

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

June 1, 2015

Re: Docket No.FR -5720-P-02

Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs; Proposed Rule

The comments in this document have been prepared by the American Civil Liberties Union, Community Legal Services of Philadelphia, National Alliance to End Sexual Violence, National Housing Law Project, National Law Center on Homelessness and Poverty, National Low Income Housing Coalition, National Network to End Domestic Violence, National Resource Center on Domestic Violence, National Sexual Violence Resource Center, Sargent Shriver National Center on Poverty Law, and Mid-Minnesota Legal Aid, in consultation with our broad, diverse and expert constituencies, collectively called the VAWA Housing Workgroup.

The above organizations drafted the recommended legislative changes to the housing section of VAWA 2013, based on our experiences with implementation of VAWA 2005 and the emerging needs of survivors. We, along with the undersigned organizations, are deeply invested in the success of the VAWA housing provisions as a tool to help survivors remain safe, begin to heal, avoid homelessness, and rebuild their lives. The law has great potential to help survivors maintain their housing while maintaining their safety.

We commend the U.S. Department of Housing and Urban Development for its agency-wide work to develop the proposed rule. We look forward to our continued work together in the implementation of this lifesaving law.

Definitions § 5.2003

Domestic violence and crime of violence

In the proposed rules, HUD indicates that it will revise the definition of “domestic violence” to reflect the statutory inclusion of “crimes of violence,” and further that it will give “crimes of violence” the same meaning that it has in 18 U.S.C. § 16. However, the Supreme Court has recently held that, “whereas the word ‘violent’ or ‘violence’ standing alone connotes a substantial degree of force, that is not true of ‘domestic violence.’ ‘Domestic violence’ is not merely a type of ‘violence’; it is a term of art encompassing acts that one might not characterize as ‘violent’ in a nondomestic context.” *U.S. v. Castleman*, 572 U.S. ____ (2014) (internal citations omitted). Therefore, it would be inappropriate for HUD to incorporate the definition of “crimes of violence” from 18 U.S.C § 16 into the definition of domestic violence in these regulations.

Instead, HUD should adopt the Supreme Court’s understanding of domestic violence as not only violent acts against an intimate partner, but also as including a pattern of conduct used by an abuser to coerce, injure, and control the victim. In *Castleman*, the Supreme Court recognized that under a correct definition of domestic violence, a seemingly “minor” act, in combination with other acts, whether seriously violent or merely harassing, could result in the complete victimization of an intimate partner – and that appropriate remedies should be available as a result. We urge HUD to follow the Supreme Court and build upon that definition to define “domestic violence” in these regulations as a pattern of behavior involving the use or attempted use of physical, sexual, verbal, emotional, economic, or other abusive behavior by a person to harm, threaten, intimidate, harass, coerce, control, isolate, restrain, or monitor a current or former intimate partner. Such a definition would more closely align with congressional intent to address the multiple forms of abuse, including economic abuse, discussed *infra*.

Applicability of VAWA 2013 to Economic Abuse

HUD’s proposed regulations do not explicitly cover victims of economic abuse despite the fact that economic abuse was a significant consideration in passing VAWA 2013 and one of the primary goals of the legislation was to help move victims toward economic self-sufficiency.

Economic abuse is one of the most powerful means of exercising power and control in a relationship.¹ Economic abuse is a form of domestic abuse whereby the abuser limits or interferes with the victim’s access to or control over her or his money. This includes a broad range of conduct, including but not limited to, interfering with the victim’s employment, controlling how money is spent (*e.g.*, an allowance), forcing the victim to write bad checks, incurring significant debt in the victim’s name, or otherwise harming the victim’s financial security.² Approximately 98% of victims who suffer physical domestic violence also suffer economic abuse.³ Furthermore, studies suggest that economic abuse is on the rise in light of the recent financial crisis.⁴ The effects of economic abuse can be devastating. Victims who lack knowledge of or control over their finances often stay in abusive relationships because of a fear that they will be unable to financially provide for themselves or their children.⁵ In fact, financial security is the number one indicator of whether a victim will break free and stay free from his or her abuser.⁶ Persons who have poor credit, no credit or an inability to access money can be denied housing, which often results in homelessness.⁷

¹ National Network To End Domestic Violence, *About Financial Abuse*, <http://nnedv.org/resources/ejresources/about-financial-abuse.html> (last visited May 1, 2015).

