



OFFICE OF HOUSING

Special Attention of:	Notice:	H 2017-05
Multifamily Regional Directors	Issued:	June 30, 2017
Multifamily Asset Management Division		
Directors	Expires:	This notice remains in effect until amended, revoked, or superseded.
Rural Services (RHS) Directors		
Performance Based Contract Administrators		
Multifamily Owners and Management Agents	Supersedes:	H 2010-23; H 2009-15

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**Subject: Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents**

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Appendix 1: Items to Consider When Developing VAWA Policies

## **I. Purpose**

This notice provides guidance to owners and management agents (O/As) of HUD multifamily assisted housing on the requirements of the Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, Final Rule, published in the Federal Register on November 16, 2016, (81 Fed. Reg. 80724 (November 16, 2016)) (VAWA Final Rule). This notice does not encompass every aspect of the VAWA Final Rule and should be used in conjunction with the VAWA Final Rule.

This notice supersedes Housing Notices H 2010-23 and H 2009-15.

## **II. Applicability**

This notice is applicable to all O/As participating in the following programs, as described in the November 16, 2016 Final Rule:

- Project-based Section 8 programs under the United States Housing Act of 1937 (42 U.S.C. 1437)
  - New Construction
  - State Agency Financed
  - Substantial Rehabilitation
  - Section 202/8
  - Rural Housing Services (RHS) Section 515/8
  - Loan Management Set-Aside (LMSA)
  - Property Disposition Set-Aside (PDSA)
- Section 202/162 Project Assistance Contract (PAC)
- Section 202 Project Rental Assistance Contract (PRAC)
- Section 202 Senior Preservation Rental Assistance Contracts (SPRAC)
- Section 811 PRAC
- Section 811 Project Rental Assistance (PRA)
- Section 236 (including RAP)
- Section 221(d)(3)/(d)(5) Below Market Interest Rate (BMIR)

## **III. Background**

On March 7, 2013, the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4) (VAWA 2013) was signed into law. VAWA 2013 implemented several key changes related to housing protections for victims of domestic violence, dating violence, sexual assault, or stalking. HUD published a notice in the Federal Register on August 6, 2013 describing HUD's programs. (See 78 FR 47717.) HUD also sought comments on certain provisions through the notice to aid in the development of regulations and program guidance.

On April 1, 2015, HUD published its proposed rule that provided amendments to HUD's existing regulations that HUD determined necessary to fully implement VAWA 2013. On November 16, 2016, HUD published its VAWA Final Rule implementing the requirements of VAWA 2013 through HUD regulations (81 FR 80724). Implementing regulations for Multifamily Housing programs can be found at Code of Federal Regulations (CFR) Part 5,

Subpart L, Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, as well as various subparts of 24 CFR parts 200, 247, 880, 882, 883, 884, 886, and 891.

Additional background information on VAWA may be found in Section I of the preamble to the VAWA Final Rule, which starts on page 80725 of the November 16, 2016, Federal Register publication.

#### **IV. Summary of Major Changes**

##### **A. Major changes for Multifamily Housing programs include:**

1. Specifies “sexual assault” as a crime covered by VAWA in HUD-covered programs. (See 24 CFR 5.2003.)
2. Clarifies that, consistent with HUD’s nondiscrimination and equal opportunity requirements, victims of domestic violence, dating violence, sexual assault, or stalking cannot be discriminated against on the basis of any protected class, and HUD programs must also be operated consistent with HUD’s Equal Access Rule, which requires that HUD-assisted and HUD-insured housing must be available to all otherwise eligible individuals and families without regard to actual or perceived sexual orientation, gender identity or marital status. (See 24 CFR 5.2001(a).)
3. Establishes new definitions (e.g., affiliated individual and sexual assault, and others) and revises previously defined terminology (e.g., bifurcate and stalking). (See 24 CFR 5.2003.)
4. Establishes new requirements for notification of occupancy rights under VAWA, and transmits a Notice of Occupancy Rights Under the Violence Against Women Act, form HUD-5380. (See 24 CFR 5.2005(a).)
5. Provides that applicants and tenants may not be denied assistance or have assistance terminated under a covered housing program on the basis of or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. (See 24 CFR 5.2005(b)(1).)
6. Establishes the requirements for creating an emergency transfer plan and for related record keeping and reporting, and provides both a model “Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking”, form HUD-5381, and an “Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking”, form HUD-5383. (See 24 CFR 5.2005(e).)
7. Revises requirements for documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking, and provides a new “Certification of

Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation”, form HUD-5382. (See 24 CFR 5.2007.)

8. Where the O/A exercises the option to bifurcate a lease and the evicted or terminated tenant was the recipient of assistance at the time of bifurcation, establishes a new requirement for reasonable time periods during which a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking may remain in the unit while establishing eligibility under the current housing program or under another covered housing program, or seeking alternate housing. (See 24 CFR 5.2009(b).)
9. Revises various Multifamily Housing regulations from the 2005 reauthorization of VAWA (VAWA 2005) to broadly state that VAWA protections apply, so that all applicants and tenants, and not only those determined to be victims of domestic violence, dating violence, sexual assault, or stalking receive statutorily required notification of their VAWA rights. (See 24 CFR parts 200, 247, 880, 882, 883, 884, 886, and 891.)
10. Clarifies that O/As may establish a preference for victims of dating violence, sexual assault, or stalking, in addition to domestic violence.

## V. Definitions

This Section includes definitions of terms most frequently referred to in this Notice that were included in the VAWA Final Rule. For the full list of terms defined in the VAWA Final Rule see 24 CFR 5.2003.

- A. *Actual and imminent threat* refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.
- B. *Affiliated individual*, with respect to an individual, means:
  1. A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual);  
or
  2. Any individual, tenant, or lawful occupant living in the household of that individual.
- C. *Bifurcate* means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the

unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

- D. *Covered housing provider* in the VAWA Final Rule refers to the individual or entity that operates a covered housing program, as defined by each program in its regulations, and that has responsibility for the administration and/or oversight of VAWA protections and includes sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, and nonprofit or for-profit organizations or entities. For the purposes of this Notice, *covered housing provider* will be referred to as O/A.

Note: Specific to the 811 PRA program, *covered housing provider* is the state housing agency, i.e., Grantee.

- E. *Dating violence* means violence committed by a person:
1. Who is or has been in a social relationship of a romantic or intimate nature with the victim, and
  2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - a. The length of the relationship;
    - b. The type of relationship, and
    - c. The frequency of interaction between the persons involved in the relationship.
- F. *Domestic violence* includes felony or misdemeanor crimes of violence committed by:
1. a current or former spouse or intimate partner of the victim;
  2. a person with whom the victim shares a child in common;
  3. a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
  4. a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
  5. 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.
- G. *Spouse or intimate partner of the victim* includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.
- H. *Sexual assault* means any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks capacity to consent.

- I. *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  1. Fear for the person's individual safety or the safety of others, or
  2. Suffer substantial emotional distress.

## **VI. Determining Who May Receive VAWA Protections**

### **A. Eligible Persons**

VAWA protections cover tenants and assisted families, as defined under applicable program regulations. VAWA protections also cover applicants when they are applying for admission to a covered housing program (e.g., Section 8 or PRAC).

VAWA protections are not limited to women. Victims of domestic violence, dating violence, sexual assault, or stalking are eligible for protections without regard to sex, gender identity, or sexual orientation. Victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD programs must also be operated consistently with HUD's Equal Access Rule, which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

An O/A may find instances of domestic violence, dating violence, sexual assault, or stalking against youth (those under the age of 18 years old) living in an assisted household for which the family may need to exercise VAWA protections to protect the youth victim. O/As should exercise the same documentation and confidentiality procedures in assisting a family in this situation.

Note: Un-emancipated minors would not be eligible to sign leases under HUD programs. Housing providers may consider contacting child welfare or child protective services, or law enforcement, when a minor claims to be a victim of domestic violence, dating violence, sexual assault, or stalking.

### **B. Ineligible Persons**

Guests, unassisted members, and live-in aides of a household are ineligible for VAWA protections that are available only to tenants.

As a reasonable accommodation, a tenant can request VAWA protections based on the grounds that a live-in aid is a victim of domestic violence, dating violence, sexual assault, or stalking. In addition, other reasonable accommodations may be needed on a case-by-case basis. If qualified, the tenant may request an emergency transfer for the entire household including the live-in aide.

In cases where a guest or unassisted member is a victim of domestic violence, dating violence, sexual assault, or stalking, a tenant cannot be evicted or have assistance terminated based on the domestic violence, dating violence, sexual assault, or stalking of the guest or

unassisted member.

Unassisted members who are also on the lease may qualify by way of the lease for VAWA protections at 24 CFR 5.2005(c).

## **VII. Determining Eligibility for VAWA Protections**

- A. Determining VAWA protections, including whether an adverse factor is a “Direct Result” of domestic violence, dating violence, sexual assault, or stalking.

The VAWA Final Rule provides that an applicant for assistance or tenant receiving assistance under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy. (See 24 CFR 5.2005(b)(1).)

This provision prohibits O/As from denying admission to, denying assistance under, terminating participation in, or evicting a tenant based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

For the programs covered by this Notice, an adverse factor refers to any factor that can be used as a basis for denying admission or assistance, terminating assistance or participation in a program, or evicting a tenant. However, if a denial or termination of assistance or eviction is required by a federal statute, based on a particular adverse factor, the O/A must comply with that statute, even if the adverse factor is a direct result of domestic violence, dating violence, sexual assault, or stalking. For example, if an applicant is subject to a lifetime registration requirement under a State sex offender registration program, the O/A must comply with section 578 of the Quality Housing and Work Responsibility Act of 1998 and deny the applicant admission, even if the sex offense(s) was (or were) a direct result of the fact that the applicant was a victim of domestic violence, dating violence, sexual assault, or stalking.

