HUD Notices/Rules Issued Since HUD 4350.3 Rev 1 Change 4

Notice #	Date Issued	Subject	Brief Summary of Impact on Occupancy Requirements in the 4350.3
H 2013-21	25-Jul-13	Implementation and approval of owner-adopted admission preferences for individuals or families experiencing homelessness	Clarifies 24 CFR 5.655(c)(1) - (c)(5) to add homelessness as an Owner preference, subject HUD approval, and explains how it should be implemented.
H 2014-16	28-Nov-14	Waiting List Administration	Clarifies existing rules regarding opening and closing of waiting lists with regard to persons with disabilities and provides owners with additional options, including using a lottery.
H 2015-06	13-Jul-15	Program Eligibility in Multifamily Assisted and Insured Housing Programs in Accordance with HUD's Equal Access Rule	Revises the definition of family under 24 CFR 5.105, 5.100 and 5.403 thus requiring changes to eligibility definitions in the tenant selection plan and application form.
H 2015-10	2-Nov-15	Guidance for Public Housing Agencies (PHA's) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions	Prohibits use of arrest records for screening for drug-related and other criminal activity which is not currently prohibited per se in the 4350.3
H 2015-12	10-Dec-15	Amendment to the Definition of Tuition	Amends the definition of tuition currently in the handbook
H 2016-01	19-Jan-16	Passbook Savings Rate Effective February 1, 2016	Changes the rate and methodology for rate currently in the handbook
FR 5969-N-01	21-Sep-16	Eligibility of Independent Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Additional Supplementary Guidance	Brings HUD's guidance into conformity with the updated HEA definition and ED's definition of "independent student". Amends the Student's Independence Verification Requirements.
H 2016-09	3-Oct-16	Streamlining Administrative Regulations for Multifamily Housing Programs	Changes regulation 24 CFR 5.216 regarding Social Security Numbers by adding a new exception for move-ins. Changes regulation 24 CFR 5.7603 to reflect the new statutory definition of "extremely low income" (79FR35940 issued July 1, 2014). Changes regulation 24 CFR 5.609 to amend the definition of income to exclude certain items in addition to tuition (see H 2015-12 above), Changes regulation 24 CFR 5.657 to permit streamlined income determination for family members with fixed sources of income
H 2017-05	30-Jun-17	Violence Against Women Act (VAWA) Reauthorization Act of 2013 - Additional Guidance for Multifamily Owners and Management Agents	Describes the requirements under the 2016 Final Rule on VAWA and the new VAWA forms (current handbook references and follows the 2005 VAWA rules, definitions, and forms) Changes effect 24 CFR 5.2003, 5.2001(a), 5.2005(a), 5.2005(b)(1), 5.2005€, 5.2007, 5.2009(b),and parts 200, 247, 880, 882, 883, 884, 886, and 891
H 2019-06	6-May-19	Treatment of ABLE Accounts in HUD-Assisted Programs	Affects the List of Income Exclusions on Exhibit 5-1 of the 4350.3 due to the requirement in 24 CFR 5.609 that amounts excluded by Federal Statute must be excluded. The relevant statute is the 2014 ABLE Act.

Updated as of 08/11/2018

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

Multifamily Hub Directors
Multifamily Program Center Directors
Rural Housing Services (RHS) Directors
Supervisory Housing Project Managers
Housing Project Managers
Contract Administrators
Multifamily Owners and Management Agents

NOTICE: H 2013-21

Issued: July 25, 2013

Expires: This notice remains in effect until amended, revoked, or superseded.

Subject: Implementation and approval of owner-adopted admissions preferences for individuals or families experiencing homelessness

I. Purpose: This Notice provides guidance to HUD field offices, contract administrators, and property owners on the circumstances under which owners of assisted properties may adopt admissions preferences. This notice clarifies 24 CFR §5.655(c)(1) - (c)(5) to allow for owners to adopt, with HUD approval, admissions preferences not specified there, in particular, preferences to house homeless families.

II. Background: The Office of Multifamily Housing Programs (Multifamily Housing) had strictly interpreted 24 CFR §5.655(c)(1) - (c)(5) *Section 8 project-based assistance programs: Owner preferences in selection for a project or unit*, to mean that owners were limited in adopting preferences in the selection of residents to those preferences specifically cited in the regulation. That interpretation did not allow for an owner to adopt a preference for homeless families, as owners could not adopt preferences outside of 5.655(c)(1) – (c)(5). However, in consultation with the Office of General Counsel, Multifamily Housing has revisited this issue and has broadened its interpretation to allow that silence within the provision does not preclude owners from adopting preferences outside of those cited.

III. Applicability: All Multifamily rental assistance programs.

IV. Definition of Homeless: The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) revised the definition of homeless for HUD's

homeless assistance programs, and on December 5, 2011, HUD published its final rule implementing this definition. HUD will use this definition to track the number of homeless persons served in its programs starting in September 2013, after changes to the HUD form 50059 have been completed.

The definition of homeless under the HEARTH Act, however, does not prohibit an owner from establishing an alternative definition of homeless for the purpose of a waiting list preference based on local need. Owners may elect to adopt a more narrow definition specific to the homeless needs in their community or a broader version that would serve more of the population. Because of the specificity of this definition, owners must go to the HUD field office for approval. Owners are reminded that any preference must comply with civil rights requirements.

V. **Implementing a Homeless Preference:** Multifamily Housing owners can significantly increase program access for individuals and families experiencing homelessness by establishing an owner-adopted preference in admissions policies. Owners must consider the following when adopting an admissions preference.

a. **Eligibility and Requirements.** Preferences affect only the order in which applicants are selected from the waiting list. They do not make anyone eligible who was not otherwise eligible, and they do not change an owner's right to adopt and enforce tenant screening criteria. In addition, owners must inform all applicants about available preferences and give all applicants an opportunity to show that they qualify for available preferences including all applicants currently on a waiting list.

b. **Tenant Selection Plan and Affirmative Fair Housing Marketing Plan.** All owner adopted preferences must be included in the Tenant Selection Plan (TSP) and, if required, the Affirmative Fair Housing Marketing Plan for the associated property including any referral policy in the preference, if applicable. In addition, for preferences other than those specifically cited at 24 CFR §5.655(c), owner-adopted preferences must be approved by the local HUD office to confirm conformance with applicable regulatory and statutory requirements. Owners may remove their owner-adopted preference at any time without HUD approval. Any changes in preferences, however, must be updated in the owner's TSP.

c. **Using a Homelessness Definition.** Owners may create a preference for homeless families using the HUD definition of homelessness or a definition that better suits the property in question. The definition cannot exclude any protected classes, e.g., the definition cannot exclude families with children.

d. **Limiting preferences to people referred by a partnering organization.** Owners may create a preference or limited preference specifically for individuals or families who are referred by a partnering homeless service organization or consortium of organizations (for example, an organization that refers people

transitioning out of a shelter or temporary housing program). When partnering with a referring agency, an owner may elect to place the preference on the entire property or accept a referral for a defined percentage of units. No units may be set-aside or held off-line, but owners can fill vacancies by alternating selections from the existing project waiting lists with referrals from their partnering organization of eligible applicants who meet the preference criteria. For instance, in filling the next four vacancies, an owner may select three applicants for occupancy from the property waiting list followed by one applicant referred by the partnering organization. To allow for maximum flexibility, HUD is not prescribing the ratio of admissions. **Note:** Although a partnering organization may refer applicants, owners must screen those applicants in the required manner as they would for any other applicants on the waiting list. In addition, the source of referrals cannot be limited to an agency, organization, or consortia that exclusively provide services restricted to people with specific disabilities or diagnoses. Referrals also cannot be limited to an agency, organization, or consortia that deny services to members of any Federally protected class under fair housing laws, *i.e.*, race, color, religion, national origin, sex, disability, or familial status.

e. **Use of Alternating Selection.** Even if not partnering with a referral agency, owners may fill vacancies in the property by alternating their selections of non-homeless applicants on the waiting list with applicants who meet the criteria for the preference. This method of selection of residents must be clearly defined in the Tenant Selection Plan.

f. **Identifying preference-qualified applicants currently on the project's waiting list.** When adopting a new preference, owners must notify all applicants on the current waiting list to determine if any are eligible under the preference (24 CFR §5.655(c)). The owner must specify on any public notice of a waiting list opening that current waiting list applicants may qualify for the preference. The notice must also include any other information new applicants and current applicants on the waiting list will need to know about how to successfully apply and establish their preference status, including any partnering agencies with whom the owner may be working to receive referrals or determine preference eligibility.

g. **Verifying preference eligibility.** If an owner adopts a preference or limited preference for individuals or families experiencing homelessness, the owner may require the individual or family to provide documentation to prove that they qualify for the preference, or may rely on a partnering homeless service organization to verify that the individual or family qualifies for the preference. When an owner establishes a partnership for referrals from a homeless service organization, he/she may allow the partnering organization to verify the individual's or family's preference qualification before the individual or family is referred to the owner.

h. **Property Designations**. If the owner has a property designation of elderly or disabled on all or some of HUD assisted units, this designation remains in effect despite the adoption of the new preference. For example, if the property is 100 percent elderly, then the homeless preference would not supersede this designation. Any qualified applicants benefiting from the homeless preference would need to meet both criteria, i.e. homeless and elderly. If the property has 10 units properly designated for individuals with disabilities, then an owner could not fill any of the 10 units with persons who met the criteria for the homeless preference unless they also met the eligibility requirements of the units.

i. **Ensuring Fair Housing compliance.** When adopting a preference or limited preference for people experiencing homelessness, an owner must ensure that the preference would not have the purpose or effect of excluding other eligible families from the program on the basis of race, color, national origin, religion, sex, disability, or familial status, or would create or perpetuate segregation. An owner must comply with all fair housing and civil rights law in the adoption of a homeless preference and the opening of the waiting list to homeless families that qualify for the preference. For example, an owner adopting a homeless preference cannot deny access to families with children. The owner must also ensure that programs or activities are administered in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The owner should analyze demographic data of the waiting list population and of the population in the community and compare this to the demographic characteristics of those who would qualify for the preference to ensure that the preference does not create a disparate impact on a particular protected class from accessing the program. In addition, the owner must fully document his/her marketing practices in the Affirmative Fair Housing Marketing Plan if the owner chooses to market the preference. This HUD-approved plan can include referrals from shelters and other organizations that serve the homeless, but should be designed specifically for the community in which the property is located.

For more guidance on the Affirmative Fair Housing Marketing Plan, please reference the HUD Handbook 4350.3 REV-1, Chapter 4.