² *Id.*

³ *Id.*

⁴ Susan L. Pollet, *Economic Abuse: The Unseen Side of Domestic Violence*, N.Y. ST. B.A. J. (Feb. 2011), https://www.nycourts.gov/ip/parent-ed/pdf/economicabusenysbjournal2011_1_1.pdf.

⁵ National Network To End Domestic Violence, *About Financial Abuse*, <http://nnedv.org/resources/ejresources/about-financial-abuse.html> (last visited May 1, 2015).

⁶ Allstate Foundation, *Facts on Domestic Violence & Economic Abuse*, <http://www.clicktoempower.org/newsroom/facts-on-domestic-violence-economic-abuse> (last visited May 1, 2015).

⁷ Susan L. Pollet, *Economic Abuse: The Unseen Side of Domestic Violence*, N.Y. ST. B.A. J. (Feb. 2011), https://www.nycourts.gov/ip/parent-ed/pdf/economicabusenysbjournal2011_1_1.pdf.

VAWA 2013 was meant to protect victims of economic abuse. The legislative history of VAWA 2013 contains many references to the effects of economic abuse. Senator Patrick Leahy, one of the co-sponsors of VAWA 2013, stated the following:

Economic insecurity is among the most formidable obstacles for survivors of domestic and sexual violence. Abusers often retain their control through economic dependence, sabotaging a victim's credit history or her ability to work productively. . . .We must take additional steps to ensure the economic independence of victims.⁸

The congressional record for VAWA 2013 includes testimony of domestic violence experts, including Ms. Auburn Watersong, an Economic Justice Specialist at the Vermont Network Against Domestic and Sexual Violence. She described economic abuse as “a central part of domestic violence,” which can create “a massive barrier to a victim's ability to flee and eventually develop economic self-sufficiency.”⁹ Ms. Watersong described some of the methods that abusers use to carry out economic abuse, including forcing victims to accrue large debts, limiting victim's access to bank accounts, leaving unpaid utility and housing bills in the victim’s name, and defaulting on shared loans.¹⁰ She explained that these actions can devastate a victim's credit score, leave victims susceptible to bankruptcy, and greatly impact a victim’s opportunities to obtain loans, steady employment or rental housing.¹¹ The harm caused by economic abuse is one of the greatest obstacles to victims’ ability to flee and become independent.

Current regulations may not protect all victims of economic abuse. Existing HUD regulations do not explicitly state whether victims of economic abuse are protected by VAWA 2005 and HUD has not addressed this question in any written guidance. In examining the current regulations, we believe that victims of economic abuse enjoy some protections if they are current tenants, but not if they are applicants.

Economic abuse does not fall under the current definition of dating violence or domestic violence, but may fall under the current definition of stalking (as these terms are defined in current Section 5.2003) and the proposed definition of domestic violence discussed above. Stalking is defined as “to follow, pursue or repeatedly commit acts with the intent to . . . harass, or intimidate another person” and “to cause substantial emotional harm.”¹² As discussed above, the effects of economic abuse on domestic violence victims can be severe, and we believe that economic abuse is a form of harassment and intimidation that is intended to cause substantial emotional harm.

⁸ *The Increased Importance of the Violence Against Women Act in a Time of Economic Crisis: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 62 (2010) [hereinafter *Hearing*] (statement of Sen. Patrick Leahy, Chairman, S. Comm. On the Judiciary).

⁹ *Id.* at 16 (statement of Auburn L. Watersong, Economic Justice Specialist, Vermont Network Against Domestic and Sexual Violence).

¹⁰ *Id.*

¹¹ *Id.*

¹² 24 C.F.R. § 5.2003 (2014).

Additionally, current Section 5.2005(c)(2) protects *tenants* who are victims of “criminal activity directly related to domestic violence, dating violence, or stalking.” The criminal activity nexus would protect a tenant who is a victim of economic abuse, as the abuse would be related to domestic violence and could be carried out through various forms of criminal activity, such as fraud or identity theft. On the other hand, current Section 5.2005(b), which relates to *applicants*, is an anti-discrimination provision that does not provide the same affirmative protections and assumes that a victim “otherwise qualifies” for public housing assistance. If a victim’s economic circumstances, including circumstances that are the direct result of or related to domestic abuse, can serve as a basis for rejecting an applicant who is not “otherwise qualified,” then the current regulations would protect victims of economic abuse only if they are current tenants.

