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Regulations Division
Office of General Counsel
451 7th Street SW., Room 10276
Department of Housing and Urban Development
Washington, DC 20410–0500

Submitted via www.regulations.gov

Re: Docket No. FR 5720-N-01

The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs

Dear Office of General Counsel:

This letter is written on behalf of the National Housing Law Project (NHLP), the Sargent Shriver National Center on Poverty Law (Shriver Center) and the undersigned advocacy organizations. NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for racial and ethnic minorities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. Established in 1968, NHLP has been dedicated to advancing housing justice for low-income individuals and families for 45 years.

The Shriver Center is a not-for-profit organization that has operated for over 40 years. Its advocacy unit is a unique public interest law practice representing low-income persons for free on systemic and policy-related issues in Illinois and nationally on a range of poverty-related issues. The Housing Justice Unit consists of attorneys with many years of experience, specializing in the areas of affordable housing, assisted housing preservation, fair housing, domestic violence and sexual assault, re-entry and housing, and landlord and tenant law.

We submit comments in response to the notice issued on August 6, 2013 by the Department of Housing and Urban Development (HUD) concerning the applicability of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) to HUD programs (the

Notice).[1] We commend HUD for issuing the Notice as it is an important first step in implementing the critical housing protections for victims of domestic violence, dating violence, sexual assault and stalking under VAWA 2013. We encourage HUD to take a leading role and work with the other federal agencies administering the housing programs covered by VAWA 2013 to issue guidance and rules ensuring that victims are not denied safe and affordable housing because of the violence committed against them. The following comments address certain questions raised by HUD in the Notice and further provide recommendations on other important issues concerning VAWA 2013's housing safeguards.

Whether VAWA 2013 is Self-Executing

The Notice indicates that VAWA 2013's housing protections are effective upon enactment, but not self-executing.[2] Therefore, HUD guidance or rules are necessary for the regulated parties to comply with the new provisions.[3] This distinction has been problematic for many victims and their advocates who assumed that aside from a few major protections that explicitly required federal agency action to initiate implementation (e.g. HUD's VAWA housing rights notice; model emergency transfer plan and the self-certification forms), the basic safeguards of VAWA 2013 were self-executing. Many advocates believed that beginning March 7, 2013, housing providers covered by VAWA 2013 were not permitted to deny access, evict or terminate assistance from tenants who were victims of domestic violence, dating violence, sexual assault or stalking because of the abuse committed against them. HUD should not delay in implementing these basic protections. For housing providers who have been subject to VAWA since 2006, further prohibiting them from discriminating against sexual assault victims does not increase their existing legal obligations. In fact, VAWA's basic protections are consistent with civil rights laws, such as the Fair Housing Act, that prevent victims from being threatened and punished by all housing providers because of the violence committed against them. We urge HUD to reevaluate its position on this matter and issue guidance that reflects the message conveyed in an email by HUD's SNAPS office on August 30, 2013 over the OneCPD listserv:

> While HUD is developing regulations to codify these important protections for HUD-covered programs and to provide guidance on such statutory provisions as "reasonable time", and "notice of rights," housing providers in HUD-covered programs should not wait on HUD regulations to extend the basic VAWA protections (e.g., no eviction or termination to survivors of domestic violence) to tenants residing in HUD-assisted housing. Furthermore, we would like to take this opportunity to remind you that certain policies and practices that treat victims of domestic violence different from other tenants may be considered to be discrimination on the basis of sex under the federal Fair Housing Act.

Applying VAWA 2013 to All Housing Programs

[1] The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs, 78 Fed. Reg. 47,717 (Aug. 6, 2013) [hereinafter *the Notice*].
[2] *Id*. at 47,718.
[3] *Id*.

VAWA Applies to All Section 202 Properties. In the Notice, HUD recognizes that VAWA applies to some Section 202 properties. Unfortunately, HUD chose to limit VAWA 2013 applicability to certain Section 202 properties, but not others. HUD should determine that VAWA 2013 is applicable to all Section 202 properties regardless of when the properties were authorized or funded. We believe such a determination is both consistent with the language of VAWA 2013 and congressional intent. Additionally, if there is any ambiguity, it is a proper exercise of HUD discretion to determine that all Section 202 properties are subject to VAWA 2013, as HUD did when implementing VAWA 2005, both to further the purposes of VAWA and to reduce administrative complexity.

The Notice sets forth a view that VAWA 2013 is not applicable to the following Section 202 properties:

- Section 202 Direct Loan projects that are without Section 8 assistance
- Section 202 when such assistance is coupled with Section 162 Assistance (Project Assistance Contracts), and
- Section 202 projects with Senior Preservation Rental Assistance Contracts[4]

HUD should not carve out these exceptions. Protecting vulnerable elderly applicants and tenants in the event of domestic violence is sound policy. Applying VAWA 2013 broadly is consistent with HUD's current efforts to streamline the HUD programs.

The unnecessary perpetuation of distinctions between programs introduces useless complexity to the work of project owners and managers and confuses tenants and applicants. Tenants and applicants do not make these distinctions. Elderly and disabled victims of domestic violence want to access affordable housing and not suffer discrimination because they are victims of violence. Section 202 owners and managers, many of whom own or manage multiple types of Section 202 properties, would be better served if the policies were consistent for all Section 202 properties. The added distinctions would also create more unnecessary work for HUD staff.

HUD's interpretation of VAWA 2013 to exclude the above-listed variations of Section 202 is erroneous. Analyzed more closely, there is scant support for excluding any of the Section 202 variations. VAWA 2013 states that "the term 'covered housing program 'means [i.e. includes]—(A) the program under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q)." In the Notice, HUD lists the programs subject to VAWA 2013, but modifies the statutory reference to Section 202 to limit it to the current Section 202 "Supportive Housing Program."[5] In addition, the Notice asserts that VAWA 2013 does not cover Section 202 Direct Loan projects that are without project-based Section 8 assistance because Congress would have used other language if that is what it intended. The Notice states that "Congress would have included language such as 'section 202 of the Housing Act of 1959 as in effect before the enactment of Cranston-Gonzalez National Affordable Housing Act of 1990'"[6] if it intended to include Section 202 Direct Loan within the coverage of VAWA 2013.[7]

[4] *Id*. at n.2.
[5] *Id*.
[6] The Notice does not provide a pin cite to the reference, but presumably it is to Section 811 of the American Homeownership Economic Opportunity Act (AHEO) of 2000, which provides:

