

**THIS PROPOSED RULE IS PENDING PUBLICATION IN THE FEDERAL REGISTER. PUBLICATION IN THE FEDERAL REGISTER WILL DETERMINE THE START OF THE PUBLIC COMMENT PERIOD. PUBLIC COMMENTS WILL NOT BE ACCEPTED IN ADVANCE OF THAT DATE.**

**Billing Code 4210-67**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 5, 92, 200, 574, 576, 578, 880, 882, 883, 884, 886, 891, 960, 966, 982, and 983**

**[Docket No. FR-5720-P-02]**

**RIN 2501-AD71**

**Violence Against Women Reauthorization Act of 2013:  
Implementation in HUD Housing Programs**

**AGENCY:** Office of the Secretary.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend HUD's regulations to fully implement the requirements of the Violence Against Women Act (VAWA) as reauthorized in 2013 under the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). VAWA 2013 provides enhanced statutory protections for victims of domestic violence, dating violence, sexual assault, and stalking. VAWA 2013 also expands VAWA protections to HUD programs beyond HUD's public housing and Section 8 programs, which were covered by the reauthorization of VAWA in 2005 (VAWA 2005). In addition to proposing regulatory amendments to fully implement VAWA 2013, HUD is also publishing for public comment two documents concerning tenant protections required by VAWA 2013—a notice of occupancy rights and an emergency transfer plan. Although VAWA refers to women in its title, the statute makes clear that the protections are for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, sexual orientation, or age.

**DATES:** Comments Due Date: **[Insert date 60 days after date of publication in the Federal Register].**

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

Communications must refer to the above docket number and title. Interested persons are invited to submit comments regarding this proposed rule. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

**1. Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on the site to submit comments electronically.

*Note:* To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (Fax) comments are not acceptable.

**Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between

8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 1-800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** For information about: HUD's Public Housing program, contact Todd Thomas, Acting Director, Public Housing Management and Operations Division, Office of Public and Indian Housing, Room 4210, telephone number 202-402-5849; HUD's Housing Choice Voucher program (Section 8), contact Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4216, telephone number 202-402-6050; HUD's Multifamily Housing programs, contact Yvette M. Viviani, Director, Housing Assistance Policy Division, Office of Housing, Room 6138, telephone number 202-708-3000; HUD's HOME Investment Partnerships program, contact Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Room 7164, telephone number 202-708-2684; HUD's Housing Opportunities for Persons With AIDS (HOPWA) program, contact William Rudy, Acting Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, Room 7212, telephone number 202-708-1934; and HUD's Homeless programs, contact Ann Marie Oliva, Director, Office of Special Needs Assistance, Office of Community Planning and Development, telephone number 202-708-4300. The address for all offices is the Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. The telephone numbers listed above are not toll-free numbers. Persons with hearing or speech

impairments may access these numbers through TTY by calling the Federal Relay Service, toll-free, at 800-877-8339.

## **SUPPLEMENTARY INFORMATION:**

### **Executive Summary**

#### **Purpose of this Regulatory Action**

This rule commences the rulemaking process to implement those provisions of VAWA 2013 that are not self-implementing. The reauthorization of VAWA 2013 expanded applicability of the VAWA protections to HUD programs beyond those HUD programs specified in VAWA 2005. VAWA 2013 also explicitly specifies sexual assault, which was not covered in VAWA 2005, as covered by VAWA protections. VAWA 2013 also expands the protections for victims of domestic violence, dating violence, sexual assault, and stalking by requiring housing providers to have emergency transfer plans, and by providing reasonable time for tenants to establish eligibility for assistance under a VAWA-covered program where an assisted household has to be divided as a result of domestic violence. While the core protections of VAWA—prohibition on denying or terminating housing assistance on the basis that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking—apply without rulemaking and HUD has advised its program participants of such immediate applicability, other requirements of VAWA 2013 must first be submitted for public comment, and this proposed rule addresses those requirements.

The importance of having HUD's VAWA regulations updated cannot be overstated. The expansion of VAWA 2013 to other HUD rental assistance programs emphasizes the importance of protecting victims of domestic violence, dating violence, sexual assault, and stalking, in all HUD housing offering rental assistance. By having all housing providers in HUD-covered

programs be aware of the protections of VAWA and the actions that they must take to provide such protections if needed, HUD signals to all tenants in the covered housing programs that HUD is an active part of the national response to prevent domestic violence, dating violence, sexual assault, and stalking

### **Summary of the Major Provisions of this Regulatory Action**

Key regulatory provisions to be addressed by this rule include proposed regulations that would:

- Include “sexual assault” as an action covered by VAWA protections, an action that was not included for HUD-covered programs by VAWA 2005.
- Establish a definition for “affiliated individual” based on the statutory definition and that is usable and workable for programs covered by VAWA.
- Apply VAWA protections to the Housing Trust, which was not statutorily listed as a covered program.
- Establish a reasonable period of time during which a tenant (in situations where the tenant is not the perpetrator) may establish eligibility to remain in housing, where the tenant’s household is divided due to domestic violence, dating, violence, sexual assault, or stalking, and where the tenant was not the member of the household that previously established eligibility for assistance.
- Establish what constitutes a safe and available unit to which a victim of domestic violence, dating violence, sexual assault, or stalking can be transferred on an emergency basis.
- Establish what documentation requirements, if any, should be required of a tenant seeking an emergency transfer to another assisted unit.

Please refer to section II of this preamble, entitled “This Proposed Rule” for a more detailed discussion of all the changes proposed by this rule.

### **Costs and Benefits**

The benefits of HUD’s proposed regulations include codifying, in regulation, the protections of VAWA to HUD programs beyond HUD’s public housing and Section 8 programs that have been covered since VAWA 2005; strengthening the rights of victims of domestic violence, dating violence, sexual assault, and stalking in HUD-covered programs, including confidentiality rights; and possibly minimizing the loss of housing by such victims through the bifurcation of lease provision and emergency transfer provisions. With respect to rental housing, VAWA was enacted to bring housing stability to victims of domestic violence. It was determined that legislation was needed to require protections for victims of domestic violence in rental housing because landlords often responded to domestic violence occurring in one of their rental units by evicting the tenant regardless of whether the tenant was a victim of domestic violence, and refusing to rent to victims of domestic violence on the basis that violence would erupt in the victim’s unit if the individual was accepted as a tenant. To ensure that landlords administering HUD rental assistance did not respond to domestic violence by denying or terminating assistance, VAWA 2005 brought HUD’s public housing and Section 8 programs under the statute’s purview, and VAWA 2013 covered the overwhelming majority of HUD programs providing rental assistance.

The costs of the regulations are primarily paperwork costs. These are the costs of providing notice to applicants and tenants of their occupancy rights under VAWA, the preparation of an emergency transfer plan, and documenting an incident or incidents of domestic violence, dating violence, sexual assault, and stalking. The costs, however, are minimized by the

fact that VAWA 2013 requires HUD to prepare the notice of occupancy rights to be distributed to applicants and tenants; to prepare the certification form that serves as a means of documenting the incident or incidents of domestic violence, dating violence, sexual assault, and stalking; and to prepare a model emergency transfer plan that guides the entities and individuals administering the rental assistance provided by HUD in developing their own plans.

### **Invitation to Comment**

HUD invites comment on its proposed regulations updating VAWA protections in HUD-covered programs. In this preamble, HUD includes twelve requests for comment on specific issues, and welcomes consideration of additional issues that may be identified by commenters.

### **I. Background**

On March 7, 2013, President Obama signed into law VAWA 2013 (Public Law 113-4, 127 Stat. 54). VAWA 2013 reauthorizes and amends VAWA 1994 (Title IV, sec. 40001-40703 of Public Law 103-322), which was previously reauthorized by VAWA 2000 (Public Law 106-386) and VAWA 2005 (Public Law 109-162, approved January 5, 2006, with technical corrections made by Public Law 109-271, approved August 12, 2006). As originally enacted in 1994, VAWA provided protections and services for victims of domestic violence, sexual assault, and stalking, and authorized funding to combat and prosecute perpetrators of sexual and domestic violence crimes. VAWA 1994 was not applicable to HUD programs.

The VAWA 2005 reauthorization brought HUD's public housing program and HUD's tenant-based and project-based section 8 programs (collectively, the Section 8 programs) under coverage of VAWA by amending sections 6 and 8 of the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437 *et seq.*), which are the authorizing statutes for those programs. VAWA 2005 established that being a victim of domestic violence, dating violence, or stalking

cannot be the basis for denial of assistance or admission to public or Section 8 housing, and provided other protections for victims. VAWA 2005 also contained requirements for notification to tenants of the rights and protections provided under VAWA, provisions on the rights and responsibilities of public housing agencies (PHAs) and owners and managers of assisted housing, and provisions pertaining to acceptable documentation of incidents of domestic violence and related acts and maintaining the confidentiality of the victim. HUD regulations pertaining to VAWA 2005 protections, rights, and responsibilities are codified in 24 CFR part 5, subpart L.

Title VI of VAWA 2013, “Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking,” contains the provisions that are applicable to HUD programs. Specifically, section 601 of VAWA 2013 removes VAWA protections from the 1937 Act and adds a new chapter to Subtitle N of VAWA 1994 (42 U.S.C. 14043e et seq.) entitled “Housing Rights.” As applicable to HUD, this chapter provides additional protections for tenants beyond those provided in VAWA 2005, and expands VAWA protections to other HUD programs. In this preamble, unless otherwise stated, HUD uses the term VAWA 2013 to refer solely to the amendments made to Subtitle N of VAWA 1994 by VAWA 2013.

On August 6, 2013, at 78 FR 47717, HUD issued a Federal Register notice that provided an overview of the applicability of VAWA 2013 to HUD programs. This notice listed the new HUD housing programs that VAWA 2013 added to the list of covered housing programs, described the changes that VAWA 2013 made to existing VAWA protections, and identified certain issues for which HUD specifically sought public comment. HUD solicited public comment for a period of 60 days, and the public comment period closed on October 7, 2013. HUD appreciates the public comments submitted in response to the August 6, 2013, notice, and



these public comments were taken into consideration in the development of this proposed rule. The public comments on the August 6, 2013, notice can be found at the [www.regulations.gov](http://www.regulations.gov) governmentwide portal, under docket number FR-5720-N-01, at <http://www.regulations.gov/#!docketDetail;D=HUD-2013-0074>.

Many of the comments submitted in response to the August 6, 2013, notice asked HUD to advise program participants that certain VAWA protections are in effect without the necessity of rulemaking. In response to these comments, HUD offices administering the housing programs covered by VAWA 2013 reached out to participants in the HUD programs to advise them that the basic protections of VAWA—not denying or terminating assistance to victims of domestic violence and expanding the VAWA protections to victims of sexual assault—are in effect, and do not require notice and comment rulemaking for compliance, and that they should proceed to comply with the basic VAWA protections.<sup>1</sup>

## **II. This Proposed Rule**

This section of the preamble describes the regulatory changes that HUD proposes to make to HUD's regulations to fully implement the rights and protections of VAWA 2013.

### **A. HUD's Cross-Cutting VAWA Regulations —24 CFR Part 5, Subpart L**

Subpart L of 24 CFR part 5 contains the core requirements of VAWA 2013 that are applicable to the HUD housing programs covered by VAWA (defined in this proposed rule as “covered housing programs”). The regulations in this subpart are supplemented by the regulations for the covered housing programs. The program-specific regulations address how

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<sup>1</sup> See, for example, the letter to Executive Directors of public housing agencies from the Assistant Secretary for Public and Indian Housing, issued September 30, 2013, at <http://nhlp.org/files/Sept%202013%20VAWA%20letter%20to%20PHAs.pdf>, as well as communications from HUD's HOME Investment Partnerships Programs (HOME) at <https://www.onecpd.info/resources/documents/HOMEfires-Vol11-No1-Violence-Against-Women-Reauthorization-Act-2013.pdf>, and from HUD's Office of Special Needs Assistance Programs at <https://www.onecpd.info/news/reauthorization-of-the-violence-against-women-act-vawa/>.

certain VAWA requirements are to be implemented for the applicable covered housing program, given the statutory and regulatory framework for the program. While the regulations in 24 CFR part 5, subpart L, establish the core requirements of VAWA and how the VAWA requirements are to be implemented generally, the program specific regulations, given the statutory parameters of the individual covered housing program, may provide for some VAWA protections to be applied differently from that provided in the part 5 regulations.

The variations in implementation primarily pertain to the requirements governing: bifurcation of a lease to remove the perpetrator of domestic violence, dating violence, sexual assault, or stalking; emergency transfers; and who can request documentation pertaining to incidents of domestic violence, dating violence, sexual assault, or staking. The variations are largely found in the programs administered by HUD's Office of Community Planning and Development (CPD).

VAWA 2013 continues to contain language that reflects the structure of the HUD housing programs first covered by VAWA 2005; that is, housing that is administered by a public housing agency (PHA). The VAWA 2013 provisions do not quite match the structure of the newly covered HUD programs, in which housing is not administered by a PHA. In proposing how the VAWA protections are to be implemented in the newly covered programs, HUD took into account both the statutory and regulatory framework of each program and HUD's experiences in both administering the program and in working with the different entities that administer the program. In each case, HUD strived to fulfill the underlying intent of the VAWA protections and provide meaningful protection to victims of domestic violence, dating violence, sexual assault, or stalking. As the proposed regulatory text reflects, for some of the newly covered programs, greater responsibility to provide and oversee VAWA protections is placed on

the entities that receive funding directly from HUD. For the other newly covered programs, more responsibility is placed on the housing owners or managers. For example, the HOME Investment Partnerships Program (HOME program) provides formula grants to States and localities for a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people, but the States and local jurisdictions are not responsible for administering assistance for rental housing in the same way that public housing agencies administer the public housing program. Under the HOME program, the assistance is administered by the property owner or manager, with the directly funded agencies (the states and localities) overseeing the administration of this eligible activity.<sup>2</sup> Additionally, some of the newly covered programs provide more discretion to the entities that HUD funds, while others are more prescriptive. For example, under HUD's Housing Opportunities for Persons With AIDS (HOPWA) program, the authorizing statute allows for family members of a HOPWA-eligible tenant who dies, to continue for a reasonable grace period, not to exceed 1 year, to remain in the unit, and provides assistance with moving expenses to the remaining family members. These program variations are reflected in the proposed regulations set out in this rule.

*Specific solicitation of comment 1:* HUD specifically seeks comment from the participants in each of the HUD-covered programs, who are familiar with how a specific HUD-covered program operates, on whether the proposed regulations for the specific HUD-covered program carry out the intent of VAWA within the statutory parameters of the program.

#### **Applicability (24 CFR 5.2001)**

Existing § 5.2001 lists the HUD programs covered by VAWA. This rule would amend

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<sup>2</sup> HUD's Guide for Property Owners participating in the HOME program provides additional information on the allocation of responsibilities. See [http://portal.hud.gov/hudportal/documents/huddoc?id=19760\\_2009homerentalpo.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=19760_2009homerentalpo.pdf).

§ 5.2001 to include the new HUD housing programs added by VAWA 2013, and to advise that the regulations in 24 CFR part 5, subpart L, address the statutory requirements of VAWA but that application of the requirements to a specific program, as discussed in the preceding section, may vary given the statutory and regulatory framework of that individual covered housing program.

As provided in § 5.2001, applicable “assistance” provided under the covered housing programs generally consists of two types (one or both): tenant-based rental assistance, which is rental assistance that is provided to the tenant; and project-based assistance, which is assistance that attaches to the unit in which the tenant resides. For project-based assistance, the assistance may consist of such assistance as operating assistance, development assistance, and mortgage interest rate subsidy. Unless specificity is necessary to identify a particular type of assistance covered by VAWA, this preamble and the proposed regulations use the term “assistance” to refer broadly to the assistance provided under the covered housing programs.

### **Definitions (§ 5.2003)**

Introductory text (Revised): The introductory text of § 5.2003 provides that certain terms are defined in subpart A of 24 CFR part 5. This rule would remove the terms “1937 Act” and “Responsible Entity” from the introductory text, as these terms are no longer used in this subpart given the extension of VAWA protections beyond 1937 Act programs.

Actual and imminent threat (Moved from § 5.2005(e) to § 5.2003): The definition of “actual and imminent threat” is currently found in § 5.2005(e). HUD does not propose to revise the definition, but rather to move the definition from § 5.2005(e) to the definition section, § 5.2003. HUD believes that the definition of “actual and imminent threat” is more appropriately placed in the definition section of the VAWA regulations.

Affiliated Individual (New): VAWA 2013 replaces the term “immediate family member” with “affiliated individual.” VAWA 2013 defines “affiliated individual” to mean, with respect to an individual: “(A) a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis; or (B) any individual, tenant, or lawful occupant living in the household of that individual.” The replacement of “immediate family member” with “affiliated individual” is intended to cover individuals lawfully occupying a unit but who may not necessarily meet a definition of “family.”<sup>3</sup>

Under VAWA, an individual who is an immediate family member as defined under VAWA 2005 or an affiliated individual under the broader terminology adopted in VAWA 2013 does not receive VAWA protections if the individual is not on the lease. However, if an affiliated individual is a victim of domestic violence, dating violence, sexual assault, or stalking, and the tenant is not the perpetrator of such actions, the tenant cannot be evicted or have assistance terminated because of the domestic violence, dating violence, sexual assault, or stalking suffered by the affiliated individual. In addition, if the affiliated individual were to apply for housing assistance, the affiliated individual could not be denied assistance on the basis that the affiliated individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

HUD adds this definition of “affiliated individual” to § 5.2003, but proposes to modify the statutory definition slightly for purposes of clarity and replaces the Latin term “in loco parentis” with plain language terminology. HUD proposes to define “affiliated individual” as follows: Affiliated individual, with respect to an individual, means: (A) a spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a

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<sup>3</sup> VAWA 2005 defined “immediate family member” as (i) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or (ii) any other person living in the household of that person and related to that person by blood or marriage.

parent to a child (for example, the affiliated individual is a child in the care, custody, or control of that individual); or (B) any individual, tenant, or lawful occupant living in the household of that individual.

In response to HUD's August 6, 2013, notice, a few commenters asked for more information about who could be considered an "affiliated individual," and whether a live-in aide or caregiver would qualify. A commenter stated that because program participants must inform housing authorities and gain approval for the admittance of all household members, "affiliated individuals" should not include those who are unreported members of a household, or else it would result in the situation in which VAWA protections would extend to individuals violating program regulations.

HUD agrees with the commenter and does not read the statute to apply VAWA protections to guests, and unreported members of the household. The protections of VAWA are directed to the tenants. Generally, tenants in the HUD programs covered by VAWA (in some HUD programs, tenants are referred to as "program participants" or "participants") are individuals, who, at the time of admission, were screened for compliance with the eligibility requirements specified by the HUD covered program in which the tenant participates. Once admitted, these tenants have contractual rights under a lease and may have certain administrative protections, such as a right to an informal hearing before termination of assistance or eviction occurs. These rights and privileges do not apply to unauthorized or unreported members of the household, such as guests, nor do they apply to affiliated individuals.<sup>4</sup> If a guest, an unreported member of the household, or an affiliated individual is sexually assaulted, the tenant may not be evicted because of the sexual assault, as long as the tenant was not the perpetrator. While a live-

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<sup>4</sup> In addition to contractual rights and rights under VAWA, tenants have rights under State law. See [http://portal.hud.gov/hudportal/HUD?src=/topics/rental\\_assistance/tenantrights](http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/tenantrights)[http://portal.hud.gov/hudportal/HUD?src=/topics/rental\\_assistance/tenantrights](http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/tenantrights).

in aide or caregiver who resides in a unit may be a lawful occupant, nonetheless such individual is not a tenant and the protections of VAWA would not apply, except that the live-in aide or caregiver cannot be denied assistance if he or she independently applies for assistance. Similarly, if an affiliated individual is a victim of domestic violence, dating violence, sexual assault, or stalking, the tenant with whom the affiliated individual resides cannot be evicted or have assistance terminated on the basis of the violence suffered by the affiliated individual, and, consequently, the affiliated individual may receive indirectly the benefit of continued assistance to the tenant.