VI. **Submission and Approval of Preference Requests:** Owners must receive HUD approval in order to adopt an admissions preference not specified under 24 CFR §5.655(c)(1) - (c)(5). Owners must submit a written request to their local HUD Field Office specifying the type of preference with a full description of the preference and how it will be implemented. Criteria set forth in this Notice including a description of the notification process for those on the waiting list, tenant selection process and any changes to the AFHMP must also be included. HUD will approve an owner-adopted preference if it does not result in discrimination, violate civil rights or equal opportunity requirements, or conflict with statutory, regulatory, or program requirements. Subsequent occupancy reviews will ensure that the property has updated its Tenant Selection Plan and, if required, the Affirmative Fair Housing Marketing

Plan. Please see Chapter 4 of HUD Handbook 4350.3 for more details about the submission and approval of preference requests.

VII. **Admissions Policies Regarding Criminal Activity and Substance Use/Abuse:** Under federal laws and HUD regulations, there are certain policies for admission to a housing program which are mandatory for all Multifamily property owners, and others which the owners have authority/discretion to adopt, but are not required.

Owners must establish standards that prohibit admission of:

1. Any household containing a member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity. The owner may, but is not required to, consider two exceptions to this provision:
    a. The evicted household member has successfully completed an approved, supervised drug rehabilitation program; or
    b. The circumstances leading to the eviction no longer exist (e.g., the household member no longer resides with the applicant household)

2. A household in which any member is currently engaged in illegal use of drugs or for which the owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents;

3. Any household member who is subject to a state sex offender lifetime registration requirement; and

4. Any household member if there is reasonable cause to believe that member's behavior from abuse or pattern of abuse of alcohol may interfere with the health, safety, and rights to peaceful enjoyment by other residents. The screening standards must be based on behavior, not the condition of alcoholism or alcohol abuse.

Owners may also establish additional screening criteria, as outlined in HUD Handbook 4350.3. However, owners should bear in mind the length of their waiting lists and the cost to applicants for screening when considering additional criteria. In addition, some of these criteria can be a barrier for vulnerable populations, including people who are homeless, to accessing the programs. For example, an owner may have strict policies related to criminal backgrounds, and previous rental housing history which can have the effect of screening out the most vulnerable people experiencing homelessness who are more likely to have past convictions, past evictions, or previous debts, due to a variety of reasons, including mental illness and substance use disorders.

An owner wishing to serve more people experiencing homelessness should consider reviewing his/her discretionary admission policies to determine if any changes can be made to remove barriers. It is important to note that all discretionary admission (and program termination) policies must be applied to all applicants uniformly. In other words, an owner cannot have a certain set of admission/termination policies that apply specifically to a certain

population, such as the homeless population, which are different from the admission/termination policies for all other applicants.

VIII. Consideration of Circumstances Regarding Admissions and Terminations/Evictions: An owner cannot establish separate admissions/termination policies for a certain population, such as the homeless population, which are different from the admissions/termination policies than for all other applicants.

In the event of receipt of unfavorable information about an applicant, consideration may be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). Consideration may also be given to factors which might indicate a reasonable probability of favorable future conduct, including: evidence of rehabilitation, and applicant's willingness to participate in social services.

IX. Service Provider as a Resource in Continued Occupancy: Service providers are important resources in ensuring that persons and families experiencing homelessness admitted to the property (and those in the property but at risk of homelessness) are provided the services necessary to remain stably housed and compliant with program requirements.

HUD field offices, contract administrators, and owners should establish working relationships or consider service agreements with the service providers to ensure that all parties stay committed to the family through their participation in the program.

X. Information Contact: Inquiries about this Notice should be directed to Yvette Viviani at Yvette.M.Viviani@hud.gov or Jonathan Kinsey at David.J.Kinsey@hud.gov.

Carol J. Galante
Assistant Secretary for Housing -
Federal Housing Commissioner

Information Collection

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0204. 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.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

Multifamily Regional Center Directors
Multifamily Hub Directors
Multifamily Program Center Directors
Rural Housing Services (RHS) Directors

Contract Administrators
Multifamily Owners and Management Agents

NOTICE H 2014-16

Issued: November 28, 2014

Expires: This notice remains in effect until amended, revoked, or superseded.

Subject: Waiting List Administration

I. Purpose. This notice provides guidance on the administration of waiting lists for Multifamily Housing properties, on the topics of opening the waiting list, placing applicants on the waiting list, and outreach. This notice does not mandate any new practices for Multifamily owners and agents, but rather provides additional options for owners in their waiting list administration to further ensure fair housing compliance. For additional details, owners should review federal regulations at 24 C.F.R Part 5, as well as HUD Handbook 4350.3 REV-1 *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

II. Background. Multifamily owners are responsible for establishing an application and selection process that treats applicants equitably and provides an effective method for determining program eligibility. While maintaining a waiting list for a property, an owner may close the waiting list for one or more unit sizes if the average wait is excessive (HUD Handbook 4350.3 4-16). When an owner agrees to accept applications again, a notice of this action must be announced in a publication likely to be read by potential applicants and in accordance with applicable affirmative fair housing marketing requirements or the HUD-approved Affirmative Fair Housing Marketing Plan. Owners must also accommodate persons with disabilities who cannot utilize the owner's preferred application process, by providing alternative methods of application in-take (e.g. accepting mailed or online applications). In response to community concerns that individuals with disabilities may still be at a disadvantage regarding waiting list placement, the Office of Multifamily Housing (in alignment with the Office of Public and Indian Housing (PIH)), is publishing additional options for owners to administer their waiting lists.

III. **Applicability.** This notice applies to the following programs:

A. Project-based Section 8
    1. New Construction
    2. State Agency Financed
    3. Substantial Rehabilitation
    4. Section 202/8
    5. Rural Housing Services (RHS) Section 515/8
    6. Loan Management Set-Aside (LMSA)
    7. Property Disposition Set-Aside (PDSA)
B. Section 101 Rent Supplement
C. Section 202/162 Project Assistance Contract (PAC)
D. Section 202 Project Rental Assistance Contract (PRAC)
E. Section 202 Senior Preservation Rental Assistance Contracts (SPRAC)
F. Section 811 PRAC
G. Section 811 Project Rental Assistance Demonstration units under a Rental Assistance Contract (PRA)
H. Section 236
I. Section 236 Rental Assistance Payments (RAP)
J. Section 221(d)(3) Below Market Interest Rate (BMIR)

IV. **Effective Date**. This notice is effective upon publication and remains in effect until amended, superseded, or rescinded.

V. **Opening the Waiting List.** As stated in HUD Handbook 4350.3 REV-1, paragraph 4-16.B.2, when an owner agrees to open his/her waiting list and begins to accept applications, the notice of this action must be announced in a publication likely to be read by potential applicants in the same manner (and if possible, in the same publications) as the notification that the waiting list was closed. The notifications should be extensive, and the rules for applying and the order in which applications will be processed should be stated. Advertisements should include where and when to apply. Advertising and outreach activities must be done in accordance with applicable fair housing marketing requirements or the HUD-approved Affirmative Fair Housing Marketing Plan.

The notification requirements must also comply with HUD fair housing requirements, such as adopting suitable means to assure that the notice reaches eligible individuals with disabilities and those with limited English proficiency.[1] Multifamily owners must ensure that notices of and communications during all meetings are provided in a manner that is effective for persons with hearing, vision, and other communications-related disabilities

[1] For additional details, please see 24 CFR § 8.6 and the Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published in the Federal Register on January 22, 2007 (72 FR 2732).

consistent with Section 504 of the Rehabilitation Act of 1973 (24 CFR 8.6), and, as applicable, the Americans with Disabilities Act. This includes ensuring that meeting sites are accessible and auxiliary aids and services are provided as needed, *e.g.*, materials in Braille, audio, and large type; sign language interpreters, computer-assisted real time transcription (CART) services, and assistive listening devices, *etc.*

Consistent with our PIH counterparts, and the guidance in PIH Notice 2012-34, Multifamily Housing cautions against opening the waiting list and accepting applications for limited periods, such as a single day, which may create disorderly and unsafe application intake processes. Opening waiting lists for longer periods and making applications available ahead of time will create safer and more effective application intake processes. Additionally, having multiple venues, both physical and online, to accept the application will help promote safety and accessibility for the application process.

VI. **Placing Applicants on the Waiting List**. In scenarios where Multifamily Housing owners elect to open a previously closed waiting list for a set period of time, owners may consider the use of a lottery or other random choice techniques to select which applicants will be placed and to determine the order these applicants will be placed on a waiting list. Owners should consider whether this is a reasonable approach in their jurisdictions. For example, this approach would be reasonable for properties located in areas where the volume of applications is high enough that placing each eligible applicant on the waiting list would result in an unrealistic waiting period for housing. It may also be appropriate in scenarios where individuals unable to apply in person at the onset of the opening would be at a distinct disadvantage in their placement on the waiting list. If a Multifamily Housing owner uses this approach, the owner must describe it in the tenant selection plan and any public notice of a waiting list opening must clearly state that this system will be used to place applicants on the waiting list. Further, applicants should be notified that, so long as the application is submitted within the stated timeframe, the timing of the application submission will have no effect on how soon they may be offered assistance. If the lottery or other random selection procedure is not used, reasonable accommodations must be made for individuals who are unable because of disabilities to submit early in the application process.

If a lottery or other random choice technique is used to place applicants on the waiting list and to determine the order in which to place applicants on the waiting list, the date and time the lottery is held should be the date recorded on the waiting list. Any preferences the applicant qualifies for must also be noted on the waiting list. Selecting tenants from the waiting list must be done in accordance with Chapter 4 of HUD Handbook 4350.3, REV-1 including paragraph 4-15.A which requires that, once unit size and preference order is determined, owners must select applications from the waiting list in chronological order to fill vacancies.

VII. **Advertising.** Owners must advertise according to the property's Affirmative Fair Housing Marketing Plan and target this advertising to groups other than the typical population of the neighborhood in which the property is located while reaching out to

applicants who are least likely to apply because they are not the predominant racial or ethnic group in the neighborhood. All advertising must include the HUD-approved Equal Housing Opportunity logo, slogan, or statement. Further, all advertising depicting persons must depict members of all eligible protected classes including individuals from both majority and minority groups, including both sexes.

VIII. Paperwork Reduction Act

There are no information collection requirements in this Notice and therefore the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) does not apply. In accordance with the Paperwork Reduction Act, an agency 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.

