, PHAs, Section 8 owners, or management agents may make a written request for a document certifying that the tenant is a victim of domestic violence, dating violence, or stalking and specifying the name of the perpetrator. PHAs, Section 8 owners, or management agents must deliver written requests for certification, and any subsequent communications, in a manner that will not expose the tenant to danger of further violence and shall document how and when a written request was made. PHAs, Section 8 owners, and management agents shall ask the victim to designate a method for safe communication, but if no method is designated, shall use certified mail to deliver the written request for certification.

(2) PHAs, Section 8 owners, or management agents are not required to ask for certification or any other proof of the tenant's status as a victim of domestic violence, dating violence, or stalking, and may elect not to request certification for example, if there is a documented history of domestic violence, dating violence, or stalking against a tenant. In such cases, PHAs, Section 8 owners, or management agents may rely on the tenant's statement, or on other corroborating evidence.

(3) Any tenant who receives a written request for certification must respond within 14 business days with appropriate documentation. Where a victim fails to file a written certification that has been requested within 14 business days, PHAs, Section 8 owners, or management agents may grant extensions of the deadline on a case-by-case basis. PHAs, Section 8 owners, or management agents shall grant good cause exceptions liberally and take into account factors that may have contributed to the victim's inability to file in a timely manner, including limited English proficiency, cognitive limitations, need to address health or safety issues or the danger of further violence.

(c) PHAs, Section 8 owners, or management agents must accept the HUD-approved certification form, a police record, a court order, or a qualified third-party certification as sufficient proof of domestic violence, dating violence, or stalking to make the tenant eligible for protection under this subpart. Qualified third-party certification may consist of 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 domestic violence, dating violence, or stalking, or in addressing the effects of abuse, in which the professional attests under penalty of perjury under 28 U.S.C. 1746 to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence or stalking has signed or attested to the documentation. Victims shall not be

required to provide more than one form of certification. PHAs, Section 8 owners, or management agents may not dispute certification by a tenant, except as provided by law or in these regulations.

(d) PHAs, Section 8 owners, or management agents must follow any applicable protective or other court order(s).

(e) PHAs, Section 8 owners, management agents, and tenants must follow the following procedure in the event the validity of a victim's certification is challenged, or two members of the same household file contradictory certifications:

(1) Where only one tenant has submitted certification and an eviction or termination proceeding has been commenced by the PHA, Section 8 owner, or management agent, any question about the validity of the certification shall be submitted to the court that is adjudicating the eviction proceeding.

(2) Where certification has been submitted by two or more tenants in the same household, each claiming to be a victim of violence perpetrated by the other, the PHA, Section 8 owner, or management agent must defer to any court order regarding possession of the residence. Specifically, if there is an order of protection in force or a criminal or other court order that determines possession of the residence or makes a finding as to which party is the perpetrator, the PHA, Section 8 owner, or management agent must follow the terms of such order and abide by such determination.

(3) Where certifications have been submitted by two or more tenants in the same household, each claiming to be a victim of violence perpetrated by the other, and there is no court determination or order of protection in force, the PHA, Section 8 owner, or management agent must grant relief to both of the parties, including, if necessary, bifurcation of the lease and provision of a Section 8 voucher, or other relief as it deems necessary, until or unless there is a court decision regarding possession or there is a finding by a criminal or civil court that one party is the perpetrator of the violence.

(4) Where a tenant has been denied protection under this subpart, or there has been no response by the PHA, Section 8 owner, or management agent within a reasonable time, the tenant may file for an expedited grievance hearing with the PHA. Nothing shall preclude the tenant from using the certification form or other documentation in the expedited grievance hearing or other court proceedings. All hearing officers must receive training regarding domestic violence, dating violence, and stalking semi-annually and must have such training before hearing any cases. The PHA must coordinate such training with local or state domestic violence organizations.

(f) PHAs, Section 8 owners, or management agents must maintain the confidentiality of a tenant's status as a victim of domestic violence, dating

violence, or stalking. PHAs, Section 8 owners, or management agents must not disclose a victim's status by any means, unless such disclosure is requested in writing by the victim, ordered by the court in an eviction proceeding, or is otherwise required by law to be produced. PHAs must not include a tenant's victim status in general releases of information, and releases regarding victim status must be limited in time and purpose. PHAs shall not disclose victim status to prospective owners or management companies, nor shall the tenant's status as a victim of domestic violence, dating violence, or stalking in any way damage the rental history of the victim as maintained by the PHA, Section 8 owner, or management agent. Only PHA employees who need access to the information about domestic violence, dating violence, or stalking may access such information.

§ 5.2008 Notice.

(a) PHAs, Housing Choice Voucher Program landlords, and project-based Section 8 owners, or management agents must use a HUD-approved Notice or a substantially similar notice to inform tenants of their rights under VAWA. Pending approval of the Notice, PHAs, Section 8 owners, or management agents must provide tenants an alternative form of notification of rights under VAWA that includes the components described below. Information specific to PHA policy and referrals to local service providers may be added to the HUD-approved form and should be included in the local form. The notice shall also include information about relevant state laws if they provide relevant protections.