- B. Examples of When Adverse Factors Might Be a Direct Result of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking

This section provides examples to give O/As a sense of the various instances in which an adverse factor may be a direct result of domestic violence, dating violence, sexual assault, or stalking.

On the surface, adverse factors may appear unrelated to domestic violence, dating violence, sexual assault, or stalking and may present legitimate reasons for denial, termination, or eviction. However, the presence of an adverse factor may be due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking. An adverse factor may be present during much of an abusive relationship, or it may present itself only when a victim is attempting to leave, or has left, the abusive relationship. The following

examples are provided to give O/As a sense of the many instances in which adverse factors might be the “direct result” of domestic violence, dating violence, sexual assault, or stalking. Note, however, that this list is neither exhaustive nor definitive.

1. Poor credit history. Depending on the circumstances, poor credit history may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when the domestic violence, dating violence, sexual assault, or stalking results in, for example-
  - a. Forcing a victim to obtain credit, including credit cards for the perpetrator’s use;
  - b. Using a victim’s credit or debit card without permission, or forcing him or her to do so;
  - c. Selling victims’ personally identifiable information to identity thieves;
  - d. Running up debt on joint accounts;
  - e. Obtaining loans/mortgages in a victim’s name;
  - f. Preventing a victim from obtaining and/or maintaining employment;
  - g. Sabotaging work or employment opportunities by stalking or harassing a victim at the workplace, or causing a victim to lose his or her job by physically battering the victim prior to important meetings or interviews;
  - h. Placing utilities or other bills in a victim’s name and then refusing to pay;
  - i. Forcing a victim to work without pay in a family business, or forcing him or her to turn the earnings over to the abuser;
  - j. Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking;
  - k. Job loss or lost wages due to missed work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime, and
  - l. Hospitalization and medical bills the victim cannot pay or cannot pay along with other bills.
2. Poor rental history. Depending on the circumstances, poor rental history may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when the domestic violence, dating violence, sexual assault, or stalking results in, for example-
  - a. Property damage;
  - b. Noise complaints;
  - c. Harassment;
  - d. Trespassing;



- e. Threats;
  - f. Criminal activity;
  - g. Missed or late utility payments(s);
  - h. Missed or late rental payment(s);
  - i. Writing bad checks to the landlord, and
  - j. Early lease termination and/or short lease terms.
3. Criminal record. Depending on the circumstances, a criminal record may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when the domestic violence, dating violence, sexual assault, or stalking results in, for example-
- a. Forcing a victim to write bad checks, misuse credit, or file fraudulent tax returns;
  - b. Property damage;
  - c. Theft;
  - d. Disorderly conduct;
  - e. Threats;
  - f. Trespassing;
  - g. Noise complaints;
  - h. Family disturbance/trouble;
  - i. 911 abuse;
  - j. Public drunkenness;
  - k. Drug activity (drug use and the selling of drugs);
  - l. Crimes related to sex work;
  - m. Failure to protect a child from a batterer's violence and/or abuse;
  - n. Crimes committed by a victim to defend him or herself or in defense of a third party from domestic violence, dating violence, sexual assault, or stalking, and
  - o. Human trafficking.
4. Failure to pay rent. Depending on the circumstances, temporary failure to pay rent may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when domestic violence, dating violence, sexual assault, or stalking results in, for example-
- a. The victim's injury or temporary incapacitation;

- b. The arrest of the only wage-earning member of the household;
- c. Preventing the victim from obtaining and/or maintaining employment;
- d. Sabotaging work or employment opportunities by stalking or harassing the victim at the workplace;
- e. Causing the victim to lose the victim's job by physically battering prior to important meetings or interviews;
- f. Placing utilities or other bills in the victim's name and then refusing to pay;
- g. Forcing the victim to turn his or her earnings over to the abuser;
- h. Forcing the victim to work without pay in a family business, Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking;
- i. Losing wages or a job due to missing work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime, and
- j. Inability to pay bills after significant medical expenses resulting from the victim's hospitalization.

C. Determining When Adverse Factors Are a Direct Result of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

This section provides a framework for determining whether an adverse factor is a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

1. To trigger the direct result analysis, it is the responsibility of the applicant or tenant to:
  - a. Inform the O/A that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking, and
  - b. Provide enough information for the O/A to make a determination regarding the adverse factor he or she is claiming was a direct result of domestic violence, dating violence, sexual assault, or stalking.
2. After the O/A receives this information, the O/A should consider the individual's statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking.
3. If further information is necessary for this determination, the O/A may request additional supporting documentation from the applicant or tenant. However, any request for additional documentation must:

- a. Be in accordance with the O/As' policies or practices;
  - b. Not require evidence of domestic violence, dating violence, sexual assault, or stalking other than as specified in 24 CFR 5.2007 (see Section VIII of this Notice), and
  - c. Not violate the VAWA Final Rule's confidentiality requirements or any other laws.
4. If the O/A believes any information is not clear, it should speak to the victim and try to clarify the information. After the O/A has received the information from the applicant or tenant and, if necessary, clarified this information with the applicant or tenant, the O/A must make an objectively reasonable determination, based on all the circumstances, whether the adverse factor is a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

**Note:** Where an applicant or tenant fails to request VAWA protections, the O/A is not independently required to identify whether adverse factors are the direct result of domestic violence, dating violence, sexual assault, or stalking. O/As may seek training, where available, from a trained third-party (such as an expert victim service provider) on reviewing VAWA documentation. Any communications with a third party must be done consistent with the VAWA rule's confidentiality requirements.

#### D. Notification and Other Considerations

This Section discusses the need for notifying an individual and other considerations when the O/A determines that the denial, termination, or eviction of an applicant or tenant is not based on, or is not the "direct result" of that applicant or tenant being a victim of domestic violence, dating violence, sexual assault, or stalking.

O/As must notify the applicant or tenant if the O/A finds that the denial, termination, or eviction is not based on (or is not a "direct result" of) being a victim of domestic violence, dating violence, sexual assault, or stalking, and the applicant or tenant is thus denied admission to or assistance under, terminated from participation in, or evicted from the housing<sup>1</sup> (See 24 CFR 5.2005(b)(1).) O/As must follow the notification requirements at 24 CFR 245.15.

An applicant or tenant who disagrees with an O/A's determination must use the program's appeal procedures (pursuant to HUD Handbook 4350.3, REV-1, Chapter 8, Section 3) or else he or she may contact the local HUD field office.

In the case of a termination or eviction, O/As must comply with the prohibition in section 5.2005(d)(2), which provides that "...the O/A must not subject the tenant, who is or has

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<sup>1</sup> HUD will propose such additions when next updating HUD Handbook 4350.3 REV-1, CHG-4, "Occupancy Requirements of Subsidized Multifamily Housing Programs". Public comment will be solicited during the update process.

been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance”.

This means that even if the direct result prohibition does not apply, the O/A cannot use that violation to terminate or evict a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, if the O/A does not ordinarily terminate or evict tenants for that violation.

## **VIII. Certification and Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

### **A. Certification of domestic violence, dating violence, sexual assault, or stalking**

VAWA 2013 required that HUD create a certification form that serves as a means of documenting the incident or incidents of domestic violence, dating violence, sexual assault, or stalking. (See 24 CFR 5.2005(a).) The VAWA Final Rule transmitted this certification form, “Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation”, form HUD-5382. The O/A must attach form HUD-5382 to the VAWA “Notice of Occupancy Rights”, form HUD-5380, as described in Section X of this notice.

Form HUD-5382 supersedes the Multifamily Housing VAWA certification form, HUD-91066, which is now obsolete.

O/As may accept this form and must make it publicly available and provide it upon request. Elements of the form are as follows:

1. Provides that VAWA 2013 protects applicants and tenants from being denied admission, denied assistance, terminated from participation, or evicted from housing based on an act of domestic violence, dating violence, sexual assault, or stalking;
2. Serves as an optional way for victims to comply with a written request for documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking for persons seeking VAWA protections;
3. Provides that the victim or someone on the victim’s behalf may complete the form;
4. Provides a list of acceptable forms of third-party documentation to satisfy a request for documentation, (See Section B below regarding requests for documentation);
5. Explains the time for responding to a written request for documentation;
6. Describes the confidentiality protections under VAWA;
7. Requires that the victim or someone filling out the form on the victim’s behalf must answer 10 numbered questions and provide a brief description of the incident(s);

8. Clarifies that the name of the accused perpetrator does not have to be provided if it is unknown to the victim or it cannot be provided safely;
9. Clarifies that the date and time of incident should be completed only if known by the victim, and
10. Requires the victim or someone filling out the form on the victim's behalf, to certify to the truth and accuracy of the information being provided, and explains that false information could be the basis for denial of admission, termination of assistance, or eviction.

When practicable, an O/A should advise applicants and tenants that, if it receives a certification form submitted on their behalf, the submission will take the place of the applicants or tenants submitting their own statements. Thus, applicants and tenants should ensure, to the extent possible, that the information provided by a third party is accurate and comprehensive.

The certification form HUD-5382, as required by 24 CFR 5.2005(a)(1)(ii), must be made available by the O/A in multiple languages, consistent with HUD's LEP Guidance. (See 24 CFR 5.2005(a)(3).) In addition, consistent with civil rights requirements, when obtaining information through the form, O/As must take appropriate steps to ensure effective communication with applicants and tenants with disabilities using appropriate auxiliary aids and services, such as large print or Braille documents, readers, interpreters, and accessible electronic documents. O/As must provide reasonable accommodations when necessary to allow applicants and tenants with disabilities to equally benefit from VAWA protections, such as by providing individualized assistance in completing forms.

B. Documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking

The VAWA Final Rule clarified several aspects of VAWA's certification or documentation process. (See 24 CFR 5.2007.) The information below discusses some of the clarifying changes made in the VAWA Final Rule, and provides additional guidance on the processing of this documentation.

1. Acceptance of Verbal Statement

The VAWA Final Rule clarifies that O/As are not required to ask for documentation when an individual presents a claim for VAWA protections; the O/A may instead choose to provide benefits to an applicant or tenant based solely on the individual's verbal statement or other corroborating evidence. HUD recommends that O/As develop written policies for how and under what circumstances a verbal statement will be accepted (e.g., the O/A was aware of the abuse and encouraged the victim to request VAWA protections).<sup>2</sup> It is recommended that in cases where an O/A decides

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<sup>2</sup> Public comment will be solicited during the update process.

to rely on such information, that the O/A documents, in a confidential manner, the individual's verbal statement or other corroborating evidence in the tenant's file.<sup>3</sup>

## 2. Requesting Documentation

If the O/A chooses to request that an applicant or tenant documents his or her claim of domestic violence, dating violence, sexual assault, or stalking, the O/A must make such request in writing. Simply providing the victim the certification form HUD-5382 does not constitute a written request for documentation, unless the certification form HUD-5382 is accompanied by a dated letter requesting documentation. (See 24 CFR 5.2007(a)(1).)

An applicant or tenant may satisfy this request by providing any one of the following documents as described under 24 CFR 5.2007(b)(1):

- a. Form HUD-5382; or
- b. A document:
  - 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, "professional") from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;
  - 2) Signed by the applicant or tenant; and
  - 3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under the VAWA Final Rule, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or
- c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency (for example, a police report); or
- d. At the discretion of an O/A, a statement or other evidence provided by the applicant or tenant.

An O/A must accept any of the above items (a - c), as provided under 24 CFR 5.2007. For example, form HUD-5382 must be accepted in lieu of any of the third-party documents outlined above (b or c), if the applicant or tenant chooses to self-certify to satisfy the O/A's request for documentation and the submitted documentation does not contain conflicting information. The O/A also has discretion to accept a statement or other evidence (d). O/As are encouraged to develop written policies as to whether they

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<sup>3</sup> Public comment will be solicited during the update process.

will exercise discretion as provided for under (d). The policies should indicate whether a statement or other evidence will be accepted. If other evidence will be accepted, HUD recommends that the O/A's policies define "acceptable evidence."<sup>4</sup>

The O/A is prohibited from requiring third-party documentation of victim status, except as outlined in Section VIII.E of this Notice.

Given the possible consequences to both the victim and the alleged perpetrator of domestic violence, dating violence, sexual assault, or stalking, it is important that any allegations made by one individual against another are made with the understanding that there are consequences if the allegations are false. In this regard, form HUD-5382 advises that the submission of false information may be a basis for denial of admission, termination of assistance, or eviction.

### C. Time to Submit Documentation

The O/A may require submission of documentation within 14 business days after the date that the individual received the written request for documentation. (See 24 CFR 5.2007(a)(2).) However, the O/A may extend this period at its discretion. During the 14-business day period and any granted extensions of that time, no adverse actions, such as eviction or termination, can be taken against the individual requesting VAWA protection. For example, O/As must not schedule an eviction to take place during this time frame.

In determining whether to extend the 14-business day period, O/As are encouraged to consider factors that may contribute to the victim's inability to provide the documentation in a timely manner. These factors may include, but are not limited to: cognitive limitations, disabilities, limited English proficiency, absence from the unit due to hospitalization or time in an emergency shelter, administrative delays in obtaining police or court records, the danger of further violence, and the victim's need to address health or safety issues. O/As must also grant reasonable accommodations for persons with disabilities. Note that because of these factors, the O/A might not be contacted by the victim with a request to extend the 14-business day period until after the 14-day period has passed.

### D. Acknowledging Receipt of Documentation; Failure to Provide Documentation in a Timely Manner

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the O/A is encouraged to acknowledge receipt of the documentation in a timely manner.<sup>5</sup>

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<sup>4</sup> HUD will propose such additions when next updating HUD Handbook 4350.3 REV-1, CHG-4, "Occupancy Requirements of Subsidized Multifamily Housing Programs". Public comment will be solicited during the update process.

<sup>5</sup> HUD will propose such additions when next updating HUD Handbook 4350.3 REV-1, CHG-4, "Occupancy Requirements of Subsidized Multifamily Housing Programs". Public comment will be

If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation, or within the designated extension period, nothing in the VAWA Final Rule may be construed to limit the authority of the O/A to:

1. Deny admission by the applicant or tenant to the housing or program;
2. Deny assistance under the covered housing program to the applicant or tenant;
3. Terminate the participation of the tenant in the covered housing program, or
4. Evict the tenant, or a lawful occupant that commits a violation of a lease.

An applicant's or tenant's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings. If the O/A denies VAWA protections, it must still follow established appeal procedures, as set forth in HUD Handbook 4350.3, REV-1, Chapter 8, Section 3.

#### E. Requests for Third-Party Documentation of Victim Status

##### 1. Victim Status

When an applicant or tenant requests protection under VAWA, the VAWA Final Rule allows, but does not require, the O/A to require the applicant or tenant to submit documentation of victim status, i.e., documentation showing the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault or stalking. However, the VAWA Final Rule prohibits an O/A from requiring the victim to provide third-party documentation of victim status, unless:

- a. More than one applicant or tenant provides documentation to show he or she is a victim of domestic violence, dating violence, sexual assault, or stalking, and the information in one person's documentation conflicts with the information in another person's documentation, or
- b. Submitted documentation contains information that conflicts with existing information already available to the O/A.

##### 2. Documentation

In the case of 1a or 1b above, the regulations at 24 CFR 5.2007(b)(2) allow an O/A to require the applicants or tenants to submit third-party documentation that meets the criteria in 24 CFR 5.2007(b)(1)(ii), (b)(1)(iii), or (b)(1)(iv). Per these criteria,

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solicited during the update process.



applicants or tenants may submit any of the following to meet the third-party documentation request:

- a. A document:
  - 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;
  - 2) Signed by the applicant or tenant; and
  - 3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under the VAWA Final Rule, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or
- b. A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency (for example, a police report) that documents the incident of domestic violence, dating violence, sexual assault, or stalking, or
- c. At the discretion of the O/A, a statement or other evidence provided by the applicant or tenant.

### 3. Timeframe to Respond

- a. Applicants or tenants must be given 30 calendar days from the date of the request to provide such documentation. If an applicant or tenant responds with third-party documentation that meets the criteria in 2a, 2b, or 2c, above, and supports the applicant’s or tenant’s VAWA request, the O/A is prohibited from requiring further documentation of the applicant’s or tenant’s status as a victim of domestic violence, dating violence, sexual assault, or stalking.
- b. If an applicant or tenant does not submit any third-party documentation within the required time or submits documentation that does not meet the criteria in 2a, 2b, or 2c, above, the O/A may, but is not required to, accept that applicant or tenant’s assertion (form HUD-5382 or verbal statement) of victim status for the VAWA protections.

### 4. Contact Information of Service Providers and Legal Aid

When requesting third-party documentation, the O/A is encouraged to include contact information for local domestic violence agencies so that the applicants or tenants can seek services and plan for their safety. The O/A may also provide the applicants or tenants with contact information for local legal aid offices, which may be able to

assist in providing appropriate referrals, obtaining restraining orders, and preparing for grievance hearings.<sup>6</sup>

#### 5. Denying VAWA Protections and Other Factors to Consider

If the O/A requests, but does not receive, third-party documentation, the O/A has the option to deny VAWA protections and must notify the applicant or tenant. If this results in one of the tenants being terminated from assistance, the O/A must hold a separate hearing for that tenant, pursuant to HUD Handbook 4350.3, REV-1, Chapter 8, Section 3.

Alternatively, the O/A may develop or follow an existing family break-up policy that may provide assistance to both persons seeking VAWA protections.

If the documentation requirements are satisfied, the question of victim status is resolved, and the O/A may not require further evidence or question whether the person satisfies the requirements for VAWA protections.

Note 1: Perpetrators sometimes obtain temporary restraining orders or file police reports against victims as a form of retaliation. Further, many victims are unable to timely access the courts or law enforcement due to language barriers, disabilities, cultural norms, or fear for their safety. As a result, the fact that only one party submitted third-party documentation is not always a reliable indicator of domestic violence, dating violence, sexual assault, or stalking. A family break-up policy allowing assistance to be provided to both parties may alleviate a negative impact, such as loss of housing assistance.

Note 2: In the case of conflicting documentation between two tenants, if one tenant submits a court order addressing rights of access or control of the property (such as a protection order granting the victim exclusive possession of the unit), the O/A must honor this court order.

Example: A two-person household (Joan and John) was notified by an O/A that they were being evicted from their unit due to a history of neighbors having to call the police for loud disturbances coming from their unit in violation of the noise provision in their lease. Both Joan and John provide certifications to the O/A that both she and he are victims of domestic violence and the disturbances arose from the partner's abuse. The O/A has a policy of requesting third party documentation when there are conflicting certifications, so the O/A requests third party documentation individually from both members of the household.