A commenter asked that the VAWA regulations contain a definition of “family” that is consistent with HUD’s definition of “family” at 24 CFR 5.403. With the removal of reference to “family” in the VAWA statute and regulations, HUD believes there is no need to add a definition of “family” in the VAWA regulations. Additionally, the majority of HUD programs covered by VAWA 2013 already incorporate the definition of “family” in 24 CFR 5.403.<sup>5</sup>

Bifurcate (Revised): Bifurcation of a lease was provided in VAWA 2005 as an option available to a covered housing provider (which term is defined below), and bifurcation of a lease remains an option, not a mandate under VAWA 2013.

This rule would amend the definition of “bifurcate” to remove reference to a “public housing or section 8 lease” since VAWA 2013 makes bifurcation of a lease an option in all covered housing programs, subject to permissibility to bifurcate a lease under the program requirements and/or state and local laws, as may be applicable.

This rule also proposes to revise the definition of “bifurcate” to reflect that VAWA 2013 authorizes a covered housing provider to evict, remove, or terminate assistance to any individual who is a tenant or a lawful occupant of a unit and who engages in criminal activity directly

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<sup>5</sup> See HUD’s regulations at 24 CFR 92.2, 200.3, 236.1, 574.3, 891.105, 982.4,

relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.

The rule proposes to define “bifurcate” to mean dividing a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable covered housing 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.

VAWA 2013 also revises the bifurcation process in VAWA 2005, and these changes are addressed in § 5.2009.

Covered housing program (New): VAWA 2013 includes a definition for “covered housing program.” The statutory definition includes the VAWA 2005 covered housing programs (public housing and Section 8 programs) and the new HUD housing programs added by VAWA 2013. HUD proposes to adopt the statutory definition, with the proposed inclusion of the Housing Trust Fund program, as discussed below.<sup>6</sup>

For some of the HUD covered housing programs, the program may include assistance to which VAWA protections may not apply. For example, HUD’s HOME program offers homeownership assistance (see 24 CFR part 92), and the HOME program’s homeownership assistance is not covered by VAWA. The type of assistance to which VAWA protections apply, based on the statutory provisions themselves, is assistance for rental housing, as discussed under

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<sup>6</sup> A commenter on the August 6, 2013, notice asked about coverage of the Rural Development Voucher program. This program is administered by the U.S. Department of Agriculture (USDA) and HUD refers the commenter to USDA for VAWA information about USDA programs.



the proposed definition of “assistance.” This type of assistance generally involves a tenant, a landlord (the individual or entity that owns and/or leases rental units) and a lease specifying the occupancy rights and obligations of the tenant.<sup>7</sup> It is this relationship in which VAWA intervenes to ensure that, in covered housing programs, a tenant or other lawful occupant who is a victim of domestic violence, dating violence, sexual assault, or stalking is not further victimized by being evicted, having assistance terminated, or having assistance denied solely because the individual is a victim of domestic violence, dating violence, sexual assault, or stalking.

Accordingly, this rule defines “covered housing program” to encompass the HUD programs specified by the statute. The following highlights the types of assistance in which the VAWA protections apply to a covered housing program, given the statutory structure of the program. HUD does not highlight in the regulatory text of 24 CFR part 5, subpart L, the types of assistance within each covered housing program to which VAWA protections apply or may not apply. Programs change, as a result of statutory changes, including changes made by appropriations acts, and providing such specificity of assistance in the part 5 regulatory text could quickly be outdated. However, the program-specific regulations will reflect any changes in the coverage of VAWA protections.

(1) Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891. Coverage of the Section 202 Supportive Housing for the Elderly program includes Senior Preservation Rental Assistance Contracts (SPRAC), and

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<sup>7</sup> For HUD programs, the assistance provided under a covered housing program may be assistance to the unit (assistance tied to the unit) assistance to the tenant (assistance tied to the tenant) or mortgage interest rate subsidies.

Project Assistance Contracts (PAC). Coverage excludes Section 202 Direct Loan Projects that are without project-based Section 8 assistance (assistance necessary for VAWA coverage)<sup>8</sup>

(2) Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891. Coverage of the Section 811 Supportive Housing for Persons with Disabilities program includes housing assisted under the Capital Advance Program and the Section 811 Rental Assistance Program, as authorized under the Frank Melville Supportive Housing Investment Act (Public Law 111-274, approved January 4, 2011).

(3) Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 et seq.), with implementing regulations at 24 CFR part 574. Coverage of the HOPWA program includes housing receiving assistance as provided in 24 CFR 574.320 and 574.340. In addition, and as provided in the HOPWA regulations, the protections of VAWA apply to project-based assistance or tenant-based rental assistance as provided in § § 574.300 and 574.320, and to community residences as provided in § 547.300.

(4) HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 et seq.), with implementing regulations at 24 CFR part 92. Coverage of the HOME program includes HOME tenant-based rental assistance and rental housing assisted with HOME funds, except as may be otherwise provided in 24 CFR 92.359.

(5) Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.), including the Emergency Solutions Grants program (with implementing regulations at 24 CFR part 576, coverage includes short- and medium-term rental

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<sup>8</sup> Section 202 of the National Housing Act of 1959 authorized HUD to make long-term loans directly to multifamily housing projects and the loan proceeds were used to finance the construction of multifamily rental housing for persons age 62 years or older and for persons with disabilities. Amendments to Section 202 in 1990 replaced the direct loan program with capital advance programs for owners of housing designed for elderly or disabled residents. All projects that received Section 202 direct loans are eligible for project-based assistance under Section 8 but without such assistance the housing is not rental housing to which VAWA protections would apply.

assistance as provided in 24 CFR 576.407(g)), the Continuum of Care program (with implementing regulations at 24 CFR part 578), and the Rural Housing Stability Assistance program (with regulations forthcoming, see March 27, 2013, proposed rule at 78 FR 18726, and 78 FR 18746).<sup>9</sup> For the Continuum of Care program, the VAWA protections apply to all permanent housing and transitional housing, except safe havens,<sup>10</sup> for which Continuum of Care grant funds are used for acquisition, rehabilitation, new construction, leasing, rental assistance, or operating costs. The VAWA protections also apply where funds are used for homelessness prevention, but only where the funds are used to provide short- and/or medium-term rental assistance.<sup>11</sup>

(6) Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221. The Section 221(d)(3) BMIR program insured and subsidized mortgage loans to facilitate new construction or substantial rehabilitation of multifamily rental cooperative housing for low- and moderate-income families. The program is no longer active, but Section 221(d)(3) BMIR properties that remain in existence are covered by

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<sup>9</sup> As noted in HUD's August 6, 2013, Federal Register notice, HUD stated, in footnote 4, that VAWA 2013 says that "the program under subtitle A of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 *et seq.*)" is a VAWA-covered housing program. (See 78 FR at 44719.) However, subtitle A does not address a program, but rather provides definitions, and other general provisions, applicable to title IV. HUD reiterates here its view that the intent of Congress was to include the programs found elsewhere in title IV, which include the Emergency Solutions Grants program, the Continuum of Care program, and the Rural Housing Stability Assistance program. HUD is cognizant that the statutory reference is to a single program, and the predominant program addressed under title IV, subtitle A, is the Continuum of Care Program. That said, HUD proposes to apply the VAWA protections, to the extent practicable, to the Emergency Solutions Grants Program and the Rural Housing Stability Assistance Program, which are authorized under subtitles B and D of the Act, respectively.

<sup>10</sup> The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) amended the McKinney-Vento Homeless Assistance Act, to, among other changes, repeal the "Safe Havens for Homeless Individuals Demonstration Program." Therefore, HUD has not funded any new safe haven projects, but HUD will continue to renew funding for existing safe haven projects as long as the project continues to operate in accordance with certain requirements. See

[https://www.hudexchange.info/resources/documents/SafeHavenFactSheet\\_CoCProgram.PDF](https://www.hudexchange.info/resources/documents/SafeHavenFactSheet_CoCProgram.PDF). A safe haven is a form of supportive housing that serves hard-to-reach homeless persons with severe mental illness, who come primarily from the streets and have been unable or unwilling to participate in housing or supportive services.

<sup>11</sup> Funding, for example, to cover mediation, credit counseling, or case management are homeless prevention activities not covered by VAWA.

VAWA. Coverage of Section 221(d)(3)/(d)(5) BMIR housing does not include section 221(d)(3)/(d)(5) BMIR projects that refinance under section 223(a)(7) or 223(f) of the National Housing Act where the interest rate is no longer determined under section 221(d)(5).

(7) Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1), with implementing regulations at 24 CFR part 236. Coverage of the Section 236 program includes not only those projects with mortgages under section 236(j) of the National Housing Act, but also non-FHA-insured projects that receive interest reduction payments (“IRP”) under section 236(b) of the National Housing Act and formerly insured Section 236 projects that continue to receive interest reduction payments through a “decoupled” IRP contract under section 236(e)(2) of the National Housing Act. Coverage also includes projects that receive rental assistance payments authorized under section 236(f)(2) of the National Housing Act.

(8) HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d)<sup>12</sup> (with regulations at 24 CFR chapter IX), tenant-based and project-based voucher assistance under section 8 of the 1937 Act (42 U.S.C. 1437f) (with regulations at 24 CFR chapter VIII and IX), and the Section 8 Moderate Rehabilitation Single-Room Occupancy (SRO) (with implementing regulations at 24 CFR part 882, subpart H).

(9) The Housing Trust Fund (12 U.S.C. 4568) (with regulations forthcoming). In addition to the statutorily covered housing programs, HUD proposes to include in the definition of “covered housing programs” the Housing Trust Fund (HTF). In its proposed rule to establish program regulations for HTF, published on October 29, 2010, at 75 FR 66978, HUD proposed to

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<sup>12</sup> A commenter asked whether Moving-to-Work PHAs must comply with VAWA and the answer is yes. They are not exempt from compliance.

codify the HTF program regulations in the same CFR part, 24 CFR part 92, in which the HOME program regulations are codified. HUD stated that the reason for the proposed codification of the HTF regulations in the same CFR part as the HOME program regulations was that the two programs were similar to each other in most respects.<sup>13</sup> Given the similarities between the HTF program and the HOME program, and the statutory coverage of the HOME program by VAWA 2013, HUD submits that the HTF is an appropriate program to add to the list of covered programs.

*Specific solicitation of comment 2:* HUD specifically solicits comment on applying VAWA protections to rental housing assisted under the HTF program in the same manner that HUD is proposing to apply the VAWA protections to rental housing assisted under the HOME program.

Covered housing provider (New): This rule proposes to add a definition of “covered housing provider.” This term would be used in the part 5, subpart L, regulations to refer collectively to the individuals or entities under the VAWA covered housing programs, such as a public housing agency (PHA), state or local government, sponsor, owner, mortgagor, grantee, recipient, or the subrecipient that has responsibility for the administration and/or oversight of VAWA protections. The existing regulations in 24 CFR part 5, subpart L, reference only PHAs and owners and managers of assisted housing, reflecting the limited coverage by VAWA 2005. This rule proposes the term “covered housing providers,” to reflect that, under VAWA 2013, implementation of VAWA protections and responsibilities are not limited to PHAs, owners, and managers of assisted housing.

The program-specific regulations for the HUD programs covered by VAWA identify the individual or entity that carries out the duties and responsibilities of the covered housing

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<sup>13</sup> See HUD’s October 29, 2010, proposed rule at 75 FR 66970.

provider, as set forth in part 5, subpart L. For any of the covered housing programs, there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed, the covered housing provider may not always be the same individual or entity. This is the case generally for the newly covered HUD programs, for the reasons discussed earlier in this preamble, and that is that they are not administered by a PHA as was the case under the HUD program covered by VAWA 2005. For example, in the Section 8 Housing Assistance Payment programs, for which regulations are found in 24 CFR parts 880, 883, 884, and 886, and for which administration involves both a PHA and an owner of the housing, it is the PHA, not the owner, that is responsible for distributing to applicants and tenants the “notice of occupancy rights under VAWA, and certification form” described at 24 CFR 5.2005(a). It is the owner (not the PHA) that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), and as discussed below, but it is the PHA, not the owner, that is responsible for providing the “reasonable time to establish eligibility for assistance following bifurcation of a lease” described at 24 CFR 5.2009(b), which is also discussed below.

Domestic violence (Revised): HUD proposes to revise the definition of “domestic violence” to reflect the statutory inclusion of “intimate partner” and “crimes of violence” in the definition for this term. (See 42 U.S.C. 13925(a)(8).) Neither term is defined in title VI of VAWA of 2013. The term “intimate partner” is defined in section 40002(a) of VAWA 1994 (see 18 U.S.C. 2266), and addressed (but not revised) in section 3 of VAWA 2013. Section 3 of VAWA provides “universal definitions” for VAWA. (See 42 U.S.C. 13925(a).) Title 18 of the U.S. Code addresses Crimes and Criminal Procedure, and part I, chapter 110A of this title addresses domestic violence and stalking. Section 2266 of title 18 defines “intimate partner” to include a spouse, former spouse, a person who shares a child in common, and a person who

cohabits or has cohabited as a spouse; or a person who is or has been in a romantic or intimate relationship, as determined by factors such as the length and type of relationship; or any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction. The term “crime of violence” is defined in 18 U.S.C. 16 to mean: “an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” HUD does not include the definitions for these terms but provides a cross-reference to their definitions in title 18 of the U.S. Code.

Immediate family member (Removed): As noted earlier, VAWA 2013 replaces the definition of “immediate family member” and substitutes “affiliated individual.” HUD therefore proposes to remove the definition of “immediate family member” from the definition section.

Sexual assault (New): While VAWA 2005 contained provisions to protect victims of sexual assault (see 42 U.S.C. 14043e-1), reference to victims of sexual assault was not included in the amendments to sections 6 and 8 of the 1937 Act, which established the VAWA protections for HUD’s public housing and Section 8 programs. (See 42 U.S.C. 1437d(3) and 1437f(9) prior to amendment by VAWA 2013.) VAWA 2013 extends VAWA protections to victims of sexual assault for all HUD-covered housing programs. The term “sexual assault” is statutorily defined as “any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.” (See 42 U.S.C. 13925(a).)

This rule would add the definition of “sexual assault” to the definitions in 24 CFR part 5, subpart L, and would also add reference to victims of sexual assault where other victims

protected under VAWA are addressed (i.e., victims of domestic violence, dating violence, sexual assault, or stalking) to the regulations for the covered housing programs.

Stalking (Revised): VAWA 2013 removed the definition of “stalking” in title VI, but a definition of “stalking” remains in title I of VAWA. Title I defines “stalking” as “engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.” (See 42 U.S.C. 13925(a)(30)). HUD proposes to substitute this definition for the definition of “stalking” in § 5.2003.

VAWA (Revised): This rule would revise the definition of VAWA to solely cite to the applicable U.S. Code citations.

### **VAWA Protections (§ 5.2005) – Revised to Include New Protections**

VAWA 2013 expands on the protections provided by VAWA 2005, and which are currently codified in HUD’s regulations at 24 CFR 5.2005. VAWA 2005 obligated each PHA, owner, and manager of assisted housing to provide notice to tenants of their rights under VAWA, including the right to confidentiality. In addition, VAWA 2005 obligated each PHA to provide notice to owners and managers of assisted housing of their rights and obligations under VAWA. These requirements are addressed in HUD’s existing regulations at 24 CFR 5.2005(a).

Notice of occupancy rights under VAWA and certification form (§ 5.2005(a)(1)(i) and (ii)): VAWA 2013 requires HUD, as opposed to the individual covered housing provider, to develop the notice of rights available under VAWA, which HUD refers to as the “Notice of Occupancy Rights under VAWA.” VAWA 2013 provides that each covered housing provider is to distribute the notice of occupancy rights developed by HUD, together with the certification form specified by VAWA 2013 (discussed below). The notice and certification form are to be distributed at such times as directed by VAWA.



VAWA 2013 states that the notice, to be developed by HUD, must also include the rights to confidentiality and the limits to such confidentiality. The confidentiality rights provided by VAWA and the limits on such rights, which are to be addressed in this notice, are also proposed to be codified in § 5.2007(c) of HUD's regulations, as further discussed below. VAWA 2013 provides that any information submitted to a covered housing provider by an applicant or tenant (the individual), including the fact that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking, shall be maintained in confidence by the covered housing provider and may not be entered into any shared database or disclosed to any other entity or any other individual, except to the extent that the disclosure is: (1) requested or consented to by the individual in writing, (2) required for use in an eviction proceeding involving VAWA protections, or (3) otherwise required by applicable law. The "otherwise required by applicable law" includes any additional procedures that may be provided under the regulations of the applicable covered HUD programs, or as required by other Federal, State, or local law.

Unlike the emergency transfer plan, discussed below, which VAWA 2013 refers to as a "model plan," the statute does not refer to the notice of occupancy rights as a "model" notice. HUD believes that the difference in referring to the emergency transfer plan as a model plan but not referring to the notice of occupancy rights as a model notice may pertain, with respect to the plan, to the ability and feasibility of a covered housing provider to transfer a victim of domestic violence, dating violence, sexual assault, or stalking to an available and safe unit, which may vary significantly given program differences. However, the basic protections of VAWA apply to all covered housing programs, notwithstanding program differences.

HUD, therefore, reads the statutory provision as requiring covered housing providers to issue the notice as developed by HUD, without substantive changes to the core protections and confidentiality rights in the notice, but that covered housing providers should customize the

notice to reflect the specific assistance provided under the particular covered housing program, and to their program operations that may pertain to or affect the notice of occupancy rights. For example, covered housing providers should add to the notice information that identifies the covered program at issue (e.g., Housing Choice Voucher program), the name of the covered housing provider (e.g., the Housing Authority of Any Town), how much time a tenant would be given to relocate to new housing in the event the covered housing provider undertakes lease bifurcation and the tenant must move from the unit, and any additional information and terminology that is used in the program and makes the notice of occupancy rights more meaningful to the applicants and tenants that receive the notice (e.g., use of “apartment” or “housing” in lieu of “unit”).

Approved certification form (§ 5.2005(a)(1)(ii)): VAWA 2013 provides that an approvable certification form is one that: (1) states that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking; (2) states that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for VAWA protection meets the requirements under VAWA; and (3) includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide. (See 42 U.S.C. 14043e-11(c)(3).)

Timing of distribution of notice of occupancy rights (§ 5.2005(a)(2)): VAWA 2013 directs the covered housing provider to provide the notice of occupancy rights and certification form to an applicant or tenant at the following times: (1) at the time the applicant is denied residency in a dwelling unit assisted under the covered housing program; (2) at the time the individual is admitted to a dwelling unit assisted under the covered housing program; and (3) at the time that any notification of eviction or notification of termination of rental assistance is

issued. The proposed regulatory text includes these time periods but rewords the first two periods of time to read as follows: (1) at the time the applicant is denied assistance or admission under the covered housing program, and (2) at the time the individual is provided assistance or admission under the covered housing program.

*Specific solicitation of comment 3:* Given the many HUD programs that are being added to VAWA coverage by VAWA 2013, HUD is considering requiring that, at a minimum, the newly covered HUD programs distribute the notice of occupancy rights and certification form to all current tenants and not only to new tenants (i.e., at the time an individual is provided assistance or admission under the covered housing program). HUD specifically solicits comment on this proposal and whether there is a less burdensome way to reach out to all existing tenants in the newly covered HUD programs about their rights under VAWA.

Notice and certification form to be available in other languages (§ 5.2005(a)(3)): VAWA 2013 also requires the notice and certification form to be available in multiple languages, consistent with guidance issued by HUD, implementing title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color, and national origin. (42 U.S.C. 14043e-11(d)(2).) The HUD Guidance was required by Executive Order 13116 and implements HUD title VI and related regulations in 24 CFR 1.4. HUD's Guidance requires recipients of Federal financial assistance to take reasonable steps to ensure meaningful access to programs and services by individuals with Limited English Proficiency (LEP) and to reduce barriers that can preclude meaningful access by LEP individuals. See HUD Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (January 22, 2007), available at <http://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>. The guidance contains a four-

part individualized assessment for recipients to use to determine the extent of their obligations, and an appendix with examples of how the four-part assessment might apply.