For example, a domestic violence program has been working with a woman, in her 40's with one older daughter, who was denied housing assistance because she had significant back debt. The debt was to a landlord and amounted to over \$4,000, most of which was due to “property damage” caused by her abuser. The woman subsequently left the situation owing money—it was either that or continue to be abused. She moved in with family, but then experienced physical family violence. She became homeless and her former landlord refused to take any kind of payment plan, even though the debt was over two years old. This outstanding debt precluded her from receiving housing assistance. She remains homeless to this day.

Proposed regulations should protect all victims of economic abuse. HUD’s proposed regulations to implement VAWA 2013 make revisions to both the definition of stalking and the protections that apply to tenants and applicants. In proposing regulations to implement VAWA 2013, HUD acknowledged that VAWA 2013 provides for applicants and tenants to receive the same protections.¹³ We fully support HUD’s proposal to expand current tenant protections to cover applicants. However, the proposed revised definition of stalking, “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,” eliminates the harassment and intimidation considerations that arguably make economic abuse a form of stalking under current regulations. This change has the effect of removing protections available to current tenants. VAWA 2013 was intended to increase the protections provided to victims, not reduce them. Therefore, to avoid reducing protections and clarify this issue, HUD should make it clear that domestic violence victims—who are either tenants or applicants—are afforded some protections from the devastating effects of economic abuse. HUD should include the previous definition of stalking and the new stalking to protect the broadest set of survivors.

HUD should add language regarding economic abuse to the VAWA 2013 regulations. We strongly recommend that HUD add economic abuse to the scope of VAWA protections in Section 5.2001.¹⁴ Additionally, the term “economic abuse” should be added to the list of protected victims throughout Section 5.2005. We also suggest revising Section 5.2005(b) to

¹³ Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 80 Fed. Reg. at 17555 (proposed Apr. 1, 2015).

¹⁴ For the avoidance of doubt, this definition should not include persons who suffer from economic abuse generally (*i.e.*, identity theft not connected to domestic violence).

state that an applicant or tenant may not be denied assistance, have assistance terminated or be evicted “on the basis *or as a result of the fact* that the applicant or tenant is or has been a victim of domestic violence . . .” in order to clarify that victims are protected from the results of economic abuse (*e.g.*, poor credit).

In the alternative, HUD should issue guidance stating that victims of economic abuse are protected under VAWA 2013 regulations. Should HUD determine not to revise the text of the regulations to address this substantial harm, we strongly urge HUD to clarify in a final rule release that economic abuse is covered under the regulations.

Additionally, HUD should establish a certification process to ensure that victims of economic abuse are protected. We propose that HUD include provisions in the regulations that establish a certification process designed to protect victims of economic abuse. Such a certification process could be based on the existing certification procedures outlined in current Section 5.2007(b)(1). We recommend that the certification process account for two scenarios. First, an individual who knows that he or she is a victim of economic abuse can supply a certification regarding such abuse when he or she applies for a HUD program. Second, to protect victims who may not know about their economic abuse, whenever an individual’s ability to participate in a HUD program is compromised due to his or her economic situation (*e.g.*, bad/no credit), the individual must be notified that his or her economic situation has jeopardized their participation and that they may be protected under VAWA. Upon receiving such notice, victims of economic abuse would have the opportunity to respond within 30 days by providing a certification that their economic situation is a result of being a victim of economic abuse before a final decision is rendered.

Affiliated Individual

The proposed definition of “affiliated individual” in Section 5.2003 is an adequate and clear definition of the new statutory term.

However, HUD’s preamble text to this proposed regulation (F.R. p. 17551) goes beyond the statutory language and creates confusion when it states that affiliated individuals do not receive VAWA protections if they are not on the lease – the introductory text states that “the protections of VAWA are directed to the tenants.”

The protections of VAWA are directed to survivors of domestic violence, dating violence, sexual assault, and stalking – whether they are named on the lease or not. Specific protections may extend to affiliated individuals or be limited to tenants or lawful occupants. For example, no individual may be denied housing in a covered program based on his/her status as a survivor – a protection that extends beyond tenants and lawful occupants. See 42 U.S.C. §14043e-11(b)(3)(1). However, the right to bifurcate the lease and preserve the subsidy is limited to tenants or lawful occupants. See 42 U.S.C. §14043e-11(b)(3)(B)(i) (A covered housing provider “may bifurcate a lease for the housing in order to evict . . . any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly 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.”).

Although certain provisions of VAWA are limited to certain types of individuals, general statements that only tenants or lawful occupants are protected by VAWA are inconsistent with the statute.