We believe that HUD's interpretation is unnecessarily restrictive. When describing the Section 202 program, VAWA 2013 includes only a reference to the 1959 Act, without any parenthetical or further limitation. In addition, Congress did not include the language used by HUD in the Notice, which references the "Supportive Housing Program."[8] The VAWA 2013 statutory language is broad in scope. Congress and HUD often refer to the Section 202 program to be inclusive of all Section 202 developments and all phases of Section 202.[9] As the Notice implies, Congress could have been more explicit and directly referenced the Section 202 Direct Loan program or the Section 202/162 program or the new Senior Preservation Rental Assistance Contracts. But that is not necessary. Importantly, by using the broader language and referencing the 1959 Act, Congress established and certainly did not preclude an expansive and inclusive definition. Moreover, including VAWA 2013 Direct Loan Section 202 properties that do not have a Section 8 contract is no different than including those Section 221d3 and Section 236 properties that do not have a Section 8 contract or that have a rent supplement contract in lieu of a Section 8 contract. All Section 221d3 and Section 236 properties are covered by VAWA and some of those properties or units have no Section 8 contracts. Significantly, Section 221d3 and Section 236 properties serve a similar population as Section 202 Direct Loan units.[10]

HUD's initial view that VAWA 2013 does not apply to the new Senior Preservation Rental Assistance Contracts (SPRAC) fails to recognize another statutory mandate. The HUD

> **SEC. 811. PREPAYMENT AND REFINANCING.**
> (a) APPROVAL OF PREPAYMENT OF DEBT.—Upon request of the project sponsor of a project assisted with a loan under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act), the Secretary shall approve the prepayment of any indebtedness to the Secretary relating to any remaining principal and interest under the loan as part of a prepayment plan under which—

Importantly, the reason for the parenthetical in Section 811 is because the HUD approval of a prepayment was limited to the properties subject to the Section 202 Direct Loan Program and not applicable to other Section 202 funding arrangements. Thus, Congress intended that the reference be limited to Direct Loan properties. Other places in AHEO that referenced Section 202 merely stated that "Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) as amended" without any additional parenthetical. *See* Sections 821 and 833 of AHEO.

[7] The Notice, *supra* note 1, at 47,718.

[8] The current Section 202 program is referred to as the Section 202 Supportive Housing Program and is codified at 12 U.S.C. § 1701q. But every Section 202 program has been codified at 1701q. Thus a reference to that citation is one with expansive implications.

[9] The Section 202 program created in 1959 has always served the elderly and been codified at 12 U.S.C. § 1701q. It has gone through three distinct phases based primarily on its financial structure and the income eligibility of tenants. Libby Perl, Section 202 and Other HUD Rental Housing Programs for Low-Income Elderly Residents, Congressional Research Service Report for Congress (Sept. 13, 2010) 2.
See also HUD, Fiscal Year 2012 Program and Budget Initiatives, Accessible Homes and Service Coordination for the Elderly and Disabled "HOUSING FOR THE ELDERLY (SECTION 202) Over the last 50 years, HUD's Section 202 program has provided over 400,000 affordable homes for very-low income elderly individuals."

[10] "The [Section 221d3] program, like the Section 202 program at the time it was created, was meant to serve those families with incomes too high for Public Housing, but too low for market-rate rents." (The Section 221d3 developments also served non elderly families.) The Section 236 housing program was designed to replace the Section 202 and Section 221d3 programs and it did for a while. Libby Perl, Section 202 and Other HUD Rental Housing Programs for Low-Income Elderly Residents, Congressional Research Service Report for Congress (Sept. 13, 2010) 11-12.

Notice states that VAWA 2013 is not applicable to the new SPRAC, but cites no additional authority for that position. SPRAC, which was created in Pub. L. No. 106-569, Sec. 811, and amended by Pub. L. No. 111-672 (Jan. 4, 2011), provides as follows:

> (e) SENIOR PRESERVATION RENTAL ASSISTANCE CONTRACTS.—
> Notwithstanding any other provision of law, in connection with a prepayment plan for a project approved under subsection (a) by the Secretary or as otherwise approved by the Secretary to prevent displacement of elderly residents of the project in the case of refinancing or recapitalization and to further preservation and affordability of such project, the Secretary shall provide project-based rental assistance for the project under a senior preservation rental assistance contract, as follows:
> (1) Assistance under the contract shall be made available to the private nonprofit organization owner—
> (A) for a term of at least 20 years, subject to annual appropriations; and
> (B) *under the same rules governing project-based rental assistance made available under section 8 of the Housing Act of 1937 or under the rules of such assistance as may be made available for the project.*
> (2) Any projects for which a senior preservation rental assistance contract is provided shall be subject to a use agreement to ensure continued project affordability having a term of the longer of (A) the term of the senior preservation rental assistance contract, or (B) such term as is required by the new financing.
>
> [emphasis added]

As recognized by the Notice, VAWA 2013 is applicable to "the programs under section[]. . . 8 of the United States Housing Act of 1937." Because the statute states that the SPRAC assistance is provided under the project-based Section 8 rules and VAWA is applicable to project-based Section 8, Congress has included the SPRAC units under VAWA 2013. HUD's exclusion of SPRAC units is mistaken.

For Section 202/162 properties, HUD failed to recognize that Section 162 is very much like project-based Section 8 and is also an early version of Section 811 and, hence, should be covered by VAWA 2013. The HUD Notice states that that VAWA 2013 is not applicable to Section 202 with Section 162. This Section 202 program serves the disabled in Section 202 properties with rental assistance (Project Assistance Contracts (PAC)). This rental assistance is similar to Section 8. It was a short-lived program providing a transition between the Section 202 program that provided rental assistance to the disabled and the Section 811 program that arose out of Section 202 and serves only the disabled.[11] These Section 202/162 contracts and units continue to exist but no new units are being created. From a management and tenant perspective, Section 202/162 units and Section 811 are very similar and share many rules and obligations. Many project management policies that pertain to both are the same, such as those governing the obligations of the family, lease requirements and occupancy.[12] As these other obligations and

[11] Barbara A. Haley and Robert W. Gray, Section 202 Supportive Housing for the Elderly: Program Status and Performance Measurement, HUD PD&R (June 2008) 18-19.

[12] *See e.g.,* the following sections which are applicable to Section 202/162 which cross-reference and make applicable Section 811 regulations. 24 C.F.R. §§ 981.755, (obligations of the family), 891.760 (overcrowded and under occupied units), 981.765 (lease requirements).

rules are the same, the VAWA 2013 provisions should also apply to Section 202/162 as they apply to Section 811.[13] HUD has provided no additional reason to exclude these properties, applicants and tenants from VAWA 2013 coverage.

VAWA Applies to Rural Development Voucher Program (RDVP). VAWA 2013 covers most of the Rural Housing Service's housing programs. However, it does not explicitly extend coverage to RDVP, a program that functions similarly to HUD's Section 8 voucher program. We believe that this is an oversight by Congress for several reasons. First, the appropriations legislation creating RDVP directs Rural Development (RD) to operate the program to the maximum extent practicable consistently with the regulations and administrative guidelines adopted by HUD for the Section 8 program.[14] Since the Section 8 program has protections for victims, then they should also be extended to RD voucher holders. Second, RD has already acknowledged VAWA 2005's application to RDVP by choosing to use HUD's Section 8 HAP contract[15] to enter into subsidy payment agreements with landlords. Part C of that agreement sets out VAWA tenant protections that are enforceable by victims. This includes the right of the victim to remain in the unit and allow the landlord to evict the abuser. We recommend that HUD work with RD to ensure that the regulations, guidance and planning documents of RDVP include VAWA 2013's protections.