Prohibited basis for denial or termination of assistance or eviction (§ 5.2005(b)): As discussed above, VAWA 2013 provides, to the extent applicable, the same protections for applicants and tenants. This proposed rule would therefore combine the protections for applicants (currently found at § 5.2005(b)) and the protections for tenants (currently found at § 5.2005(c)) into one paragraph at § 5.2005(b). (See 42 U.S.C. 14043e-11(b)(1).) In proposed § 5.2005(b), paragraph (b)(1) would state the general prohibition pertaining to denial or termination of assistance or eviction.

The prohibition, generally (§ 5.2005(b)(1)). Paragraph (b)(1) of § 5.2005(b)(1) provides that, under a covered housing program, neither an applicant nor tenant assisted may be denied assistance or admission, have assistance terminated, or be evicted on the basis 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 under a covered housing program.

Termination on the basis of criminal activity (§ 5.2005(b)(2)): In proposed § 5.2005(b), paragraph (b)(2) would address the VAWA prohibition on denying or terminating assistance or evicting a tenant solely on the basis of criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking if the tenant or affiliated individual is the victim or threatened victim of such activity. VAWA 2005 prohibited denying or terminating assistance or evicting a tenant solely on the basis of criminal activity directly related to domestic violence, dating violence, or stalking if the tenant or immediate family member is the victim of such activity. VAWA 2013 expands the 2005 statutory prohibition to include reference to sexual

assault and reference to affiliated individuals, and this rule would revise this protection to reflect the change in terminology.

A commenter on the August 6, 2013, notice asked for clarification of the meaning of the term “directly relating” in the context of criminal activity stating that it assumed that the use of the word “directly” was intended to limit the reach of the protection. The commenter is correct. The prohibition in VAWA on denying or terminating assistance on the basis of criminal activity, is not intended to cover all criminal activity, such as criminal activity related to the selling and distribution of narcotics, but rather solely to the criminal activity that specifically relates to domestic violence, dating violence, sexual assault, or stalking. HUD believes that, read in context of the full VAWA provision, the term is clear and no further elaboration is needed.

Construction of lease terms and terms of assistance (§ 5.2005(c)): Proposed new paragraph (c) of § 5.2005 would incorporate the direction of VAWA 2013 on how to construe certain lease terms and terms of rental assistance. VAWA 2013 provides that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as: (1) a serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or (2) good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of a victim or threatened victim of such incident. (See 42 U.S.C. 14043e-11(b)(2).)

Although “actual or threatened” was removed by VAWA 2013 from almost all places that this term appeared in VAWA 2005, VAWA 2013 retains its use here with respect to direction on how to construe leases. The limited use of “actual or threatened” in VAWA 2013 may be because the VAWA protections that are applicable to individuals under the “threat” of domestic violence, dating violence, sexual assault, or stalking are limited to tenants; thus,

necessitating the need to reference to “threatened” acts in determining lease violations. A tenant’s fear of “threatened” harm also arises in the context of a tenant’s request to be transferred to another unit. (See discussion of the emergency transfer plan later in this preamble.)

It is HUD’s position that consideration of “threatened” acts of domestic violence is an important component of reducing domestic violence, and the intent of VAWA is to reduce domestic violence. In support of this position, HUD notes that the term “crime of violence” is used in VAWA’s definition of “domestic violence.” “Crime of violence” is defined in 18 U.S.C. 16 to mean (a) an offense that has an element the use, attempted use, or *threatened use* of physical force against the person or property of another or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Limitation of VAWA protections (§ 5.2005(d)): Paragraph (d) of § 5.2005 would continue to address the limitations of VAWA protections, but would be revised to reflect changes made by VAWA 2013. Those changes include the expansion of coverage of HUD programs beyond HUD’s public housing and Section 8 programs, and new terminology such as “affiliated individual.”

HUD proposes to incorporate in § 5.2005(d) the language currently found in paragraph (b) of § 5.2009 (Remedies available to victims of domestic violence, dating violence, sexual assault or stalking). Section 5.2009(b) addresses court orders and provides that nothing in VAWA may be construed to limit the authority of a covered housing provider to honor court orders and civil protection orders. HUD views this provision as a limitation on VAWA protections, since such orders may result in the disclosure of confidential information, and therefore has moved this language to § 5.2005(d)(1).

Although not required by VAWA, HUD retains paragraph (d)(3) of existing § 5.2005 (§ 5.2005(d)(4) in the proposed rule) that encourages a covered housing provider to evict or terminate assistance as provided in § 5.2005(d) only when there are no other actions that could be taken to reduce or eliminate the threat of domestic violence. This paragraph provides that any eviction or termination of assistance, as provided in the regulations, should be utilized by a covered housing provider only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. This paragraph was added to HUD's regulations in response to public comment in the prior rulemaking. Covered housing providers are strongly encouraged, although not mandated, to use eviction or termination as a last resort.

Removal of definition of "actual and imminent threat" in § 5.2005: As noted earlier in this preamble, HUD proposes to move the definition of "actual and imminent threat" to the definition section, § 5.2003.

Emergency transfer plan (§ 5.2005(e)): VAWA 2013 increases protection for victims of domestic violence, dating violence, sexual assault, and stalking by requiring HUD to develop and adopt a model emergency transfer plan for use by covered housing providers. HUD addresses the requirements for the emergency transfer plan in § 5.2005(e).

VAWA 2013 provides that the emergency transfer plan: (1) must allow tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit assisted under a covered housing program if the tenant expressly requests the transfer; the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same dwelling unit assisted under a

covered housing program; or in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90-day period preceding the tenant's request for transfer; and (2) must incorporate reasonable confidentiality measures to ensure that the covered housing provider does not disclose the location of the dwelling unit of a tenant to a person that commits an act of domestic violence, dating violence, sexual assault, or stalking against the tenant. (See 42 U.S.C. 14043e-11(e).)

HUD emphasizes certain points about the statutory language.

First, the statutory language refers to "reasonable confidentiality measures" and HUD replaces "reasonable" with "strict" confidentiality measures. HUD cannot overstate the importance of guarding the identity of victims of domestic violence, dating violence, sexual assault, and stalking and believes "strict" better reflects the intent of VAWA, which is optimum protections for victims of domestic violence.

Second, the statutory documentation requirements of VAWA, which are specified below in the discussion of § 5.2007, are not statutorily required with respect to a tenant requesting an emergency transfer. Under a strict interpretation of section 41411(c)(1), (3)(A)(ii), and (3)(B)(ii) of VAWA, the statutory requirements regarding documentation only apply when a victim of domestic violence, dating violence, sexual assault, or stalking requests "protection under subsection (b)" of section 41411, which pertains only to lease bifurcation and the prohibited bases for denial or termination of assistance or eviction. Emergency transfers, in contrast, are covered in subsections (e) and (f) of section 41411 and the statute is silent regarding documentation requirements for requests for protection under those subsections. In addition, the statutory language refers to "tenants who are victims of domestic violence, dating violence, sexual assault, and stalking." This phrasing possibly indicates that the tenant may have already



been determined to be victim of domestic violence, dating violence, sexual assault, and stalking, and, therefore, no need for further documentation.

HUD has reasonable discretion over what documentation requirements, if any, to apply or allow when victims of domestic violence, dating violence, sexual assault, or stalking request an emergency transfer from their existing unit to another safe and available unit. However, as noted earlier, because the statutory language refers to “victims of domestic violence” there is also the implication that the individual may have already been determined, through documentation, to be a victim of domestic violence and, therefore, further documentation would not be required.

In § 5.2007, HUD provides that the documentation requirements specified in paragraph (a) of § 5.2007 do not apply to a request for an emergency transfer requested under § 5.2005(e), unless otherwise specified by HUD by notice, or by the covered housing provider in its emergency transfer plan. Inclusion in the emergency transfer plan of any documentation requirements related to emergency transfer provides earlier notification to tenants of documentation requirements that may be imposed by the covered housing provider.

*Specific solicitation of comment 4:* HUD believes that documentation requirements pertaining to the need for an emergency transfer are important for both the tenant and the covered housing provider. HUD invites comments on requiring documentation in the situation in which a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking requests an emergency transfer from the tenant’s existing unit to another safe and available unit, and what that documentation might include. HUD welcomes commenters’ views on whether documentation requirements should be imposed for tenants requesting emergency transfer, and, if so, whether less stringent documentation requirements should apply due to the emergency nature of the requests or more stringent documentation requirements should apply due to the

increased costs and risks that transfers might present to housing owners, grantees, and PHAs. HUD also seeks comment on the possibility of requiring documentation after the emergency transfer has been achieved, which would then provide a record for the covered housing provider as to why such a move was necessary.

The statutory language refers to transfer to an “available and safe dwelling unit assisted under a covered housing program.” The tenant must expressly request the transfer and the tenant reasonably believe that the tenant is threatened with imminent harm from further violence if the tenant remains within the same dwelling unit, or in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90-day period preceding the request for transfer. The use of the terms “available and safe unit” reflect the limits of the covered housing provider’s responsibility to transfer a victim of domestic violence, dating violence, sexual assault, or stalking to another unit.

Under an emergency transfer, the covered housing provider relocates a tenant who is a victim of such actions from the unit in which the tenant is residing to another unit if the covered housing provider has a unit that is: (1) not occupied and available to the tenant given possible considerations that may be applicable, such as eligibility requirements, waiting list, tenant preferences or prioritization, unit restrictions, or term limitations; and (2) safe (for example, an unoccupied unit immediately next door to the unit in which the victim is residing would, on its face, be safer than the unit in which the victim is currently residing, but the degree and extent of safety may be questionable if the perpetrator remains in the unit in which the victim was residing).

HUD reads “under a covered housing program” to mean the covered housing provider must, at a minimum, transfer the tenant to a unit under the provider’s control and assisted under

the same covered program as the unit in which the tenant was residing, again, if a unit is available and is safe. An example of the meaning of control can be found in the Section 202 Supportive Housing for the Elderly program. Under this program, a covered housing provider would not be able to transfer a tenant to another Section 202 project that has a sponsor that is different from the sponsor of the project in which the tenant who is seeking to move is residing.

A covered housing provider, however, may transfer the tenant to a unit assisted under another covered program administered by the covered housing provider if a unit is available and safe, and if feasible given any possible differences in tenant eligibility. HUD provides in § 5.2005(e) that, with respect to emergency transfer of tenants, nothing in § 5.2005(e) is to be construed to supersede any eligibility, or other occupancy requirements, that may apply under a covered housing program.

*Specific solicitation of comment 5:* HUD also specifically solicits comment on available and safe dwelling units that a covered housing provider is required to consider in transferring a tenant, who expressly requests a transfer, as a result of an incident of domestic violence, dating violence, sexual assault, or stalking.

*Specific solicitation of comment 6:* HUD further solicits comment on whether it would be helpful to covered housing providers if HUD issues a model transfer request that includes the criteria for requesting the transfer; i.e., reasonable belief that the tenant is being threatened.

HUD notes that HUD's Section 8 tenant-based rental program allows a family to move with continued assistance within a PHA's jurisdiction or to another PHA's jurisdiction (portability). The Section 8 tenant-based regulations at 24 CFR 982.314 provide that a family or member of a family may move with continued assistance if the move is needed to protect the health and safety of the family or family member as a result of domestic violence, dating,

violence, sexual assault, or stalking, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-day period preceding the family's request to move. This regulation provides that a PHA may not terminate assistance if a family moves with or without prior notification to the PHA because the family or member of the family reasonably believed they were in imminent threat from further violence (however, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-day period preceding the family's move or request to move, is not required to believe that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit).

HUD's Continuum of Care (CoC) program regulations currently provide for transfer of tenant-based rental assistance for a family fleeing domestic violence, dating violence, sexual assault, or stalking. HUD's regulation at 24 CFR 578.51(c)(3) covers program participants who have complied with all program requirements during their residence and who have been victims of domestic violence, dating violence, sexual assault, or stalking. Section 578.51(c)(3) provide that program participants must reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence). If program participants remain in the assisted unit, § 578.51(c)(3) provides that they must be able to document the violence and the basis for their belief. If program participants receiving tenant-based rental assistance satisfy the requirements of 24 CFR 578.51(c)(3), then they may retain rental assistance and move to a different CoC geographic area if they choose to move out of the assisted unit to protect their health and safety.

HUD is aware that the transfers of tenants from one unit to another are not without costs, and HUD proposes that covered housing providers follow, to the extent possible, existing

policies and procedures in place with respect to transfers, and make every effort to facilitate transfers as quickly as possible, and to minimize such costs or bear such costs, where possible, consistent with existing policies and practices. HUD's CoC regulations, in addition to containing regulations that provide for a victim of domestic violence, dating violence, sexual assault, or stalking to retain his or her tenant-based rental assistance and move to a different CoC geographic area, include reasonable one-time moving costs as eligible supportive services cost. (See 24 CFR 578.53(e)(2).)

*Specific solicitation of comment 7.* For covered housing providers that have been involved in a transfer of tenants from one unit, regardless of the reason for the transfer, HUD specifically solicits comment on the costs of such transfer (including information on who bears the costs of the transfer) and the paperwork involved to achieve such transfer. For covered housing providers that have not been involved in transfers, HUD solicits comment on the anticipated costs of such transfer and anticipated paperwork involved.

VAWA documents: In addition to the proposed amendments discussed above, the appendices to the proposed rule present for public comment the documents that HUD is required to develop by VAWA: Appendix A to this proposed rule presents the notice of occupancy rights; Appendix B presents the model emergency transfer plan; and Appendix C presents the proposed certification form.

### **Documenting the Occurrence of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (§ 5.2007)**

This proposed rule would amend § 5.2007, which addresses documenting domestic violence, dating violence, or stalking and, now, following VAWA 2013, documenting sexual assault. The proposed rule would also revise the heading of this section to include reference to

“sexual assault.” VAWA 2013 does not make significant changes to the documentation content and procedures required by VAWA 2005. The types of documents that an applicant or tenant are eligible to submit are largely the same as in HUD’s existing VAWA regulations, but there are some changes.

Request for documentation (§ 5.2007(a)): As is the case in the current regulations, if an applicant for assistance, or a tenant assisted under a covered housing program represents to the covered housing provider that the individual is entitled to the protections under § 5.2005, or to remedies under § 5.2009, the covered housing provider may request that the applicant or tenant submit to the covered housing provider the documentation required in § 5.2007. If the covered housing provider makes this request, the request must be in writing. As noted earlier in this preamble, the documentation requirements in § 5.2007(a) are not specified in this proposed rule as applicable to a request made by the tenant for an emergency transfer under § 5.2005(e), but HUD is considering requiring documentation for tenants requesting emergency transfer and has, earlier in this preamble, specifically solicited comment on this issue.

Timeline for submission of requested documentation (§ 5.2007(a)(2)(ii)): The time period for an applicant or tenant to submit documentation remains 14 business days following the date that the covered housing provider requests, in writing, such documentation. This is the same as in the existing regulations and, as in the existing regulation, the covered housing provider can extend the time period for the applicant or tenant to submit the necessary documentation.

Permissible documentation and submission requirements (§ 5.2007(b)): HUD proposes to reorganize existing § 5.2007 to consolidate the documentation requirements, including submission requirements, into paragraph (b). Under this proposed reorganization an applicant or tenant’s statement or other evidence is now included in paragraph (b), along with the other forms

of documentation, instead of in a separate paragraph in § 5.2007, as is currently found in HUD's existing regulations at § 5.2007(d). Paragraph (b), as proposed to be revised by this rule, would also address failure to provide the documentation (currently § 5.2007(c)) and conflicting evidence presented by the applicant or tenant (currently § 5.2007(e)). Paragraph (b) would also incorporate the statutory language, new to VAWA 2013, that provides that nothing in VAWA 2013 shall be construed to require a covered housing provider to request that an individual submit documentation of the status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking.

Certification form (§ 5.2007(b)(1)(i)): VAWA 2013 retains, as acceptable documentation, a certification form, approved by HUD. The certification form, as acceptable documentation, is addressed in HUD's existing regulations at § 5.2007(b), and, under this proposed rule would be addressed in § 5.2005(a)(1)(ii).

As a result of VAWA 2005, HUD issued two approved certification forms. Form HUD-50066 is used for covered housing programs administered by HUD's Office of Public and Indian Housing. Form HUD-91066 is used for covered housing programs administered by HUD's Office of Multifamily Housing, Office of Housing. These forms are available at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/forms/](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/).

Through the Paperwork Reduction Act process, the HUD covered housing programs will combine these forms into one (to be used for all programs) and modify the language to reflect updated terminology. The proposed combined certification form is modified to abbreviate the space given to a victim to describe the incident of domestic violence. HUD was concerned that the length of space made available on the form signaled that a very detailed description was

required, which is not the case. As noted earlier in this preamble, HUD's proposed certification form is provided in Appendix C to this rule.

*Specific solicitation of comment 8:* HUD specifically solicits comment on the content of the proposed certification form. Specifically, HUD solicits comment from housing providers, as well as victims, survivors, and their advocates, who have experience with forms HUD-50066 and HUD-91066, about whether these forms have been useful and whether HUD should make any changes to the new proposed certification form provided in Appendix C.

Document signed by a professional (§ 5.2007(b)(1)(ii)): VAWA 2013 retains as an acceptable document, a document signed by an employee, agent, or volunteer of a victim service provider; an attorney; medical professional; or mental health professional (collectively "professionals" and "professional" individually) from whom the victim has sought assistance. In addition to the professionals listed in VAWA 2005, VAWA 2013 provides that the document may include the signature from a mental health professional. VAWA 2013 eliminates the requirement that the professional attest that the incident of abuse is "bona fide." VAWA 2013 provides that the professional must attest, under penalty of perjury, the professional's belief in the occurrence of the incident of domestic violence, dating violence, sexual assault, stalking, that is grounds for protection under VAWA, and that the incident meets the definition of the applicable abusive action as provided in § 5.2003.

Official government or court records (§ 5.2007(b)(1)(iii)): VAWA 2013 continues to provide, as acceptable documentation of domestic violence, dating violence, sexual assault, and stalking, a Federal, State, tribal, territorial, or local police or court record and adds to this a record provided by an administrative agency, such as a state child protective services agency. An administrative agency, under a dictionary for legal terminology, is a governmental body with



the authority to implement and administer particular legislation. (See Black's Law Dictionary, 8th Edition, 1999.)

Other documentation acceptable to the covered housing provider (§ 5.2007(b)(1)(iv)): In addition to the documentation specified by the statute, VAWA 2013 gives the housing provider the discretion to accept documentation other than that prescribed by statute. This provision is comparable to the provision in VAWA 2005 which allowed the covered housing provider to accept an individual's verbal statements or other corroborating evidence.

Conflicting documentation (§ 5.2007(b)(2)): Paragraph (b)(2) specifies the actions that a covered housing provider may take if the covered housing provider is confronted with conflicting documentation about the incident of domestic violence, dating violence, sexual assault, or stalking. This paragraph provides, as does the existing regulation on conflicting documentation, that if the covered housing provider receives documentation under § 5.2007(b)(1) that contains conflicting information (including certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator), the covered housing provider may require an applicant or tenant to submit third-party documentation as provided in § 5.2007(b)(1)(ii) or (b)(iii). The statute specifies no time period in which the third-party documentation is to be submitted.

*Specific solicitation of comment 9*: HUD specifically solicits comment on whether the 14-business-day time period for submitting documentation requested by the covered housing provider under § 5.2007(a)(2)(ii) should also apply to a third-party document requested under (§ 5.2007(b)(2). VAWA establishes the 14-business-day minimum time period for the victim to submit the requested documentation to the covered housing provider, and this time frame seems

reasonable as a starting base for submission of third-party documentation, but this specific solicitation of comment recognizes that more time may be needed by the victim to obtain third-party documentation.

Confidentiality requirements (§ 5.2007(c)): The confidentiality requirements are revised primarily to reflect terminology changes in the statute. However, with respect to entering any information pertaining to an individual being a victim of domestic violence, dating violence, sexual assault, or stalking (confidential information) into a shared database, VAWA 2013 changed the “shall not be entered” to a “may not be entered,” but retains the exceptions to such prohibition. HUD is retaining the “shall not” phrasing that is in HUD’s existing regulations. Given that VAWA 2013 continues to carve out exceptions to the prohibition on disclosure, and given that VAWA 2013 retains the “shall be maintained in confidence” clause, it is HUD’s view that the prohibition is firm, not discretionary, unless one of the exceptions is present.