Within 30 calendar days, the O/A receives third-party documentation from Joan with sufficient information for the O/A to determine that the disturbances and police calls

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<sup>6</sup> HUD will propose such additions when next updating HUD Handbook 4350.3 REV-1, CHG-4, "Occupancy Requirements of Subsidized Multifamily Housing Programs". Public comment will be solicited during the update process.

were a direct result of Joan being a victim of domestic violence. The O/A then treats Joan as a victim of domestic violence for purpose of VAWA and notifies John that the O/A will deny VAWA protections to him. The O/A will include in that notification a date for an eviction appeal hearing, pursuant to HUD Handbook 4350.3, REV-1, Chapter 8, Section 3.

Note: If Joan does not provide third-party documentation and the O/A, after good faith communication to obtain documentation, has found that Joan does not qualify for VAWA protections, the O/A must notify Joan that she does not qualify and the O/A may proceed with the eviction action against the entire household.

#### F. Documentation Conflicts with O/A Information

An applicant or tenant may satisfy a request for victim status documentation by submitting any document that meets the criteria under 24 CFR 5.2007(b)(1). The O/A must accept the submitted documentation and is prohibited from seeking additional documentation of victim status, unless the submitted documentation does not meet the criteria in the VAWA Final Rule or the submitted documentation contains conflicting information, including conflicting claims between two parties, as described above.

O/As are prohibited from conducting further fact finding in or to verify the “validity” of an applicant’s or tenant’s victim status. For example, O/As are prohibited from conducting interviews with neighbors or employers to determine if the applicant or tenant is an actual victim of domestic violence, dating violence, sexual assault, or stalking. Doing so would be in violation of the documentation requirements of the VAWA Final Rule and may result in a violation of the victim confidentiality requirements of the VAWA Final Rule.

However, if the O/A already has, or regularly receives, reliable information that conflicts with the submitted documentation, the O/A may require third-party documentation of victim status, based on information outside of the submitted documentation. Examples of reliable information include surveillance footage, police report(s), and other verifiable information. This information must not be collected for the purposes of discrediting claims for VAWA protections, but may be collected for other legitimate reasons, such as addressing safety in the community. If the applicant or tenant subsequently does not submit third-party documentation, or only submits third-party documentation that contains conflicting information that is material to a victim status determination, the O/A has the option to deny VAWA protections and must notify the applicant or tenant.

Note: Only consequential, conflicting information bearing on whether or not an individual is or is not a victim should form the basis for denying VAWA protections.

Given the possible consequences to both the victim and the alleged perpetrator of domestic violence, dating violence, sexual assault, or stalking, it is important that any

allegations made by one individual against another are made with the understanding that there are consequences if the allegations are false. In this regard, certification form HUD-5382 advises that the submission of false information may be a basis for denial of admission, termination of assistance, or eviction.

## **IX. VAWA Lease Addendum**

The VAWA Final Rule requires that a description of specific protections afforded to victims of domestic violence, dating violence, sexual assault, or stalking be included in the tenant lease. (See 24 CFR 5.2005(a)(4).) The Office of Multifamily Housing will soon issue an updated form HUD-91067, “VAWA Lease Addendum”, which will include the additional provisions required in the final rule. All O/As must use this updated form when providing or modifying a lease.

For reference, O/As should refer to 24 CFR Part 5, subpart L, and the applicable program regulations for required elements of the lease addendum. The updated lease provisions in HUD-91067 will include updates regarding:

1. Definitions (24 CFR 5.2003);
2. VAWA protections (24 CFR 5.2005);
3. Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2007), and
4. Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking as applicable to the multifamily housing program, including emergency transfers (24 CFR 5.2009).

O/As must provide a new VAWA Lease addendum (when the revised form HUD-91067 is issued) to all current households. This may be done at each household’s next Annual Recertification (AR) or at another timely opportunity. All subsequent new move-ins must also receive the updated VAWA lease addendum.<sup>7</sup>

O/As are encouraged to include in their house rules any additional protections made available to victims of domestic violence, dating violence, sexual assault, or stalking.<sup>8</sup>

## **X. Notice of Occupancy Rights, form HUD-5380**

The VAWA Final Rule revises the requirements for notice of VAWA rights at 24 CFR 5.2005(a). VAWA 2013 requires that HUD create a notice of VAWA rights “Notice of Occupancy Rights”, form HUD-5380. The form is available in [Hudclips](#).

O/As must issue the VAWA Notice of Occupancy Rights without changes to the core protections and confidentiality rights in the Notice. However, O/As must customize the

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<sup>7</sup> These provisions will be included in the forthcoming Paperwork Reduction Act renewal package for 2502-0204.

<sup>8</sup> HUD will propose such additions when next updating HUD Handbook 4350.3 REV-1, CHG-4, “Occupancy Requirements of Subsidized Multifamily Housing Programs”. Public comment will be solicited during the update process.

Notice to reflect the specific assistance provided under the covered housing program and specify the program operations that may pertain to or affect the VAWA Notice of Occupancy Rights. For example, O/As must add to the VAWA Notice of Occupancy Rights information that identifies the covered housing program (e.g., Section 8 or PRAC), the company/organization or property name, and any additional information and terminology that is used in the pertinent program and makes the VAWA Notice of Occupancy Rights more meaningful to applicants or tenants. (For example, O/As may want to use the term “apartment” or “housing” in lieu of “unit”.) This may include additional language, so long as the language does not make changes to the core protections and confidentiality rights as noted above. For example, the additional language cannot add additional requirements to receive VAWA protections, but additional language may be provided to better explain VAWA.

The VAWA Final Rule does not establish all-inclusive requirements for how a victim of domestic violence, dating violence, sexual assault, or stalking requests VAWA protections from an O/A. As such, O/As must follow/include the requirements outlined in the VAWA Final Rule when establishing their own policies.

The VAWA Notice of Occupancy Rights, along with the attached certification form HUD-5382, must be provided to existing households, applicants, and new move-ins/initial certifications no later than each of the following times:

1. For applicants -
  - a. At the time the household is provided assistance or admission (i.e., at move-in (MI) or initial certification (IC)), and
  - b. At the time the applicant is denied assistance or admission.
2. For existing households -
  - a. Through December 15, 2017, at each household’s annual recertification (AR), and
  - b. With any notification of eviction or termination of assistance, (but not with subsequent eviction or termination notices sent for the same infraction).

If households have already had their AR for 2017 and they were not provided with the forms, the O/A must provide the forms to those households through other means by 12/15/2017. A note or documentation must be made in those tenant files indicating when the forms were provided to the household.

The VAWA Final Rule does not require an applicant/household to sign acknowledgement of receipt of the Notice of Occupancy Rights and certification form. Nonetheless, it is strongly recommended that O/As maintain a note or other documentation in each tenant’s file that indicates when each applicant or household was provided the forms at each of the times listed in 1a, 1b, 2a, and 2b above.

O/As are encouraged to provide the VAWA Notice of Occupancy Rights and certification form to households and tenants at any additional times determined to be helpful in informing tenants of their rights under VAWA. HUD also encourages O/As to post the VAWA Notice of Occupancy Rights and certification form on their websites and in public areas such as waiting rooms, community bulletin boards, and lobbies, where all tenants may view them. This will be particularly helpful for households whose next AR is many months away.<sup>9</sup>

Note: Even if the VAWA Notice of Occupancy Rights (form HUD-5380) and certification form (form HUD-5382) are provided in other ways, O/As still must provide the VAWA Notice of Occupancy Rights and certification form at each household's AR through December 15, 2017. After that date, HUD assumes all current households will have received the forms and the VAWA rule does not require O/As to provide the notice and certification form at future ARs.

The VAWA Notice of Occupancy Rights must be made available in multiple languages, consistent with guidance issued by HUD in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency, signed August 11, 2000, and published in the Federal Register on August 16, 2000 (at 65 FR 50121) (HUD's LEP Guidance) (24 CFR 5.2005(a)(3))).

## **XI. Victim Confidentiality**

### **A. Introduction**

Given the significant safety issues faced by victims of domestic violence, dating violence, sexual assault, or stalking, it is critical that O/As establish or update existing policies to maintain the confidentiality and privacy of victims who seek protections under the VAWA Final Rule.

The VAWA Final Rule clarified that any information submitted to an O/A under 24 CFR 5.2007, including the fact that an applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in confidence by the O/A. (See 24 CFR 5.2007(c).)

1. Employees of the O/A (or those who administer assistance on their behalf, e.g., contractors) must not have access to the information unless explicitly authorized by the O/A for reasons that specifically call for these individuals to have access to such information under applicable Federal, State, or local law (e.g., the information is needed by a O/A employee to provide the VAWA protections to the victim), and
2. The O/A must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:

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<sup>9</sup> HUD will propose such additions when next updating HUD Handbook 4350.3 REV-1, CHG-4, "Occupancy Requirements of Subsidized Multifamily Housing Programs". Public comment will be solicited during the update process.

- a. Requested or consented to in writing by the victim in a time-limited release;
- b. Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program, or
- c. Otherwise required by applicable law.

The prohibition against entering this information into any shared database does not preclude an O/A from entering this information into a database system used by the O/A that meets all requirements for securing sensitive personally identifiable information (PII), including the Privacy Act of 1974 (5 U.S.C. § 552a), in addition to the protections listed above and provided at 24 CFR 5.2007(c).

## B. Communicating with the Victim

When communicating with an applicant or tenant who has requested VAWA protections, O/As must take precautions to avoid inadvertent disclosure of confidential information to another individual or entity in violation of 24 CFR 5.2007(c). Unless given permission from the victim to do so, the O/A must not leave messages that contain confidential information or refer to VAWA, the VAWA protections, or the incident of domestic violence, dating violence, sexual assault, or stalking (e.g., asking the victim to come to the management office to pick up form HUD-5382) on the victim's voicemail system or with other individuals, including members of the victim's household. Leaving a voicemail requesting that the victim contact the O/A without referencing VAWA, VAWA protections, or the incident of domestic violence, dating violence, sexual assault, or stalking, is permissible. Best practices demonstrate that O/As should not send mail regarding the incident of domestic violence, dating violence, sexual assault, or stalking (e.g., a written request to complete form HUD-5382 or a written extension of the 14-business day timeframe to respond to the O/A's request for documentation) to the victim's address, if the perpetrator may have access to the victim's mail (e.g. the perpetrator is the co-head of household or the perpetrator is employed at the victim's residence).