Reasonable Time to Establish Eligibility or Find New Housing

HUD must define parameters concerning what constitutes "reasonable time" necessary to establish eligibility under another HUD covered housing program or to locate new housing. However, in doing so, HUD must acknowledge the reality that victims of abuse are often unable to immediately establish eligibility due to factors beyond their control (e.g. destruction of important documents or identification by an abuser).

VAWA 2013 states that victims of abuse who are ineligible to remain in a unit must be afforded the opportunity to secure new housing. However, finding new assisted housing may not be immediately possible—again, due to circumstances or factors beyond the victim's control. For example, abusers often times assert control over their victims by cutting off the victim's access to their money. As a result, victims often have bad credit scores or rental history. When these individual circumstances are combined with the well-documented shortage of safe, affordable housing in communities across the country, victims are left with few, if any, housing options. Thus, we recommend establishing a process that is measured in activities and benchmarks rather than a definite time period. For example, a housing provider can collaborate with the victim to determine barriers to locating new housing, with the victim then working to overcome these barriers. Instead of designating a specific timeframe as constituting "reasonable time," locating new housing should instead be viewed as an ongoing process that accounts for the individual circumstances of each victim. However, if HUD does designate a specific time as constituting a "reasonable time," we urge that HUD grant housing providers the authority to waive this requirement in circumstances where the victim cannot locate housing due to factors beyond her

[13] VAWA 2013 applies to "the program under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013)".
[14] Pub. L. No. 112-55, 125 Stat. 552, 567 (Nov. 18, 2011).
[15] Form HUD 52641 (Aug. 2009).

control. A timeframe that affords the victim fewer than 60 days to locate housing would be inherently unreasonable. We reiterate that a *process*, rather than a time limit, recognizes the considerable obstacles victims face when locating new housing. Furthermore, a process will result in fewer victims facing homelessness when their abusers are evicted from a housing unit or program.

HUD should also consider adding an interim VAWA eligibility category that allows PHAs and other covered housing providers to document that a victim may live in the unit during an interim period. During this period, the victim is simultaneously working towards establishing eligibility or locating new housing. This would allow the housing provider to remain in compliance with HUD regulations while also housing a victim who may otherwise be left without housing options. Additionally, victims in these circumstances should be permitted to request an emergency transfer and relocate to another permanent unit within a covered program.

Model Emergency Transfer Plan

Under VAWA 2013, HUD is required to adopt a model emergency transfer plan for use by PHAs, owners, managers, or other housing providers participating in HUD covered programs. The plan must allow tenants who are victims of domestic violence, dating violence, sexual assault and/or stalking to transfer to another available unit under a covered housing program and must incorporate reasonable confidentiality procedures to ensure that the new location is not disclosed. The transfer process is tenant-driven and based upon the tenant asserting a reasonable belief that he or she is threatened with imminent harm from further violence related to these crimes. Victims of sexual assault, in addition to being able to qualify based on a reasonable believe of imminent harm, must also be allowed to transfer to another available unit if the sexual assault occurred within 90 days on the premises prior to the transfer request. The tenant's transfer request is subject to meeting HUD requirements and the availability of housing.

HUD should clarify that a survivor's eligibility for an emergency transfer should focus on the victim's reasonable belief of the threat he or she faces. Because of their experiences with violence, survivors face escalated risks of harm including the heightened impact of physical or psychological violence on their physical and mental health, economic stability, employment, relationships, and other significant aspects of daily life and functioning—all of which is well-documented in the literature.[16] Eligibility should be determined by whether a person in the

[16] Hopper, E., Bassuk, E., & Olivet, J. (2010). Shelter from the storm: Trauma-informed care in homelessness service settings. The Open Health Services and Policy Journal, 3, 80-100. Retrieved from http://homeless.samhsa.gov/ResourceFiles/cenfdthy.pdf;
Jennings, A. (2004). Models for developing trauma-informed behavioral health systems and trauma-specific services. Retrieved from http://www.theannainstitute.org/MDT.pdf;
Bebout, R. (2001). *Trauma-informed approaches to housing*. San Francisco, CA: Jossey-Bass Publishers;
Bloom, S. (2003). Revised trauma theory: Understanding the traumatic nature of sexual assault. In A. Giardino, E. M. Datner, & J. B. Asher (Eds.), Sexual assault victimization across the lifespan: A clinical guide (pp. 405-432). St. Louis, MO: G.W. Medical Publishing;
Campbell, R. (2001). Mental health issues for rape survivors: Current issues in therapeutic practice. Violence Against Women Online Resources. Retrieved from http://www.mincava.umn.edu/documents/commissioned/campbell/campbell.html;

victim's shoes, with his or her particular experiences and responses to violence, threats, and trauma, would reasonably believe he or she is threatened with imminent harm from further violence without a transfer. Emergency transfers will provide a vital safety option for victims of domestic violence, dating violence, sexual assault, and stalking.

The language of the statute requires that the analysis of emergency transfer eligibility is based on the survivor's reasonable belief, and this can only be understood in light of his or her experiences with violence. Thus, this is a different analysis from the standard that applies when owners seek to evict or terminate tenancy or assistance to victims whose continued tenancy poses an actual and imminent threat to other tenants or housing employees. The actual and imminent threat standard relies on objective factors as already set out in regulations by HUD in 75 Fed. Reg. 66,259 (Oct. 27, 2010), and this standard and regulation should be applied to implementation of VAWA 2013.

HUD should also clarify that the actual and imminent threat standard cannot be met and cannot lead to eviction or termination of the tenancy or assistance unless the covered program has exhausted all possibilities for alternate housing for the survivor, including emergency transfers, voucher porting, or other housing placement. Placing the victim in alternate housing would address the threat faced by others and carry out the statute's purpose of ensuring safe housing for victims. Imminent harm should be interpreted to include both physical and psychological threats to the victim's well-being and based upon a victim's reasonable perception of imminent harm.

The HUD Secretary is also required to establish policies and procedures under which victims of abuse requesting an emergency transfer may receive, subject to the availability of tenant protection vouchers, assistance through the tenant-based voucher program.