IX. Contact Information. Inquiries about this Notice may be directed to Kate Brennan at Catherine.M.Brennan@hud.gov in the Office of Multifamily Housing.

_____

Biniam Gebre, Acting Assistant Secretary for Housing –
Federal Housing Commissioner

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

Multifamily Regional Center/Hub Directors
Multifamily Program Center/Satellite Office Directors
Rural Housing Services (RHS) Directors
Contract Administrators
Multifamily Owners and Management Agents

NOTICE: H 2015-06

Issued: July 13, 2015

Expires: This notice remains in effect until amended, rescinded or superseded.

Cross References: 24 CFR 5.100, 24 CFR 5.105(a)(2), 24 CFR 5.403, 24 CFR 200.3 and 200.300, and 24 CFR 891.105.

Subject: Program Eligibility in Multifamily Assisted and Insured Housing Programs in Accordance with HUD's Equal Access Rule

I. Purpose and Background. On February 3, 2012, HUD published a final rule entitled Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity (77 FR 5662) ("Equal Access Rule" or "Rule"). The Rule is intended to ensure that housing across HUD programs is open to all eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status. This notice provides guidance on how the Equal Access Rule applies to Multifamily insured and assisted housing.

II. Applicability. The Rule applies to all HUD-assisted and HUD-insured housing.

III. Eligibility Determinations and Definitions. The Rule revised program requirements at PART 5—General HUD Program Requirements; Waivers, by adding the following provisions at 24 CFR 5.105, and by revising generally applicable definitions at 24 CFR 5.100 and 24 CFR 5.403.

24 CFR 5.105
(a)(2) *Equal Access to HUD-assisted or insured housing.*

(i) *Eligibility for HUD-assisted or insured housing.* A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available **without regard to actual or perceived sexual orientation, gender identity, or marital status.**

(ii) *Prohibition of inquiries on sexual orientation or gender identity.* No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing or housing whose financing is insured by HUD, whether renter- or owner-occupied, for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

24 CFR 5.100:
Gender identity means actual or perceived gender-related characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

24 CFR 5.403:
Family includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

(1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person or any other single person; or
(2) A group of persons residing together and such group includes, but is not limited to:
(i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
(ii) An elderly family;
(iii)A near-elderly family;
(iv) A disabled family;
(v) A displaced family; and
(vi) The remaining member of a tenant family.

IV. **<u>Program Regulations Revised to Reference Part 5.</u>** The Rule made several changes to program regulations, including changes to PART 200—Introduction to FHA Programs and to PART 236—Mortgage Insurance and Interest Reduction Payment for Rental Projects, covering HUD-insured programs, such that:

(1) Under 24 CFR 200.3, *Definition*, "family" has the same meaning as provided in Part 5; and

(2) Under 24 CFR 200.300, *Nondiscrimination and fair housing policy*, the nondiscrimination policies in Part 5, including the prohibition on inquiries regarding sexual orientation or gender identity apply to FHA programs;

In addition, PART 891—Supportive Housing for the Elderly and Persons with Disabilities is amended at 24 CFR 891.105, *Definitions*, to refer to the same definition of "family" in Part 5.

V. **Compliance and Enforcement.** Violations of the rule could result in HUD's determination that the owner has failed to comply with program requirements. HUD may pursue any available remedy, including sanctions, that it determines appropriate to remedy the violation. HUD or a Contract Administrator may review an owner's tenant selection plan or other policies and procedures to determine if it complies with the Equal Access Rule. In addition, the civil rights review done at the time of the Management and Occupancy Review may include a review to determine if the owner is in compliance with the Equal Access Rule. A review may also include requests for information concerning allegations of noncompliance. Owners will cooperate with HUD and provide access to staff, records or any information needed to conduct the review.

More extensive guidance on civil rights laws and nondiscrimination policies as they apply to Multifamily assisted housing can be found in Chapter 2 of the HUD Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs*. This Chapter of the Handbook will be updated to reflect the provisions of the Equal Access Rule. Note that Section 4 of that Chapter, on Housing Discrimination Complaints and Compliance Reviews, provides direction in the event that an applicant or tenant believes that he or she has been subject to discriminatory treatment from the owner of an assisted property. See also the Office of Fair Housing and Equal Opportunity (FHEO) webpage on lesbian, gay, bisexual, or transgender (LGBT) housing discrimination, which provides instructions for contacting HUD if a person believes he or she has experienced housing discrimination.

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination

The webpage provides instructions for contacting HUD to obtain answers to questions about LGBT fair housing issues or information about HUD regulations intended to ensure equal access of LGBT persons.

VI. **Enforcement Options.** If, after conducting a thorough investigation of a complaint brought to HUD or to the Contract Administrator or other information brought to the attention of HUD or the Contract Administrator, the Regional Center/Hub Director determines that the owner or agent has committed one or more violations of the requirements contained in the Equal Access Rule, the Regional Center/Hub Director will provide written notice of the violations to the owner. The notice will describe the violations and call for a response within 30 days. If the applicable regulatory agreement and/or HAP contract requires the owner to "provide management for the project that is acceptable to HUD" or to "administer the subsidy contract in accordance with HUD regulations and requirements," the Regional Center/Hub Director's notice will further inform the owner that its violations of the Equal Access Rule constitute unacceptable

management and, therefore, are also violations of the regulatory agreement and/ or the HAP contract.

If the owner fails to respond, or the response does not satisfactorily address the violations alleged in the Regional Center/Hub Director's letter, then the Regional Center/Hub Director or designee may send a referral to the Departmental Enforcement Center (DEC) and the owner must be flagged in the Active Partners Participation System (APPS).

Owners, management agents, principals, or affiliates of projects that are under an insured mortgage or are assisted, who violate any provision of the Equal Access Rule may be liable for one or more of the following sanctions:

A. Debarment - an exclusion of an individual, organization and its affiliates from conducting business with any Federal Agency government-wide. Debarment is a very serious compliance sanction and is typically imposed for a three-year period. See 2 CFR Parts 180 and 2424 (applies only to nonprocurement activities with the federal government).

B. Suspension - a temporary action with the same effect as debarment. See 2 CFR Parts 180 and 2424.

C. Limited Denial of Participation (LDP) - an action that excludes a party from further participation in a certain HUD program area. The scope of the LDP may also be limited to a certain geographic area, and generally remains in effect for up to 12 months. See 2 CFR Parts 180 and 2424.

D. Civil Money Penalties - fines which may be imposed on owners, principals of owners, and management agents who knowingly and materially fail to comply with any provision of the Equal Access Rule, and, therefore, fail to provide management for the project acceptable to the Secretary, or fail to administer the subsidy contract in accordance with HUD regulations and requirements. By adjustment under the Federal Civil Penalties Inflation Adjustment Act of 1990, the maximum civil money penalty for each offense is currently $42,500, but the actual amount of the penalty is determined by applying the factors listed in 24 CFR 30.80. These include, among other things, the gravity of the offense, the Owner's history of prior offenses, injury to the public resulting from the violations, the Owner's culpability for the violations, and the Owner's ability to pay the penalty. As these will vary from case to case, there is no schedule of Civil Money Penalty (CMP) amounts. The actual amount sought in any particular case depends on the Departmental Enforcement Center's (DEC) analysis of the factors as they apply to each case.

The enforcement options under A., B., and C., above, may be applied to any insured or assisted project owner, agent or affiliate. Option D., Civil Money Penalties, may only be applied to projects under an insured mortgage or that have a project-based Section 8

contract that has been renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997 **(**MAHRA). In addition, HUD may also pursue abatement of, or termination of, a Section 8 contract to sanction an owner or agent who HUD determines has violated any provisions of the Equal Access Rule.

VII. **Fair Housing Implications.** Although the Fair Housing Act does not expressly include sexual orientation, gender identity or marital status as protected characteristics, a lesbian, gay, bisexual, or transgender person may still be protected by one or more of the Fair Housing Act's prohibitions against discrimination. For example, courts have recognized that the Fair Housing Act's prohibition against discrimination because of sex includes discrimination based on non-conformance with sex stereotypes. Therefore, under certain circumstances, complaints involving sexual orientation or gender identity may be investigated under the Fair Housing Act.

Persons alleging such discrimination should be informed of their right to file a fair housing discrimination complaint with HUD and directed to HUD's Office of Fair Housing and Equal Opportunity at (800) 669-9777 (voice) or (800) 927-9275 (TTY). Housing discrimination complaints may also be filed by visiting www.hud.gov/fairhousing, or by downloading HUD's free housing discrimination mobile application, which can be accessed through Apple and Android devices.

If HUD lacks jurisdiction to investigate a complaint from an LGBT person, such person may still be protected under state and local laws that include sexual orientation, gender identity and/or marital status as protected classes.

Many states and local jurisdictions prohibit housing discrimination based on sexual orientation, gender identity and/or marital status, and HUD may refer complaints or other information concerning these protected classes to appropriate state and local fair housing enforcement agencies.

VIII. **Paperwork Reduction Act.** The information collection requirements contained in this Equal Access Housing Notice were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Compliance and Enforcement are covered by OMB control numbers 2502-0577 and 2502-0598. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

IX. **Contact Information**. Inquiries about this notice may be directed to Kate Brennan at Catherine.M.Brennan@hud.gov in the Office of Multifamily Housing Programs.

_____

Edward L. Golding, Principal Deputy Assistant Secretary
for Housing

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:
Public Housing Agency Directors
Public Housing Hub Offices Directors
Public Housing Field Office Directors
Resident Management Corporations
All Multifamily Hub Directors
All Multifamily Program Center Directors

Notice H 2015-10

Issued: November 2, 2015

Expires: This notice remains in effect until amended, superseded, or rescinded.

Reference: PIH 2015-19

Subject: Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions

1. Background

For the past five years HUD has been an active member of the Federal Interagency Reentry Council. This Council, made up of more than 23 Federal Agencies, meets on a regular basis to act on issues that affect the lives of those released from incarceration. An important aspect of the Reentry Council's work has been to have each Federal Agency identify and address "collateral consequences" that individuals and their families may face because they or a family member has been incarcerated or has had any involvement with the criminal justice system.[1]

In 2011, former HUD Secretary Shaun Donovan issued a letter to public housing authorities (PHAs) across the country emphasizing the importance of providing "second chances" for formerly incarcerated individuals.[2] Secretary Donovan urged PHAs to adopt admission policies that achieve a sensible and effective balance between allowing individuals with a criminal record to access HUD-subsidized housing and ensuring the safety of all residents of such housing. A year later, Secretary Donovan encouraged owners of HUD-assisted multifamily properties ("owners") to do the same and reiterated HUD's goal of "helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live." HUD has also previously stressed the troubling relationship between housing barriers for individuals with criminal records and homelessness, stating that "the difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness in turn increases the risk of subsequent re-incarceration."[3]

[1] For more information on the initiatives of the Council members, see https://csgjusticecenter.org/nrrc/projects/firc/snapshots/.