The statute and HUD’s existing regulations provide that the VAWA-related information provided by a tenant shall be kept confidential unless required to be disclosed, among other permissible actions, for use in an eviction proceeding. HUD adds that disclosure is also permissible for use in a hearing regarding termination of assistance from the covered program. VAWA 2013 provides that the information provided by a tenant that is a victim of domestic violence, dating violence, sexual assault, or stalking must be kept confidential unless requested or consented by the individual in writing, required for use in an eviction proceeding, or otherwise required by law. A hearing to determine termination of assistance is required in some covered housing programs.

The remaining changes made to 24 CFR 5.2007 are those required to extend VAWA provisions to victims of sexual assault, and to expand the HUD programs subject to the regulations under VAWA 2013.

**Remedies Available to Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (§ 5.2009)**

As with the other sections in 24 CFR part 5, subpart L, this proposed rule would amend § 5.2009, which addresses remedies available for victims, to include victims of sexual assault and would revise the heading of this section to include the same.

Lease bifurcation: Existing § 5.2009(a) addresses the option (not a mandate) of a covered housing provider to bifurcate a lease to evict, remove, or terminate assistance to a perpetrator of a VAWA crime without evicting, removing, or terminating rental assistance to the remaining tenants. This option was provided in VAWA 2005. HUD's existing regulations in § 5.2009 provide that notwithstanding any Federal, State, or local law to the contrary, a PHA, owner, or management agent (the housing providers covered under VAWA 2005) may bifurcate a lease. The existing regulations also emphasize that, consistent with VAWA 2005, any eviction, removal, or termination of occupancy rights or assistance must be carried out in accordance with the procedures prescribed by Federal, State or local law for termination of assistance.

VAWA 2013 does not reflect that bifurcation of a lease may occur “notwithstanding any Federal, State, or local law to the contrary” but does reiterate the language in VAWA 2005 that the option to bifurcate a lease is subject to other Federal, State, or local law that may address bifurcation of a lease. Accordingly, HUD would revise § 5.2009(a) to remove the “notwithstanding” clause.

By providing that bifurcation of lease is an option, not a mandate, VAWA 2005 and VAWA 2013 both recognize that this remedy may not be an option in all covered housing programs, given statutory requirements of the program.

Reasonable time to establish eligibility for assistance or find alternative housing following bifurcation of a lease (§ 5.2009(b)): VAWA 2013 adds another remedy for victims of domestic violence, dating violence sexual assault, and stalking, which will be added at § 5.2009(b)(1). The new remedy provides that if a covered housing provider exercises the option to bifurcate a lease and evicts, removes, or terminates assistance to the individual who was the perpetrator of domestic violence, dating violence, sexual assault, or stalking, and that individual was the tenant eligible for assistance under the covered housing program, the covered housing provider shall provide any remaining tenant the opportunity to establish eligibility for assistance under the covered housing program. If the remaining tenant cannot establish eligibility, the covered housing provider shall provide the tenant with a reasonable period of time, as determined by HUD, to find new housing or to establish eligibility for assistance under another covered housing program.<sup>14</sup> (See 42 U.S.C. § 14043e–11(b)(3)(B).) VAWA provides that the purpose of this provision is to not penalize the tenant victim or other tenants, who are not the perpetrators and are not eligible for assistance, by leaving them without housing.

The complication that this provision presents is whether the authorizing statutes for the covered housing programs allow continued assistance to any individual if eligibility has not been established. Several commenters raised this concern in response to the August 6, 2013, notice,

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<sup>14</sup> As noted later in this preamble, under some covered programs, the covered housing provider that bifurcates the lease (the owner of the assisted housing) may not be the covered housing provider (for example, the PHA) that determines family eligibility for assistance. For example, the PHA (not the owner) is the covered housing provider responsible for providing the “Notice of occupancy rights under VAWA, and certification form” described at § 5.2005(a). In addition, the owner (not the PHA) is the covered housing provider that may choose to bifurcate a lease as described at § 5.2009(a), but the PHA (not the owner) is the covered housing provider responsible for providing the “Reasonable time to establish eligibility for assistance following bifurcation of a lease” described at § 5.2009(b).” See proposed regulations at § 982.53(e).

and asked if assistance would continue once the only eligible tenant was removed. The response varies given the statutory framework of each program.

For example, HUD's HOPWA program already has in place in its regulations at 24 CFR part 574, a provision that allows, in limited instances, a surviving member or members of a household residing in a unit receiving assistance under the HOPWA program to remain in the unit. Section 574.310(e) of HUD's HOPWA regulations provides that with respect to the surviving member or members of a family who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death, housing assistance and supportive services under the HOPWA program shall continue for a grace period following the death of the person with AIDS. The grantee or project sponsor shall establish a reasonable grace period for continued participation by a surviving family member, but that period may not exceed 1 year from the death of the family member with AIDS. The grantee or project sponsor shall notify the family of the duration of their grace period and may assist the family with information on other available housing programs and with moving expenses. HUD proposes to amend this section to allow for the grace period to include victims of domestic violence, and to further establish that the minimum grace period can be no less than 90 days (the minimum time period HUD is proposing as discussed below) and the maximum period can be no more than 1 year as provided in the existing regulations.

HUD's CoC program has a similar provision in its regulations at 24 CFR part 578 for permanent supportive housing projects. Section 578.75(i) of the CoC regulations provides that for permanent supportive housing projects, surviving members of any household who were living in a unit assisted under this part at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization, have the right to rental assistance under this

section until the expiration of the lease in effect at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization. HUD would propose to amend this section to allow for the CoC grace period to extend to tenants (permanent supportive housing tenants) needing to establish eligibility after lease bifurcation.

As noted earlier, under VAWA 2013, reasonable time to establish eligibility for assistance is required if the covered housing provider opts to bifurcate the lease. Therefore, covered housing providers that exercise the bifurcation of lease option must be certain that, under the requirements of the covered housing program, they can provide the remaining tenant or tenants reasonable time to establish eligibility and allow the tenants to remain in the housing unit without assistance or to have the assistance continued for a reasonable period of time until eligibility is established. If the tenant cannot establish eligibility within a reasonable time, after the bifurcation of the lease the covered housing provider shall also provide the tenant reasonable time to find new housing or to establish eligibility for housing under another covered housing program.

HUD recognizes that, under some covered programs, the covered housing provider that bifurcates the lease (the owner of the assisted housing) may not be the covered housing provider (for example, the PHA) that determines family eligibility for assistance. This situation emphasizes the importance of the regulations for the specific covered housing program in determining how certain VAWA provisions are to be implemented.

*Specific solicitation of comment 10:* HUD specifically solicits comments on actions that covered housing providers may be able to take to help remaining tenants stay in housing or to continue to receive assistance consistent with requirements of the existing covered housing program. HUD also solicits comment on how a covered housing provider may establish an

interim rent obligation on the remaining tenant during the time afforded to establish eligibility. It could be the case that HUD would not cover the assistance and an individual would have to pay a full rental amount. In such case, how would such a rental amount be determined and would rent be based on, for example, the subsidy HUD provides to the PHA for the unit.

*Specific solicitation of comment 11:* In addition to seeking comment, generally, on actions a covered housing provider may take to keep tenants in housing, HUD seeks comment on its Emergency Solutions Grants and CoC programs. HUD specifically requests comment on what lease requirements should apply when tenant-based rental assistance is used for homelessness prevention under the Emergency Solutions Grants and CoC programs, and the family wishes to stay in its existing housing.

Reasonable period of time to establish eligibility: VAWA 2013 leaves it to the applicable Federal agency, in this case HUD, to establish a reasonable time for any remaining tenants, following bifurcation of a lease, to establish eligibility. If the tenant cannot establish eligibility after the bifurcation of the lease, the covered housing provider shall provide the tenant reasonable time to find new housing or to establish eligibility for housing under another covered housing program. HUD would establish this reasonable period in § 5.2009(b)(2).

Commenters on the August 6, 2013, notice offered several time periods as being a reasonable time period to establish eligibility. The majority of the commenters submitted a time period of no less than 60 days and a maximum of 90 days. A few commenters submitted that the time period should be 120 days, and a few others suggested a 180-day period. Some commenters suggested that HUD allow the housing provider to determine the reasonable period of time to establish eligibility, but the majority of commenters did not favor that approach.

HUD agrees with those commenters recommending that 90 days would be a reasonable period for the remaining tenant or tenants to establish eligibility. For HUD covered housing programs, such as HUD's HOPWA program and CoC program, which already provide an "eligibility grace period," HUD does not propose to alter those periods, but rather would amend those regulations to extend those grace periods to victims of domestic violence. HUD proposes to establish the 90-day period for the HUD covered housing programs that do not currently have an eligibility grace period.

In determining what may constitute a reasonable period to establish eligibility, HUD looked at its regulations in 24 CFR part 5, subpart B (Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information) as a possible model to determine a reasonable period to provide to a tenant to establish eligibility under a covered housing program. A period of 90 calendar days is used in HUD's regulation at 24 CFR 5.216 (Disclosure and verification of Social Security and Employer Identification Numbers) to allow for a household to obtain a Social Security number for a new household member that is under the age of six. (See 24 CFR 5.216(e)(ii).) A period of 90 calendar days is also used as the period to allow an applicant to produce a Social Security number to maintain eligibility to for participation in the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) program for Homeless Individuals under 24 CFR part 882, subpart H. (See 24 CFR 5.216(h)(2).) HUD viewed these "disclosure" regulations as providing support that a minimum 90-day period presents a reasonable period to establish eligibility under a HUD covered housing program.

HUD notes that VAWA 2013 directs that the covered housing provider "shall provide" the remaining tenant (or tenants) with reasonable time to find new housing *or* to establish



eligibility for the housing in which the tenant currently resides. HUD therefore proposes a minimum 90-day period that would be divided into two time periods: one time period would be to establish eligibility to remain in the unit in which the tenant is now residing, and a second time period would be to allow the tenant to locate alternative housing if the tenant is unable to establish eligibility for the unit in which the tenant is now residing.

For the first period, the rule provides for 60 calendar days, commencing from the date of bifurcation of the lease, for the tenant to establish eligibility to remain in the unit in which the tenant is now residing. For the second reasonable period, the rule provides for 30 calendar days, commencing from the 61st date from the date of bifurcation of the lease for the tenant to find alternative housing.

Of course, during first (60 days) period and the second (30 days) period, the tenant may undertake efforts to both establish eligibility to remain in the unit in which the tenant is residing and to find alternative housing. HUD is proposing division of the time period for the tenant to obtain housing so that the tenant has sufficient opportunity to explore both options, provided by statute, for the tenant to obtain housing. A covered housing provider is strongly encouraged to assist a tenant in efforts to establish eligibility for the covered housing in which the tenant is participating, and then assist in finding alternative housing if it no longer seems possible that the tenant will be able to establish eligibility for the covered housing program.

For each of these time periods, the proposed rule would allow, but not mandate, covered providers to grant an extension for up to 30 days, subject, however, to the program regulations under the applicable covered housing program authorizing the covered housing provider to grant an extension, as part of the covered housing providers standard policies and practices or, alternatively, granting such an extension on a case-by-case basis. For some covered housing

programs—for example, HUD’s public housing and Section 8 voucher programs where demand for available housing and assistance is high—a period of more than 90 days may adversely affect applicants waiting for admission to public housing or receipt of a voucher, and, therefore, for these programs, the proposed is for a maximum period of 90 days, without an extension.

It is important to note that the reasonable time period may only be provided to tenants by covered housing providers that remain subject to the requirements of the other covered housing program once the eligible tenant departs the unit. Therefore the reasonable time period does not apply, generally, if the only assistance provided is tenant-based rental assistance. For such assistance, the assistance is tied to the tenant not the unit. However, where the assistance is tied to the unit, such as project-based assistance, operating assistance, or construction or rehabilitation assistance, the covered housing provider may provide the reasonable period of time to establish eligibility.

In addition, it is the tenant’s responsibility to establish eligibility for assistance under the covered housing program or find alternative housing. While the covered housing provider may assist the tenant in the individual’s efforts to establish eligibility for assistance under a covered housing program, or find alternative housing, and is encouraged to do so, the responsibility remains with the tenant to establish eligibility for assistance or find alternative housing.

*Specific solicitation of comment 12:* HUD specifically solicits comment on the “reasonable” time periods proposed in this rule. HUD recognizes that all of its covered rental programs have waiting lists for individuals and families already determined to be eligible who are waiting on an available unit to occupy. On the other hand, HUD wants to ensure that, consistent with the statute, covered housing providers allow sufficient time for individuals and

families already occupying the unit to remain in the unit if possible, and not further contribute to populations lacking housing stability.

In this regard, HUD has added a new paragraph (c) to § 5.2009, which encourages covered housing providers to undertake whatever actions permissible and feasible under their respective programs to assist individuals residing in their units who are victims of domestic violence, dating violence, sexual assault, or stalking to remain in their units or other units under the covered housing program or other covered housing providers, and for the covered housing provider to bear the costs of any transfer, where permissible.

Court orders: Section 5.2009(b) of HUD's existing VAWA regulations, which pertain to court orders, is proposed to be moved, as discussed earlier in this preamble, to § 5.2005(d)(1).

#### **Effect on Other Laws (§ 5.2011)**

With the exception of including "sexual assault," this section would remain unchanged.

#### **B. Proposed Conforming Amendments to 24 CFR parts 92, 93, 200, 574, 576, 578, 880, 882, 883, 884, 886, 891, 960, 966, 982, and 983**

For the programs already covered by VAWA, additional proposed amendments are primarily directed to include reference to sexual assault, which was added by VAWA 2013.

For the new HUD programs covered by VAWA 2013, the proposed rule would amend the regulations of the HUD-covered housing programs to cross-reference the applicability of the VAWA regulations in 24 CFR part 5, subpart L. However for certain of the newly covered programs, such as the HOME program, the HOPWA program, the Emergency Solutions Grants program, and the CoC program, regulations beyond reference to the core VAWA requirements provided in part 5, subpart L, are necessary to guide how the VAWA requirements are to be

implemented in accordance with the unique program requirements of these four programs, the first three of which are formula funded programs.<sup>15</sup>

As noted earlier in this preamble, HUD also proposes to amend the HOPWA regulations at 24 CFR 578.75(i) to include a reasonable time for the remaining members of the household to continue occupancy in the housing after the qualifying member was evicted for having engaged in domestic violence, dating violence, sexual assault, or stalking.

For the multifamily housing programs administered by HUD's Office of Housing, the proposed conforming amendment is made to 24 CFR part 200, subpart A, under the undesignated heading of Miscellaneous Cross-Cutting Regulations. To this group of important cross-cutting regulations, HUD would add the requirement to comply with the VAWA protections.

While this rule proposes to make the necessary regulatory amendments to fully implement VAWA 2013 in all HUD-covered housing programs, the HUD offices administering assistance under the covered programs will develop guidance for their covered housing providers to further assist covered housing providers in their implementation of VAWA and elaborate on such nonregulatory requirements, such as encouraging the providers to aid remaining tenants in their efforts to establish eligibility for assistance and how such aid may be provided. The guidance will be in such forms that HUD program offices generally issue guidance to supplement and support statutory or regulatory program requirements, such as Office of Housing or PIH notices, Federal Housing Administration (FHA) mortgagee letters, etc. HUD recognizes that for HUD and the covered housing providers to more effectively assist victims of domestic violence, dating violence, sexual assault, or stalking, assistance may be needed from service

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<sup>15</sup> Although HOPWA is primarily a formula program, it does have a competitive grant component that is funded annually.

providers, charitable organizations, and others in the community in which the housing is located, and HUD and covered housing providers will reach out to such organizations.

### III. Paperwork Reduction Act

#### Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). 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.

The burden of the information collections in this proposed rule is estimated as follows:

#### **REPORTING AND RECORDKEEPING BURDEN:**

| 24 CFR Section                             | Number of Respondents in Covered Programs |         |         |       |  | Number of Responses Per Respondent (Annually) ** | Estimated Average Response Time (in hours) ** | Estimated Annual Burden (in hours) **                                    |
|--|---|---------|---------|-------|--|--|---|--|
|  | PH &* Sec. 8                              | MF* HSG | HOME    | HOPWA | Homeless                                       |  |   |  |
| 5.2005(a) (Notice of Occupancy Rights)     | 3,400                                     | 23,000  | 180,487 | 255   | 450- CoC<br>360-ESG<br><u>230-RHS</u><br>1,040 | 1  | 0.30  | 545,346  |
| 5.2005(a) Certification                    | 3,400                                     | 23,000  | 180,487 | 255   | 450-CoC<br>360-ESG<br><u>230-RHS</u><br>1,040  | 1  | 0.30  | 545,346  |
| 5.2005(e) Emergency Transfer Plan          | 3,400                                     | 23,000  | 180,487 | 255   | 450-CoC<br>360-ESG<br><u>230-RHS</u><br>1,040  | 1  | 8.00  | 1,665,456  |
| 5.2005(a) (Notice of Occupancy Rights) *** |   |         |         |       |  |  |   | 0.5. First year only – modifications to form to reflect housing provider |
| 5.2005(a) Certification ***                |   |         |         |       |  |  |   | 0.5. First year only – modifications to form to reflect                  |

| 24 CFR Section   | Number of Respondents in Covered Programs |         |         |       |   | Number of Responses Per Respondent (Annually) ** | Estimated Average Response Time (in hours) ** | Estimated Annual Burden (in hours) **                                   |
|--|---|---------|---------|-------|---|--|---|---|
|  | PH & Sec. 8                               | MF* HSG | HOME    | HOPWA | Homeless                                      |  |   |   |
|  |   |         |         |       |   |  |   | housing provider  |
| 5.2005(e) Emergency Transfer Plan ****                     |   |         |         |       |   |  |   | 2 hrs. First year only – preparing emergency plan based on HUD’s model. |
| 5.2007(b)(1) Documenting incident of DV                    | 3,400                                     | 23,000  | 180,487 | 255   | 450-CoC<br>360-ESG<br><u>230-RHS</u><br>1,040 | 1  | 1 .00   | 181,782   |
| 5.2009 Bifurcation of lease                                | 3,400                                     | 23,000  | 180,487 | 255   | 450-CoC<br>360-ESG<br><u>230-RHS</u><br>1,040 | 1  | 8.00  | 1,454,256   |
| <b>Total Burden (for all HUD programs covered by VAWA)</b> |   |         |         |       |   |  |   | 4,392,189   |

\* With the exception of the emergency transfer plan, the information collection items listed in this table already apply to public housing, Section 8, and multifamily housing programs. Accordingly, no new burden is established for these programs, except for the requirement to establish an emergency transfer plan, and, as such, they are not counted in the reporting and recordkeeping burden established by VAWA 2013.

\*\* These hours pertain to distribution by the housing provider and review by the tenants in these programs.

\*\*\* These are the forms required to be developed by HUD. For the Notice of Occupancy Rights and Certification, the housing provider need only customize to reflect the covered program and identify the housing provider. The Emergency Transfer Plan is a model plan and therefore the housing provider may seek to make more substantive changes.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting from members of the public and affected agencies comments on the following concerning this collection of information:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency’s estimate of the burden of the proposed collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (5720-P-02) and must be sent to:

HUD Desk Officer

Office of Management and Budget

New Executive Office Building

Washington, DC 20503

Fax number: 202-395-6947

and

Ms. Colette Pollard

Reports Liaison Officer

Department of Housing and Urban Development,

451 7th Street, SW, Room 2204

Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

#### **IV. Findings and Certifications**

##### Executive Order 12866, Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled, “Regulatory Planning and Review”). This rule was determined to be a “significant regulatory action,” as defined in section 3(f) of the order but not economically significant, as provided in section 3(f)(1) of the order. In accordance with the Executive order, HUD has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting primarily from the statute’s documentation requirements.

##### Need for Regulatory Action

This regulatory action is required to conform the provisions of HUD’s VAWA regulations to those of title VI of VAWA 2013, codified at 42 U.S.C. 14043e et seq. The 2013 statutory changes both expand the HUD programs to which VAWA applies and expand the



scope of the VAWA protections, so that HUD's existing regulations reflect and implement the full protection and coverage of VAWA.