Overarching Comments

We appreciate HUD's request for comments on the contents of the model emergency transfer plan and the implementation of the tenant protection voucher provision. These two provisions are considered critical by advocates who, year after year, have seen victims being

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Davies, J. (2007). Helping sexual assault survivors with multiple victimizations and needs. Retrieved from http://www.nsvrc.org/sites/default/files/Helping-sexual-assault-survivors-with-mutltiple-victimizations-and-needs_0.pdf;
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National Network to End Domestic Violence. (2010). Domestic Violence and Sexual Assault Fact Sheet. Retrieved from http://nnedv.org/downloads/Stats/NNEDV_DVSA_factsheet2010.pdf.

forced to choose between their physical and emotional safety and their housing subsidy. For those few housing programs, such as the public housing program, that have existing transfer provisions, advocates have witnessed a bureaucratic maze rarely capable of meeting the real and emergent needs of victims to access safe, decent, and affordable housing. Victims often wait months for transfers, many living in shelters while waiting for transfers to be approved, while also undergoing lengthy recertification processes prior to any transfer and being asked to submit multiple forms of proof requirements. For that reason, domestic violence, dating violence, sexual assault, or stalking-related transfers that already occur within public housing are generally not a template for the model emergency transfer plan.

The model emergency transfer plan adopted by HUD should focus on several key priorities. There must be Secretary-level designated points of contact within HUD to be responsible for the transfer process and to coordinate and ensure the efficiency of transfers within and among the various HUD-covered housing programs. Otherwise, the silo-ed nature of HUD's various housing programs will lead to vastly different transfer policies and results. It will also help ensure that tenants seeking a VAWA transfer have the ability to potentially transfer across subsidy programs in accordance with VAWA 2013. HUD's model emergency transfer plan must also emphasize and mandate that the transfers be considered true emergencies, in that it is the objective to identify other housing for a VAWA tenant within a 48 to 72 hour window of time.

Furthermore, tenants seeking VAWA transfers should be able to provide the same level of proof or documentation as tenants seeking other VAWA protections. Covered housing programs should also be encouraged to adopt an admissions preference for victims of dating violence, domestic violence, sexual assault, and stalking. HUD must also take the lead with the other relevant federal agencies, the Treasury Department and the Department of Agriculture, regarding the development of transfer policies and coordination among agencies. This coordination is particularly important where properties may include more than one VAWA-covered housing program and, thus, involve more than one federal agency. For example, a property that includes Low-Income Housing Tax Credits but where the public housing authority owns or has an interest in the property, HUD transfer policies should apply for the purpose of uniformity. This principle is also important in cases of properties undergoing a RAD (Rental Assistance Demonstration) conversion. Finally, when a tenant is denied a VAWA transfer or other adverse action is taken against him or her (i.e., being offered a unit in a covered housing program that is unsafe, the location of the new dwelling unit is disclosed to the person who has committed the act of violence, delay in effectuating the transfer) the tenant seeking the transfer must have the ability to challenge the action irrespective of the particular covered housing program. With these priorities in mind, we believe that HUD has the ability to establish a model emergency transfer policy that will meet the real life circumstances and emergency needs of tenants who are victims of violence and need to move without losing their affordable housing.

Specific Comments

1. Notice of Transfer Rights.
   The notices regarding VAWA rights should expressly incorporate how a tenant can seek a transfer depending on the type of covered housing program. The notice should

accompany both the agency-approved, self-certification form and the VAWA transfer request form described below. Notices regarding VAWA transfer rights must be conspicuously posted within public areas of the covered housing program and provided to tenants at re-certifications, lease renewals, and with any notification of eviction or termination of assistance. Because tenants in need of a housing transfer may not also face eviction or termination, it is critical that the notice regarding transfer rights be distributed by other means and, at a minimum, on an annual basis.

2. Proof Requirements for Tenants Seeking a VAWA Transfer.
The proof requirements should be the same as they are for all other VAWA protections. Therefore, HUD should make clear that PHAs and project owners can accept a tenant's submission of the agency approved VAWA certification form, third party documentation, or the tenant's own statement, as part of the transfer request. As with the proof requirements for all other VAWA protections, PHAs and project owners cannot require third party documentation, which includes, but is not limited to, a police report, court order, or statement from a third-party from whom the victim has sought services.

   HUD should create a VAWA transfer request form that would accompany the VAWA certification form, third party documentation, or the victim's own statement. The transfer form should allow the tenant to elect that they are asserting either an imminent threat or a sexual assault on the premises within the last 90 days. The transfer form should reflect the date on which the tenant submitted the transfer request. The transfer form should allow the victim to state what locations or areas may continue to pose an imminent threat if he or she would be offered a transfer in that location or area.

3. Steps Taken Upon the Transfer Request Being Made.
As noted above, HUD must craft a model policy that is focused on addressing the urgent housing and safety needs of the victim. Currently, most PHAs who permit domestic violence-related transfers consider them non-emergency because they are tenant-initiated, resulting in tenants waiting several months for a transfer. In the model emergency transfer policy, HUD should emphasize that these transfers are true emergencies, regardless of who initiated them, and should be acted upon swiftly like the involuntary transfers done as a result of a fire or natural disaster at a property. VAWA transfers should be considered emergency transfers, mandatory on the covered housing programs.

   The Secretary-level points of contact should oversee and ensure accountability for each covered housing program. Tenants seeking transfers may be directed differently depending on the covered housing program and what local agency or entity has administrative responsibility or ownership/management responsibilities. HUD should instruct the covered housing programs to designate specific staff to address VAWA transfers, both within the covered housing program, contract administrator, COC lead agency, state and local recipients of HOME or LIHTC funds, and the field and regional offices. For example, the chart below provides a potential framework based upon housing type:

Type of tenant seeking transfer:	Primary Resource:	Secondary Resource:
Public Housing	Local public housing authority	Regional PIH office
Project-based Section 8	Contract administrator	HUD MFH field office
202, 811, or 221(d)(3)	HUD MFH field office	
HOME	State/local recipient of funds	HUD CPD
LIHTC	State housing finance agency	
Rural 515	Department of Agriculture	
Project-based voucher	Public housing authority	Regional PIH Office
McKinney Vento program	COC Lead Agency	HUD

Owners participating in the project-based Section 8 program, project-based voucher program, or the HUD insured programs should be encouraged to offer transfers to victims at other sites owned or managed by them, even if they did not have identical ownership. HUD MFH field offices, public housing authorities, or the contract administrator can assist in identify assisted housing within properties not associated with the owners.

Public housing authorities should be encouraged to work regionally (and beyond, if necessary for the victim to be safe) with other public housing authorities to identify available units of public housing and other affordable housing owned or managed by the PHA, such as but not limited to Section 8 moderate rehabilitation, public housing converted via RAD to project-based Section 8 or project-based vouchers, LIHTC or Rural Development housing for victims. The units identified should include all units owned, managed or administered by the PHAs, even if the victim currently resides within a jurisdiction without available units.

McKinney-Vento Homeless programs should work with HUD or the Continuum of Care Lead Agency to identify other McKinney-Vento Homeless programs where there are eligible and available units.