The VAWA Final Rule is silent on how an O/A is to balance the confidentiality requirement at 24 CFR 5.2007(c) with the requirement at 24 CFR 5.2007(a) when requesting documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking in writing. O/As may determine the procedures for requesting documentation in writing on a case-by-case basis, or adopt general policy guidelines for how to handle these requests. For example, policies should state whether the applicant or tenant requesting VAWA protections is required to come to an office or other space that may be safe for the individual to receive the written request and that reasonable accommodations will be made as necessary.<sup>10</sup>

If the victim gives the O/A permission to contact him or her about the incident of domestic

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<sup>10</sup> HUD will propose such additions when next updating HUD Handbook 4350.3 REV-1, CHG-4, "Occupancy Requirements of Subsidized Multifamily Housing Programs". Public comment will be solicited during the update process.

violence, dating violence, sexual assault, or stalking via mail, voicemail system, electronic mail, or other method approved by the victim, best practice would be to ensure this permission is in writing. If it is not feasible for the victim to provide the permission in writing, the O/A may make a note in the tenant's file about which forms of communication with the victim have been approved by the victim. The written permission or notation must be kept confidential.

When discussing these matters directly with the victim, O/As must take reasonable precautions to ensure that no one can overhear the conversation. For example, property management employees are encouraged to make the documentation request in a private room, not in an open space at the property. O/As may require that the victim come into the management office to pick up the certification form and are encouraged to work with victims to make delivery arrangements that do not place them at risk.<sup>11</sup>

The O/A must comply with all nondiscrimination and civil rights statutes and requirements in implementing its policies. This includes, for example, providing reasonable accommodations to permit applicants or tenants to follow or access any rules, policies, practices, or services. An example is modifying a policy requiring that the victim come into the office to pick up the certification form and instead deliver the form to the victim. This also includes ensuring effective communication with persons with disabilities, e.g., providing sign language interpreters for persons who are deaf, accessible documents and assistance filling out forms for persons who are blind or have low vision, and language assistance for persons with limited English proficiency.

O/As may suggest, but cannot require, that the victim designate an attorney, advocate, or other secure contact for communications regarding the request of VAWA protections. This may reduce the O/A's burden in ensuring confidentiality in communications with the victim.

### C. Best Practices to Collect Information and Avoid Unintentional Disclosure

The following best practices are designed to address the challenges of collecting information from and communicating with a victim of domestic violence, dating violence, sexual assault, or stalking while meeting the confidentiality requirements in the rule.

1. Conduct the intake session in a private room, where the individual and staff person can talk without the risk of other staff or clients overhearing;
2. Explain the O/A's information sharing policies;
3. Communicate to the individual which property management staff person is responsible for handling questions or complaints about confidentiality;
4. Provide adequate time for the individual to review and sign forms;

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<sup>11</sup> HUD will propose such additions when next updating HUD Handbook 4350.3 REV-1, CHG-4, "Occupancy Requirements of Subsidized Multifamily Housing Programs". Public comment will be solicited during the update process.



5. Post confidentiality notices in the management office and around the property;
6. Ensure relevant staff understand confidentiality policies and procedures through regular staff training;
7. Post notices about the importance of maintaining confidentiality throughout the office;
8. Direct staff to respond to third-party inquiries only after verifying that written client consent has been obtained;
9. Clarify information sharing policies with referring/referral agencies and other service and business partners;
10. Maintain distinct phone lines for certain purposes;
11. Avoid using language referencing domestic violence or sexual assault in agency names, program names, organization names, and staff titles;
12. Use a post office (PO) box to receive written correspondence;
13. Serve individuals off-site as needed or when appropriate;
14. Provide interpretation and/or documents translated into the appropriate language when necessary, and
15. Provide accessible documents or assistance filling out forms for individuals with disabilities.

## **XII. Emergency Transfers**

### **A. Emergency Transfer Plan**

1. The VAWA Final Rule requires O/As to adopt an Emergency Transfer Plan, based on HUD's model Emergency Transfer Plan (form HUD-5381). The model Emergency Transfer Plan is available in [Hudclips](#). (See 24 CFR 5.2005(e).)

Note: Specific to the 811 PRA program, the state housing agency, or Grantee, will adopt the Emergency Transfer Plan.

2. O/As must adopt an Emergency Transfer Plan no later than June 14, 2017. Note: For Management and Occupancy Reviews (MORs) conducted after the publication of this Notice through December 13, 2017, reviewers should issue a Recommendation, rather than a Finding, for non-compliance relating to the Emergency Transfer Plan. For MORs conducted after December 14, 2017, a Finding should be issued for non-compliance relating to the Emergency Transfer Plan.
3. The Emergency Transfer Plan must:
  - a. Define tenants eligible for an emergency transfer;

- b. List documentation needed to request an emergency transfer;
  - c. Outline confidentiality protections, and
  - d. Describe how an emergency transfer may occur.
4. The Emergency Transfer Plan may require documentation from a tenant seeking an emergency transfer, pursuant to 24 CFR 5.2005(e)(10) and 24 CFR 5.2007 and further explained in Section VIII.B of this Notice. However, a tenant is not required to provide documentation other than that which is specified in 24 CFR 5.2005(e)(10). (See 24 CFR 5.2005(e)(10)(iii).)
  5. The O/A's Emergency Transfer Plan must allow tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to make an internal emergency transfer under VAWA when a safe unit is immediately available. An internal emergency transfer is further explained in Section XII.D of this Notice. A victim determines whether the unit is safe. (See 24 CFR 5.2005(e)(1)(iii)). The VAWA Final Rule does not define "*immediately available*". A best practice would be to define "immediately available" as a vacant unit, ready for move-in within a reasonable period of time, as defined in the O/A's Emergency Transfer Plan, where the O/A also defines "*reasonable period of time*" based on local factors. HUD encourages O/As to engage the victim in a conversation regarding what he or she considers safe or what factors the victim considers unsafe. This may allow the O/A to better tailor its emergency transfer response.
  6. The Emergency Transfer Plan must describe policies for assisting a tenant in making an internal emergency transfer when a safe unit is not immediately available, and describe reasonable efforts the O/A will take to assist a tenant who wishes to make an external emergency transfer when a unit that meets the victim's safety standard is not available.
  7. The Emergency Transfer Plan must also incorporate strict confidentiality measures. (See 24 CFR 5.2005(e)(4).)
  8. In developing the Emergency Transfer Plan, O/As are encouraged to review their transfer waiting list policies in their Tenant Selection Plans, to determine if revisions are necessary to facilitate emergency transfers. In determining whether changes to the existing waiting list policies are necessary, O/As may want to consider the following:
    - a. Availability and location of units at the tenant's property;
    - b. Demand by applicants for assistance;
    - c. Frequency of internal transfer requests, and
    - d. Availability of alternative housing opportunities.

## B. Eligibility for Emergency Transfers

1. The Emergency Transfer Plan must provide that a tenant residing in a unit subsidized under a covered housing program and who is a victim of domestic violence, dating violence, sexual assault, or stalking, qualifies for an emergency transfer if:
  - a. The tenant expressly requests the transfer; and
  - b. Either -
    - 1) The tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit, or
    - 2) In the case of sexual assault, the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premises during the 90-calendar day period preceding the date of the request for transfer. (See 24 CFR § 5.2005(e)(2).)

A tenant's reasonable belief that there is a threat of imminent harm from further violence may stem from an incident of domestic violence, dating violence, sexual assault, or stalking of a household member.

2. The Emergency Transfer Plan should also make clear that qualifying for an emergency transfer does not guarantee continued assistance under the current program or an external transfer to another covered housing program. The emergency transfer requirements do not supersede any eligibility or occupancy requirements that may apply under a covered housing program. (See 24 CFR 5.2005(e)(13).)

This means that even if a tenant at Property A is eligible to request an emergency transfer, the tenant cannot move into Property B if the tenant does not meet the program eligibility or occupancy requirements at Property B. For example, if a tenant qualifies for an emergency transfer at Property A to escape an abusive partner, but the tenant does not meet the program eligibility requirements at Property B (must be age 62 at an elderly property), the tenant cannot be rehoused at Property B under that program.

An external emergency transfer is further explained in Section XII.D of this Notice.

### C. Emergency Transfer Request

1. The O/A's Emergency Transfer Plan must indicate how a tenant may request an emergency transfer. An O/A may either allow for a verbal statement/self-certification or require a written request before any transfer occurs. An O/A should include in its Emergency Transfer Plan and related VAWA policies whether verbal statements/self-certification is sufficient to initiate an emergency transfer.
2. The verbal statement/self-certification, if permitted, or the written request must include:

- a. A statement that the tenant requests an emergency transfer because the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit, or
- b. A statement that the tenant requests an emergency transfer because the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar day period preceding the tenant's request for an emergency transfer.

HUD has created a model Emergency Transfer Request document that O/As requiring written request for emergency transfer may use (form HUD-5383). O/As using the emergency transfer request document must make it available to the tenant. O/As and tenants can download the model Emergency Transfer Request document from [Hudclips](#).