As stated at the outset of this preamble to this proposed rule, the importance of having HUD's VAWA regulations updated cannot be overstated. The expansion of VAWA 2013 to other HUD rental assistance programs emphasizes the importance of protecting victims of domestic violence, dating violence, sexual assault, and stalking, in all HUD housing offering rental assistance. By having all covered housing providers be aware of the protections of VAWA and the actions that they must take to provide such protections if needed, HUD signals to all tenants in the covered housing programs that HUD is an active part of the national response to prevent domestic violence, dating violence, sexual assault, and stalking.

In addition to expanding the applicability of VAWA to HUD programs beyond HUD's Section 8 and public housing programs, VAWA 2013 expands the protections provided to victims of domestic violence, dating violence, sexual assault, and stalking, which must be incorporated in HUD's codified regulations. For example, under VAWA 2013, victims of sexual assault are specifically protected under VAWA for the first time in HUD-covered programs (compare, e.g., current 24 CFR 5.2005(b) and (c)(1) with § 5.2005(b)(1) and (c) of this proposed rule). Another example is the statutory replacement of the term "immediate family member" with the term "affiliated individual." Where HUD's current VAWA regulations provided that a nonperpetrator tenant would be protected from being evicted or denied housing because of acts of domestic violence, dating violence, or stalking committed against a family member (see current 24 CFR 5.2005(c)(2)), under VAWA 2013, the same protections apply to a non-perpetrator tenant because of acts of domestic violence, dating violence, or stalking committed against an "affiliated individual." The replacement of "immediate family member" with

“affiliated individual” reflects differing domestic arrangements and must be incorporated in HUD’s regulations.

VAWA 2013 also increases protection for victims of domestic violence, dating violence, sexual assault, and stalking by requiring HUD to develop a model emergency transfer plan to guide covered housing providers in the development and adoption of their own emergency transfer plans. VAWA also changes the procedures for the notification to tenants and applicants of their occupancy rights under VAWA. Prior to VAWA 2013, public housing agencies administering HUD’s public housing and Section 8 assistance were responsible for the development and issuance such notification to tenants. Under VAWA 2013, HUD must develop the notice. Thus, HUD’s VAWA regulations must reflect that HUD will prescribe the notice of occupancy rights to be distributed by covered housing providers.

#### Range of Regulatory Approaches Considered

Regarding conformance to, and implementation of, the changes made by VAWA 2013, which is the primary purpose of this rulemaking, HUD has very little discretion to consider actions different from the actions and documents required by the statute. The core protections and the documentation required by VAWA are vital to providing the necessary protections for the victims of domestic violence, dating violence, sexual assault, and stalking.

VAWA 2013 does present some implementation challenges for the newly covered HUD programs. The VAWA 2013 provisions did not alter the VAWA 2005 to more suitably address the “administration” structure of the newly covered HUD programs. As noted earlier in this preamble, the VAWA 2013 language continues to match more effectively the type housing that is administered by a PHA; that is, the public housing and Section 8 programs covered by VAWA 2005. As further noted earlier in this preamble, in proposing how the VAWA protections are to be implemented in the newly covered programs, HUD took into account both the statutory and

regulatory framework of each program, and HUD's experiences in both administering such program and in working with the different entities administering such programs. In each case, HUD strived to ensure that the proposed regulations for the newly covered programs protect victims of domestic violence, dating violence, sexual assault, or stalking, as contemplated by VAWA. The proposed regulations for the newly covered programs do not offer alternative approaches for implementation of VAWA in these programs, but rather how HUD believes the protections of VAWA are to be implemented given the structure of these programs. However, the specific questions posed by HUD for comment in this preamble reflect alternative approaches that HUD is considering but HUD values input from the public on these approaches, including listing the Housing Trust Fund as a covered HUD program. HUD submits that, with this program's significant similarity to the HOME program, the Housing Trust Fund program should also offer the VAWA protections to tenants receiving rental assistance under the Housing Trust Fund.

As HUD also noted in the preamble, VAWA 2013 does not impose documentation requirements on a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, and seeks an emergency transfer from the tenant's current unit. As provided under specific solicitation of comment 4 in this preamble, HUD seeks comment on whether documentation requirement should be imposed on those seeking emergency transfers and, if they are imposed, whether they should be the same as those required of tenants seeking other protections of VAWA 2013.

With respect to emergency transfers, VAWA does not define what constitutes a safe and available dwelling unit, and HUD does not provide a definition for such unit in this rule but seeks comment on how such unit should be defined. Under specific solicitations of comment 5

and 9 in the preamble to this proposed rule, HUD specifically solicits comment on actions that covered housing providers may be able to undertake to assist tenants who are not perpetrators of domestic violence, dating violence, sexual assault, or stalking to remain in covered housing programs, consistent with existing program requirements, when a tenant household is divided as a result of lease bifurcation.

As the preamble reflects, HUD's proposed regulations adhere closely to the statutory requirements, and the alternative approaches HUD will consider in the context of information, feedback, and recommendations offered by advocates for protection of victims of domestic violence, participants in and administrators of HUD-covered programs, and the public generally.

#### Costs and Benefits

As noted in the Executive Summary of this preamble, there are several benefits, including expanding the protections of VAWA to applicants and tenants beyond those in HUD's public housing and Section 8 programs; strengthening the rights, including confidentiality rights, of victims of domestic violence, dating violence, sexual assault, and stalking in HUD-covered programs; and possibly minimizing the loss of housing by such victims through the bifurcation of lease provision, where such action may be a feasible option. The notice of occupancy rights to be distributed to all applicants and tenants signals the concern of HUD and the covered housing provider about the serious consequences of domestic violence, dating violence, sexual assault, and stalking on the individual tenant victim and, at times, the victim's family or individuals affiliated to the victim, and confirms the protections to be afforded to the tenant victim if such violence occurs. The notice of occupancy rights is presented with the goal of helping applicants and tenants understand their occupancy rights under VAWA. Awareness of such rights is an important benefit.

The costs of the regulations, as also noted earlier in this preamble, are primarily paperwork costs. These are the costs of providing notice to applicants and tenants of their occupancy rights under VAWA, the preparation of an emergency transfer plan, and documenting the incident or incidents of domestic violence, dating violence, sexual assault, and stalking. The costs, however, are minimized to some extent by the fact that VAWA 2013 requires HUD to prepare the notice of occupancy rights, the certification form, and the model emergency transfer plan.

In addition to the costs related to these documents, which HUD submits is not significant given HUD's role in creating the documents, there will be a cost with respect to a tenant claiming the protections of VAWA and a covered housing provider responding to such incident. This cost will vary, however, depending on the incidence of claims in a given year and the nature and complexity of the situation. The costs will also depend on the supply and demand for the available and safe units in the situation of an emergency transfer request. HUD's covered housing providers did not confront such "movement" costs under VAWA 2005, so it remains to be seen, through implementation of VAWA 2013, if the transfer to a safe unit, as VAWA 2013 allows, is feasible in most situations in which such a request is made and becomes a substantial cost to the covered housing provider. As provided under specific solicitation of comment 7, HUD is soliciting comment on the costs of such transfer, and the extent of paperwork that is necessary to provide the transfer.

The reporting and recordkeeping matrix that accompanies HUD's Paperwork Reduction Act statement, provided above, provides HUD's estimate of the workload associated with the reporting and recordkeeping requirements.

The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the telephone number above via TTY by calling the Federal Relay Service, toll-free, at 800-877-8339.

### Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule proposes to fully implement the protections of VAWA 2013 in all HUD covered housing programs. These protections are statutory and statutorily directed to be implemented. The statute does not allow for covered housing providers who are, or may qualify as small entities to not provide such protections to its applicants or tenants or provide fewer protections than covered entities that are larger entities. However, with respect to processes that may be found to be burdensome to small covered housing providers—such as bifurcation of the lease and the emergency transfer plan—bifurcation of the lease is a statutory option not a mandate, and the emergency transfer plan is contingent upon units to which victims of domestic violence, dating violence, sexual assault, or stalking may seek transfer on an emergency basis being available and safe. Therefore, small entities are not required to carry out these latter

processes that may be more burdensome, and, indeed may not be feasible given the fewer number of units generally managed by smaller entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives, as described in this preamble.

#### Environmental Impact

This proposed rule involves a policy document that sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3) this interim rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order. The scope of this rule is limited to HUD covered housing programs, as such term is defined in the rule.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on

State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal government, or the private sector within the meaning of UMRA.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.103, 14.135, 14.157, 14.181, 14.195, 14.231, 14.267, 14.268, 14.239, 14.241, 14.850, 14.856, and 14.871.

#### **List of Subjects**

##### 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

##### 24 CFR Part 92

Administrative practice and procedure, Grant programs-housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

##### 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and



community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping.

24 CFR Part 574

Community facilities, Grant programs-housing and community development, Grant programs-social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 576

Community facilities, Grant programs-housing and community development, Grant programs-social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 578

Community facilities, Continuum of Care, Emergency solutions grants, Grant programs--housing and community development, Grant program--social programs, Homeless, Rural housing, Reporting and recordkeeping requirements, Supportive housing programs-- housing and community development, Supportive services.

24 CFR Part 880

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs-housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

## 24 CFR Part 884

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

## 24 CFR Part 886

Grant programs-housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

## 24 CFR Part 891

Aged, Grant programs-housing and community development, Individuals with disabilities, Loan programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

## 24 CFR Part 960

Aged, Grant programs-housing and community development, Individuals with disabilities, Pets, Public housing.

## 24 CFR Part 966

Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements.

## 24 CFR Part 982

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

## 24 CFR Part 983

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, and in accordance with HUD's authority in 42 U.S.C. 3535(d), HUD proposes to amend 24 CFR parts 5, 92, 200, 574, 576, 578, 880, 882, 883, 884, 886, 891, 960, 966, 982, and 983, as follows.

## **PART 5 - GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

1. The authority citation for part 5 is revised to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109-115, 119 Stat. 2936, and 42 U.S.C. 14043e *et seq.*, Sec. 601, Pub. L. 113-4, 127 Stat. 101.

2. Revise Subpart L, including the heading, to read as follows:

### **Subpart L - Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

§ 5.2001 Applicability.

§ 5.2003 Definitions.

§ 5.2005 VAWA Protections

§ 5.2007 Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking.

§ 5.2009 Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking.

§ 5.2001 Effect on other laws.

#### **§ 5.2001 Applicability.**

(a) This subpart addresses the protections for victims of domestic violence, dating violence, sexual assault, or stalking who are applying for, or the beneficiary of, assistance under

a HUD program covered by the Violence Against Women Act (VAWA), as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.) (“covered housing program,” as defined in § 5.2003).

Notwithstanding the title of the statute, victims are not limited to women but cover all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, sexual orientation, disability, or age.

(b)(1) The applicable assistance provided under a covered housing program generally consists of two types of assistance (one or both may be provided): tenant-based rental assistance, which is rental assistance that is provided to the tenant; and project-based assistance, which is assistance that attaches to the unit in which the tenant resides. For project-based assistance, the assistance may consist of such assistance as operating assistance, development assistance, and mortgage interest rate subsidy.

(2) The regulations in this subpart are supplemented by the specific regulations for the HUD-covered housing programs listed in § 5.2003. The program-specific regulations address how certain VAWA requirements are to be implemented and whether they can be implemented (for example, reasonable time to establish eligibility for assistance as provided in § 5.2009(b)) for the applicable covered housing program, given the statutory and regulatory framework for the program. When there is conflict between the regulations of this subpart and the program-specific regulations, the program-specific regulations govern. Where assistance is provided under more than one covered housing program, the covered housing program that provides the greatest protection to victims of domestic violence, dating violence, sexual assault, or stalking governs.

#### **§ 5.2003 Definitions.**

The definitions of PHA, HUD, household, and other person under the tenant’s control are defined in subpart A of this part. As used in this subpart L:

*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.

*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 to a child (for example, the affiliated individual is a child in the care, custody, or control of that individual); or

(2) Any individual, tenant, or lawful occupant living in the household of that individual.

*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.

*Covered housing program* consists of the following HUD programs:

(1) Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.

(2) Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.

(3) Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 *et seq.*), with implementing regulations at 24 CFR part 574.

(4) HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 et seq.), with implementing regulations at 24 CFR part 92.

(5) Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.), including the Emergency Solutions Grants program (with implementing regulations at 24 CFR part 576), the Continuum of Care program (with implementing regulations at 24 CFR part 578), and the Rural Housing Stability Assistance program (with regulations forthcoming).

(6) Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221.

(7) Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1), with implementing regulations at 24 CFR part 236.

(8) HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d) (with regulations at 24 CFR Chapter IX), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f) (with regulations at 24 CFR chapters VIII and IX), and the Section 8 Moderate Rehabilitation Single Room Occupancy (with implementing regulations at 24 CFR part 882, subpart H).

(9) The Housing Trust Fund (12 U.S.C. 4568) (with regulations forthcoming).

*Covered housing provider* refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities. The program-specific

regulations for the covered housing programs identify the individual or entity that carries out the duties and responsibilities of the covered housing provider as set forth in part 5, subpart L. For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be the same individual or entity.

*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:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

*Domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. The term "intimate partner" is defined in 18 U.S.C. 2266 and the term "crime of violence" is defined in 18 U.S.C. 16.

*Sexual assault* means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

*Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for his or her safety or the safety of others; or
- (2) Suffer substantial emotional distress.

VAWA means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).

**§ 5.2005 VAWA protections.**

(a) Notice of occupancy rights under VAWA, and certification form. (1) The following notice and certification form must be provided by a covered housing provider to each of its applicants and to each of its tenants:

(i) A “Notice of Occupancy Rights under VAWA,” as prescribed and in accordance with directions provided by HUD, that explains the VAWA protections under this subpart, including the right to confidentiality, and any limitations on those protections; and

(ii) A certification form, in a form approved by HUD, to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault or stalking, and that:

(A) States that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;

(B) States that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under this subpart meets the applicable definition for such incident under § 5.2003; and



(C) Includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide.

(2) The notice required by paragraph (a)(1)(i) of this section and certification form required by paragraph (a)(1)(ii) of this section must be provided to an applicant or tenant no later than at each of the following times:

(i) At the time the applicant is denied assistance or admission under a covered housing program;

(ii) At the time the individual is provided assistance or admission under the covered housing program; and

(iii) With any notification of eviction or notification of termination of assistance.

(3) The notice required by paragraph (a)(1)(i) of this section and the certification form required by paragraph (a)(1)(ii) of this section 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)).

(b) Prohibited basis for denial or termination of assistance or eviction. (1) General. An applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis 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.

(2) Termination on the basis of criminal activity. A tenant in a covered housing program may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if:

(i) The criminal activity is engaged in by a member of the household of a tenant or any guest or other person under the control of the tenant, and

(ii) The tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking.

(c) Construction of lease terms and terms of assistance. An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

(1) A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or

(2) Good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of the victim or threatened victim of such incident.

(d) Limitations of VAWA protections. (1) Nothing in this section limits the authority of a covered housing provider, when notified of a court order, to comply with a court order with respect to:

(i) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

(ii) The distribution or possession of property among members of a household in a case.

(2) Nothing in this section limits any available authority of a covered housing provider to evict or terminate assistance to a tenant 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. However, the covered housing provider must not subject the tenant, who is or has 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.

(3) Nothing in this section limits the authority of a covered housing provider to terminate assistance to or evict a tenant under a covered housing program if the covered housing provider can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to property of the covered housing provider would be present if that tenant or lawful occupant is not evicted or terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the standards provided in the definition of “actual and imminent threat” in § 5.2003.

(4) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section should be utilized by a covered housing provider only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

(e) Emergency transfer plan. Each covered housing provider, as identified in the program specific regulations for the covered housing program, shall adopt an emergency transfer plan,

based on HUD's model emergency transfer plan, and that incorporates the following components:

(1) The emergency transfer plan must allow tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another unit under the covered housing program in which the tenant has been residing or to a unit in another covered housing program if such transfer is permissible under applicable program regulations, provided that a unit is available and safe, and provided, further, that:

(A) The tenant expressly requests the transfer; and

(B)(i) 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

(ii) In the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90-day period preceding the date of the request for transfer; and

(2) The emergency transfer plan must incorporate strict confidentiality measures to ensure that the covered housing provider does not disclose the location of the dwelling unit of the tenant to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

(3) Nothing in this subsection (e) may be construed to supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

**§ 5.2007 Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking.**

(a) Request for documentation. (1) Under a covered housing program, if an applicant or tenant represents to the covered housing provider that the individual is a victim of domestic

violence, dating violence, sexual assault, or stalking entitled to the protections under § 5.2005, or remedies under § 5.2009, the covered housing provider may request, in writing, that the applicant or tenant submit to the covered housing provider the documentation specified in paragraph (b)(1) of this section. The documentation requirements in this paragraph (a) are not applicable to a request made by the tenant for a request for an emergency transfer under § 5.2005(e), unless otherwise specified by HUD by notice.

(2)(i) If an applicant or tenant does not provide the documentation requested under paragraph (a)(1) of this section within 14 business days after the date that the tenant receives a request in writing for such documentation from the covered housing provider, nothing in § 5.2005 or § 5.2009, which addresses the protections of VAWA, may be construed to limit the authority of the covered housing provider to:

- (A) Deny admission by the applicant or tenant to the covered housing program;
- (B) Deny assistance under the covered housing program to the applicant or tenant;
- (C) Terminate the participation of the tenant in the covered housing program; or
- (D) Evict the tenant, or a lawful occupant that commits a violation of a lease.

(ii) A covered housing provider may, at its discretion, extend the 14-business-day deadline under paragraph (a)(2)(i) of this section.

(b) Permissible documentation and submission requirements. (1) In response to a written request to the applicant or tenant from the covered housing provider, as provided in paragraph (a) of this section, the applicant or tenant may submit, as documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking:

- (i) The certification form described in § 5.2005(a)(1)(ii); or
- (ii) A document:

(A) 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;

(B) Signed by the applicant or tenant; and

(C) Specifies that, under penalty of perjury, 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 this subpart meets the applicable definition under § 5.2003; or

(iii) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

(iv) At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

(2) If a covered housing provider receives documentation under paragraph (b)(1) of this section that contains conflicting information (including certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator), the covered housing provider may require an applicant or tenant to submit third-party documentation, as described in paragraphs (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section.

(3) Nothing in this paragraph (b) shall be construed to require a covered housing provider to request that an individual submit documentation of the status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Confidentiality. Any information submitted to a covered housing provider under this section, including the fact that an individual is a victim of domestic violence, dating violence,

sexual assault, or stalking (confidential information), shall be maintained in confidence by the covered housing provider.

(1) The covered housing provider shall not allow any individual administering assistance on behalf of the covered housing provider or any persons within their employ (e.g., contractors) or in the employ of the covered housing provider to have access to confidential information unless explicitly authorized by the covered housing provider for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

(2) The covered housing provider shall not enter confidential information described in paragraph (c) of this section into any shared database or disclose such information to any other entity or individual, except to the extent that the disclosure is:

(i) Requested or consented to in writing by the individual;

(ii) Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or

(iii) Otherwise required by applicable law.

(d) A covered housing provider's compliance with the protections of §§ 5.2005 and 5.2009, based on documentation received under this section shall not be sufficient to constitute evidence of an unreasonable act or omission by the covered housing provider. However, nothing in this paragraph (d) of this section shall be construed to limit the liability of a covered housing provider for failure to comply with §§ 5.2005 and 5.2009.

**§ 5.2009 Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking.**

(a) Lease bifurcation. (1) A covered housing provider may in accordance with paragraph (a)(2) of this section, bifurcate a lease, or remove a household member from a lease in order 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:

(i) Without regard to whether the household member is a signatory to the lease; and

(ii) Without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.

(2) A lease bifurcation, as provided in paragraph (a)(1) of this section, shall be carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law for termination of assistance or leases and in accordance with any requirements under the relevant covered housing program.

(b) Reasonable time to establish eligibility for assistance or find alternative housing following bifurcation of a lease. The reasonable time to establish eligibility under a covered housing program or find alternative housing is specified in paragraph (b) of this section, or alternatively in the program-specific regulations governing the applicable covered housing program. Some covered housing programs may provide different time frames than are specified in this paragraph (b), and in such cases, the program-specific regulations govern.