Funding for HOME developments is distributed by HUD by formula to state and local governments. Owners or managers of units assisted with HOME funds should work with the state and local government that is responsible for the HOME program in the jurisdiction to determine where there are other units assisted with HOME funds and to coordinate emergency transfer policies. Some states or local governments maintain a list of such properties.

4. <u>PHA or Project Owner Denial of Transfer Request or Other Adverse Action.</u>

All transfer denials should be in writing from the covered housing program and explain the PHA or project owner's basis for the denial of the housing transfer. Covered housing programs must respond in writing to VAWA transfer requests within 72 hours of the transfer form being submitted by the victim.

Tenants facing denials of transfer requests or other adverse action (i.e., being offered unit is in a covered housing program that is unsafe, the location of the new dwelling unit is disclosed to the person who has committed the act of violence, delay in response to transfer request or in effectuating the transfer) must have the opportunity to challenge that action regardless of the covered housing program.

5. Tenant Rejection of Transfer.
A tenant's rejection of the proposed transfer should under no circumstances serve as a basis for good cause termination of assistance or lease termination.

6. Costs Related to Transfers.
Beyond the costs incurred by the tenant in moving to a transfer unit or with a VAWA voucher, no other cost or expense can be charged to the tenant for the transfer.

7. Planning Documents, Guidebooks, Leases, and Other Documents.
HUD should instruct the PHAs, including Moving To Work Housing Authorities, and all other project owners of covered housing programs to amend planning documents, such as the PHA 5 Year Plan and the Administrative Plan and ACOP, project management plans, tenant selection plans, CoC plans, house rules, etc., to incorporate a model emergency transfer policy.

HOME funds are distributed by formula to units of local government and to states.[17] These government entities are required to submit a consolidated plan.[18] HUD should require local and state governments to revise their consolidated plans to address the VAWA emergency transfer polices obligations as they relate to HOME properties, among the other VAWA requirements.

Each state or local entity issuing tax credits is required to develop annually a Qualified Allocation Plan (QAP). HUD should urge recipients of HUD financing to work with the state or local entity responsible for developing the QAP to include an emergency transfer plan that allows for emergency transfers between housing types.

In the course of recommending amendments to these documents to incorporate a model emergency transfer policy, HUD should also urge that those documents detail efforts to create regional cooperative agreements, memorandum of agreements, or working groups between various housing providers of different housing programs and domestic violence and sexual assault victim advocates. Such planning is consistent with VAWA obligations since the 2005 reauthorization and, if done, will ensure that a plan is developed among a variety of housing programs to identify potential housing options for tenants in need of a transfer. It is also consistent with HUD's policies regarding consortiums.[19]

For many of the HUD assisted housing programs, HUD has handbooks, guidebooks and issues notices. Once HUD has developed an emergency transfer policy, the relevant

[17] 24 C.F.R. 92.50.
[18] 24 C.F.R. Part 91.
[19] *See e.g.,* 24 CFR 92.101 (HOME rules on consortium) and 42 U.S.C. § 1437k(a) (PHA provision on consortium).

handbooks, guidebooks should be revised and a HUD notice applicable to all of the programs issued. HUD should develop lease language applicable to all of the programs and require that recipients of HUD funds adopt such leases that reference the transfer policy. HUD should also revise any model leases reflecting mandates on PHAs and project owners within VAWA 2013 and the transfer policy.

8. Consideration or Adoption of the Guiding Principles of the Portability Provision and the Mobility Feature of PBVs and RAD Conversions to PBRA.

   Housing Choice Voucher Portability. Pursuant to VAWA 2005 and its implementing regulations, tenants experiencing violence in the Housing Choice Voucher program can still maintain that assistance if they moved out of the assisted unit in violation of the lease so as to protect the health or safety of a person who is the victim of violence and who reasonably believes that he or she was imminently threatened by harm from further violence if he or she remained in the dwelling unit and has complied with all other obligations of the Section 8 program.[20] This portability provision reflects an understanding of the realities facing many victims – that they must leave unsafe housing first in order to be physically and emotionally safe – and *then* compliance with other obligations, such as recertification or interim certification or lease compliance, will be addressed. The same must be true for the transfer policy. Victims should be allowed to transfer on an interim basis prior to the completion of a recertification or interim certification. Victims should also not be required to be in good standing with the PHA or project owner prior to a transfer. In many instances, the violence may have caused the victim to be out of compliance with his or her lease, such as when the perpetrator has economic control over the victim's finances. Otherwise, the inherent delay caused by the certification process or the issue of good standing will endanger victims and remove all urgency from the transfer policy.

   In addition, victims who leave their unsafe housing (to move to a shelter or other unassisted housing, for example) prior to the completion of a transfer should not be penalized or be considered to have permanently vacated their housing, abandoned their housing assistance, or withdrawn any transfer request. Victims who move to unassisted housing or a shelter and must pay rent at the temporary site should not be obligated to also pay rent at the assisted housing unit until such time as the emergency transfer to a covered housing program can be accomplished.

   These same principles should apply to tenants using the mobility feature of PBV and RAD conversions to PBRA (project-based rental assistance).

9. The Effect of the Emergency Transfer Policy on Covered Housing Program Waitlists. HUD should expressly state that the waitlist rules are not violated by complying with an emergency transfer policy or the request of a tenant to use the emergency transfer policy.

10. Tenant Protection Vouchers for Victims Requesting an Emergency Transfer.

[20] 24 C.F.R. § 982.353(b).

The availability of tenant protection vouchers for victims of violence is of critical importance to victims and advocates. A tenant protection voucher may serve as a victim's best chance of securing safe housing and avoiding homelessness. However, for some victims a voucher may be more necessary than for others. For example, victims who live within rural areas of the country with a lack of site-based assisted housing may have few if any housing options to exercise with a transfer request. As well, victims who have not been offered a transfer unit within 30 days of the initial request should be deemed eligible for a voucher. As well, some consideration should be given of the local and regional housing market's supply of comparable assisted housing under the covered housing programs. HUD should, therefore, establish a list of priority needs for this resource of tenant protection vouchers that looks at these factors.

HUD must also consider how these tenant protection vouchers can be quickly made available to victims. For that reason, PHAs should be encouraged to utilize their existing budget authority for victims in need of vouchers and then be allowed to subsequently request funds from HUD to make up for any difference. PHAs should also be encouraged to be part of regional cooperative agreements that would identify available vouchers for victims within the region, regardless of whether or not the victim resides within the jurisdiction of the PHA with a voucher. HUD could instruct those PHAs who provide a voucher to a victim in another jurisdiction the right to maintain their administrative fee.

As with transfer requests, victims seeking vouchers should be able to provide the same proof requirements outlined under VAWA.