(1) The Notice must consist of a document outlining: tenants' rights under VAWA; the procedure for exercising those rights; and contact information for appropriate local domestic violence, legal, and social service providers.

(2) For applicants to and tenants of Public Housing or the Housing Choice Voucher Program, PHAs must provide the Notice to applicants for housing and tenants with all leases, denial letters, notices of proposed or actual eviction, notices of proposed or actual termination, and in connection with annual recertifications. Notice to tenants on VAWA provisions may be coordinated with other HUD-required notices. All leases must also contain information about VAWA. PHAs must take reasonable steps to ensure that the Notice is provided in a format that is understandable to the tenant, particularly with respect to individuals who have limited English proficiency or are disabled. At the initial lease signing and at each recertification meeting, the PHA must receive acknowledgment, in writing, of each adult tenant's receipt of the Notice. PHAs must post the Notice in the common space of public housing buildings.

(3) For project-Based Section 8, where the PHA administers the housing, the requirements of (2) shall apply. Where the PHA does not administer the housing, the administering entity is responsible for providing notice to all applicants and tenants with all leases, denial letters, eviction notices, notices of termination, and in connection with annual recertifications. Notice to tenants on

VAWA provisions may be coordinated with other HUD-required notices. The administering entity must take reasonable steps to ensure that the Notice is provided in a format that is understandable to the tenant, particularly with respect to individuals who have limited English proficiency or are disabled. At the initial lease signing and at each recertification meeting, the administering entity must receive acknowledgment, in writing, of each adult tenant's receipt of the Notice. PHAs must post the Notice in the common space of the project-based Section 8 building where such space exists.

(4) The PHA shall supply all landlords participating in the Housing Choice Voucher Program and all project-based Section 8 owners with which it has a contract with the notices on an annual basis. HUD shall supply all other project-based Section 8 owners with the notices on an annual basis.

(b) PHAs must include in the initial orientation to all tenants, as required under 24 C.F.R. § 982.301: a discussion of domestic violence, PHA policies in the event of the need to move or flee a household for safety reasons; PHA policies regarding family break-up; and PHA policies regarding tenants' rights not be subjected to discrimination on the basis of domestic violence, dating violence, or stalking.

(c) PHAs must provide landlords participating in the Housing Choice Voucher Program and landlords operating project-based Section 8 with notice of their obligations under VAWA in the Housing Assistance Program contract and as a separate notification. PHAs must provide notice by mail on an annual basis.

(d) PHAs, Section 8 owners, and management agents must give notice to all tenants of the applicable family break-up policy pursuant to Sec. 982.315 in the event of termination of a lease or voucher as the result of domestic violence, dating violence, or stalking.

(e) PHAs, Section 8 owners, and management agents must provide housing applicants and tenants with notice regarding the procedures for filing a complaint in the event that the applicant or tenant believes that she or he has not been afforded protections under VAWA.

§ 5.2009 Effect on other laws.

Nothing in this subpart shall be construed to supersede any provision of any federal, state, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

§ 5.2010 HUD Office of Fair Housing and Equal Opportunity Jurisdiction.

The HUD Office of Fair Housing and Equal Opportunity is authorized to receive complaints, to investigate, and to charge cases where rights under VAWA or this subpart have not been upheld by a PHA, Section 8 owner, or management agent. The Office of Fair Housing and Equal Opportunity shall determine the procedures

for these complaints. Notice of the procedures for filing a complaint in the event that the applicant or tenant believes that he or she has not been afforded protections under VAWA must be provided as set forth in § 5.2008. Nothing herein is intended to or shall deprive the courts from enforcing rights under VAWA.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

- 3. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

- 3A. Amend § 91.205 to revise the first sentence of paragraph (b)(1) to read as follows:

(b) * * *

(1) PHAs must include a statement regarding their plan to implement the VAWA housing provisions in their Annual Plan, Five-Year Plan, and Consolidated Plan. This statement should include current policies for implementing VAWA and a description of services offered to victims of domestic violence, dating violence, and stalking. Plans must include as attachments all notices, including, but not limited to, notices pursuant to § 5.2008, and other procedures and documents related to the PHA's implementation of VAWA.

(2) PHAs must hold public hearings on their plans, pursuant to Sec. 903.17, and must publish notice of any proposed plans, including the statement regarding implementation discussed in § 5.2008, for review no later than 45 days before the public hearing. Public hearings must be held for the Annual Plan, Five-Year Plan, and Consolidated Plan, as well as any significant policy developments relating to the implementation of VAWA. PHAs may obtain feedback during the formation of their plans from local stakeholders, including, but not limited to, community groups and organizations that work with victims of domestic violence, dating violence, stalking, or sexual assault should be invited to participate in the drafting of relevant policies. PHAs will provide copies of their plans to residents on request without cost.

(3) HUD will review for adequacy all Annual, Five-Year, and Consolidated Plans prepared by PHAs to ensure proper implementation of VAWA and consideration of the housing needs of child and adult victims of domestic violence, dating violence, and stalking. HUD will make all approved plans available through its website.

[REMAINDER OF TEXT AS IN INTERIM RULE]