(1) Reasonable time to establish eligibility assistance. (i) If a covered housing provider exercises the option to bifurcate a lease as provided in paragraph (a) of this section, and the individual who was evicted or for whom assistance was terminated was the eligible tenant under the covered housing program, the covered housing provider shall provide to any remaining tenant or tenants a period of 60 calendar days from the date of bifurcation of the lease to:

(A) Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease; or



(B) Establish eligibility under another covered housing program.

(ii) The 60-calendar-day period provided by paragraph (b)(1) of this section can only be provided to a remaining tenant if the governing statute of the covered program authorizes an ineligible tenant to remain in the unit without assistance. The 60-calendar-day period does not supersede any period to establish eligibility for the covered housing program that may already be provided by the covered housing program. The 60-calendar-day period is the total period provided to a remaining tenant to establish eligibility under the two options provided in paragraphs (b)(1)(i)(A) and (B) of this section.

(iii) The covered housing provider, subject to authorization under the regulations of the applicable covered housing program, may extend the 60-calendar-day period up to an additional 30 calendar days.

(2) Reasonable time to find alternative housing provider. (i) If a tenant is unable to establish eligibility for the covered housing program, as provided in paragraph (b)(1) of this section, the covered housing provider must give the tenant an additional 30 calendar days to find alternative housing. The additional 30 days shall commence following the 61st day after date of bifurcation of the lease.

(ii) The covered housing provider may, subject to authorization under the regulations of the applicable covered housing program, extend the 30-calendar-day period up to an additional 30 calendar days.

(c) Efforts to promote housing stability for victims of domestic violence, dating violence, sexual assault, or stalking. Covered housing providers are encouraged to undertake whatever actions permissible and feasible under their respective programs to assist individuals residing in their units who are victims of domestic violence, dating violence, sexual assault, or stalking to

remain in their units or other units under the covered housing program or other covered housing providers, and for the covered housing provider to bear the costs of any transfer, where permissible.

**§ 5.2011 Effect on other laws.**

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

**PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM**

3. The authority citation for part 92 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 12701-12839.

4. In § 92.253, paragraph (a) is revised and paragraph (d) is revised by removing the “and” following paragraph (5), adding “and” at the end of paragraph (6), and adding a new paragraph (d)(7) to read as follows:

**§ 92.253 Tenant protections and selection.**

(a) Lease. There must be a written lease between the tenant and the owner of rental housing assisted with HOME funds that is for a period of not less than 1 year, unless by mutual agreement between the tenant and the owner a shorter period is specified. The lease must incorporate the VAWA lease term/addendum required under § 92.359(e), except as otherwise provided by § 92.359(b).

\* \* \* \* \*

(d) Tenant selection. \* \* \*

(7) Comply with the VAWA requirements prescribed in § 92.359.

5. A new § 92.359 is added to read as follows:

**§ 92.359 VAWA requirements.**

(a) General. (1) The Violence Against Women Act (VAWA) requirements set forth in 24 CFR section 5, subpart L, apply to all HOME tenant-based rental assistance and rental housing assisted with HOME funds, except as otherwise provided in this section.

(2) For the HOME program, “covered housing provider,” as such term is used in HUD’s regulations in 24 CFR part 5, subpart L, and that is designated to carry out the duties and responsibilities specified in 24 CFR part 5, subpart L, refers to:

(i) The housing owner for the purposes of § 5.2005(d)(1), (d)(3), and (d)(4) and § 5.2009(a);

(ii) The participating jurisdiction or its designee for purposes of § 5.2005(e); and

(iv) The housing owner and entity administering tenant-based rental assistance for the purposes of § 5.2005(d)(2) and § 5.2007.

(b) Effective date. Compliance with the VAWA requirements under this section and 24 CFR part 5, subpart L, is not required for any tenant-based rental assistance or rental housing project for which the date of the HOME funding commitment is earlier than **[insert effective date of the final rule at final rule stage]**.

(c) Notification requirements. The participating jurisdiction is responsible for providing a notice and certification form that meet the requirements of §5.2005(a) to each owner of HOME-assisted rental housing and each entity that administers HOME tenant-based rental assistance.

(1) For HOME-assisted units. Each owner of HOME-assisted rental housing must provide the notice and certification form described in 24 CFR 5.2005(a) to each applicant for a HOME-assisted unit at the time the applicant is admitted or denied admission to a HOME-assisted unit. Each owner of HOME-assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HOME-assisted unit.

(2) For HOME tenant-based rental assistance. Each entity that administers HOME tenant-based rental assistance must provide the notice and certification form described in 24 CFR 5.2005(a) to each applicant for HOME tenant-based rental assistance when the applicant's HOME tenant-based rental assistance is approved or denied. Each entity that administers HOME tenant-based rental assistance must also provide the notice and certification form described in 24 CFR 5.2005(a) to a tenant receiving HOME tenant-based rental assistance when the entity provides the tenant with notification of termination of the HOME tenant-based rental assistance and when the entity learns that the tenant's housing owner intends to provide the tenant with notification of eviction.

(d) Bifurcation of lease requirements. The requirements of 24 CFR 5.2009(b) do not apply to HOME-assisted rental units or housing for which HOME tenant-based rental assistance is the only assistance provided (i.e., the housing is not assisted housing under a covered housing program, as defined in 24 CFR 5.2003). With respect to this housing, the following requirements apply when a lease is bifurcated in accordance with 24 CFR 5.2009(a):

(1) The participating jurisdiction or its designee must establish a bifurcation policy, which at a minimum specifies:

(i) What constitutes a reasonable opportunity for the remaining tenant to establish eligibility for the HOME-assisted unit, if the qualifying tenant is removed through bifurcation;

(ii) What constitutes a reasonable opportunity for the remaining tenant to establish eligibility for HOME tenant-based rental assistance, if the qualifying tenant is removed through bifurcation; and

(iii) Which provisions, if any, the VAWA lease term/addendum for HOME tenant-based rental assistance must include to protect the remaining tenant, if the qualifying tenant is removed through bifurcation.

(2) If the qualifying tenant for a HOME-assisted unit is removed through bifurcation, the owner must provide any remaining tenant a reasonable opportunity, as determined by the participating jurisdiction, to establish eligibility for the HOME-assisted unit. If the remaining tenant cannot establish eligibility, the owner must give the tenant at least 60 days to find other housing, beginning on the date the tenant is determined ineligible.

(3) If HOME tenant-based rental assistance is the only assistance provided, the following requirements apply:

(i) If the qualifying tenant for the HOME tenant-based rental assistance is removed through the bifurcation, the housing owner and the entity administering the HOME tenant-based rental assistance must provide any remaining tenant(s) a reasonable opportunity, as determined by the participating jurisdiction, to establish eligibility for the HOME tenant-based rental assistance.

(ii) When a family separates under 24 CFR 5.2009(a) and both resulting families remain eligible for HOME tenant-based rental assistance, the participating jurisdiction or its designee must determine on a case-by-case basis which of the resulting families will keep the current

HOME tenant-based rental assistance and whether the other resulting family will receive new HOME tenant-based rental assistance.

(e) VAWA lease term/addendum. The participating jurisdiction is responsible for developing a VAWA lease term/addendum to incorporate the VAWA requirements that apply to the owner under this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if the participating jurisdiction or its designee determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). When HOME tenant-based rental assistance is provided, the lease term/addendum must require the owner to notify the entity administering HOME tenant-based rental assistance before the owner initiates a bifurcation of the lease or provides notification of eviction to the tenant. If HOME tenant-based rental assistance is the only assistance provided (i.e., the unit is not assisted housing under a covered housing program, as defined in 24 CFR 5.2003), the VAWA lease term/addendum may be written to expire at the end of the rental assistance period.

(f) Period of applicability. For HOME-assisted rental housing, the requirements of this section shall apply to the owner or manager of the housing for the duration of the affordability period. For HOME tenant-based rental assistance, the requirements of this section shall apply to the owner or manager of the tenant's housing for the period for which the rental assistance is provided.

6. Section 92.504(c)(3)(v) is revised by adding a new paragraph (F) to read as follows:

**§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.**

\* \* \* \* \*

(c) Provisions in written agreements: \* \* \*

(3) \* \* \*

(i) \* \* \*

(v) \* \* \*

(F) The VAWA requirements prescribed in § 92.359.

\* \* \* \* \*

## **PART 200—INTRODUCTION TO FHA PROGRAMS**

7. The authority citation for Part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1702-1715z-21 and 42 U.S.C. 3535(d).

8. A new § 200.38 is added to read as follows:

### **§ 200.38 Protections for victims of domestic violence.**

(a) The requirements for protection for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to programs administered under section 236 and under sections 221(d)(3) and (d)(5) of the National Housing Act, as follows:

(1) Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221. The Section 221(d)(3) BMIR program insured and subsidized mortgage loans to facilitate new construction or substantial rehabilitation of multifamily rental cooperative housing for low- and moderate-income families. The program is no longer active, but Section 221(d)(3) BMIR properties that remain in existence are covered by

VAWA. Coverage of section 221(d)(3) and (d)(5) BMIR housing does not include section 221(d)(3) and (d)(5) BMIR projects that refinance under section 223(a)(7) or 223(f) of the National Housing Act where the interest rate is no longer determined under section 221(d)(5).

(2) Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1), with implementing regulations at 24 CFR part 236. Coverage of the section 236 program includes not only those projects with FHA-insured project mortgages under section 236(j), but also non-FHA-insured projects that receive interest reduction payments (“IRP”) under section 236(b) and formerly insured section 236 projects that continue to receive interest reduction payments through a “decoupled” IRP contract under section 236(e)(2). Coverage also includes projects that receive rental assistance payments authorized under section 236(f)(2).

(b) For the programs administered under paragraph (a) of this section, “covered housing provider” as such term is used in 24 CFR part 5, subpart L, refers to the mortgagor, or owner, as applicable, and as provided in guidance issued by HUD.

#### **PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS**

9. The authority citation for part 574 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 12901-12912.

10. A new § 574.460 is added to read as follows:

**§ 574.460 Remaining participants following bifurcation of a lease or eviction as a result of domestic violence.**

With respect to participants living in a unit assisted under the HOPWA program with a person with AIDS, and the person with AIDS was found to have engaged in domestic violence, dating violence, sexual assault or stalking, the grantee or project sponsor shall provide a



reasonable grace period for continued participation by the remaining participants, which period shall be no less than 90 days, and not more than 1 year, from the date of eviction of the person with AIDS. The grantee or project sponsor shall notify the remaining participants of the duration of their grace period and may assist them with information on other available housing programs and with moving expenses.

11. A new § 574.604 is added to read as follows:

**§ 574.604 Protections for victims of domestic violence, dating violence, sexual assault, and stalking.**

(a) General. (1) Applicability of VAWA. The VAWA requirements set forth in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), apply to all housing assisted with HOPWA grant funds for acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing; new construction; and operating costs provided in § 574.300. The requirements set forth in 24 CFR part 5, subpart L, also apply to project- or tenant-based rental assistance as provided in §§ 574.300 and 574.320, and community residences, as provided in § 574.340.

(2) Inapplicability of VAWA. The requirements set forth in 24 CFR section 5, subpart L do not apply to short-term supported housing, as provided in § 574.330.

(b) Covered housing provider. For the programs administered under paragraph (a) of this section, “covered housing provider” as such term is used in 24 CFR part 5, subpart L, is the HOPWA grantee, project sponsor, or housing or facility owner, as described in this section.

(1)(i) For HOPWA-assisted units, the HOPWA grantee is responsible for ensuring that the project sponsor:

(A) Sets policy for determining “reasonable opportunity” for establishing eligibility for remaining tenants in HOPWA facility-based assistance—minimum 90 days, maximum 1 year;

(B) Provides notice of occupancy rights and the certification form at admission, denial of assistance, termination, or eviction;

(C) Adopts and administers emergency transfer plan, and facilitating emergency transfers; and

(D) Maintains the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant’s housing location.

(ii)(A) If a tenant seeks VAWA protections, the tenant must submit such request through the project sponsor (or grantee if the grantee is directly administering housing assistance). The project sponsor will work with the facility owner to facilitate protections on the tenant’s behalf. Project sponsors must follow the documentation specifications in 24 CFR 5.2007 and maintain confidentiality as provided in 24 CFR 5.2007.

(B) The facility owner is responsible for using a HOPWA lease addendum with VAWA protections and, if such option is exercised, bifurcating the lease to evict the tenant that perpetrated the domestic violence, dating violence, sexual assault, or stalking.

(2)(i) For tenant-based rental assistance, the HOPWA grantee is responsible for ensuring that the project:

(A) Sets policy for determining “reasonable opportunity” for establishing eligibility for remaining tenants in HOPWA facility-based assistance—minimum 90 days, maximum 1 year;

(B) Provides notice of occupancy rights and the certification form at admission, denial of assistance, termination, or eviction;

(C) Adopts and administers emergency transfer plan, and facilitates emergency transfers;  
and

(D) Maintains the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant's housing location.

(ii)(A) If a tenant seeks VAWA protections, the tenant must submit such request through the project sponsor (or the grantee if the grantee is directly administering housing assistance). The project sponsor will work with the facility owner to facilitate protections on the tenant's behalf. Project sponsors must follow the documentation specifications in 24 CFR 5.2007 and maintain confidentiality as provided in 24 CFR 5.2007. The project sponsor is also responsible for determining on a case-by-case basis whether to provide new tenant-based rental assistance to a remaining tenant if an emergency transfer results in division of the household.

(B) The facility owner is responsible for using a HOPWA lease addendum with VAWA protections and, if such option is exercised, bifurcating the lease to evict the tenant that perpetrated the domestic violence, dating violence, sexual assault, or stalking.

(c) Effective date. For formula grants, compliance with the VAWA requirements under this section and 24 CFR part 5, subpart L, is not required for any project covered under § 574.604(a) for which the date of the HOPWA funding commitment is earlier than **[insert effective date of the final rule at the final rule stage]**. For competitive grants, VAWA requirements under this section and 24 CFR part 5, subpart L, are incorporated in the annual notice of funding availability (NOFA) and made applicable through the grant agreement or Renewal Memorandum, executed for the first full fiscal year that commences on **[insert effective date of the final rule at the final rule stage]**.

(d) Notification requirements. (1) As provided in paragraph (b) of this section, the grantee is responsible for ensuring that each eligible person applying to or assisted under the eligible activities described in § 574.604(a) receives the notice and certification form described in 24 CFR 5.2005 at the following times:

(i) At the time the eligible person is denied tenant-based rental assistance or admission to a HOPWA-assisted unit;

(ii) At the time the eligible person is admitted to a HOPWA-assisted unit or begins receiving tenant-based rental assistance; and

(iii) With any notification of eviction from the HOPWA-assisted unit or termination of HOPWA tenant-based rental assistance.

(2) The grantee is responsible for ensuring that, for each tenant receiving HOPWA tenant-based rental assistance, the owner or manager of the tenant's housing unit commits to provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction that the owner or manager provides to the tenant during the period for which the tenant is receiving HOPWA tenant-based rental assistance. This commitment, as well as the confidentiality requirements under 24 CFR 5.2007(c), must be set forth in the VAWA lease term/addendum required under paragraph (e) of this section.

(e) Definition of reasonable time. For the purpose of 24 CFR 5.2009(b), the reasonable time is the reasonable grace period described in 24 CFR 547.460.

(f) VAWA lease term/addendum. As provided in paragraph (b) of this section, the facility owner or housing owner, as applicable, is responsible for developing a VAWA lease term/addendum to incorporate all obligations and prohibitions that apply to the housing owner under 24 CFR part 5, subpart L, including the prohibited bases for eviction under 24 CFR

5.2005(b). The VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if a determination is made that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). For tenant-based rental assistance, the VAWA lease term/addendum may be written to expire at the end of the rental assistance period, except where the tenant's housing is assisted under a "covered housing program," as defined in 24 CFR 5.2003. The facility owner or housing owner, as applicable, is responsible for ensuring the VAWA lease term/addendum is added to the leases for all HOPWA-assisted units and the leases for all eligible persons receiving HOPWA tenant-based rental assistance.

#### **PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM**

12. The authority citation for part 576 continues to read as follows:

**Authority:** 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

13. In § 576.105, add paragraph (a)(7) to read as follows:

#### **§ 576.105 Housing relocation and stabilization services.**

(a) \* \* \*

(7) If a program participant receiving short- or medium-term rental assistance under § 576.106 meets the conditions for an emergency transfer under 24 CFR 5.2005(e), ESG funds may be used to pay damages caused by early termination of the program participant's lease.

These costs are not subject to the 24-month limit on rental assistance under § 576.106.

\* \* \* \* \*

14. In § 576.106, paragraphs (e) and (g) are revised to read as follows:

#### **§ 576.106 Short-term and medium-term rental assistance.**

\* \* \* \* \*

(e) Rental assistance agreement. The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit or any complaint used under State or local law to commence an eviction action against the program participant. Each rental assistance agreement that is executed or renewed on or after **insert the effective date of the final rule at final rule stage** must include all tenant protections under 24 CFR part 5, subpart L, except 24 CFR 5.2005(e). If the housing is not assisted under another “covered housing program”, as defined in 24 CFR 5.2003, the agreement may provide that the owner’s obligations under 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), expire at the end of the rental assistance period.

\* \* \* \* \*

(g) Lease. Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner’s financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of 1 year. Each lease

executed on or after **[insert the effective date of the final rule at the final rule stage]** must include a lease provision or incorporate a lease addendum that includes all protections that apply to tenants under 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), except 24 CFR 5.2005(e). If the housing is not assisted under another “covered housing program”, as defined in 24 CFR 5.2003, the lease provision or lease addendum may be written to expire at the end of the rental assistance period.

\* \* \* \* \*

15. In § 576.407, add paragraph (g) to read as follows:

**§ 576.407 Other Federal requirements.**

\* \* \* \* \*

(g) Protection for victims of domestic violence, dating violence, sexual assault, or stalking. (1) The requirements of 24 CFR part 5, subpart L apply to all eligibility and termination decisions that are made with respect to ESG rental assistance on or after **[insert the effective date of the final rule at the final rule stage]**. The recipient must ensure that the requirements under 24 CFR part 5, subpart L, are included or incorporated into rental assistance agreements and leases as provided in § 576.106(e) and (g).

(2) For the ESG program, “covered housing provider,” as such term is used in HUD’s regulations in 24 CFR part 5, subpart L, and that is designated to carry out the duties and responsibilities specified in 24 CFR part 5, subpart L, refers to:

(i) The recipient or subrecipient that administers the rental assistance for the purposes of §5.2005(e);

(ii) The housing owner for the purposes of §5.2005(d)(1), (d)(3), and (d)(4) and §5.2009(a);

(iii) The housing owner and the recipient or subrecipient that administers the rental assistance for the purposes of §5.2005(d)(2) and §5.2009(b); and

(iv) The housing owner and the recipient or subrecipient that administers the rental assistance for the purposes of §5.2007, unless otherwise provided in a written policy authorized by this section.

(3) As provided under 24 CFR 5.2005(a)(1) and (3), each recipient or subrecipient that determines eligibility for or administers ESG rental assistance is responsible for ensuring that the notice and certification form described under 24 CFR 5.2005(a)(1) is provided to each applicant for ESG rental assistance and each program participant receiving ESG rental assistance at each of the following times:

- (i) When an individual or family is denied ESG rental assistance;
- (ii) When a program participant begins receiving ESG rental assistance;
- (iii) When a program participant is notified of termination of ESG rental assistance; and
- (iv) When a program participant receives notification of eviction.

(3)(i) The recipient must develop an emergency transfer plan to meet the requirements of 24 CFR 5.2005(e) or require its subrecipients that administer ESG rental assistance to develop emergency transfer plans to meet the requirements of 24 CFR 5.2005(e). If the recipient requires its subrecipients to develop the plans, the recipient must specify whether:

- (A) One plan is to be developed for the recipient's jurisdiction as a whole;
- (B) One plan is to be developed for each Continuum of Care in which the subrecipients are located; or



(C) One plan is to be developed for each subrecipient that administers ESG rental assistance.

(ii) Once the applicable plan is developed, each recipient and subrecipient that administers ESG rental assistance must adopt and implement the plan in accordance with 24 CFR 5.2005(e).