11. Moving VAWA Tenants into Other Covered Housing Programs Subject to Income Eligibility.

VAWA 2013 provides for the possibility for a tenant to seek an emergency transfer and move into a different covered housing program. This ability to transfer across covered housing programs will enable victims, particularly those who live in more rural areas with limited covered housing options, the ability to maintain affordable housing that is safe within another covered housing program. Consistent with lease bifurcation provisions of VAWA, HUD should provide a tenant who is a victim of violence seeking an emergency transfer a reasonable period of time to establish eligibility for other covered housing programs. HUD must also establish a network of senior officials within the various covered housing programs who can, under the leadership of the HUD Secretary-level staff referenced above, establish how a VAWA tenant will access housing from another covered housing program.

HUD's VAWA Housing Rights Notice

VAWA 2013 requires that the Secretary of HUD develop a notice (VAWA Housing Rights Notice) that covers the statute's housing protections and is distributed to all applicants and tenants along with the agency-approved self-certification form (1) at the time residency is denied; (2) at the time an applicant is admitted; and (3) when there is any notification of eviction or termination of assistance. In addition, the VAWA Housing Rights Notice must be in multiple languages consistent with HUD guidance in accordance with Executive Order 13166.

Provision of VAWA Housing Rights Notice. We commend Congress for requiring housing authorities, owners and managers (housing providers) to provide a uniform notice regarding VAWA housing rights for applicants and tenants at three critical junctures. Given the importance of ensuring that victims are aware of their VAWA housing rights at any point during the tenancy (not only at the beginning and end of the tenancy), we recommend that housing providers be required to give tenants this VAWA Housing Rights Notice on an annual basis. The Notice, along with a copy of the housing provider's emergency transfer plan, should also be given when there is a request for an emergency transfer under VAWA 2013. In addition, this VAWA Housing Rights Notice must be provided to all household members when a family breaks up due to violence. Under 24 C.F.R. § 982.315(a)(2), when a family with a Section 8 Housing Choice Voucher breaks up due to domestic violence, dating violence or stalking, housing authorities must ensure that the victim maintains housing assistance. However, despite this requirement, when the victim is not listed as the head of household, many Section 8 participants, household members and even housing authorities do not know that the victim can still retain the voucher. Requiring housing authorities to provide this Notice at the time of family break-up would give the victim an opportunity to request the voucher under the housing authority's family break-up rules and policies. Additionally, it would be optimal for housing providers to post the VAWA Housing Rights Notice in an area that would be frequented by applicants and tenants of the covered housing, such as in a common area on the residential property and the property management office. Finally, the VAWA Housing Rights Notice should be included in all of the planning documents of the housing programs covered by VAWA 2013, such as the PHA Plan.

Contents of VAWA Housing Rights Notice. HUD requested comments pertaining to the content of the VAWA Housing Rights Note. We have proposed a sample notice. Please see Appendix A.

Language Access. VAWA 2013 requires that the VAWA Housing Rights Notice be available in multiple languages and be consistent with guidance issued by HUD in accordance with Executive Order 13166. This language access mandate raises several implementation issues.

Background. Executive Order 13166 arises from obligations under Title VI of the Civil Rights Act of 1964, under which federally administered or assisted programs may not discriminate on the basis of national origin.[21] The U.S. Supreme Court has interpreted national origin discrimination under Title VI to include discrimination against limited English proficient (LEP) persons.[22] Accordingly, Executive Order 13166 mandates that federal agencies, including HUD, issue guidance to its funding recipients on how to comply with their obligations under Title VI. In 2007, HUD issued guidance for its funding recipients regarding Title VI's prohibition against national origin discrimination affecting LEP persons (HUD LEP Guidance).[23] The HUD LEP Guidance directs HUD program participants to take certain steps to ensure that LEP persons are not denied access to these programs due to a language barrier.

[21] 42 U.S.C. § 2000d *et seq.*
[22] Lau v. Nichols, 414 U.S. 563, 568 (1974).
[23] HUD, "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 72 Fed. Reg. 2732 (Jan. 22, 2007).

VAWA 2013's Scope May Be Much Broader than that of Title VI or Executive Order 13166. The housing protections afforded by VAWA 2013 apply to housing programs that may not be covered by the Executive Order or the HUD LEP Guidance. Both the Executive Order and the HUD LEP Guidance, as noted above, arise out of obligations created by Title VI. However, the VAWA 2013 housing protections include programs that may not be subject to Title VI, or, in turn, the HUD LEP Guidance. For example, the VAWA 2013 housing protections impose obligations on private landlords who participate in the Section 8 Housing Choice Voucher Program. However, it is HUD's position that these landlords are not subject to the HUD LEP Guidance.[24] Additionally, it is unclear whether all Section 236 or Section 221d3 units, which are covered by VAWA 2013, are also covered by Title VI and the HUD LEP Guidance. In 2004, HUD provided a list of the agency's "federally assisted programs" that are subject to Title VI.[25] This list, while not exhaustive, only included a small subset of Section 236 and Section 221d3 units and is silent as to whether the remaining Section 236 and 221d3) units are subject to Title VI.

Furthermore, HUD has indicated an understanding that the Internal Revenue Service does not consider Low Income Housing Tax Credit Program (LIHTC) properties to be subject to the Title VI mandate.[26] Thus, this seemingly creates a conflict between the intent of the VAWA 2013 housing protections – i.e., to extend these protections broadly across a wide range of housing programs—and the apparently restrictive language of VAWA 2013's language access provision.

HUD should assume that restricting the translation of the VAWA Housing Rights Notice to only those programs subject to Title VI was an oversight, and not a deliberate attempt to excuse some housing providers from having to provide the translated VAWA Housing Rights Notice (particularly when all housing providers covered by VAWA 2013 are required to provide the Notice in English to applicants and tenants). Thus, we urge the HUD Secretary to issue additional guidance noting that despite this discrepancy, *all housing providers* covered by VAWA 2013 must issue a translated VAWA Housing Rights Notice.

The Language Access Provision Does Not Mention USDA's LEP Guidance. VAWA 2013 covers Rural Development (RD) multifamily housing. However, again, the language access provision appears unintentionally restrictive, as it does not explicitly mandate that RD housing programs covered by VAWA 2013 provide translated notices in accordance with the LEP guidance issued by USDA. The U.S. Department of Agriculture has issued proposed guidance[27] on language access that is very similar to the HUD LEP Guidance. We urge the Secretary to work closely with USDA and RD multifamily housing program officials to ensure that the RD housing providers covered by VAWA 2013 supply the translated VAWA Housing Rights Notice to applicants and tenants.

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[24] *See* HUD, "Limited English Proficiency (LEP) Frequently Asked Questions," [*hereinafter* HUD LEP FAQs] Question 4, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-mfh-faq#q4

[25] List of Federally Assisted Programs, Notice, 69 Fed. Reg. 68,700 (Nov. 24, 2004).