3. The model Emergency Transfer Request document, form HUD-5383 -
  - a. Provides that victims of domestic violence, dating violence, sexual assault, or stalking may use this form to request an emergency transfer;
  - b. May be used to certify that the victim meets the requirements of eligibility for an emergency transfer under VAWA;
  - c. Defines the qualifications for an emergency transfer;
  - d. Allows victims who have third-party documentation that demonstrates why they are eligible for an emergency transfer to submit this information to the O/A if it is safe to do so;
  - e. Describes the confidentiality protections under VAWA;
  - f. Provides examples of acceptable third-party documentation;
  - g. Requires that the victim answer numbered questions;
  - h. Clarifies that the name of the accused perpetrator does not have to be provided if it is unknown to the victim or it cannot be provided safely, and
  - i. Requires the victim to certify to the truth and accuracy of the information being provided, and explains that false information could be the basis for denial of admission, termination of assistance, or eviction.

O/As are encouraged to customize the model Emergency Transfer Request document (form HUD-5383) to reflect the specific assistance provided under the particular housing program and to the relevant program operations that may pertain to or affect the emergency transfer provisions. For example, the model Emergency Transfer Request document does not include details about a O/A's emergency transfer policy, because it is incumbent upon the O/A to provide such information in its Emergency Transfer Plan.

An O/A may also request in writing that the victim provide documentation of an occurrence

of domestic violence, dating violence, sexual assault, or stalking in accordance with the regulation at 24 CFR 5.2007. However, third party documentation may not be required to qualify the tenant for an emergency transfer.

#### D. Emergency Transfer Policies

The VAWA Final Rule requires O/As to establish policies for internal and external emergency transfers, which must be included in the Emergency Transfer Plan. (See 24 CFR 5.2005(e)(1).)

The VAWA Final Rule did not change an O/A's authority to establish and define other transfer policies; it only requires that new policies be established for transfers under VAWA. Emergency transfers include internal transfers and external transfers.

##### 1. Internal Transfers

- a. An internal transfer is a transfer within the same single or scattered site property in which the tenant requesting the transfer resides. The transfer can be performed without the tenant reapplying for housing assistance.
- b. The Emergency Transfer Plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available. The plan must also describe policies for assisting tenants when a safe unit is not immediately available. Those policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that O/As may already provide to other types of emergency transfer requests.
- c. Often O/As will not have a unit which is immediately available and/or that the victim determines is safe within the same property or in another building that is part of the same scattered site property. The O/A must have a policy to assist the tenant in obtaining a safe unit within the property once one becomes available. If the O/A has an internal transfer waiting list, the victim should be placed on that list. As mentioned above, the O/A's policy should state whether or not the O/A will give priority to victims of domestic violence, dating violence, sexual assault, or stalking on their internal transfer waiting list. This is the O/A's choice.<sup>12</sup>
- d. In addition, if a safe unit is not immediately available, the O/A must, at the same time, offer the tenant assistance in making an external transfer. The O/A and victim should discuss why an internal transfer is not viable at that time and what external transfer options are available based on the Emergency Transfer Plan.

##### 2. External Emergency Transfers

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<sup>12</sup> HUD will propose such additions when next updating HUD Handbook 4350.3 REV-1, CHG-4, "Occupancy Requirements of Subsidized Multifamily Housing Programs". Public comment will be solicited during the update process.

An external emergency transfer refers to a tenant's physical move out of the property in which he or she resides or out of a form of assistance, where the tenant would be categorized as a new applicant. For example, a move from Property A to Property B is an external transfer – this also means that the household goes from being a tenant at Property A to an applicant at Property B.

O/As are required to make reasonable efforts to assist a tenant who requests to make an external emergency transfer when a safe unit at the current property is not immediately available. O/As are not required to research available units and/or arrange for the move, but they can if they choose. An O/A's reasonable efforts should include providing contact information for relevant local service providers, government agencies, and other affordable housing developments in the area.

- a. O/As' Emergency Transfer Plans must include the following in their external transfer policies:
  - 1) A description of the reasonable efforts the O/A will take to assist a victim who wishes to move to alternative housing, if a safe unit is not immediately available. For example, the Plan could include providing the victim with names, addresses, or phone numbers of domestic violence advocacy organizations that stand ready to assist victims of domestic violence on an emergency basis. In addition, the O/A can provide a list of other local O/As of private market or other government-assisted housing, who could possibly offer assistance to a victim of domestic violence, dating violence, sexual assault, or stalking;
  - 2) A statement that a tenant must be allowed to seek an internal and external emergency transfer concurrently if an internal safe unit is not immediately available. For example, if there will not be any vacancies in the tenant's current property for the foreseeable future, a victim may seek an internal and external emergency transfer concurrently.
  - 3) Policies for both assisting a tenant/applicant who is seeking an external emergency transfer under VAWA out of the O/A's property (move-out from Property A) and an applicant who is seeking an external emergency transfer under VAWA into the O/A's property (move-in at Property A).
- b. HUD strongly encourages O/As to consider the following when creating their external emergency transfer policies:
  - 1) Making available a list of similar assisted housing options in an area requested by the victim. A housing search can be completed on HUD's website [here](#).
  - 2) Making arrangements including memoranda of understanding, with other O/As/Public Housing Agencies (PHAs) to facilitate moves.

- 3) Conducting outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking (see Section XIV of this Notice for additional guidance on developing partnerships with victim service providers);
  - 4) Creating an admissions preference for victims seeking an external emergency transfer from another covered housing provider (e.g. O/A to PHA). This would allow a victim to more quickly access an available unit administered by an O/A or PHA without being placed on the bottom of an applicant waiting list. (See Section XIX of this Notice for additional guidance on adopting an admissions preference.)
  - 5) Providing a letter that the victim may share with prospective covered housing providers, indicating that the victim is eligible for an emergency transfer and is seeking an external emergency transfer because a safe unit is not immediately available at the O/A's property.
- c. O/As must also comply with state specific VAWA laws which may provide additional requirements for emergency transfer policies, such as a requirement to create an admissions preference for victims of domestic violence, dating violence, sexual assault, or stalking.

In summary, if an O/A's property is fully occupied and the O/A is unaware of other vacant units in the area, HUD encourages O/As to make their best effort to support victims in finding a safe place to live.

#### E. Emergency Transfer Example

Scenario: A tenant approaches property management staff, informing them that she is a victim of dating violence and fearful of further violence. The household consists of the victim (head of household) and two children under the age of 18.

Step 1: The O/A provides the victim with the VAWA Notice of Occupancy Rights (form HUD-5380) and certification form (form HUD-5382) to ensure that she understands the rights and protections afforded her.

Step 2: The O/A can decide to accept the victim's verbal statement for VAWA protections or may request documentation per 24 CFR 5.2007.

Step 3: The O/A accepts the documentation (if requested), as provided under 24 CFR 5.2007, or verbal statement requesting VAWA protections.

Step 4: The victim informs the O/A that she is seeking an emergency transfer and reasonably believes there is a threat of imminent harm from further violence if she remains in her current unit.

Step 5: The O/A can decide to accept the victim's verbal request for an emergency transfer or it can ask for a written request for the emergency transfer.

Step 6: The O/A accepts the verbal or written request (if requested and as provided in 24 CFR 5.2005(e)(10)) for the emergency transfer.

Step 7: The O/A refers to its Emergency Transfer Plan to work with the victim and inform her of options (as set forth in the Emergency Transfer Plan).

1. Internal Transfer:

a. The O/A offers to put the victim on an internal transfer waiting list. A safe unit is not immediately available. Because a safe unit is not immediately available, the O/A also explains external emergency transfer options.

2. External Transfer:

a. The O/A provides or tells the victim how to obtain a list of O/As in the community as well as a list of O/As with which the O/A has partnered to serve victims of domestic violence, dating violence, sexual assault, or stalking.

Step 8: The O/A informs the victim that local victim service providers may be able to assist her in identifying temporary shelter. The providers may have resources such as safety planning, counseling, and emergency funding. The O/A provides the victim with contact information.

Step 9: The victim decides to stay in her current assisted housing unit until she is able to secure another assisted housing unit. Although not required under HUD's rule, the O/A takes steps to reduce the threat of further violence against the victim. Examples include changing the victim's locks (pursuant to the O/A's lock replacement policy and state and local laws); installing better lighting around the perimeter of the building, and reminding the victim that she is allowed temporary absence from the unit in accordance with the O/A's policies.

Step 10: An assisted unit becomes available at the tenant's current property. The O/A notifies the victim of the availability of a unit and provides a tour of the unit.

Step 11: The victim determines the unit to be safe. The O/A expeditiously follows its policies for the internal transfer.

### **XIII. Record Keeping and Reporting Requirements**

The VAWA Final Rule requires O/As to keep confidential records of all emergency transfers requested under its Emergency Transfer Plan and the outcomes of such requests, and to retain these records for a period of three years, or for a period as specified in program regulations. (See 24 CFR 5.2005(e)(12).)

The VAWA Final Rule further requires that these requests and outcomes of such requests be reported to HUD annually. HUD plans to add these data elements to a future release of the Tenant Rental Assistance Certification System (TRACS). HUD is considering adding the



following items:

1. Number of emergency transfer requests received;
2. Number of requests resolved;
3. Number still pending;
4. Outcomes of requests-
  - a. Number of internal unit transfers (within same project);
  - b. Number relocated to other HUD-funded housing sites (e.g. other multifamily assisted, public housing/housing vouchers, or HOME);
  - c. Number of other move-outs, and
  - d. Number of tenants who chose to remain in unit.

The requirement to report this information to the Office of Multifamily Housing is not in effect until TRACS has been updated and Multifamily Housing completes the Paperwork Reduction Act (PRA) requirements for adding these data.

HUD will communicate additional details about the reporting requirement at a later date. HUD notes, however, that it would be beneficial for O/As to maintain this information to facilitate future reporting.