(4) The recipient or subrecipient that administers ESG rental assistance may establish a written policy that allows or requires program participants to seek the recipient or subrecipient's assistance in preventing an owner from taking actions prohibited by VAWA. The policy must be appended to the notice of occupancy rights under VAWA and in the VAWA protection provisions in leases and rental assistance agreements as provided under § 576.106. At a minimum, the policy must provide that if a program participant seeks the recipient or subrecipient's assistance in preventing an owner's action:

(i) The recipient or subrecipient may request documentation under §5.2007, but the program participant will not be required to provide documentation to the owner, except under court order;

(ii) The recipient or subrecipient must determine whether the program participant is entitled to protection under VAWA, and immediately advise the program participant of the determination; and

(iii) If the program participant is entitled to protection, the recipient or subrecipient must notify the owner in writing that the program participant is entitled to protection under VAWA and of the actions that are prohibited under VAWA, and the recipient or subrecipient must work with the owner on the program participant's behalf to resolve the matter. Any further sharing or

disclosure of the program participant’s information will be subject to the requirements in § 5.2007.

## **PART 578—CONTINUUM OF CARE PROGRAM**

16. The authority citation for part 578 continues to read as follows:

**Authority:** 42 U.S.C. 11371 et seq., 42 U.S.C. 3535(d).

17. In § 578.7, a new paragraph (d) is added to read as follows:

### **§ 578.7 Responsibilities of the Continuum of Care.**

\* \* \* \* \*

(d) VAWA emergency transfer plan. The Continuum of Care must develop the emergency transfer plan required under 24 CFR 5.2005(e) to coordinate emergency transfers within the geographic area, which plan:

(i) Requires all recipients and subrecipients in the geographic area to use the plan; and

(ii) Permits recipients and subrecipients of grants for tenant-based rental assistance to use grant funds to pay damages resulting from the early termination of a lease if the recipient or subrecipient determines that the conditions of 24 CFR 5.2005(e) are met and the program participant uses the emergency transfer plan to transfer to a “safe and available unit.” The revision will clarify what grant funds may be used to pay and will reflect the addition of 24 CFR 5.2005(e)(3).

18. In § 578.51, add paragraph (m) to read as follows:

### **§578.51 Rental assistance.**

\* \* \* \* \*

(m) VAWA emergency transfer plan costs. Recipients and subrecipients of grants for tenant-based rental assistance may use grant funds to pay damages resulting from early termination of a lease if the conditions of § 578.7(d) are met.

19. In § 578.75, paragraph (i) is revised to read as follows:

**§ 578.75 General operations.**

\* \* \* \* \*

(i) Retention of assistance after death, incarceration, institutionalization, or eviction of qualifying member. (1) For permanent supportive housing projects, surviving members of any household who were living in a unit assisted under this part at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization.

(2) Remaining program participants following bifurcation of a lease or eviction as a result of domestic violence. For permanent supportive housing projects, members of any household who were living in a unit assisted under this part at the time of a qualifying member's eviction from the unit because the qualifying member was found to have engaged in domestic violence, dating violence, sexual assault, or stalking, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's eviction.

20. In § 578.91, revise paragraph (a) to read as follows:

**§ 578.91 Termination of assistance to program participants.**

(a) Termination of assistance. The recipient or subrecipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy, subject to the requirements of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same individual or family.

\* \* \* \* \*

21. In § 578.99, add paragraph (j) to read as follows:

**§ 578.99 Applicability of other Federal requirements.**

\* \* \* \* \*

(j) Protections for victims of domestic violence, dating violence, sexual assault, or stalking. (1) General. The requirements set forth in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), implementing the requirements of the VAWA apply to all permanent housing and transitional housing, except safe havens, for which Continuum of Care program funds are used for acquisition, rehabilitation, new construction, leasing, rental assistance, or operating costs. The requirements also apply where funds are used for homelessness prevention, but only where the funds are used to provide short- and/or medium-term rental assistance. For the Continuum of Care program, “covered housing provider,” as such term is used in HUD’s regulations in 24 CFR part 5, subpart L refers to the entity that carries out the duties and responsibilities of a covered housing provider, as provided in §§ 578.7, 578.75, 578.91 and 578.99.

(2) Definition of covered housing provider. For the Continuum of Care program, “covered housing provider,” as such term is used HUD’s regulations in 24 CFR part 5, subpart L,

and that is designated to carry out the duties and responsibilities specified in 24 CFR part 5, subpart L, refers to:

(i) The entity that carries out the duties and responsibilities of a covered housing provider, as provided in §§ 578.7, 578.75, 578.91, and 578.99;

(ii) The owner or landlord, which may be the recipient or subrecipient, for purposes of 24 CFR 5.2005(d)(1) and 5.2009(a);

(iii) The recipient, subrecipient, and owner or landlord for purposes of 24 CFR 5.2005(d)(2)–(d)(4) ; and

(iv) The recipient or subrecipient for purposes of 24 CFR 5.2007 if the recipient or subrecipient establishes a policy under § 578.99(j)(5) requiring the program participant to seek the recipient’s or subrecipient’s assistance; otherwise the recipient, subrecipient, and owner or landlord for purposes 24 CFR 5.2007.

(3) Effective date. Compliance with the requirements of 24 CFR part 5, subpart L, and this paragraph (j) is required for grants awarded pursuant to NOFAs published on or after **[insert effective date of the final rule at final rule stage]**. Compliance is encouraged for grants awarded pursuant to NOFAs published earlier than **[insert effective date of the final rule at final rule stage]**

(4) Notification requirements. (i) The recipient or subrecipient must provide each individual or family applying for permanent housing and transitional housing and each program participant the notice and the certification form described in 24 CFR 5.2005 at each of the following times:

(A) When an individual or family is denied permanent housing or transitional housing;

(B) When a program participant is admitted to permanent housing or transitional housing;

(C) When a program participant receives notification of eviction; and

(D) When a program participant is notified of termination of assistance.

(ii) When grant funds are used for rental assistance, the recipient or subrecipient must ensure that the owner or manager of the housing provides the notice and certification form described in 24 CFR 5.2005(a) to the program participant with any notification of eviction. This commitment and the confidentiality requirements under 24 CFR 5.2007(c) must be set forth in a contract with the owner or landlord.

(5) Optional policy. A recipient or subrecipient may establish a written policy that allows or requires program participants to seek the recipient's or subrecipient's assistance in preventing an owner or landlord from taking an action that is prohibited under 24 CFR part 5, subpart L. The policy must be appended to the notice of occupancy rights under VAWA, and included in a contract between the recipient or subrecipient and the owner or landlord, and in any lease or sublease between the owner or landlord and a program participant. The policy must include the following:

(i) If a program participant seeks the recipient's or subrecipient's assistance in preventing the owner's or landlord's action, the program participant, upon request of the recipient or subrecipient for documentation under 24 CFR 5.2007, will provide the requested documentation to the recipient or subrecipient and will not be required to provide the documentation to the owner or landlord, except under court order. Any further sharing or disclosure of the program participant's information will be subject to the requirements in 24 CFR 5.2007.

(ii) The recipient or subrecipient must determine whether the program participant is entitled to protection under 24 CFR part 5, subpart L, and immediately advise the program participant of the determination.

(iii) If the program participant is entitled to protection, the recipient or subrecipient must notify the owner or landlord in writing that the program participant is entitled to protection under 24 CFR part 5, subpart L and of the actions that are prohibited under 24 CFR part 5, subpart L, and must work with the owner or landlord on the program participant's behalf to resolve the matter.

(6) Contract, lease, and occupancy agreement provisions. (i) Recipients and subrecipients must include in any contracts and leases between the recipient or subrecipient, and an owner or landlord of the housing:

(A) The requirement to comply with 24 CFR part 5, subpart L; and

(B) Where the owner or landlord of the housing will have a lease with a program participant, the requirement to include a lease provision that includes all protections that apply to tenants under 24 CFR part 5, subpart L.

(ii) The recipient or subrecipient must include in any lease, sublease, and occupancy agreement with the program participant a provision that includes all protections that apply to tenants under 24 CFR part 5, subpart L. The lease, sublease, and occupancy agreement may specify that the protections under 24 CFR part 5, subpart L, apply only during the period of assistance under the Continuum of Care Program. The period of assistance for housing where grant funds were used for acquisition, construction, or rehabilitation is 15 years from the date of initial occupancy or date of initial service provision.

(iii) Except for tenant-based rental assistance, recipients and subrecipients must require that any lease, sublease, or occupancy agreement with a program participant permits the program participant to terminate the lease, sublease, or occupancy agreement without penalty if the recipient or subrecipient determines that the conditions of 24 CFR 5.2005(e) are met.

(iv) For tenant-based rental assistance, the recipient or subrecipient must enter into a contract with the owner or landlord of the housing that:

(A) Requires the owner or landlord of the housing to comply with the provisions of 24 CFR part 5, subpart L; and

(B) Requires the owner or landlord of the housing to include a lease provision that includes all protections that apply to tenants under 24 CFR part 5, subpart L. The lease may specify that the protections under 24 CFR part 5, subpart L, only apply while the program participant receives tenant-based rental assistance under the Continuum of Care Program.

(7) Transition. (i) The recipient or subrecipient must ensure that the requirements set forth in § 578.99(j)(5) apply to any contracts, leases, subleases, or occupancy agreements entered into, or renewed, following the expiration of an existing term, on or after the effective date in § 578.99(j)(2). This obligation includes any contracts, leases, subleases, and occupancy agreements that will automatically renew on or after the effective date in § 578.99(j)(3).

(ii) For leases for tenant-based rental assistance existing prior to the effective date in § 578.99(j)(2), recipients and subrecipients must enter into a contract under § 578.99(j)(6)(iv) before the next renewal of the lease.

(8) Definition of reasonable time. The requirements of 24 CFR 5.2009(b) do not apply to this part. See § 578.75(i)(2) for the reasonable time provided to remaining program participants under this part.



(9) Develop the VAWA emergency transfer plan. See § 578.7(d).

**PART 880 – SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM  
FOR NEW CONSTRUCTION**

22. The authority citation for part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611-13619.

23. In § 880.201, a definition of “covered housing provider” is added in alphabetical order to read as follows:

**§ 880.201 Definitions.**

\* \* \* \* \*

*Covered housing provider.* For the Section 8 Housing Assistance Payment Program for New Construction, “covered housing provider,” as such term is used in HUD’s regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA (not the owner) is the covered housing provider responsible for providing the “notice of occupancy rights under VAWA, and certification form” described at 24 CFR 5.2005(a). Additionally, the owner (not the PHA) is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), but the PHA (not the owner) is the covered housing provider responsible for providing the “reasonable time to establish eligibility for assistance following bifurcation of a lease” described at 24 CFR 5.2009(b).

\* \* \* \* \*

24. Revise § 880.504(f) to read as follows:

**§ 880.504 Leasing to eligible families.**

\* \* \* \* \*

(f) Protections for victims of domestic violence, dating violence, sexual assault, or stalking. The regulations of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), apply to selection of tenants and occupancy requirements in cases involving or allegedly involving incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking.

25. Revise § 880.607(c) to read as follows:

**§ 880.607 Termination of tenancy and modification of lease.**

\* \* \* \* \*

(c) \* \* \*

(5) In actions or potential actions to terminate tenancy, the owner shall follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), in all cases where domestic violence, dating violence, sexual assault, stalking, or criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking is involved or claimed to be involved.

\* \* \* \* \*

**PART 882 - SECTION 8 MODERATE REHABILITATION PROGRAMS**

26. The authority citation for part 882 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535d.

27. In § 882.102(b), a definition of “covered housing provider” is added in alphabetical order to read as follows:

**§ 882.102 Definitions**

\* \* \* \* \*

*Covered housing provider.* For the Section 8 Moderate Rehabilitation Programs, as provided in subparts A, D, and E of this part, “covered housing provider,” as such term is used in HUD’s regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA (not the owner) is the covered housing provider responsible for providing the “notice of occupancy rights under VAWA, and certification form” described at 24 CFR 5.2005(a). In addition, the owner (not the PHA) is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), but the PHA (not the owner) is the covered housing provider responsible for providing the “reasonable time to establish eligibility for assistance following bifurcation of a lease” described at 24 CFR 5.2009(b).

\* \* \* \* \*

28. Revise § 882.407 to read as follows:

**§ 882.407 Other Federal requirements.**

The moderate rehabilitation program is subject to applicable Federal requirements in 24 CFR 5.105 and to the requirements for protection for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

29. Revise § 882.511(g) to read as follows:

**§ 882.511 Lease and termination of tenancy.**

\* \* \* \* \*

(g) In actions or potential actions to terminate tenancy, the owner shall follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), in all cases where domestic violence, dating violence, sexual assault, or stalking, or criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking is involved or claimed to be involved.

30. In § 882.514(c), revise the fourth sentence, to read as follows:

**§ 882.514 Family participation.**

\* \* \* \* \*

(c) Owner selection of families. \* \* \* However, the owner must not deny program assistance or admission to an applicant based on the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant otherwise qualifies for assistance or admission. \* \* \*

\* \* \* \* \*

31. In § 882.802, a definition of “covered housing provider” is added, in the alphabetical order, to read as follows:

**§ 882.802 Definitions.**

\* \* \* \* \*

*Covered housing provider.* For the Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals, “covered housing provider,” as such term is used in HUD’s regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner as defined in this section.

\* \* \* \* \*

32. In § 882.804, paragraph (a) is revised to read as follows:

**§ 882.804 Other Federal requirements.**

(a) Participation in this program requires compliance with the Federal requirements set forth in 24 CFR 5.105, with the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), and with the regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

\* \* \* \* \*

**PART 883 - SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS—  
STATE HOUSING AGENCIES**

33. The authority citation for part 883 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

34. In § 883.302, a definition of “covered housing provider” is added, in the alphabetical order, to read as follows:

**§ 883.302 Definitions**

\* \* \* \* \*

*Covered housing provider.* For the Section 8 Housing Assistance Payments Programs—  
State Housing Agencies, “covered housing provider,” as such term is used in HUD’s regulations

in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA (not the owner) is the covered housing provider responsible for providing the “notice of occupancy rights under VAWA, and certification form” described at 24 CFR 5.2005(a). In addition, the owner (not the PHA) is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), but the PHA (not the owner) is the covered housing provider responsible for providing the “reasonable time to establish eligibility for assistance following bifurcation of a lease” described at 24 CFR 5.2009(b).

\* \* \* \* \*

35. Revise § 883.605 to read as follows:

**§ 883.605 Leasing to eligible families.**

The provisions of 24 CFR 880.504 apply, including reference at 24 CFR 880.504(f) to the requirements of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), pertaining to the selection of tenants and occupancy requirements in cases involving or allegedly involving incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking, subject to the requirements of § 883.105.

**PART 884 - SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING**

36. The authority citation for part 884 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

37. In § 884.102, a definition of “covered housing provider” is added, in the alphabetical order, to read as follows:

**§ 884.102 Definitions**

\* \* \* \* \*

*Covered housing provider.* For the Section 8 Housing Assistance Payments Programs, New Construction Set-Aside for Section 515 Rural Rental Housing, “covered housing provider,” as such term is used in HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA (not the owner) is the covered housing provider responsible for providing the “notice of occupancy rights under VAWA, and certification form” described at 24 CFR 5.2005(a). Additionally, the owner (not the PHA) is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), but the PHA (not the owner) is the covered housing provider responsible for providing the “reasonable time to establish eligibility for assistance following bifurcation of a lease” described at 24 CFR 5.2009(b).

\* \* \* \* \*

38. Revise § 884.216(c) to read as follows:

**§ 884.216 Termination of tenancy.**

\* \* \* \* \*

(c) In actions or potential actions to terminate tenancy, the owner shall follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault,

or Stalking) in all cases where domestic violence, dating violence, sexual assault, or stalking, or criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking is involved or claimed to be involved.

39. Revise § 884.223(f) to read as follows:

**§ 884.223 Leasing to eligible families.**

\* \* \* \* \*

(f) The regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to selection of tenants and occupancy requirements in cases involving or allegedly involving incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking.

**PART 886 – SECTION 8 HOUSING ASSISTANCE PAYMENTS  
PROGRAM—SPECIAL ALLOCATIONS**

40. The authority citation for part 886 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

41. In § 886.102, a definition of “covered housing provider” is added, in the alphabetical order, to read as follows:

**§ 886.102 Definitions**

\* \* \* \* \*

*Covered housing provider.* For the Section 8 Housing Assistance Payments Programs – Special Allocations, subpart A of this part, “covered housing provider,” as such term is used in HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence,



Dating Violence, Sexual Assault, or Stalking) refers to the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA (not the owner) is the covered housing provider responsible for providing the “notice of occupancy rights under VAWA, and certification form” described at 24 CFR 5.2005(a). In addition, the owner (not the PHA) is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), but the PHA (not the owner) is the covered housing provider responsible for providing the “reasonable time to establish eligibility for assistance following bifurcation of a lease” described at 24 CFR 5.2009(b).

\* \* \* \* \*

42. Revise § 886.128 to read as follows:

**§ 886.128 Termination of tenancy.**

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR parts 247 and 5 shall apply. For cases involving, or allegedly involving, domestic violence, dating violence, sexual assault, or stalking, or criminal activity directly relating to such violence, the provisions of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), apply. The provisions of 24 CFR part 5, subpart E, of this title concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance, also shall apply.

43. Revise § 886.132 to read as follows:

**§ 886.132 Tenant selection.**

Subpart F of 24 CFR part 5 governs selection of tenants and occupancy requirements applicable under this subpart A of part 886. Subpart L of 24 CFR part 5 (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies to selection of tenants and occupancy requirements in cases involving or allegedly involving incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking.

44. In § 886.302, a definition of “covered housing provider” is added, in the alphabetical order to read as follows:

**§ 886.302 Definitions**

\* \* \* \* \*

*Covered housing provider.* For the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects, under subpart C of this part, “covered housing provider,” as such term is used in HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA (not the owner) is the covered housing provider responsible for providing the “notice of occupancy rights under VAWA, and certification form” described at 24 CFR 5.2005(a). In addition, the owner (not the PHA) is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), but the PHA (not the owner) is the covered housing provider responsible for providing the “reasonable time to

establish eligibility for assistance following bifurcation of a lease” described at 24 CFR 5.2009(b).

\* \* \* \* \*

45. Revise § 886.328 to read as follows:

**§ 886.328 Termination of tenancy.**

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR part 247 and 24 CFR part 5 shall apply. For cases involving, or allegedly involving, domestic violence, dating violence, sexual assault, or stalking, or criminal activity directly relating to such violence, the provisions of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply. The provisions of 24 CFR part 5, subpart E, concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance, also shall apply.

46. Revise § 886.329(f) to read as follows:

**§ 886.329 Leasing to eligible families.**

\* \* \* \* \*

(f) The regulations of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to selection of tenants and

occupancy requirements in cases involving, or allegedly involving, incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking.

**PART 891 – SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH  
DISABILITIES**

47. The authority citation for part 891 continues to read as follows:

**Authority:** 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

48. In § 891.105 a definition of “covered housing provider” is added, in the alphabetical order, to read as follows:

**§ 891.105 Definitions.**

\* \* \* \* \*

*Covered housing provider.* For the Supportive Housing for the Elderly and Persons with Disabilities Program, “covered housing provider,” as such term is used in HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the PHA or owner (as defined in § 891.205 and § 891.305), as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA (not the owner) is the covered housing provider responsible for providing the “notice of occupancy rights under VAWA, and certification form” described at 24 CFR 5.2005(a). In addition, the owner (not the PHA) is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), but the PHA (not the owner) is the covered housing provider responsible for providing the “reasonable time to establish eligibility for assistance following bifurcation of a lease” described at 24 CFR 5.2009(b).

\* \* \* \* \*

49. Revise § 891.575(f) to read as follows:

**§ 891.575 Leasing to eligible families.**

\* \* \* \* \*

(f) The regulations of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to selection of tenants and occupancy requirements in cases involving, or allegedly involving, incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking.