[26] *See* HUD LEP FAQs, *supra* note 24, at Question 5, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-mfh-faq#q5

[27] USDA, Proposed Final Guidance, "Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency," 77 Fed. Reg. 13,980 (Mar. 8, 2012).

HUD Must Translate the VAWA Housing Rights Notice. The language access provision of VAWA 2013 is silent on who bears the responsibility of translating the VAWA Housing Rights Notice. However, given HUD's obligations under Executive Order 13166 to ensure meaningful access by LEP persons to the agency's programs, we believe that this obligation lies with HUD itself. In addition, by centralizing the translation requirements within HUD, the agency could ensure that the VAWA Housing Rights Notice is translated consistently and uniformly across languages. We urge HUD to develop and release translated versions of the VAWA Housing Rights Notice at the same time that the Notice is released. Any delay in providing the translations would falsely suggest to housing authorities and landlords that providing the translated notice is not just as important as the other obligations under VAWA 2013. Further, we note that translated versions of HUD's self-certification forms promulgated under VAWA 2005 were translated after 2005, creating another obstacle for LEP victims accessing and maintaining safe and affordable housing. At minimum, HUD should translate the VAWA Housing Rights Notice into the non-English languages for which translated documents have been previously provided by the agency.[28]

Certification and Conflicting Certification

Under VAWA 2013, victims may prove their status as victims by providing a self-certification form; third-party documentation; or a police, administrative or court record.[29] Advocates report that housing providers often require victims to provide a certain type of proof to claim VAWA protections. For example, some housing providers have indicated that the completed self-certification form and the third-party verification are not adequate forms of proof and, therefore, a police report or protective order is needed to prove the victim's status. However, VAWA does not impose these requirements on victims. More importantly, it is not always safe or feasible for victims to obtain a restraining order or a police report. Calling the police or going through the court process of getting a protective order can increase the likelihood of retaliation or increased violence by the abuser. HUD should provide additional guidance to specify that the victim may select which of the approved forms of documentation that the victim will provide to certify their entitlement to the protections under VAWA. In addition, we recommend that HUD clarify that unless there is an issue with conflicting proof, it is adequate for victims to provide the form of proof that they select without requiring any additional documentation.

If a housing provider receives conflicting documentation, HUD's VAWA 2005 implementing regulations and VAWA 2013 allows the housing provider to request third-party documentation from the parties.[30] We recommend that HUD guidance specify that the forms used for this documentation be identical to those used throughout the VAWA process. In addition, when there is conflicting documentation, the party providing the third-party documentation should not automatically be deemed the victim. Abusers sometimes obtain a

[28]HUD has translated documents into numerous languages, including, among others, Amharic, Arabic, Armenian, Cambodian, Chinese, Farsi, French, Korean, Portuguese, Russian, Spanish, Tagalog, and Vietnamese. *See* HUD LEP Webpage, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep

[29] 42 U.S.C. § 14043e-11(c)(3)(A)-(C).

[30] 24 C.F.R. § 5.2007(e)(2012); 42 U.S.C. § 14043e-11(c)(7).

restraining order, protective order or file a police reports as forms of continued abuse, control or retaliation. Many victims are unable to timely access courts or law enforcement (frequent third-party verification sources) due to language barriers, disabilities, cultural norms or safety concerns. Finally, rather than terminate the tenancy of the party that fails to provide third-party verification, when conflicting certifications are received from both parties claiming VAWA protections in an incident, housing providers should use a grievance hearing or administrative review process to determine which party is the victim to be protected by VAWA.

Confidentiality

Confidentiality is vital in ensuring a victim's safety. HUD should place special emphasis on reiterating VAWA confidentiality standards throughout the regulations and guidance for VAWA 2013. In particular, HUD should clarify that the confidential information submitted by a victim under VAWA should only be used, as necessary, to provide the protections requested by the victim, unless the victim specifically consents, in writing, for that confidential information to be used for some other purpose. Furthermore, as the transfer processes begin to be used, it is extremely important that all owners, managers, landlords, and housing authorities understand their confidentiality obligations. The transfer process will require identification of victims and some form of documentation, and it is critical that victims' confidentiality be safeguarded throughout that process. HUD should provide very direct and clear guidance, regulations and training that help all entities maintain confidentiality within their practices.

Portability

VAWA 2013 makes no change to victims' protections concerning portability of Section 8 vouchers, as provided by VAWA 2005. Therefore, a PHA may still permit a family with a Section 8 voucher to move to another jurisdiction if the family has complied with all other obligations of the program and is moving to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence or stalking. The PHA may permit the family to move even if the family's lease term has not yet expired.[31]

Because it left the portability provision untouched, VAWA 2013 failed to extend its coverage to victims of sexual assault. However, because this oversight clearly violates an important purpose of VAWA 2013's housing provisions – to provide protections to sexual assault victims, HUD must ensure that this protection is clarified and included in the implementing regulations.

Administratively Enforcing VAWA 2013

Despite VAWA's existing housing protections, advocates inform us of instances in which housing authorities, owners, managers, and other housing providers wrongly evict or terminate housing assistance for victims of domestic violence, dating violence, sexual assault, and stalking. These victims are doubly victimized – first by their abusers, and then in the loss of their housing, despite their housing provider's obligations under VAWA in situations of abuse. Moreover, covered entities continually violate VAWA by failing to include domestic violence and other

[31] 42 U.S.C.A. § 1437f(r)(5).

forms of abuse in their planning documents, not allowing victims to move with their vouchers to other jurisdictions for their own safety, and failing provide notice to federally-assisted housing tenants of their VAWA rights.

Given these ongoing and widespread violations of VAWA, victims of domestic violence, dating violence, sexual assault, and stalking must have a HUD administrative process to vindicate their VAWA rights. Currently, there is no entity specifically tasked with VAWA enforcement, or a single office within HUD headquarters that can work with advocates on compliance issues. Thus, one office within HUD should be designated to accept and investigate HUD administrative complaints for alleged VAWA violations. Furthermore, HUD should inform the public which office has assumed this responsibility. This designated office should work to ensure that HUD field offices are adequately trained on VAWA's protections. Any administrative enforcement framework should include two key elements: (1) coordination and oversight within HUD and (2) harmonization of the VAWA and Fair Housing Act (FHA) investigation processes. For the first element, an advisor within the Office of the Secretary should manage VAWA implementation both within HUD while coordinating with housing programs outside of HUD (e.g., Rural Development, LIHTC). Dedicated staff in each covered housing program should oversee and investigate VAWA implementation issues while consulting with regional offices. For the second element, HUD staff charged with investigating FHA complaints should also look for VAWA violations, and HUD staff that investigates VAWA complaints should search for facts supporting FHA violations. HUD's Office of Fair Housing and Equal Opportunity has previously discussed the link between discrimination against victims of domestic abuse and gender discrimination under the FHA.[32] HUD should, therefore, train its staff on this established connection to ensure that victims of abuse may vindicate their rights via all available legal avenues. However, HUD should also make clear that any failure to exhaust an administrative process does not waive a VAWA-based affirmative defense. Furthermore, HUD should clarify that regardless of which entity within HUD is accorded jurisdiction over VAWA complaints, such jurisdiction would not bar a victim from pursuing other available legal recourse.