We encourage HUD to delete the language from the introductory text incorrectly construing the protections of VAWA as applying only to those named on the lease. (F.R. p. 17551) Further, whether an individual is a “tenant” or a “lawful occupant” is a question of state law on which HUD should not take a position. To avoid taking positions that conflict with state law, we encourage HUD to remove the language in the introductory text indicating that individuals “do not receive VAWA protections if the individual is not on the lease.”

In many cases, as part of the dynamics of an abusive relationship and the abuser’s exercise of control over the survivor, a survivor of domestic violence, dating violence, sexual assault and/or stalking will not be listed as a tenant on the lease but may be a lawful occupant. To limit protections to “tenants” or to individuals specifically named on the lease, without regard for how a lawful occupant might be characterized under state or local laws, undermines the very purpose of VAWA and would deny many survivors the protections they so urgently need.

Notice of Occupancy Rights § 5.2005

We are very grateful to HUD for including a draft *Notice of Occupancy Rights under the Violence Against Women Act* (“Notice”), included as Appendix A to the Proposed Rule, with the Proposed Rule so that those who work with and on behalf of victims of domestic violence, dating violence, sexual assault, or stalking can provide feedback. Creating this Notice is a crucial step in the VAWA 2013 implementation process, particularly since the Treasury Department and the U.S. Department of Agriculture will also utilize this Notice in their housing programs. In recognition of the significant role that the Notice will play in the implementation of VAWA 2013’s housing protections, we offer the following recommendations to strengthen the effectiveness of this Notice, both in its language and in the manner in which the Notice is distributed. However, given the fact that the regulation has not yet been finalized, and that changes will likely arise out of the notice and comment period for certain topics (*e.g.*, emergency transfers), we urge HUD to reissue the Notice for public comment after the issuance of the Final Rule.

A. General Readability and Accessibility of the Notice

Overall, the Notice currently utilizes word choice and a sentence structure usually seen in documents written for audiences reading at an advanced level. As written, this Notice would likely be inaccessible to persons who possess limited or basic reading skills. To get a better idea of the education level required to successfully read the Notice, we pasted the Notice text into several websites that measure text readability. The sites approximated that the Notice required the reader to have 17¹⁵ and 17.3¹⁶ years of education (or grade levels) respectively, with a third

¹⁵ <http://read-able.com> (accessed May 12, 2015). This site and other online indicators feature a number of readability indices, and then provide an average grade level to describe the text’s readability. The lowest grade level indicator for this site was a 13.7 grade level, with the highest being a 23.7 grade level.

site reporting that an individual would need at least 19 years of formal education to “easily understand” the Notice on a first reading.¹⁷ While these are nonscientific indicators, these reports support the general assertion that HUD needs to address the Notice’s accessibility. HUD should aim to provide notification at a 5th grade reading level to ensure accessibility across literacy and educational levels. Additionally, using person-first, plain-language writing approaches can increase readability and resonate more closely with people’s lived experiences. For example, someone may not relate to the words “victim” or “perpetrator,” but they may relate to this language: “if someone has harmed another person in the home, there are options available.”

Excerpts from the Notice also underscore the need to make this document more accessible for a general audience. For example, a sentence in the first paragraph of the notice currently reads, “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.” This sentence is quite lengthy, and features a complicated sentence structure. The statement also includes more detail than is necessary to convey essential details. More appropriate language could read as follows: “A form is attached to this notice. You can fill out this form to show that you are a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.” Another example appears in the following statement: “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.” Instead, HUD could convey the same information by using several, shorter sentences. For example: “Sometimes more than one person in a household claims to be the victim. As a result, the HP gets conflicting proof. For example, abusers or perpetrators in the home may give false proof that says the victim caused the violence. This makes it hard for the HP to figure out who the victim is. In these cases, the law allows the HP to ask for another kind of proof from the list of choices above.” Having a notice that is difficult for tenants and applicants to understand falls short of the aims of VAWA—which include creating a notice to effectively inform and empower tenants and applicants with the knowledge of their VAWA rights.

The Notice states that a copy of the final VAWA regulations, as well as the HUD-approved certification form, would be attached to the Notice. While attaching the HUD-approved certification form to the Notice is required by VAWA 2013,¹⁸ attaching a copy of the regulations is not. While we recognize HUD for trying to go beyond what the statute requires, in this case, it

¹⁶ <https://readability-score.com/> (accessed May 12, 2015). The lowest grade level indicator for this site was a 13.5 grade level, with the highest being a 21.1 grade level.