50. Revise § 891.610(c) to read as follows:

**§ 891.610 Selection and admission of tenants.**

\* \* \* \* \*

(c) Determination of eligibility and selection of tenants. The borrower is responsible for determining whether applicants are eligible for admission and for selection of families. To be eligible for admission, an applicant must be an elderly or handicapped family as defined in § 891.505; meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirement for Social Security numbers and sign and submit consent forms for obtaining wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and, if applying for an assisted unit, be eligible for admission under subpart F of 24 CFR part 5, which governs selection of tenants and occupancy requirements. For cases involving, or allegedly involving, domestic violence, dating violence, sexual assault, stalking, or criminal activity directly relating to such violence, the provisions of

24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply.

\* \* \* \* \*

51. Revise § 891.630(c) to read as follows:

**§ 891.630 Denial of admission, termination of tenancy, and modification of lease.**

\* \* \* \* \*

(c) In actions or potential actions to terminate tenancy, the owner shall follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), in all cases where domestic violence, dating violence, sexual assault, stalking, or criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking is involved or claimed to be involved.

**PART 960 - ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING**

52. The authority citation for part 960 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z--3, and 3535(d).

53. In § 960.102 a definition of “covered housing provider” is added in alphabetical order to read as follows:

**§ 960.102 Definitions.**

\* \* \* \* \*

*Covered housing provider.* For HUD’s public housing program, “covered housing provider,” as such term is in used HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), is the PHA.

\* \* \* \* \*

54. In § 960.103, revise the section heading and paragraph (d) to read as follows:

**§ 960.103 Equal opportunity requirements and protection for victims of domestic violence, dating violence, sexual assault, or stalking.**

\* \* \* \* \*

(d) Protection for victims of domestic violence, dating violence, sexual assault, or stalking. The PHA must apply 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) in all applicable cases involving, or allegedly involving, incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking.

55. In § 960.200, revise paragraph (b)(8) to read as follows:

**§ 960.200 Purpose.**

\* \* \* \* \*

(b) \* \* \*

(8) Protection for victims of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

56. In § 960.203, revise paragraph (c)(4) to read as follows:

**§ 960.203 Standards for PHA tenant selection criteria.**

\* \* \* \* \*

(c) \* \* \*

(4) PHA tenant selection criteria are subject to 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) protections for victims of domestic violence, dating violence, sexual assault, or stalking.

\* \* \* \* \*

**PART 966 – DWELLING LEASES, PROCEDURES, AND REQUIREMENTS**

57. The authority citation for part 966 continues to read as follows:

**Authority:** 42 U.S.C. 1437d and 3535(d).

58. In § 966.4, revise paragraph (a)(1)(vi) and paragraph (e)(9) to read as follows:

**§ 966.4 Lease requirements.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(vi) HUD’s regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply, if a current or future tenant or an affiliated individual of a tenant is or becomes a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L.

\* \* \* \* \*

(e) \* \* \*

(9) To consider lease bifurcation, as provided in 24 CFR 5.2009, in circumstances involving domestic violence, dating violence, sexual assault, or stalking addressed in 24 CFR



part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

\* \* \* \* \*

**PART 982 – SECTION 8 TENANT-BASED ASSISTANCE:**

**HOUSING CHOICE VOUCHER PROGRAM**

59. The authority citation for part 982 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535d.

60. In § 982.53, revise the section heading and paragraph (e) to read as follows:

**§ 982.53 Equal opportunity requirements and protection for victims of domestic violence, dating violence, sexual assault, or stalking.**

\* \* \* \* \*

(e) Protection for victims of domestic violence, dating violence, sexual assault, or stalking. The PHA must apply 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) in all applicable cases involving incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking. The protections provided in 24 CFR part 5 apply to homeownership assistance provided under the homeownership option in §§ 982.625 through 982.643. For purposes of compliance with HUD’s regulations in 24 CFR part 5, subpart L, the covered housing provider is the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA (not the owner) is the covered housing provider responsible for providing the “Notice of occupancy rights under VAWA, and certification form” described at § 5.2005(a). In addition, the owner (not the PHA) is the covered housing provider that may choose to bifurcate a lease as described at § 5.2009(a), but the PHA

(not the owner) is the covered housing provider responsible for providing the “Reasonable time to establish eligibility for assistance following bifurcation of a lease” described at § 5.2009(b).

61. In § 982.201, revise paragraph (a) to read as follows:

**§ 982.201 Eligibility and targeting.**

(a) When applicant is eligible: general. The PHA may admit only eligible families to the program. To be eligible, an applicant must be a “family;” must be income-eligible in accordance with paragraph (b) of this section and 24 CFR part 5, subpart F; and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5, subpart E. If the applicant is a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

\* \* \* \* \*

62. In § 982.202, revise paragraph (d) to read as follows:

**§ 982.202 How applicants are selected: General requirements.**

\* \* \* \* \*

(d) Admission policy. The PHA must admit applicants for participation in accordance with HUD regulations and other requirements, including, but not limited to, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and with PHA policies stated in the PHA administrative plan and the PHA plan. The PHA admission policy must state the system of admission preferences that the PHA uses to

select applicants from the waiting list, including any residency preference or other local preference.

63. In § 982.307, revise paragraph (b)(4) to read as follows:

**§ 982.307 Tenant screening.**

\* \* \* \* \*

(b) \* \* \*

(4) In cases involving a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

64. In § 982.310, revise paragraph (h)(4) to read as follows:

**§ 982.310 Owner termination of tenancy.**

\* \* \* \* \*

(h) \* \* \*

(4) Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking. The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions of 24 CFR 5.105, and with the provisions for protection of victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

65. In § 982.314, revise paragraphs (b)(4) and (c)(2)(iii) to read as follows:

**§ 982.314 Move with continued tenant-based assistance.**

\* \* \* \*

(b) \* \* \*

(4) The family or a member of the family, is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or any family member who has been the victim of a sexual assault that occurred on the premises during the 90-day period preceding the family's request to move. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-day period preceding the family's move or request to move, is not required to believe that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit.

(c) \* \* \*

(2) \* \* \*

(iii) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or

family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-day period preceding the family's request to move.

\* \* \* \* \*

66. In § 982.315, revise paragraphs (a)(2) and (b) to read as follows:

**§ 982.315 Family break-up.**

(a) \* \* \*

(2) If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), the PHA must ensure that the victim retains assistance.

(b) The factors to be considered in making this decision under the PHA policy may include:

(1) Whether the assistance should remain with family members remaining in the original assisted unit.

(2) The interest of minor children or of ill, elderly, or disabled family members.

(3) Whether family members are forced to leave the unit as a result of actual or threatened domestic violence, dating violence, sexual assault, or stalking.

(4) Whether any of the family members are receiving protection as victims of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and whether the abuser is still in the household.

(5) Other factors specified by the PHA.

\* \* \* \* \*

67. In § 982.353, revise paragraph (b) and add a new paragraph (c)(4) to read as follows:

**§ 982.353 Where family can lease a unit with tenant-based assistance.**

\* \* \* \* \*

(b) Portability: Assistance outside the initial PHA jurisdiction. Subject to paragraph (c) of this section, and to § 982.552 and § 982.553, a voucher-holder or participant family has the right to receive tenant-based voucher assistance, in accordance with requirements of this part, to lease a unit outside the initial PHA jurisdiction, anywhere in the United States, in the jurisdiction of a PHA with a tenant-based program under this part. The initial PHA must not provide such portable assistance for a participant if the family has moved out of the assisted unit in violation of the lease except as provided for in this subsection. If the family moves out in violation of the lease in order to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believes him- or herself to be threatened with imminent harm from further violence by remaining in the dwelling unit (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-day period preceding the family's move or request to move), and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the initial PHA and move to another jurisdiction under the Housing Choice Voucher Program.

(c) \* \* \*

(4) Paragraph (c) of this section does not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of

the family or family member, or any family member who has been the victim of a sexual assault that occurred on the premises during the 90-day period preceding the family’s request to move.

\* \* \* \* \*

68. In § 982.452, revise the second sentence of paragraph (b)(1) to read as follows:

**§ 982.452 Owner responsibilities.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* The fact that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking is not an appropriate basis for denial of tenancy if the applicant otherwise qualifies for tenancy.

\* \* \* \* \*

69. In § 982.551, revise paragraphs (e) and (l) to read as follows:

**§ 982.551 Obligations of participant.**

\* \* \* \* \*

(e) Violation of lease. The family may not commit any serious or repeated violation of the lease. Under 24 CFR 5.2005(c), an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated lease violation by the victim, or threatened victim, of the domestic violence, dating violence, sexual assault, or stalking, or as good cause to terminate the tenancy, occupancy rights, or assistance of the victim.

\* \* \* \* \*

(l) Crime by household members. The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553). Under 24 CFR 5.2005(b)(2), criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant’s household, or any guest or other person under the tenant’s control, shall not be cause for termination of tenancy, occupancy rights, or assistance of the victim, if the tenant or an affiliated individual of the tenant, as defined in 24 CFR 5.2003, is the victim.

\* \* \* \* \*

70. In § 982.552, revise paragraph (c)(2)(v) to read as follows:

**§ 982.552 PHA denial or termination of assistance for the family.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking. The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105, and with the requirements of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

\* \* \* \* \*



71. In § 982.553, revise paragraph (e), to read as follows:

**§ 982.553 Denial of admission and termination of assistance for criminals and alcohol abusers.**

\* \* \* \* \*

(e) In cases of criminal activity related to domestic violence, dating violence, sexual assault, or stalking, the victim protections of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply.

72. In § 982.637, revise paragraphs (a)(2) and (a)(3) to read as follows:

**§ 982.637 Homeownership option: Move with continued tenant-based assistance.**

(a) \* \* \*

(2) The PHA may not commence continued tenant-based assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home. However, when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-day period preceding the family's request to move), such family or family member may be assisted with continued tenant-based assistance even if such family or family member owns any title or other interest in the prior home.

(3) The PHA may establish policies that prohibit more than one move by the family during any 1 year period. However, these policies do not apply when the family or a member of

the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-day period preceding the family's request to move.

\* \* \* \* \*

### **PART 983 – PROJECT-BASED VOUCHER (PBV) PROGRAM**

73. The authority citation for part 983 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

74. In § 983.3(b), add the definition of “covered housing provider,” in the alphabetical order, as follows:

#### **§ 983.3 PBV definitions.**

\* \* \* \* \*

(b) \* \* \*

*Covered housing provider.* For Project-Based Voucher (PBV) program, “covered housing provider,” as such term is used in HUD’s regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) refers to the PHA or owner (as defined in § 891.205 and § 891.305), as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA (not the owner) is the covered housing provider responsible for providing the “notice of occupancy rights under VAWA, and certification form” described at 24 CFR 5.2005(a). In addition, the owner (not the PHA) is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), but the PHA (not the owner) is the covered housing provider

responsible for providing the “reasonable time to establish eligibility for assistance following bifurcation of a lease” described at 24 CFR 5.2009(b).

\* \* \* \* \*

75. In § 983.4, revise “Protections for victims of domestic violence, dating violence or stalking” to read as follows:

**§ 983.4 Cross-reference to other Federal requirements.**

\* \* \* \* \*

Protection for victims of domestic violence, dating violence, sexual assault, or stalking.

See 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). For purposes of compliance with HUD’s regulations in 24 CFR part 5, subpart L, the covered housing provider is the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L.

\* \* \* \* \*

76. In § 983.251, revise paragraph (a)(3) to read as follows:

**§ 983.251 How participants are selected.**

(a) \* \* \*

(3) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to admission to the project-based program.

\* \* \* \* \*

77. In § 983.255, revise paragraph (d) to read as follows:

**§ 983.255 Tenant screening.**

\* \* \* \* \*

(d) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to tenant screening.

78. In § 983.257, revise the last sentence of paragraph (a) to read as follows:

**§ 983.257 Owner termination of tenancy and eviction.**

(a) \* \* \* 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies to this part.

\* \* \* \* \*

Dated March 3, 2015

\_\_\_\_\_  
//  
Julián Castro, Secretary

[FR-5720-P-02]

## Appendix A

### [Insert Name of Housing Provider or Responsible Entity]<sup>16</sup>

#### Notice of Occupancy Rights under the Violence Against Women Act<sup>17</sup>

##### **To all Tenants and Prospective Tenants**

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking, regardless of sex, gender identity, sexual orientation, or age. The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that [insert name of program or rental assistance] is in compliance with VAWA. This notice explains your rights under VAWA. Attached to this notice is a copy of HUD's VAWA regulations. Also attached is a HUD-approved certification form for documenting an incident of domestic violence, dating violence, sexual assault, or stalking for a tenant who seeks the protections of VAWA as provided in this notice of occupancy rights and in HUD's regulations.

##### **Protections for Prospective Tenants**

If you are eligible for rental assistance under [insert name of program or rental assistance], you may not be denied admission or denied assistance on the basis that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, if you otherwise qualify for admission, assistance, participation, or occupancy.

##### **Protections for Victims as Tenants**

---

<sup>16</sup> The notice uses HP for housing provider but the housing provider or other responsible entity should insert name where HP is used. HUD's program-specific regulations identify the individual or entity responsible for providing the notice of occupancy rights.

<sup>17</sup> Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, sexual orientation, disability, or age.

If you are receiving rental assistance under **[insert name of program or rental assistance]**, you may not be denied rental assistance, terminated from participation, or be evicted from your rental housing on the basis that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, if you otherwise qualify for admission, participation, or occupancy.

Also, if a tenant or an affiliated individual of the tenant is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of the tenant's household or any guest, rental assistance under **[insert name of program or rental assistance]** may not be restricted solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking engaged in by the member of the tenant's household or any guest.

Affiliated individual means a spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent (for example, the affiliated individual is in the care, custody, or control of that individual); or any individual, tenant, or lawful occupant living in the household of that individual.

### **Removing the Abuser from the Household**

HP may divide your lease in order to evict the individual or terminate the rental assistance of the individual who has engaged in criminal activity (the abuser) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If HP chooses to remove the abuser, HP may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the tenant evicted was the sole tenant to have established eligibility for rental assistance under the program, HP must allow the tenant who is or

has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or find alternative housing.

In removing the abuser from the household, HP must follow Federal, State, and local eviction procedures. In order to divide a lease, HP may ask you to provide proof of incidences of domestic violence, dating violence, sexual assault, or stalking.

### **Moving to Another Unit**

Upon your request, HP may permit you to move to another unit, subject to the availability of other units, and still keep your rental assistance. In order to approve a request, HP may ask you to provide proof that you are requesting to move because of incidences of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the request must be in made in accordance with HP's emergency transfer plan.

### **Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking**

HP can ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from HP must be in writing, and HP must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) to provide the documentation. HP may extend the deadline for the submission of proof upon your request.

You can provide one of the following to HP as documentation:

- A complete HUD-approved certification form given to you by HP with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic

violence, and a description of the incident. The certification form provides for including the name of the abuser if the name of the abuser is known and is safe to provide.

- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the abuse.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, “professional”) from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that HP has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, HP does not have to provide you with the protections contained in this notice.

If HP receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser), HP has the right to request that you provide third-party documentation in order to resolve the conflict.

If you fail or refuse to provide third-party documentation, HP does not have to provide you with the protections contained in this notice.

### **Confidentiality**



HP must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

HP must not allow any individual administering rental assistance or other services on behalf of HP (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

HP must not enter your information into any shared database or disclose your information to any other entity or individual. HP, however, may disclose the information provided if:

- You give written permission to HP to release the information.
- HP needs to use the information in an eviction or termination proceeding, such as to evict your abuser or terminate your abuser from rental assistance under this program.
- A law requires HP or your landlord to release the information.

VAWA does not limit HP's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

### **Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Rental Assistance May Be Terminated**

You can be evicted and your rental assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, HP cannot hold you, as a tenant eligible for occupancy rights under VAWA (one who is or has been a victim), to a more demanding set of rules than it applies to tenants who are not eligible for tenancy rights under VAWA.

**Other Domestic Violence Laws**

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.

**For Additional Information**

For questions regarding VAWA, please contact **[insert contact information]**. For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY).

Attachment 1: HUD VAWA Regulations

Attachment 2: Certification form HUD-XXXXX [form approved for this program to be included]

## Appendix B

[Insert name of housing provider or responsible entity]

### Model Emergency Transfer Plan for Victims of Domestic Violence

#### Emergency Transfers

[Insert name of housing provider or responsible entity (acronym HP for purposes of this model plan)] is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),<sup>18</sup> HP allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability of HP to honor such request for tenants currently receiving rental assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether HP has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.<sup>19</sup>

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the Federal agency that oversees that insert name of program or rental assistance here is in compliance with VAWA.

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<sup>18</sup> Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, sexual orientation, disability, or age.

<sup>19</sup> See specific solicitation of comment 4 in the preamble to the rule regarding whether documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking should be imposed.

### **Eligibility for Emergency Transfers**

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L (a copy of which is attached), is eligible for an emergency transfer, if:

- The tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit;
- The tenant is a victim of a sexual assault, and the sexual assault occurred on the premises within the 90-day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

### **Emergency Transfer Request Documentation**

To request an emergency transfer, the tenant shall notify HP's management office and submit a written request for a transfer to **[HP to insert location]**. The tenant's written request for an emergency transfer should include either:

1. A statement expressing why 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 assisted under HP's program.
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the tenant's request for an emergency transfer.

HP may request additional documentation from a tenant in accordance with the documentation policies of HUD's regulations at 24 CFR part 5, subpart L.

### **Confidentiality**

HP will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives HP written permission to release the information, or disclosure of the information is required by law or in the course of an eviction or termination proceeding. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant.

### **Emergency Transfer Timing and Availability**

HP cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. HP will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred.

### **Safety and Security of Tenants**

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe. The tenant is encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Attachment 1: Copy of HUD's VAWA regulations.

Attachment 2: Local organizations offering assistance to victims of domestic violence.

**CERTIFICATION OF DOMESTIC  
VIOLENCE, DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING,  
AND ALTERNATE DOCUMENTATION**

**Appendix C  
U.S. Department of Housing  
and Urban Development**

OMB Approval No. XXXX-XXX  
Exp. XX/XX/2XXXX

**Purpose of Form:** The Violence Against Women Act (“VAWA”) provides protections for applicants and tenants (or program participants, which is the term used under some covered housing programs) who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (collectively “domestic violence”). VAWA protects applicants and tenants (or program participants) from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence against them. Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, sexual orientation, disability, or age.

If you are an applicant or tenant (or program participant) and a victim of domestic violence, the information requested below is one type of documentation that you may be asked to complete by the “responsible entity,” as indicated on the Notice of Occupancy Rights distributed to you.

**Use of This Optional Form:** If you are or have been a victim of domestic violence, you or someone on your behalf may complete and submit this information to a responsible entity for use in determining eligibility for protections under VAWA.

**Alternate Documentation:** Instead of this form (or in addition to this form), only upon request by the responsible entity, the applicant or tenant may be asked to submit the following:

- (1) A document 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) A document signed by the applicant or tenant who states 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 VAWA;
- (3) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (4) At the discretion of the responsible entity, a statement or other evidence provided by the applicant or tenant.

**Submission of Documentation:** The time period to submit documentation is 14 business days from the date that the responsible entity submits a written request to the applicant or tenant (or program participant) to provide documentation of the occurrence of domestic violence. The responsible entity may extend the time period to submit the documentation, if the applicant or tenant (or program participant) requests an extension of the time period. If the requested information, whether on this form, or an alternative form, is not received by the 14th business day or any extension of the date provided by responsible entity, none of the VAWA protections have to be provided to the tenant or applicant. Distribution or issuance of this form does not serve as a written request for certification.

**Public Reporting Burden:** The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the responsible entity to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: \_\_\_\_\_

2. Name of victim: \_\_\_\_\_

3. Your name (if different from victim's): \_\_\_\_\_

4. Name(s) of other family member(s) listed on the lease: \_\_\_\_\_

5. Residence of victim: \_\_\_\_\_

6. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_

7. Relationship of the accused perpetrator to the victim: \_\_\_\_\_

8. Date(s) of incident(s): \_\_\_\_\_

9. Time of incident(s): \_\_\_\_\_

10. Location of incident(s): \_\_\_\_\_

|   |
|---|
| <p>In your own words, briefly describe the incident(s):</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> |
|---|

This is to certify that the information provided on this form is true and correct and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

**Confidentiality:** All information provided to the responsible entity concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of the responsible entity are not to have access to these details unless to provide or deny VAWA protections to the applicant or tenant, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by the victim in writing; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.