HUD should also mandate that all covered housing programs and PHAs provide an informal review, hearing, or other grievance mechanism when a person who is denied assistance, evicted, or terminated from assistance contends that the denial, eviction, or termination results from domestic abuse. Similar process should be afforded to victims when the PHA or housing provider maintains that a victim's continued presence in federally-assisted housing would constitute an imminent threat to the safety of others.

In closing, NHLP, the Shriver Center and the undersigned organizations appreciate your consideration of these comments. While understanding that you will receive a considerable amount of feedback during this comment period, we must stress that having interim guidance issued as soon as possible is vital to our continuing work in ensuring that victims can access and maintain safe and affordable housing. If you have any questions, please contact Kate Walz at

[32]Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, "Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)" (Feb. 9, 2011).

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Sincerely,

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Bay Area Legal Aid
Community Legal Services in East Palo Alto
Community Legal Services of Philadelphia
D.C. Coalition Against Domestic Violence
Greater Boston Legal Services, Inc.
Inner City Law Center (Los Angeles, CA)
LAF Chicago
Legal Services of Greater Miami, Inc.
Mid-Minnesota Legal Aid
National Law Center on Homelessness & Poverty
Ohio Poverty Law Center
Public Justice Center
San Francisco Department on the Status of Women
Vermont Legal Aid, Inc.
Washington Legal Clinic for the Homeless
Western Center on Law & Poverty

APPENDIX A

Notice to Applicants and Residents of Housing Programs Covered by the Violence Against Women Act (VAWA)

To applicants and residents:

A federal law was reauthorized on March 7, 2013 and provided new housing protections for individuals who are victims of domestic violence, dating violence, sexual assault and stalking. The name of the law is the Violence Against Women Act, or "VAWA." This notice is being provided to you because

(1) You are an applicant or resident of one of the following federal housing programs covered by VAWA:

- Public housing;
- Section 8 Housing Choice Voucher program;
- Section 8 project-based housing;
- Section 202 housing for the elderly;
- Section 811 housing for people with disabilities;
- Section 236 multifamily rental housing;
- Section 221(d)(3) Below Market Interest Rate (BMIR) housing;
- HOME;
- Housing Opportunities for People with Aids (HOPWA);
- McKinney-Vento Act programs;
- Rural Development (RD) multifamily housing programs;
- Low-Income Housing Tax Credit (LIHTC) program

AND

(2) You have (a) been admitted to housing subsidized by one of the above programs; (b) been denied residency from housing subsidized by one of the above programs; (c) been notified of eviction or termination of assistance from one of the above programs; or (d) requested an emergency transfer due to your belief that you are at risk of further violence or have been sexually assaulted on the premises within the last 90 days.

Along with this notice, VAWA requires a local housing authority, owner or landlord of the above housing programs (housing providers) provide a form in which you can certify that you are a victim of domestic violence, dating violence, sexual assault and stalking. This notice further explains your rights under VAWA.

Protections for Victims

If you are eligible for any of the federal housing programs mentioned above, a housing provider cannot refuse to admit you or rent to you based on acts or threats of violence committed against

you. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault or stalking that are caused by a member of your household or a guest can't be the reason for evicting you or terminating assistance if you were a victim of the abuse.

Reasons You Can Be Evicted

A housing provider can still evict you if it can show there is an actual and imminent (immediate) threat to other tenants, housing authority staff or employees on the property if you are not evicted. Also, the housing provider may evict you for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault or stalking against you. The housing provider cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

Removing the Abuser from the Household

The housing provider may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If the housing provider chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, the housing provider must follow federal, state, and local eviction procedures.

In addition, any tenant remaining in the unit has the opportunity to establish eligibility for the housing assistance. If no tenant can establish eligibility, then the housing provider must give the tenant reasonable time to find new housing or to establish eligibility under another program covered by VAWA.

Moving to Protect Your Safety and Emergency Transfers

If you have a Section 8 voucher, the housing authority may permit you to move and still keep your rental assistance, even if your current lease has not yet expired. The housing authority may require that you be current on your rent or other obligations in the Section 8 program. The housing authority may ask you to provide proof that you are moving because of incidents of abuse.

In addition, you can request an emergency transfer from your housing provider if you believe that you will face imminent harm from further violence by remaining in the unit or you are a victim of sexual assault and the sexual assault occurred on the premises within 90 days of the transfer request.

Proving that You Are a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

The housing provider can ask you in writing to prove or "certify" that you are a victim of domestic violence, dating violence, sexual assault or stalking. The housing provider must request

certification in writing and give you at least 14 business days to provide this proof. The housing provider is free to extend the deadline. There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing provider. The form will ask for your name; the name of the perpetrator, if known and safe to provide; and a description of the incident(s).
- Provide a statement from a victim service provider, attorney, mental health professional or medical professional who has helped you address incidents of domestic violence, dating violence, sexual assault or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing "under penalty of perjury; or
- Provide a police, administrative or court record that demonstrates that you have experienced domestic violence, sexual assault, dating violence or stalking..

If you fail to provide one of these documents within 14 business days, your landlord may move forward with the eviction process, and the housing authority may move forward with terminating your rental assistance.

Conflicting Proof

If a housing provider receives conflicting information regarding the incident(s) of domestic violence, dating violence, sexual assault or stalking, then you may be required to provide any above-mentioned documentation from a third party, such as a statement from a victim service provider or medical professional.

Confidentiality

The housing provider must keep confidential any information you submit about the violence against you, unless:

- You give written permission to the housing provider to release the information;
- Your housing provider needs to use the information in an eviction proceeding, such as to evict your abuser; or
- A law requires the housing provider to release the information.

The housing provider can only disclose information about the violence in the above instances and you must be informed of any and all disclosures. You should inform the housing provider if your safety will be placed at risk if the housing provider discloses the information about the violence against you.

VAWA and Other Laws

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

For Additional Information

If you have any questions regarding VAWA, please contact _____ at _____.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines "domestic violence" as a felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child;
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or
- Any other person who committed a crime against an adult or youth victim who is protected under the domestic or family violence laws of the jurisdiction.

VAWA defines "dating violence" as violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- The existence of such a relationship is determined based on the following factors:
    - Length of the relationship
    - Type of relationship
    - Frequency of interaction between the persons involved in the relationship

VAWA defines "sexual assault" as any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

VAWA defines "stalking" as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or others; or
- Suffer substantial emotional distress.