[2] Letter from Shaun Donovan, Secretary, United States Department of Housing and Urban Development, to Public Housing Authority Executive Directors (June 17, 2011), available at http://usich.gov/resources/uploads/asset_library/Rentry_letter_from_Donovan_to_PHAs_6-17-11.pdf.

[3] Guidance on Housing Individuals and Families Experiencing Homelessness Though the Public Housing and Housing Choice

At a time when an estimated 100 million (or nearly one in three) Americans have some type of criminal record,[4] HUD remains committed to the goal of providing second chances to formerly incarcerated individuals where appropriate and to ensuring that individuals are not denied access to HUD-subsidized housing on the basis of inaccurate, incomplete, or otherwise unreliable evidence of past criminal conduct. With those aims, and in response to requests from housing providers and prospective tenants for guidance from HUD regarding the proper use of criminal records in housing decisions, HUD is issuing this notice.

2. Purpose

The purpose of this Notice is to inform PHAs and owners of other federally-assisted housing that arrest records may not be the basis for denying admission, terminating assistance or evicting tenants, to remind PHAs and owners that HUD does not require their adoption of "One Strike" policies, and to remind them of their obligation to safeguard the due process rights of applicants and tenants.

The Notice also reminds PHAs and owners of their obligation to ensure that any admissions and occupancy requirements they impose comply with applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105.

Finally, the Notice provides best practices and peer examples for PHAs and owners to review.

3. HUD Does Not Require PHAs and Owners to Adopt "One Strike" Policies

HUD does not require that PHAs and owners adopt or enforce so-called "one-strike" rules that deny admission to anyone with a criminal record or that require automatic eviction any time a household member engages in criminal activity in violation of their lease. Instead, in most cases, PHAs and owners have discretion to decide whether or not to deny admission to an applicant with certain types of criminal history, or terminate assistance or evict a household if a tenant, household member, or guest engages in certain drug-related or certain other criminal activity on or off the premises (in the case of public housing) or on or near the premises (in the case of Section 8 programs).[5]

In deciding whether to exercise their discretion to admit or retain an individual or household that has engaged in criminal activity, PHAs and owners may consider all of the circumstances relevant to the particular admission or eviction decision, including but not limited to: the seriousness of the offending action; the effect that eviction of the entire household would have

---

Voucher Programs, HUD PIH Notice 2013-15 (HA), 8 (June 10, 2013), available at http://1.usa.gov/1afx3VY.

[4] Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal History Information Systems*, 2012, 3 (Jan. 2014), available at https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf.

[5] HUD regulations outline the limited instances where denial of admission or termination of assistance is required in the public housing, Housing Choice Voucher and Section 8 multifamily programs. See 24 CFR Part 5, subpart I; Part 960, subpart B; Part 966, subpart A; Part 982, subpart L.

on family members not involved in the criminal activity; and the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the criminal activity. Additionally, when specifically considering whether to deny admission or terminate assistance or tenancy for illegal drug use by a household member who is no longer engaged in such activity, a PHA or owner may consider whether the household member is participating in or has successfully completed a drug rehabilitation program, or has otherwise been rehabilitated successfully.[6]

4. An Arrest is Not Evidence of Criminal Activity that Can Support an Adverse Admission, Termination, or Eviction Decision

Subject to limitations imposed by the Fair Housing Act and other civil rights requirements,[7] PHAs and owners generally retain broad discretion in setting admission, termination of assistance, and eviction policies for their programs and properties. Even so, such policies must ensure that adverse housing decisions based upon criminal activity are supported by sufficient evidence that the individual engaged in such activity. Specifically, before a PHA or owner denies admission to, terminates the assistance of, or evicts an individual or household on the basis of criminal activity by a household member or guest, the PHA or owner must determine that the relevant individual engaged in such activity.

HUD has reviewed relevant case law and determined that the fact that an individual was arrested is not evidence that he or she has engaged in criminal activity. Accordingly, the fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity warranting denial of admission, termination of assistance, or eviction.

An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. In many cases, arrests do not result in criminal charges, and even where they do, such charges can be and often are dismissed or the person is not convicted of the crime alleged. In fact, in the 75 largest counties in the country, approximately one-third of felony arrests did not result in conviction, with about one-quarter of all cases ending in dismissal.[8]

Moreover, arrest records are often inaccurate or incomplete (e.g., by failing to indicate whether the individual was prosecuted, convicted, or acquitted), such that reliance on arrests not resulting in conviction as the basis for denying applicants or terminating the assistance or tenancy of a household or household member may result in unwarranted denials of admission to or eviction from federally subsidized housing.[9]

---

[6] See 24 CFR 5.852, 960.203(d), 966.4(l)(5)(vii), 982.310(h) (describing PHA and owner discretion in screening and evictions actions related to criminal activity).

[7] See 24 CFR 5.852(e) ("admission and eviction decisions must be consistent with fair housing and equal opportunity provisions of [24 CFR 5.105]"); see also 24 CFR 960.202(c)(3), 966.6(l)(vii)(F), 982.310(h)(4), 982.552(c)(2)(v).

[8] Brian A. Reaves, Bureau of Justice Statistics, U.S. Dep't of Justice, Felony Defendants in Large Urban Counties, 2009, at 22, Table 21 (2013), http://www.bjs.gov/content/pub/pdf/fdluc09.pdf.

[9] See, e.g., U.S. Dep't of Justice, *The Attorney General's Report on Criminal History Background Checks* at 3, 17 (June 2006), http://www.justice.gov/olp/ag_bgchecks_report.pdf (reporting that the FBI's Interstate Identification Index system, which is the national system designed to provide automated criminal history record information and "the most comprehensive single source of criminal history information in the United States," is "still missing final disposition information for approximately 50 percent of its records").

With respect to the Section 8 tenant-based and moderate rehabilitation programs, HUD regulations specifically provide that termination of assistance for criminal activity must be based on a "preponderance of the evidence" that the tenant, or other household member, or guest engaged in such activity. For public housing as well, applicants or tenants may not be denied admission or evicted based on mere suspicion that they, a household member, or guest has engaged in criminal activity. Where PHAs or owners seek eviction, they should be prepared to persuade a court that the eviction is justified based on sufficient evidence of criminal activity in violation of the lease.

For these reasons, a PHA or owner may not base a determination that an applicant or household engaged in criminal activity warranting denial of admission, termination of assistance, or eviction on a record of arrest(s).

Although a record of arrest(s) may not be used to deny a housing opportunity, PHAs and owners may make an adverse housing decision based on the conduct underlying an arrest if the conduct indicates that the individual is not suitable for tenancy and the PHA or owner has sufficient evidence other than the fact of arrest that the individual engaged in the conduct. The conduct, not the arrest, is what is relevant for admissions and tenancy decisions.

An arrest record can trigger an inquiry into whether there is sufficient evidence for a PHA or owner to determine that a person engaged in disqualifying criminal activity, but is not itself evidence on which to base a determination. PHAs and owners can utilize other evidence, such as police reports detailing the circumstances of the arrest, witness statements, and other relevant documentation to assist them in making a determination that disqualifying conduct occurred. Reliable evidence of a conviction for criminal conduct that would disqualify an individual for tenancy may also be the basis for determining that the disqualifying conduct in fact occurred.

5. Protecting the Due Process Rights of Applicants and Tenants

Federal law requires that PHAs provide public housing, project-based Section 8, and Section 8 HCV applicants with notification and the opportunity to dispute the accuracy and relevance of a criminal record *before* admission or assistance is denied on the basis of such record. Public housing and Section 8 applicants also must be afforded the right to request an informal hearing or review *after* an application for housing assistance is denied.

As with admissions decisions, federal law requires that PHAs provide public housing, project-based Section 8, and Section 8 HCV tenants with notice and the opportunity to dispute the accuracy and relevance of a criminal record before they evict or terminate the tenant's assistance on the basis of such record. Moreover, PHAs and owners may only terminate the tenancy or assistance of a public housing or project-based Section 8 tenant through either a judicial action in state or local court, or, in the case of a Section 8 HCV participant, through an administrative grievance hearing before an impartial hearing officer appointed by the PHA. In either case, the tenant must be afforded the basic elements of due process, including the right to be represented by counsel, to question witnesses, and to refute any evidence presented by the PHA or owner.

6. Civil Rights Requirements and Consistent Application of Procedures and Standards

PHAs and owners must ensure that any screening, eviction, or termination of assistance policies and procedures comply with all applicable civil rights requirements contained in in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105. To that end, a PHA or owner should institute protocols that assure that its procedures and standards are consistently applied and that decisions are made based on accurate information. Inconsistent application of standards or decisions based on partial or inaccurate information may result in liability under federal civil rights laws. See, e.g., Allen v. Muriello, 217 F. 3rd 517 (7th Cir. 2000) (allegation that African American applicant for federal housing assistance was given less opportunity to contest erroneous record of criminal activity than two similarly situated white applicants established a prima facie case of discrimination under the Fair Housing Act).

7. Best Practices and Peer Examples

PHAs and owners are encouraged to adopt admissions and continuing occupancy policies based on the best practices highlighted below to guard against unwarranted denial of assistance, termination from program participation, or eviction from federally assisted housing. These best practices incorporate clear standards for using information about criminal history in an admission or continuing participation decision. PHAs and owners are also encouraged to read the Shriver Report entitled "When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing."

Examples of PHA Best Practices on the Use of Criminal Records

A. Many PHAs have adopted written admission policies that limit their criminal record screening to assessments of conviction records.

Examples of PHA Best Practices on Screening for Criminal Activity

A. Some PHAs allow public housing and Housing Choice Voucher applicants to address and present mitigating circumstances regarding criminal backgrounds prior to admission decisions. In some cases, doing so has produced cost savings due to fewer decision appeals.

B. Some PHAs have adopted lookback periods that limit what criminal conduct is considered during the screening process based on when the conduct occurred and/or the type of conduct. For example, when screening HCV applicants, one PHA has adopted a twelve-month lookback period for drug-related criminal activity and a twenty-four month lookback period for violent and other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

C. Some PHAs have adopted admission policies that enumerate the specific factors that will be considered when the PHA evaluates an individual's criminal record, including:

a. Whether the applicant's offense bears a relationship to the safety and security of

other residents;

b. The level of violence, if any, of the offense for which the applicant was convicted;
c. Length of time since the conviction;
d. The number of convictions that appear on the applicant's criminal history;
e. If the applicant is now in recovery for an addiction, whether the applicant was under the influence of alcohol or illegal drugs at the time of the offense; and
f. Any rehabilitation efforts that the applicant has undertaken since the time of conviction.