¹⁷ http://www.online-utility.org/english/readability_test_and_improve.jsp (accessed May 12, 2015). The lowest grade level indicator for this site was a 13.25 grade level, with the highest being an 18.61 grade level. For this website, the grade level measurement differs from the measurement of years of formal education required to understand the text on a first reading.

¹⁸ 42 U.S.C. § 14043e-11(d)(2).

is unlikely that many tenants or prospective tenants have the time or background knowledge to understand the full scope of their rights by reading the VAWA regulations, particularly if the conforming amendments were to be included. In fact, doing so may have the opposite effect of confusing or even overwhelming tenants who are considering asserting VAWA protections.

Instead of providing a copy of the regulations, the Notice should link to the regulations in a footnote and encourage, in text, any tenants or applicants who think they may qualify for VAWA protections to seek the assistance of a legal services attorney or victim services provider. The footnote (not the text) should include the Federal Register citation for the Final Rule such that advocates who read the Notice would be able to locate the regulations and any explanatory language in the preamble. The Notice can also include language that suggests taking the Notice along when meeting with such a service provider. As part of the Notice, HUD should include a blank space where the housing provider/responsible entity can insert contact information for local legal services and victim services providers, in addition to the nationwide hotline information featured in the Notice. Furthermore, the Notice should also include the Rape, Abuse and Incest National Network (RAINN) hotline for victims of sexual assault, 1-800-656-HOPE, to supplement the hotline number already provided for domestic violence victims.

B. Customization of the Notice by Housing Providers

The Proposed Rule contemplates issuing the Notice in a way such that it could be customizable by housing providers. Specifically, housing providers would “issue the notice as developed by HUD, without substantive changes to the core protections and confidentiality rights in the notice.” Another portion of the Proposed Rule says that “the housing provider need only customize to reflect the covered program and identify the covered housing provider.”¹⁹ However, the preamble also states that housing providers should include items such as “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’).”²⁰ Additionally, housing providers would “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.”²¹ Nothing, however, limits this “customization” to the suggested blanks provided by HUD in the Notice. For example, there is no blank within the draft Notice to represent the time a tenant would have to relocate to new housing after a lease bifurcation. Permitting housing providers to customize the notice is very concerning because there is no mechanism for quality control over the various iterations of the Notice that will be distributed across the covered housing programs. Nothing in the Proposed Rule indicates that HUD will be reviewing these notices; thus, there is no way to ensure that the notices being distributed accurately reflect the VAWA protections afforded to tenants and applicants. Leaving individual housing providers,

¹⁹ Proposed Rule at 17,562 (footnote to chart).

²⁰ *Id.* at 17,554.

²¹ *Id.*

such as owners and managers, with the responsibility of determining how to apply VAWA rights will result in confusion and inconsistency.

While we recognize that VAWA implementation will differ across the covered housing programs, HUD is in the best position to create a series of different notices that outline how VAWA rights will be manifest in different housing programs. This will prevent additional burdens on covered housing providers—particularly smaller housing providers—who would otherwise be expected to figure out how VAWA 2013 protections play out in their programs by reading the regulations themselves, or to wait upon additional HUD guidance. Despite any well-intentioned efforts by housing providers, there would still be no guarantee that the notices will accurately reflect VAWA and HUD regulations for particular programs. Thus, we urge HUD to go the extra step and create notices customized for specific housing programs or types of rental assistance. To the extent that HUD wishes for there to be a local point of contact for tenants and applicants, HUD should include blanks that would allow the housing provider to add their own contact information, as well as contact information for local legal services and victim services providers. However, this is where any individualized “customization” should end; the housing provider should not be “filling in the blanks” regarding programmatic operations.

C. Strengthening and Clarifying Language in the Notice

In addition to the general readability and accessibility issues, HUD needs to strengthen or clarify certain language in the draft Notice.

Use of the term “abuser” only

The term “abuser” is used throughout the Notice. However, use of that term alone is too limiting. The Notice needs to also include the term “perpetrator,” in order to reference perpetrators of sexual assault or stalking. This underscores the fact that VAWA protections do not simply apply to victims of domestic violence or dating violence, but also to victims of sexual assault and stalking.

Including additional non-discrimination language in the text of the document

The second footnote of the Notice states, “Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, or stalking, regardless of sex, gender identity, sexual orientation, disability, or age.” This sentiment needs to be included in the text of the Notice itself, such that the intended audience understands, that, in spite of the law’s title, the law does not only protect women, and that other nondiscrimination protections are in place.