#### **XIV. Developing Partnerships with Victim Service Providers**

HUD encourages Emergency Transfer Plans to be developed in consultation and collaboration with other public and private organizations and entities that are dedicated to helping victims of domestic violence, dating violence, sexual assault, or stalking. HUD encourages ongoing O/A efforts to strengthen access to supportive services for victims of domestic violence, dating violence, sexual assault, or stalking. Some O/As have developed valuable relationships with domestic violence victim advocates, legal aid services, and law enforcement agencies to ensure that victims are getting the necessary supportive services they need.

HUD also encourages O/As to reach out to other O/As in their jurisdiction, and strive to establish a relationship in which they, whether private market or government-assisted, help one another, to the extent feasible, address emergency domestic violence, dating violence, sexual assault, or stalking situations. Emergency Transfer Plans must be designed to facilitate a transfer as quickly as possible. Therefore, HUD recommends including reference to such other resources in the Plan.

O/As are encouraged to share their best practices in developing a strong domestic violence, dating violence, sexual assault, or stalking education and service program. Such practices have included:

1. Participating in regular domestic violence working groups with domestic violence victim advocates, legal aid services, and law enforcement agencies;
2. Inviting domestic violence victim advocates to speak to resident groups and property management staff;
3. Providing easy-to-access and easy-to-understand information pamphlets;

4. Facilitating counseling and support groups through available community space;
5. Working with domestic violence victim advocates to make policy changes to better protect victims, and
6. Establishing applicant admission preferences to prioritize victims for housing assistance, including victims referred through the local HUD-funded Continuum of Care (CoC). (CoCs manage the distribution of Continuum of Care program funds to homeless service providers in their jurisdictions.)

These efforts can also help O/As identify local domestic violence experts for participation in grievance hearings.

The U.S. Department of Justice Office on Violence Against Women maintains resources that may be of assistance to communities seeking to learn more about domestic violence, dating violence, sexual assault, or stalking, or those seeking contact information for national advocacy groups. This information is available at <https://www.justice.gov/ovw>.

## **XV. Family Break-up**

The occurrence of domestic violence, dating violence, sexual assault, or stalking may lead to the break-up of the assisted family in many instances. Family break-up involves terminating the assistance of the perpetrator while continuing the assistance to the victim; ensuring that the victim understands his or her rights; documenting the abuse; maintaining the confidentiality of the victim, and ensuring the safety of the victim.

Changes to a family's composition must be reported to the O/A in accordance with the terms of the lease. The lease includes a requirement that the tenant transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the O/A that such a dwelling unit is available. O/As must follow the lease and their written internal transfer waiting list policies in their Tenant Selection Plans in instances where the change in family composition would require that the family move to another unit of appropriate size.

To help O/As understand each of the steps involved with this process, this Notice presents the following scenario:

Note: The example below provides a scenario that is fact-intensive. Real-world cases of victims seeking VAWA protections must be approached in a way that takes in consideration the specifics of each case, and addressed pursuant to program requirements and O/A management policy.

A victim informs the O/A that his or her family member is committing domestic violence against him or her and he or she wishes to retain assistance. The victim may choose to inform the O/A of the abuse after the O/A has notified the household that it is being evicted (due to criminal activity, for example), or at any other point.

Step 1: If the O/A previously has not provided notification to the family members of their VAWA rights, then in accordance with 24 CFR 5.2005(a)(2), the O/A must provide

notice to the victim of his or her VAWA rights. If he or she has been previously notified of his or her VAWA rights, the O/A is encouraged to again provide the victim with the VAWA Notice of Occupancy Rights and certification form, to ensure that he or she fully understands the rights and the protections afforded him or her.

- Step 2: The O/A can decide to accept the victim's statement, or request documentation per 24 CFR 5.2007.
- Step 3: Upon provision of documentation (if requested and provided as specified in 24 CFR 5.2005(7), the O/A is encouraged to ensure the victim knows of the upcoming notification of eviction of the perpetrator, including the exact date the notification will take place. As part of this notification to the victim, the O/A is encouraged to provide the victim with contact information for local victim service providers – providing the victim an opportunity to create a plan of action (e.g., the victim may need to leave the unit temporarily and stay in a domestic violence shelter until the eviction takes place). The O/A is encouraged to utilize any partnerships it may have established with local law enforcement and victim service providers to ensure the safety of the victim.
- Step 4: The O/A begins the process to evict the perpetrator. If the victim wants to move out of the unit for his or her safety, the O/A must first determine if the tenant qualifies for an emergency transfer and then follow its Emergency Transfer Plan. If the victim wants to stay in the unit, the O/A bifurcates the lease by evicting the perpetrator and allowing the victim to remain on the lease. The O/A must expeditiously conduct an Interim Recertification (IR) to determine the new rent computations. The O/A should refer to HUD Handbook 4350.3, REV-1, Chapter 7 for the requirements of processing an IR if there is a change in family composition.
- Step 5: The O/A should provide the perpetrator with no more than 30 days (in most cases) notice of termination (24 CFR 247.4(c)). If the perpetrator requests a hearing, the O/A is encouraged to conduct an expedited hearing within no more than 10 days following the effective date of the notice.

The perpetrator has a right to examine the O/A's documentation relevant to the eviction. This means the perpetrator has a right to examine the relevant documentation the victim provided, claiming VAWA protections. This documentation is required for use in an eviction proceeding or hearing regarding termination of assistance from the covered housing program. (This is an exception to the victim's confidentiality rights, per 24 CFR 5.2007(c)(2)). To protect the victim's safety, any information that would reveal the location of the victim, or the location of any services that the victim is receiving must be maintained confidentially (i.e. redacted from the shared documentation), unless it meets the exception in 24 CFR 5.2007(c)(2)(ii).

O/As are encouraged to consult a local domestic violence expert or victim service

provider (that has not worked with either the victim or perpetrator), to be on the grievance hearing panel.

The hearing officer or hearing panel provides the perpetrator with a written decision.

Step 6: If it is determined that the perpetrator did indeed commit the acts, the case will then be moved to eviction court.

Step 7: If the eviction process is upheld, the O/A processes the IR to remove the household member and completes the bifurcation of the lease agreement.

## **XVI. Lease Bifurcation**

In accordance with 24 CFR 5.2009(a), O/As may choose to bifurcate a lease (or remove a household member or lawful occupant from a lease) to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual. Under VAWA Final Rule, and consistent with the statute, VAWA protections, including bifurcation, do not apply to guests or unreported members of a household or anyone else residing in a household who is not a tenant.

Eviction, removal, termination of occupancy rights, or termination of assistance must be effected in accordance with the procedures prescribed by federal, state, or local law for termination of leases. For example, some jurisdictions may prohibit partial or single tenant evictions.

To avoid unnecessary delay in the bifurcation process, HUD recommends that O/As seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the O/A regains possession of the unit. The O/A would then execute a new lease with the victim.

HUD also encourages O/As to simultaneously attempt to reach agreement to the mutual termination of the lease, if it is safe to do so.

## **XVII. Reasonable Time to Establish Eligibility Following Bifurcation of a Lease**

The Final Rule at 24 CFR 5.2009(b) establishes a reasonable time period for remaining family member(s) to demonstrate eligibility for housing assistance or find alternative housing following lease bifurcation. In this situation, the remaining family member(s), prior to the lease bifurcation, had not established eligibility for the housing assistance. This would be applicable to mixed families, where assistance was provided to the perpetrator and the victim is a member of the household who hasn't contended eligible immigration status or to a remaining family member who did not otherwise meet the program eligibility requirements (e.g. a remaining family member under the age of 62 in an elderly property).

In most cases, the O/A shall provide to the remaining family member(s) a period of 90- calendar days from the date of lease bifurcation to:

- Establish eligibility for the same housing program that provided assistance to the evicted or terminated tenant;
- Establish eligibility under another covered housing program, or
- Find alternative housing.

The 90-calendar day period provided above will not be available to a remaining household member if the statutory requirements for the program prohibit it. In addition, the 90-calendar day period will not apply beyond the expiration of a lease, unless this is permitted by program regulations.

The chart below explains the statutory limitations to eligibility (age, immigration status, etc.) which may prevent remaining tenants from establishing eligibility.

Program	Possible Eligibility Limitations	Regulatory Provision	Reasonable Time Period to Remain in Unit
Section 202/811 PRAC and SPRAC	Age (for Section 202) and disability (for Section 811)	24 CFR 5.2009	90-calendar days or when the lease expires, whichever is first
Section 202/8	Age or disability; Immigration Status	24 CFR 5.2009	90-calendar days or when the lease expires, whichever is first; 30-calendar days if immigration status is an eligibility limitation
Section 221(d)(3)/(d)(5)		24 CFR 5.2009	All residents already meet eligibility
Section 236 (including RAP)	Immigration Status	24 CFR 5.2009	30-calendar days to meet eligibility
Project-based Section 8 and Mod Rehab/SRO	Immigration Status	24 CFR 5.2009	30-calendar days to meet eligibility

Tenant rent payments must be modified for the remaining family members during the 90-calendar day time-period. O/As should perform an IR for the remaining family members at the same time the lease bifurcation is done. The effective date of the IR should be in accordance with HUD Handbook 4350.3, REV-1, Chapter 7. Note: As a result of lease bifurcation, it may be necessary to transfer the existing household to an appropriate unit size in accordance with the lease.

In some cases, the lease bifurcation may result in an increase in tenant rent (or Total Tenant Payment (TTP)). The O/A must ensure the remaining tenant is provided the proper notice of increase in accordance with HUD Handbook 4350.3 REV-1, Chapter 7, Section 2 and/or local and state laws.