D. Some PHAs have implemented pilot programs that allow formerly incarcerated persons who have been released from prison within the past two or three years to be added to an existing voucher of a family member if all involved agree to participate and the formerly incarcerated individual agrees to six months to one year of supportive services with nonprofit partners.

E. One PHA has hired an offender reentry housing specialist who collaborates with a formerly incarcerated individual's parole officer, landlord, and treatment provider to ensure successful reentry into the community.

Example of PHA Best Practices on Evicting and Terminating Assistance for Criminal Activity

A. Some PHAs have adopted policies that list the circumstances that will be considered prior to a termination of the lease on the basis of criminal activity, including:

a. The seriousness of the offending action, especially with respect to how it would affect other residents;
b. The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or a victim of domestic violence, dating violence, sexual assault, or stalking;
c. The effects that the eviction will have on other family members who were not involved in the action or failure to act;
d. The effect on the community of the termination, or of the PHA's failure to terminate the tenancy;
e. The effect of the PHA's decision on the integrity of the public housing program;
f. The demand for housing by eligible families who will adhere to lease responsibilities;
g. The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action; and
h. The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future.

8. **Paperwork Reduction Act**

The information collection requirements contained in this Notice were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C 3501-3520). Compliance and Enforcement are covered by OMB controls numbers 2502-

0205, 2577-0232, 2577-0220, 2577-0230, and 2577 - 0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

9. Contact Information

If you have questions regarding this Notice, please contact your local HUD Field Office.

/s/
Lourdes Castro Ramirez
Principal Deputy Assistant Secretary for
Public and Indian Housing

/s/
Edward Golding
Principal Deputy Assistant Secretary for
Housing

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

Office of Housing

Office of Public and Indian Housing

Special Attention of:	NOTICE: PIH 2015-21 H 2015-12
Multifamily Regional Center Directors Multifamily Hub Directors Multifamily Program Center Directors Supervisory Housing Project Managers Rural Housing Service (RHS) Directors Account Executives Contract Administrators Owners, Management Agents Administering Multifamily Housing Assistance Programs Public Housing Agency Directors Section 8 and Public Housing Administrators HUD Directors of Public Housing PIH Program Center Coordinators Public Housing Division Directors	Issued: December 10, 2015 Expires: This notice remains in effect until amended, revoked, or superseded. Cross References: Fiscal Year 2012 Appropriations; Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance (71 FR 18146, appendix A); 24 CFR 5.609(b)(9); 24 CFR 5.609(c)(6)

Subject: Amendment to the Definition of Tuition

I. Purpose

This notice serves to amend the definition of tuition found in the *Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance* (71 FR 18146, appendix A) which is used in both Multifamily Housing and Public and Indian Housing (PIH) programs. The *Supplementary Guidance* states that "tuition shall have the meaning given this term by the institution of higher education in which the student is enrolled[1]." To promote consistency across HUD's programs and provide PHAs and O/As with a standard definition of tuition and fees, HUD is aligning with the Department of Education's definition of tuition and fees. With the issuance of this notice, tuition will now be defined in the same manner in which the Department of Education defines "tuition and fees." Section IV of this Notice provides details of the amended definition.

This Notice is effective upon publication.

[1] The term "tuition" is defined in the *Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance* (71 FR 18146, appendix A). Multifamily Housing programs define the term tuition in HUD Handbook 4350.3 REV-1.

II. Background

HUD has become aware of many institutions of higher education moving from a traditional tuition-only structure to a new tuition and fee structure. Fees often include, but are not limited to, student service fees, student association fees, student activities fees, and laboratory fees. HUD believes the inclusion of many of these required fees within the definition of tuition will increase opportunities for its participants to further their education.

This position was reinforced with the inclusion of the language (in bold below) of section 215(b) in the Fiscal Year 2012 appropriations. The FY 2012 appropriations require that the amount of any financial assistance an individual receives in excess of amounts received for tuition and "other required fees and charges" be considered when determining an applicant's or participant's annual income. For purposes of section 8 programs only see section 215 (b) below.

> SEC. 215. (b) For purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (**in excess of amounts received for tuition and any other required fees and charges**) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.

III. Applicability

All provisions of this notice apply to owners and management agents (O/As) and public housing authorities (PHAs) administering the following covered programs under section 8 of the United States Housing Act of 1937:

A. Project-based Section 8
    1. New Construction
    2. State Agency Financed
    3. Substantial Rehabilitation
    4. Section 202/8
    5. Rural Housing Services Section 515/8
    6. Loan Management Set-Aside (LMSA)
    7. Property Disposition Set-Aside (PDSA)

B. Section 8 Housing Choice Voucher (including Project-Based Voucher and Project-Based Certificate)

C. Moderate Rehabilitation

In programs, other than HUD's section 8 programs, that follow the definition of annual income in 24 CFR part 5 (e.g. the Public Housing program), PHAs and other grantees may continue to exclude the full amount of student financial assistance from a person's annual income in accordance with 24 CFR § 5.609(c)(6).

The amended definition of tuition in section IV of this notice applies to all HUD programs. The income determination (section V) and verification requirements (section VI) may also apply to other HUD programs that follow 24 CFR part 5. Administrators and participants in those programs should contact the appropriate HUD program office overseeing your program if you have questions concerning the implementation of HUD's amended definition of tuition or the income determination and verification requirements for your program.

IV. Amended Definition of Tuition as Defined by the Department of Education

Prior to this Notice, when determining an applicant's or participant's income, HUD's definition of tuition required PHAs and O/As to defer to the definition of tuition used by the institution of higher education in which the student is enrolled. The definition can vary across institutions and academic programs. With the inclusion of "other required fees and charges" being added to the definition of tuition, PHAs and O/As may experience difficulty in determining income.

The Department of Education defines tuition as the amount of money charged to students for instructional services which may be charged per term, per course, or per credit. The Department of Education further defines tuition and fees as the amount of tuition and required fees covering a full academic year most frequently charged to students.[2] These values represent what a typical student would be charged and may not be the same for all students at an institution. If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an entire academic year is used to estimate average tuition. Required fees include all fixed sum charges that are required of a large proportion of all students. The student who does not pay the charges is an exception.[3] Examples of required fees include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).

Expenses related to attending an institution of higher education must **not** be included as tuition. Examples of these expenses include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed sum charges.

[2] *See*, Integrated Postsecondary Education Data System Glossary for definition of "tuition" and "tuition and fees." Retrieved February 5, 2013, from http://nces.ed.gov/ipeds/glossary/?charindex=T
[3] *Id*.

V. Income Determination

In implementing the amended definition of tuition, for section 8 programs only, O/As and PHAs must include amounts of financial assistance an individual receives in excess of tuition and other required fees and charges when determining annual income in accordance with 24 CFR 5.609(b)(9).

Under other programs, such as the Public Housing program, the full amount of financial assistance a student receives while participating in the program continues to be excluded from the program participant's annual income pursuant to 24 CFR § 5.609(c)(6).

Example:
Kim, a 22 year old, married, participant in a Section 8 program is enrolled in a nursing program at her local community college. She is receiving $7,000 in financial assistance to cover the full cost of tuition and fees of $6,000 for the academic year. The $6,000 includes:

- $2,500 in tuition per semester (total $5,000) *plus*
- $500 in individual fees (total $1,000)—athletic fee, writing laboratory fee, student center fee, science laboratory fee, technology fee—charged to every student per semester.

In this example, the excess $1,000 ($7,000 - $6,000) Kim received in financial assistance will be included in her annual income in accordance with 24 CFR 5.609(b)(9).

Under HUD's previous definition of tuition, Kim's housing authority might have considered her financial assistance to be in excess of $2,000 if her college's definition of tuition did not include fees. Under HUD's new definition, Kim's housing authority will determine her excess financial assistance to be $1,000 rather than $2,000 because the required fees and charges are included with tuition.

Using the same example, if Kim was a participant in the Public Housing program, the full amount of financial assistance she received would be excluded from her income in accordance with 24 CFR § 5.609(c)(6).

VI. Verification of Tuition and Fees

O/As and PHAs must verify the amounts of tuition and required fees charged by the school when determining annual income. O/As and PHAs may wish to verify those amounts using the student's bill or account statement (including an online account statement) as provided by the school's bursar's office, or by contacting the bursar's office directly. It is also recommended that you visit the school's website as many institutions of higher education provide an itemized list covering tuition and fees that are charged to a majority of their students on their websites.

VII. Contact Information

For those administering or participating in programs administered by the Office of Multifamily Housing, please contact Michael Sharkey via email, Michael.A.Sharkey@hud.gov should you have questions regarding this Notice. For those administering or participating in PIH programs, you may contact your local HUD Field Office of Public Housing. Persons with hearing or speech impairments may access their field office via TTY by calling the Federal Information Relay Service at (800) 877-8339.

_____/s/_____
Lourdes Castro Ramirez,
Principal Deputy Assistant Secretary
for Public and Indian Housing

_____/s/_____
Edward Golding
Principal Deputy Assistant Secretary for
Housing

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

Multifamily Regional Center/Hub Directors
Multifamily Satellite/Program Center Directors
Rural Services (RHS) Directors
Supervisory Housing Project Managers
Housing Account Executives
Contract Administrators
Multifamily Owners and Management Agents

Notice: 2016-01

Issued: January 19, 2016

Expires: This notice remains in effect until amended, revoked, or superseded.

Subject: Passbook Savings Rate Effective February 1, 2016

I. Purpose: This notice supersedes Notice H 2014-15 addressing the passbook savings rate used to determine annual income from net family assets.

II. Applicability: This notice applies to the following programs:

A. Project-based Section 8
   1. New Construction
   2. State Agency Financed
   3. Substantial Rehabilitation
   4. Section 202/8
   5. Rural Housing Services (RHS) Section 515/8
   6. Loan Management Set-Aside (LMSA)
   7. Property Disposition Set-Aside (PDSA)

B. Section 101 Rent Supplement
C. Section 202/162 Project Assistance Contract (PAC)
D. Section 202 Project Rental Assistance Contract (PRAC)
E. Section 202 Senior Preservation Rental Assistance Contracts (SPRAC)
F. Section 811 PRAC
G. Section 811 Project Rental Assistance Demonstration units under a Rental Assistance Contract (PRA)
H. Section 236
I. Section 236 Rental Assistance Payments (RAP)
J. Section 221(d) (3) Below Market Interest Rate (BMIR)

III. Background: Under 24 CFR §5.609(b)(3), when determining annual income for families who receive assistance in a Multifamily Housing subsidized unit, the owner includes in annual income the greater of either: (1) actual income resulting from all net family assets; or (2) a percentage of the value of such assets based upon the

current passbook savings rate as determined by the U.S. Department of Housing and Urban Development (HUD) when a family has net assets in excess of $5,000. As interest rates may fluctuate, Multifamily Housing acknowledges the need to adjust the passbook savings rate at least annually to represent current national averages.

IV. **Passbook Savings Rate**: The passbook savings rate is based on the national average provided by the Federal Deposit Insurance Corporation. The passbook savings rate (unchanged from last year) to be used for all move-in, initial, annual, and interim recertification when a family has net assets over $5,000 is .06%. This .06% rate must be used until Multifamily Housing publishes and makes effective a new passbook savings rate.

V. **Environmental Impact**: In accordance with § 50.19(c)(6) of the HUD regulations, this Notice sets forth rate determinations which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore is categorically excluded from the requirements of the National Environmental Policy Act and related Federal laws and authorities.

VI. **Paperwork Reduction Act**: There are no information collection requirements in this Notice and therefore the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) does not apply. In accordance with the Paperwork Reduction Act, an agency 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.

VII. **Inquiries**: Questions about this notice should be directed to Michael Sharkey in the Office of Asset Management and Portfolio Oversight at Michael.A.Sharkey@hud.gov.

_____

Edward Golding
Principal Deputy Assistant Secretary for Housing

identify based on that person's appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents.

[FR Doc. 2016–22587 Filed 9–20–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5969–N–01]

Eligibility of Independent Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Additional Supplementary Guidance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, and Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On December 30, 2005, HUD published a final rule (FR–5036–F–01), ''Eligibility of Students for Assisted Housing under Section 8 of the U.S. Housing Act of 1937'', implementing section 327 of the agency's Fiscal Year 2006 appropriations, Title III of Public Law 109–115, 119 Stat. 2936, approved November 30, 2005 (2006 HUD Appropriations Act). Section 327 requires that if an individual is enrolled at an institution of higher education (*i.e.,* student) is under the age of 24, is not a veteran, is unmarried and does not have a dependent child, is individually ineligible for assistance under section 8 of the United States Housing Act of 1937 (section 8 assistance), or the student's parents are, individually or jointly, ineligible for assistance, no section 8 assistance can be provided to the student.

On April 10, 2006, HUD published supplemental guidance to assist providers in implementing the final rule. That supplemental guidance provided a list of items that Public Housing Agencies, Owners, and Managers are required to verify when determining whether a student's income alone should be used to determine section 8 eligibility, and this notice updates that list of items to remain consistent with the U.S. Department of Education's definition of ''independent student,'' and reduce barriers for vulnerable youth to receive assistance and continue their education.

FOR FURTHER INFORMATION CONTACT: Rebecca L. Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4214, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000, telephone (202) 402–6050 (this is not a toll-free number), or Danielle D. Garcia, Branch Chief, Multifamily Housing, Assisted Housing Oversight Division, Room 6148, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000, telephone (202) 402–2768 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION

I. Background

Section 327 of HUD's Fiscal Year 2006 appropriations, Title III of Public Law 109–115, 119 Stat. 2936, approved November 30, 2005 (2006 HUD Appropriations Act), introduced new restrictions on providing housing assistance to students of higher education under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (1937 Act). On December 30, 2005, at 70 FR 77742, HUD published a final rule implementing section 327 of the Act (Section 327) in accordance with the statutory requirement that HUD issue a final rule no later than 30 days following enactment of the 2006 HUD Appropriations Act. HUD's rule implementing the statute prohibits section 8 assistance to an individual who is enrolled at an institution of higher education (*i.e.,* students), is under the age of 24, is not a veteran, is unmarried, does not have a dependent child, and is individually ineligible for section 8 assistance or has parents who are, individually or jointly, ineligible on the basis of income to receive assistance.

On April 10, 2006, at 71 FR 18146, HUD issued supplementary guidance to further assist Public Housing Agencies (PHAs) and multifamily project owners and management agents (Owners and Managers) with the implementation of the new eligibility restrictions (2006 supplementary guidance). HUD's 2006 supplementary guidance provided certain exceptions to the requirement that the eligibility of a student seeking section 8 assistance would be determined based on income eligibility for the assistance by both the student and the student's parents. HUD's 2006 supplementary guidance explained that a student, under the age of 24 who meets the additional criteria of Section 327, may still be income eligible for assistance in circumstances where the student can demonstrate independence from parents, where the student can demonstrate the absence of parents, or where an examination of the student's parents' income may not be relevant. The 2006 supplementary guidance instructs PHAs, Owners, and Managers to consider certain criteria, including but not limited to, whether:

(1) The individual is of legal contract age under state law.

(2) The individual has established a household separate from parents or legal guardians for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of an ''independent student.'' Section 480(d) of the Higher Education Act of 1965, as amended (the HEA), 20 U.S.C. 1087vv(d).

(3) The individual is not claimed as a dependent by parents or legal guardians pursuant to IRS regulations.

(4) The individual obtains a certification of the amount of financial assistance that will be provided by parents, signed by the individual providing the support, even if no assistance will be provided.

The 2006 supplemental guidance also provided a list of items that PHAs, Owners, and Managers must verify to determine whether a student is independent for purposes of using the student's income alone for determining Section 8 eligibility (Student's Independence Verification Requirements). Those items include:

(1) Previous address information to determine evidence of a separate household, or verifying the student meets the U.S. Department of Education's definition of ''independent student'';

(2) prior year income tax returns to verify if a parent or guardian has claimed the student as a dependent, except if the student meets the Department of Education definition of ''independent student''; and

(3) written certification by a parent of the amount of financial support that parent provides to the student, or written certification that the parent provides no financial support to the student.

HUD also adopted in Appendix A of the 2006 supplementary guidance the U.S. Department of Education's (ED) definition of ''independent student'' from the HEA. ED's definition provided that an ''independent student'' is a student who meets one or more of the following criteria: (a) Is at least 24 years old by December 31 of the award year for which aid is sought; (b) is an orphan or a ward of the court through the age of 18; (c) is a veteran of the United States Armed Forces; (d) has legal dependents other than a spouse (for

example, dependent children or an elderly dependent parent); (e) is a graduate or professional student; or, (f) is married.[1]

In 2007, the HEA definition was amended and expanded in Section 604 of the College Cost Reduction and Access Act of 2007 (Public Law 110–84, 121 Stat. 784, approved September 27, 2006). The College Cost Reduction and Access Act added new criteria to the definition of ''independent student'' to include broadening the category of students who were orphans or wards of the court at age 18 to include those who were orphans, in foster care, or were wards of the court at any time when the individual was 13 years of age or older; it added those students who are or were emancipated or in legal guardianship; and added unaccompanied youths who are homeless or who are at risk of homelessness. This new definition was adopted by ED in guidance.

II. Definition of ''Independent Student''

This notice brings HUD's guidance into conformity with the updated HEA definition and ED's definition of ''independent student.'' ED's definition of ''independent student'' is one of the criteria in HUD's 2006 supplementary guidance for PHAs, owners and managers to use in verifying whether a student is ''independent.'' Specifically, HUD is updating the definition of ''independent student'' to include the more expansive definition found in HEA, as amended by the College Cost Reduction and Access Act of 2007.

ED's definition of ''independent student'', which now applies is:

a. The individual is 24 years of age or older by December 31 of the award year;

b. The individual is an orphan, in foster care, or a ward of the court or was an orphan, in foster care, or a ward of the court at any time when the individual was 13 years of age of older;

c. The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's State of legal residence;

d. The individual is a veteran of the Armed Forces of the United States (as defined in subsection (c)(1) of HEA) or is currently serving on active duty in the Armed Forces for other than training purposes;

e. The individual is a graduate or professional student;

f. The individual is a married individual;

g. The individual has legal dependents other than a spouse;

h. The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth (as such terms are defined in section 725 of the McKinney-Vento Homeless Assistance Act) (42 U.S.C. 11431 *et seq.*), or as unaccompanied, at risk of homelessness, and self-supporting, by—

(i) a local educational agency homeless liaison, designated pursuant to section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act;

(ii) the director of a program funded under the Runaway and Homeless Youth Act or a designee of the director;

(iii) the director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (relating to emergency shelter grants) or a designee of the director; or

(iv) a financial aid administrator; or

i. The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.[2]

III. Student's Independence Verification Requirements

HUD is also amending the Student's Independence Verification Requirements set out in the 2006 supplementary guidance. These requirements may create barriers for youth, and especially vulnerable youth (*i.e.,* unaccompanied homeless youth, at risk of being homeless youth, and youth who have aged out of foster system), to receive assistance and continue their education, as many of these youth are not connected to their parents or caregivers to obtain the information necessary to show they are ''independent'' under HUD's current guidance. Therefore, HUD is clarifying that the tax return requirement only applies to providing the student's tax returns and not that of the student's parents.

HUD also provides through this guidance that an individual who meets ED's ''independent student'' definition in paragraph (b), (c), or (h), as adopted in Section II of this notice, are considered ''vulnerable youth'' for purposes of this guidance, and provides that when a PHA, owner or manager determines an individual is a ''vulnerable youth'' such determination is all that is necessary to determine a person is an ''independent student'' for purposes of using only the student's income for determining eligibility for section 8 assistance. The new Student's Independence Verification Requirements are as follows:

PHAs, Owners, and Managers of section 8 assistance will need to verify a student's independence from his or her parents to determine that the student's parents' income is not relevant for determining the student's eligibility for assistance by doing all of the following:

(1) Reviewing and verifying previous address information to determine evidence of a separate household or verifying the student meets the U.S. Department of Education's definition of ''independent student'';

(2) Reviewing a student's prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of Education's definition of ''independent student''; and

(3) Verifying income provided by a parent by requiring a written certification from the individual providing the support. Certification is also required if the parent is providing no support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income. (Except if the student meets the Department of Education's definition of ''independent student'' in paragraphs (b), (c) or (h) adopted in section II of this notice).