If the remaining family member will not be able to establish eligibility (for example a 55-year

old remaining in a Section 202 PRAC), the household is not eligible to receive subsidy. In this case, the remaining family member must then pay market rent for the duration of the 90-calendar day period or move-out, whichever comes first.

Note: The member removed from the household will remain active in the Tenant Rental Assistance Certification System (TRACS) and the Enterprise Income Verification (EIV) system until the effective date of the newly performed IR.

### **XVIII. Termination of the Victim Due to “Actual and Imminent Threat” and Any Violation Not Premised on an Act of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

The VAWA Final Rule at 24 CFR 5.2005 prohibits denial of admission or assistance, termination of assistance, or eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. However, nothing in the VAWA Final Rule may be construed to limit the authority of an O/A to evict or terminate assistance for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. (See 24 CFR 5.2005(d)(2).)

In addition, nothing in the VAWA Final Rule may be construed to limit the authority of the O/A to terminate assistance or evict a tenant if the O/A can demonstrate that an actual and imminent threat to other tenants or those employed at or providing services to the property would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 24 CFR 5.2005(d)(3).)

In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the O/A must have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

“Actual and imminent threat” refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm.

In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

1. The duration of the risk;
2. The nature and severity of the potential harm;
3. The likelihood that the potential harm will occur, and
4. The length of time before the potential harm would occur.

Eviction or termination of assistance should only be used by an O/A when there are no other actions or remedies to reduce or eliminate the threat, including when actions or remedies are unavailable. This is the case even when time periods could reasonably be called “immediate.” Some possible actions for an O/A to take to reduce or eliminate the threat are listed at 24 CFR 5.2005(d)(4) and in this Section. HUD encourages O/As to work with local law enforcement to prevent or remedy instances where a threat may occur to better protect the victim and other

tenants in the community.

An O/A may consider the following actions to reduce or eliminate an “actual and imminent” threat:

1. Barring the perpetrator from the property (where state and local laws permit);
2. Changing the victim’s locks (pursuant to the O/A’s lock replacement policy and state and local laws);
3. Installing basic security features (e.g., better lighting or an alarm);
4. Encouraging the victim to seek an emergency transfer;
5. Allowing an early lease termination;
6. Allowing the victim to arrange for temporary absence from the assisted unit;
7. Helping the victim access available services and support (e.g., providing information for a local victim service provider and civil legal assistance providers, to help the victim get any necessary court orders), and/or
8. Working with police and victim service providers to develop a safety plan for the property and a plan of action for the victim.

O/As must follow guidance in HUD Handbook 4350.3, REV-1, Chapter 8-13, “Material Noncompliance with the Lease”.

## **XIX. Establishing Waiting List Preferences**

O/As may establish an admission preference for victims of domestic violence, dating violence, sexual assault, or stalking. An O/A does not need HUD approval to adopt a VAWA preference – this is an acceptable owner-adopted preference under 24 CFR 5.655(c)(4). O/As must modify their Tenant Selection Plan to include the owner-adopted preference. The Tenant Selection Plan will be reviewed during the property’s MOR.

HUD encourages O/As to work collaboratively with health care providers, social service providers, homeless service providers, CoCs, and local offices of government and community organizations to establish a system of preferences based on local housing needs, collectively identified by the community.

O/As may create a preference or limited preference specifically for people who are referred by a partnering service organization or consortia of organizations. The O/A may not limit the source of referrals to an agency, organization, or consortia that denies its services to members of any Federally protected class under fair housing laws, e.g., race, color, religion, national origin, sex, disability, or familial status. For example, an O/A may not limit the source of referrals to only service providers of female victims of domestic violence, dating violence, sexual assault, or stalking.

Note: Owners must receive HUD approval to adopt an admissions preference not specified under 24 CFR §5.655(c)(1) - (c)(5). To assist in establishing owner-adopted preferences, refer to: 24 CFR 5.655, HUD Handbook 4350.3, REV-1, Chapter 4-6, or Housing Notice 2013-21 *“Implementation and approval of owner-adopted admission preferences for individuals or families experiencing homelessness.”*

## **XX. HUD Enforcement of VAWA Final Rule**

During an on-site MOR or as part of an off-site desk review, HUD, the property’s Performance Based Contract Administrator (PBCA) or the property’s Traditional Contract Administrator (TCA) staff will review the O/As compliance with VAWA Final Rule. HUD/PBCA/TCS will identify areas of noncompliance in the form HUD-9834. Under the current version of the form, questions 14,16, 21, 22, and 25 each contain subsections under which VAWA compliance may be assessed and reported.

## **XXI. Assistance Under More Than One Covered Housing Program**

When assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

Where housing is covered under multiple HUD programs, the responsible covered housing provider under each program will provide the required VAWA Notice of Occupancy Rights and certification form. Tenants may request emergency transfers or lease bifurcation under any applicable program, unless prohibited from doing so because of statutory constraints.

## **XXII. Fair Housing and Nondiscrimination**

O/As must comply with all applicable fair housing and civil rights laws and requirements in the implementation of VAWA requirements. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. See 24 CFR 5.105(a). For example, O/As must provide reasonable accommodations for individuals with disabilities, such as a reasonable accommodation to any requirement that the emergency transfer request be in writing. O/As must help certain individuals put their request in writing, if requested or where the need for such assistance is obvious. Individuals with disabilities may request a reasonable accommodation at any time to any program rules, policies, or practices that may be necessary. O/As must meet physical accessibility requirements when making emergency and other transfers, which may include making physical modifications to dwelling units and common use areas.

O/As must also ensure that communications and materials are provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and their implementing regulations. O/As must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is



provided in appropriate accessible formats as needed, e.g., Braille, audio, large type, assistive listening devices, and sign language interpreters.

O/As must also take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals. See the Department's Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance), [http://www.lep.gov/guidance/HUD\\_guidance\\_Jan07.pdf](http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf).

### **XXIII. Paperwork Reduction Act**

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (22 U.S.C. 2501-3520) and assigned OMB control numbers 2502-0204 and 2577-0286. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

### **XXIV. Contact Information**

Questions concerning this Notice should be directed to your property's Account Executive in your local HUD Field Office. You may also contact Carissa Janis, Program Analyst, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, 202-402-2487 or Carissa.L.Janis@hud.gov. Persons with hearing or speech impairments may access their field office via TTY by calling the Federal Information Relay Service at (800) 877-8339.

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Genger Charles  
General Deputy Assistant Secretary for Housing

## **Appendix 1 – Items to Consider When Developing VAWA Policies**

### **Certification and Documentation**

- During the first year, how will the O/A provide the VAWA Notice of Occupancy Rights (form HUD-5380) and Certification form (HUD-5382) to each household?
- How and where will the VAWA forms be made available?
- Will the O/A ask for documentation when an individual presents a claim for VAWA protections, and if so, under what circumstances?
- How will the O/A define the term “other evidence”?
- Will the O/A require submission of documentation within 14 business days?
- Under what conditions will an extension of the 14-business day period for submitting documentation be allowed?
- How long will the O/A take to acknowledge receipt of documentation?

### **Victim Confidentiality**

- Who will have access to VAWA information?
- How will information be stored and secured?
- How will information be accessed?
- Who are the O/A’s VAWA points of contacts for tenants?
- How will the O/A determine appropriate communications with victims?
- What procedures will the O/A undertake to ensure others will not overhear conversations with victims?
- Will victims be required to come into a management office?
- Will the O/A suggest that a victim designate a point of contact for communications?

### **Emergency Transfer Plan**

- What efforts will the O/A make to assist a tenant or household who request an internal emergency transfer or external emergency move?
- Will the O/A accept verbal-certification or require a written transfer request?
- Will the O/A require the use of the emergency transfer request form HUD-5383?
- Will the O/A make additional efforts to assist a tenant who wishes to make an internal emergency transfer (e.g. provide a moving van)? (Under the VAWA regulation, the O/A’s Emergency Transfer Plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.)

- Will the O/A make arrangements, including memoranda of understanding, with other HUD-funded O/As to facilitate external moves?
- Will the O/A provide contact information for local service providers?

### **Partnerships**

- Will the O/A conduct outreach activities to organizations that assist or provide resources to victims?
- Will the O/A develop partnerships with domestic violence victim advocates, legal aid services, and law enforcement agencies to further VAWA protections?
- Will the O/A invite domestic violence victim advocates to speak to resident groups and employees?
- Will the O/A create pamphlets, posters, and other media to help inform applicants, tenants, and participants about the VAWA protections available to them?
- Will the O/A offer any activities, services, or programs either directly or in partnership with other service providers to enhance victim safety?
- Will the O/A offer any domestic violence, dating violence, sexual assault, or stalking prevention programs?

### **Conflicting Claims of Abuse**

- What will the O/A do in cases of conflicting third-party documentation?
- Will hearings include a trained third party with experience in adjudicating domestic violence cases?

### **Waiting List Preferences**

- Will the O/A adopt an admissions preference for victims seeking an external emergency move from another HUD-funded housing?
- What priority will be given to victims?
- Will the O/A treat HUD tenants who are victims looking for an external emergency move the same or different than other victims not previously assisted under a HUD covered housing program?
- Will the O/A limit the preference to persons referred by a partnering service organization or consortia of organizations?
- Are there State or local laws that provide greater protections than those provided under VAWA that an owner should be made aware of?

### **Other Considerations**

- What actions will the O/A consider to reduce or eliminate an “actual or imminent” threat?

- Will the O/A offer lease bifurcation?
- Under what circumstances would a perpetrator who was evicted/terminated from assistance or convicted of domestic violence, dating violence, sexual assault, or stalking be allowed to rejoin the household upon request of the family?