This guidance and HUD's rule focus on a student under the age of 24 who meets the additional requirements of section 327 and who is not residing in a section 8 assisted unit with his or her parents, but who is individually seeking to reside in a section 8 assisted unit. Neither the rule nor this guidance applies to students residing with their parents in a section 8 assisted unit or who reside with parents who are applying to receive section 8 assistance.

Dated: September 16, 2016.

Lourdes Castro Ramirez,

Principal Deputy Assistant Secretary for Public and Indian Housing.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

[FR Doc. 2016–22727 Filed 9–20–16; 8:45 am]

BILLING CODE 4210–67–P

[1] The Higher Education Act of 1965. 20 U.S.C. 1087vv(d). See also Jeffrey R. Andrade, ''Dear Colleague'' Letter, U.S. Dep't of Educ. (May 2, 2003), *https://ifap.ed.gov/dpcletters/GEN0307.html.*

[2] These letters reflect the numbering used in the HEA definition of ''independent'' for use in this notice.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:	Notice:	H-2016-09
Multifamily Hub Directors Multifamily Program Center Directors Rural Services (RHS) Directors Supervisory Housing Project Managers Housing Project Managers Contract Administrators Multifamily Owners and Management Agents	Issued: Expires:	October 3, 2016 This Notice remains in effect until amended, revoked, or superseded.

Subject: Streamlining Administrative Regulations for Multifamily Housing Programs

I. Purpose

This Notice provides implementation guidance for provisions included in the final rule titled "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs," also known as the "Streamlining Rule." Only the provisions that apply to programs administered by the Department of Housing and Urban Development's (HUD) Office of Multifamily Housing are described in this Notice.

All pertinent provisions of the Streamlining Rule went into effect on April 7, 2016.

II. Applicability

This Notice applies to the following programs:

A. Project-based Section 8
   1. New Construction
   2. State Agency Financed
   3. Substantial Rehabilitation
   4. Section 202/8
   5. Rural Housing Services (RHS) Section 515/8
   6. Loan Management Set-Aside (LMSA)
   7. Property Disposition Set-Aside (PDSA)

B. Section 101 Rent Supplement

C. Section 202/162 Project Assistance Contract (PAC)

D. Section 202 Project Rental Assistance Contract (PRAC)
E. Section 202 Senior Preservation Rental Assistance Contracts (SPRAC)
F. Section 811 PRAC
G. Section 811 Project Rental Assistance Demonstration units under a Rental Assistance Contract (PRA)
H. Section 236
I. Section 236 Rental Assistance Payments (RAP)
J. Section 221(d)(3) Below Market Interest Rate (BMIR)

The applicability of specific provisions of the Streamlining Rule is detailed below.

III. Background

The Streamlining Rule will allow for improvements in program operations that reduce costs and enhance efficiency while maintaining HUD's core program oversight functions. The rule was published on March 8, 2016 and can be viewed at https://www.federalregister.gov/articles/2016/03/08/2016-04901/streamlining-administrative-regulations-for-public-housing-housing-choice-voucher-multifamily. There are 16 programmatic changes found in this final rule, four of which apply to Multifamily Housing programs. The direction below supersedes prior guidance on these topics. HUD Handbook 4350.3, REV-1 and the TRACS MAT Guide will be updated at a future date to account for these changes in policy.

VI. 24 CFR 5.216 – Verification of Social Security Numbers

A. Applicability

This provision applies to the Rent Supplement, Section 8, Section 221(d)(3), Section 221(d)(5), Section 236, Section 202, and Section 811 programs.

B. Change to Regulation

This provision modifies the regulation at 24 CFR 5.216 as it applies to program *applicants* (as differentiated from program *participants*), and brings the guidance for applicants more closely in line with longstanding guidance for program participants (at 24 CFR 5.216(e)(2)(ii)). The regulation at 24 CFR 5.216 now permits owners to accept applicant households that include an applicant family member who is under the age of 6, who does not yet have a Social Security Number (SSN) assigned to him/her, and was added to the household 6 months or less from the move-in date. As a result of this change, the owner or owner agent (O/A) must no longer deny occupancy to such applicant households.

C. Implementation

When an applicant household with the above composition is housed from the waiting list, the O/A must give the household 90 days from the effective date of their move-in certification to provide documentation of the SSN for the child. An additional 90-day period must be granted by the O/A if the failure to provide documentation of a SSN is due to circumstances that are outside the control of the household. Examples include but are not limited to: delayed processing of the SSN application by the SSA, natural disaster, fire, death in family, etc. During this time period, the child is to be included as part of the household and will receive all of the benefits of the program in which the child is involved, including the dependent deduction. An interim recertification must be processed once the household discloses and provides verification of the SSN for this individual.

D. TRACS Input

TRACS currently has the ability to accept SSNs that meet the requirements of the new regulation, however, purchased site software used by O/As to transmit data to TRACS may not yet have this ability. Because of this, O/As are instructed to input SSNs as described in the two paragraphs below.

1. Pre-Software Change

   When completing the SSN field in TRACS for a child who has been added to the applicant household 6 months or less from the move-in date and has not yet been assigned a SSN, the owner must input a SSN of "999990000" which will permit the household to receive subsidy. This SSN should only be used for move-in (MI) and initial (IC) certifications (see exceptions in Section VI.D.3 of this Notice). When a similar individual is added to an existing household, current guidance instructing use of a "999999999" SSN with an "M" exception code must be followed.

2. Post Software Change

   Software developers are working to update their software which will allow the system to accommodate this change in regulation. Once owners are informed their software has been updated, all SSNs of "999990000" must be edited according to the procedure below through an interim recertification (IR). This will allow for accurate tracking by HUD.

   When completing the SSN field in TRACS for a child who has not yet been assigned a SSN, the owner must input a SSN of "999999999" with a "M" SSN exception code. These inputs will permit the flow of subsidy to the household. At the time of the disclosure of the SSN, an interim recertification must be processed changing the child's SSN from the "999999999" placeholder to the child's verified SSN and removing the SSN exception code. More information relating to SSN input in TRACS can be found in the TRACS MAT Guide located at

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/trx/trxdocs.

3. Exceptions for inputting a SSN of "999990000" on an Interim (IR) or Annual (AR) Recertification

There are cases after the MI or IC where an IR or AR could be submitted before the end of the time required to obtain an SSN outlined in Section VI.C of this Notice. Examples for an IR include but are not limited to: increase or decrease of income, household addition or subtraction, etc. An example for an AR includes owners that have a mass recertification schedule and the recertification is effective before an SSN has been obtained. If such an IR or AR is needed follow the Pre-Software Change or Post Software change rules as applicable.

a. If the owner is in a Pre-Software change situation, the SSN field would be filled with "999990000" and there would be no exception code.

b. If the owner is in a Post Software change situation, the SSN field would be filled with "999999999" and the exception code would be "M."

E. Penalties for Non-Disclosure of a Household Member's SSN

The penalty associated with the failure to disclose and provide verification of a household member's SSN is termination of tenancy. As stated in HUD Handbook 4350.3, REV-1, paragraph 8-13.A.6, the owner must terminate the tenancy of a tenant and the tenant's household if the SSN disclosure and verification requirements for all household members are not met in the specified timeframe. Proration of assistance is not permitted for household members who are required to obtain SSN but fail to disclose and provide verification of this SSN.

F. Housing Assistance Payments During Eviction Proceedings

An owner may continue to receive housing assistance payments for the unit occupied by the family in question during eviction proceedings and these payments must continue until the eviction is upheld and the household is actually evicted. This practice is consistent with existing procedure and FAQ 143 for HUD Handbook 4350.3, REV-1.

In the case of evictions not upheld through judicial proceedings the family is permitted to continue occupying the assisted unit and the owner will continue to receive housing assistance payments for that unit. The SSN will be entered as described in Paragraph C.2 above until a SSN is obtained.

G. Implementation

The regulatory change was effective beginning April 7, 2016. Site software used by the O/A to transmit data to TRACS is expected to be updated by February 2017.

V. 24 CFR 5.603 – Definition Change – Extremely Low Income

A. Applicability

This provision applies to the Section 8 program.

B. Change to Regulation

The regulation at 24 CFR 5.603 has been changed to reflect the new statutory definition of an extremely low-income family in accordance with Section 238 of HUD's FY 2014 Appropriations Act, which amended Section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a). Previously, there was no statutory definition of extremely low income families, and the regulatory definition did not take the federal poverty level into consideration. The revision defines an extremely low-income family as a family whose income does not exceed the higher of 30 percent of the area median income or the federal poverty level. The federal poverty level provision in the definition of an extremely low-income family does not apply in the case of public housing agencies or projects located in Puerto Rico or any other territory or possession of the United States.

C. Posting of Income Limits

HUD determines income limits, including the income limit for the newly defined extremely low-income family, for all areas in the United States annually and publishes these income limits on the HUDUSER website at www.huduser.gov/portal/datasets/il.html. O/As do not need to research or determine the federal poverty level, or income limits in general, as all HUD-published extremely low-income dollar amounts are calculated in accordance with the new definition and are posted for each region.

D. Implementation

Section 8 property owners must use the extremely low-income limit when selecting applicants to fulfill the income-targeting requirements described in paragraph 4-5 of HUD Handbook 4350.3, REV-1. As detailed in the TRACS MAT Guide, the extremely low-income limit is to be populated into software used by owners in processing tenant data.

The definition change was established as HUD policy on July 1, 2014, through Federal Register Notice (79 FR 35940) *HUD Implementation of Fiscal Year 2014*

Appropriations Provisions on Public Housing Agency Consortia, Biennial inspections, Extremely Low-Income Definition and Utility Allowances. It is reflected in published income limits now being utilized by O/As.

VI. 24 CFR 5.609 – Definition Change – Exclusion of mandatory education fees from income

A. Applicability

This provision applies to the Section 8 program (other than Moderate Rehabilitation).

B. Change to Regulation

The regulation at 24 CFR 5.609 amends the definition of "income" to exclude from calculations of individual income any financial assistance received for mandatory fees and charges (in addition to tuition).

C. Background

The change is made to conform regulations to language first enacted in the FY 2012 HUD Appropriations Act, and continued in each subsequent appropriation. Current law requires that any amount of financial assistance an individual receives in excess of amounts received for tuition and other required fees and charges be considered income when determining an applicant's or participant's annual income.

D. Implementation

Implementation guidance for this change is found in Housing Notice 2015-12 which elaborates on the phrase "and any other required fees and charges" by amending the term "tuition." In addition to the new definition of tuition, the Notice provides examples for calculating income using this new definition and explains how to verify tuition and fees.

The definitions promulgated though Notice H 2015-12 continue to be in effect for multifamily properties.

VII. 24 CFR 5.657 – Section 8 project-based assistance programs: Reexamination of family income and composition

A. Applicability

This provision applies to the Section 8 (other than Moderate Rehabilitation), Section 202, and Section 811 programs.

B. Change to Regulation

The regulation at 24 CFR 5.657 – applicable to project-based Section 8 participants only – has changed to permit an owner to use a streamlined income determination for any family member with a fixed source of income. A streamlined income determination is made by applying, for each fixed-income source, either the verified cost of living adjustment (COLA) or the current rate of interest to the previously verified or adjusted-income amount. Any non-fixed sources of income must be verified using third party verification as described in Chapter 5, Section 3 of HUD Handbook 4350.3, REV-1.

C. Implementation

1. O/As have the discretion to adopt a streamlined income determination for fixed sources of income belonging to current project-based Section 8 program participants. This method may be used to adjust income on the two annual recertifications following the annual recertification (or move-in certification) in which the income was verified through third-party verification. The O/A must verify all income, both fixed and non-fixed, every third year.

2. In situations where a household has a combination of fixed income and non-fixed income, O/As can use the streamlined income determination for the fixed income and must verify all non-fixed income through third party verification. Streamlined income determination is not applicable for individuals who are not yet participants.

3. Tenants may instruct owners not to use the streamlined income determination to determine their income. In that case, third party verification will be required for all income sources.

Example			
3/1/2017	Move-in Certification	Fixed Income	Third Party Verify
		Non-Fixed Income	Third Party Verify
3/1/2018	Annual Recertification	Fixed Income	Use of Adjustment Factor Permitted
		Non-Fixed Income	Third Party Verify
3/1/2019	Annual Recertification	Fixed Income	Use of Adjustment Factor Permitted
		Non-Fixed Income	Third Party Verify
3/1/2020	Annual Recertification	Fixed Income	Third Party Verify
		Non-Fixed Income	Third Party Verify
3/1/2021	Annual Recertification	Fixed Income	Use of Adjustment Factor Permitted
		Non-Fixed Income	Third Party Verify
3/1/2022	Annual Recertification	Fixed Income	Use of Adjustment Factor Permitted
		Non-Fixed Income	Third Party Verify
3/1/2023	Annual Recertification	Fixed Income	Third Party Verify
		Non-Fixed Income	Third Party Verify

D. Definition of Fixed Income

When implementing a streamlined income determination, an O/A must first determine if the source of income is fixed and document how this determination was made. This determination is only needed prior to the first time streamlined income determination is used.

For purposes of this Notice, the term "fixed income" includes income from:

- Social Security payments, to include Supplemental Security Income (SSI) and Supplemental Disability Insurance (SSDI);

- Federal, state, local, and private pension plans; and
- Other periodic payments received from annuities, insurance policies, retirement funds, disability or death benefits, and other similar types of periodic payments.

E. Determination and Application of the Adjustment Factor

To apply an adjustment factor (verified COLA or the current rate of interest to the previously verified or adjusted-income amount) to a fixed source of income, the O/A must first verify all adjustment factors from either a public source or from tenant-provided, third party generated documentation. In the absence of such verification for any source of fixed income, third-party verification of income amounts must be obtained. Once an adjustment factor is obtained, verified, and documented in the tenant file, the O/A will then apply the applicable factor to the previously verified or adjusted income amount. This amount is then recorded as income on the household's form HUD-50059.

F. Effect on Use of the Enterprise Income Verification (EIV) System

In the years when an O/A elects to utilize streamlined income determination, the fixed source of income does not have to be verified using the EIV system. The O/A may, however, use the EIV system at his/her discretion and as indicated in the property's policies and procedures. All non-fixed sources of income remain subject to full income-verification requirements.

G. Additional Information

The following regulations have been updated to permit an owner to follow the provisions of 24 CFR 5.657(d): 880.603, 884.218, 886.124, 886.324, 891.410, 891.610, and 891.750.

VIII. Paperwork Reduction Act

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0204. 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.

IX. Contact

For more information on the guidance provided in this Notice, please contact Danielle Garcia in the Office of Asset Management and Portfolio Oversight at Danielle.D.Garcia@hud.gov.

_____

Edward Golding
Principal Deputy Assistant Secretary for Housing

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

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

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

Contents

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 [1] (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

[1] 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).[2] It is recommended that in cases where an O/A decides

[2] 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.[3]

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

[3] 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."[4]

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.[5]

[4] 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] 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,

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.[6]

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

[6] 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.[7]

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.[8]

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

[7] These provisions will be included in the forthcoming Paperwork Reduction Act renewal package for 2502-0204.

[8] 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.[9]

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:

[9] 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.[10]

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

[10] 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.[11]

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;

[11] 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.[12]

    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

[12] 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.

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.

_____

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?

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention of:

Public Housing Field Office Directors
Public Housing Agency Directors
Public Housing Hub Office Directors
Multifamily Regional Center Directors
Rural Services (RHS) Directors
Supervisory Housing Project Managers
Housing Project Managers
Contract Administrators
Multifamily Owners and Management Agents

NOTICE PIH 2019-09
NOTICE H-2019-06

Issued: May 6, 2019

This notice remains in effect until amended, superseded or rescinded.

Cross Reference: 24 CFR 5.609; ABLE Act of 2014

Title: Treatment of ABLE Accounts in HUD-Assisted Programs

Purpose: This notice provides guidance regarding the federally mandated exclusion of ABLE accounts from the calculation of income and assets, as required under the Achieving a Better Life Experience Act of 2014 (ABLE Act). Per the mandate of the ABLE Act, for the purpose of determining eligibility and continued occupancy, HUD will disregard amounts in the designated beneficiary's/individual's ABLE account.

Background: The Achieving Better Life Experience (ABLE) Act (P.L. 113-295.) was signed into law on December 19, 2014. The ABLE Act allows States to establish and maintain a program under which contributions may be made to a tax-advantaged ABLE savings account to provide for the qualified disability expenses of the designated beneficiary of the account. The designated beneficiary must be a person with disabilities, whose disability began prior to his or her 26th birthday and who meets the statutory eligibility requirements.

Applicability: This notice applies to the following programs:

1. Housing Choice Voucher Program, including all special voucher types
2. Public Housing
3. Project-based Section 8
    - 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)
    - Rental Assistance Demonstration Project Based Rental Assistance (RAD/PBRA)
4. Section 202/162 Project Assistance Contract (PAC)
5. Section 202 Project Rental Assistance Contract (PRAC)
6. Section 202 Senior Preservation Rental Assistance Contracts (SPRAC)
7. Section 811 PRAC

8. Section 811 Project Rental Assistance (PRA)
9. Section 236 (including RAP)
10. Section 221(d)(3)/(d)(5) Below Market Interest Rate (BMIR)

Definition of Terms: This Section includes definitions of terms referred to in this notice.

A. *ABLE account* means an account established for the benefit of an eligible individual, maintained under a qualified ABLE program.
B. *Contribution* is the deposit of funds into an ABLE account.
C. *Designated beneficiary* is the eligible individual who established and owns the ABLE account.
D. *Distribution* is the withdrawal or issuance of funds from an ABLE account.

Treatment of ABLE account in HUD programs: Section 103 of the ABLE Act mandates that an individual's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is excluded/disregarded when determining the designated beneficiary's eligibility and continued occupancy under certain federal means-tested programs.

Individuals have to be income eligible to receive assistance under HUD programs. Per 24 CFR 5.609, annual income is defined as the anticipated total income from all sources received by every family member which are not specifically excluded in 24 CFR 5.609(c). The exclusion found at 24 CFR 5.609(c)(17) instructs PHAs and owners to exclude from income all amounts that are specifically excluded by other Federal statute when the statute is applicable to HUD programs. Given that the ABLE Act creates a federally mandated exclusion for ABLE accounts applicable to HUD programs, in determining a family's income, HUD will exclude amounts in the individual's ABLE account pursuant to 24 CFR 5.609(c)(17). The entire value of the individual's ABLE account will be excluded from the household's assets. This means actual or imputed interest on the ABLE account balance will not be counted as income. Distributions from the ABLE account are also not considered income. All wage income received, regardless of which account the money is paid to, is included as income.

For example:

1. **Contributions made by the designated beneficiary**
   Pursuant to 24 CFR 5.609(a), all amounts received by the designated beneficiary are counted as income, unless they fall under one of the enumerated exclusions under 5.609(c) or are federally mandated, as with distributions from ABLE accounts.

   If the beneficiary has a portion of his/her wages directly deposited into his/her ABLE account, then all wage income received, regardless of which account the money is paid to, is included as income. *Pre-tax employer contributions to an ABLE account (that are not deducted from wages) are excluded.* If the designated beneficiary subsequently deposits any amount previously included as income into his/her ABLE account, that deposited amount must not be included in the household's asset calculation or counted as income again when the beneficiary receives a distribution from the account.

2. **Contributions made by others directly into the ABLE account**

   If someone other than the designated beneficiary contributes directly to the ABLE account, that contribution will not be counted as income to the designated beneficiary.

   If a relative provides a recurring gift of $100 per month directly to the beneficiary, the recurring gift would be counted as income. If a relative deposits the $100 recurring monthly gift directly into the ABLE account, then it will not be counted as income. Note: Any person can contribute to an ABLE

account. However, the Internal Revenue Service (IRS) limits the total annual contributions that any ABLE account can receive from all sources for a given calendar year.

3. **Rollovers from existing ABLE accounts**

   Rollovers from existing ABLE accounts to the designated beneficiary's ABLE account are not counted as income to the designated beneficiary.

Verification: In accordance with program requirements at 24 CFR 5.240(c), PHAs and owners should verify the amount held in the ABLE account. PHAs and owners should develop a policy and procedure for verifying ABLE accounts that obtains the following information:

- the name of the designated beneficiary; and
- the State ABLE program administering the account to verify that the account qualifies as an ABLE account.

Contact Information: If you have any questions regarding this notice, please contact Annecia Durr (Office of Housing) at Annecia.Durr@hud.gov or 202-402-2618, or Becky Primeaux (Office of Public and Indian Housing) at Becky.L.Primeaux@hud.gov or 202-402-6050.

Paperwork Reduction Act: The information collection requirements referred to in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB control numbers 2577-0169 and 2502-0204.

/s/
R. Hunter Kurtz
Principal Deputy Assistant Secretary
for Public and Indian Housing

/s/
Brian D. Montgomery
Assistant Secretary for Housing –
Federal Housing Commissioner