“Protections for Prospective Tenants”

This section must include stronger language to describe the VAWA 2013 prohibitions against denying admission or assistance due to domestic violence, dating violence, sexual assault, or stalking. Currently, the Notice uses the phrase “may not,” such as “you may not be denied admission or denied assistance” on the basis of being a victim. Changing the language to “must

not” sends a stronger message about the degree to which VAWA prohibits such discrimination against victims of domestic violence, dating violence, sexual assault, or stalking. Replacing “may” with more compulsory language is consistent with the approach taken by HUD elsewhere in the Proposed Rule. Specifically, in the preamble discussion of VAWA’s confidentiality requirements, HUD is proposing to keep “shall not” language as opposed to using “may not” language when referring to the prohibition on confidential information being placed in a shared database. Explaining the rationale behind this choice, HUD states that “it is HUD’s view that the prohibition is firm, not discretionary.”²² The same logic must apply to the core nondiscrimination protections in VAWA 2013.

“Protections for Victims as Tenants”

Similar “may not” language appears in this section of the Notice—specifically, “you may not be denied rental assistance, terminated from participation, or be evicted from your rental housing” because of domestic violence, dating violence, sexual assault, or stalking. Again this language must be changed to “must not,” for the reasons outlined in the previous paragraph.

“Removing the Abuser from the Household”

The Notice currently states, “HP may divide your lease in order to evict” the abuser. HUD should change this language to say “HP can choose to divide your lease in order to evict” the abuser/perpetrator. This word choice more clearly conveys that, under VAWA, the housing provider has the discretion to engage in lease bifurcation.

Furthermore, regarding post-bifurcation eligibility for remaining tenants, VAWA 2013 states that if a housing provider bifurcates the lease to remove the abuser/perpetrator and that individual is “the sole tenant eligible to receive assistance under a covered housing program,” the housing provider “shall provide any remaining tenant an opportunity to establish eligibility for the covered housing program.”²³ Importantly, VAWA 2013 then states that if the remaining tenant cannot establish his or her eligibility, the housing provider “shall provide the tenant a reasonable time, as determined by the appropriate agency, to find new housing *or to establish eligibility for housing under another covered housing program.*”²⁴ However, the Notice, as currently written, does not mention that the remaining tenant can try to establish eligibility for another housing program covered by VAWA. Instead, the Notice is unclear on this point, and could be read by a tenant to mean that someone can either establish eligibility for the current covered housing program, or that person must find housing outside of the context of federally subsidized housing programs. HUD must update the Notice to include reference to the possibility of establishing eligibility for another covered housing program. By making this addition, victims and their advocates will be more fully apprised of potential housing options post-bifurcation.

²² *Id.* at 17,559.

²³ 42 U.S.C. § 14043e-11(b)(3)(B)(ii).

²⁴ *Id.* (emphasis added).

In the final sentence of this section, the Notice should be clarified to add that the housing provider may, *but is not required to*, ask for documentation proving domestic violence, dating violence, sexual assault, or stalking.

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

The Notice should again clarify when a housing provider is exercising discretion. For example, under VAWA 2013, housing providers can choose to, but are not required to, extend the deadline for documentation. The Notice should ensure that tenants and applicants understand that the housing provider is not required to, but is merely allowed to, extend the period of time to submit documentation; in other words, such an extension is not assured. Doing so ensures that the tenant or applicant will not unduly rely upon getting an extension in instances where the housing provider is not willing to grant additional time, thus losing their ability to assert VAWA housing rights.

Additionally, the Notice needs to make clear that, generally speaking, the tenant or applicant asserting VAWA protections can choose which form of acceptable documentation he or she wishes to provide. The housing provider, except in circumstances where there is a conflicting certification, *must accept the form of documentation provided by the tenant or applicant.*²⁵ In discussing the types of documentation that could be provided by the tenant/applicant, for the second item (record of Federal, state, tribal, territorial, or local law enforcement agency), providing one or two examples (*e.g.*, restraining order, protective order, etc.) would likely increase accessibility to the intended reader.

“Reasons a Tenant Eligible for Occupancy Rights Under VAWA May Be Evicted or Rental Assistance May Be Terminated”

This section of the Notice omits the fact that victims can be evicted or terminated if the housing provider demonstrates that the victim’s continued tenancy poses an “actual and imminent threat” to other tenants or employees. The Notice fails to explain what an “actual and imminent” threat means, particularly the fact that it is limited to physical dangers that are “real, would occur within an immediate time frame, and could result in serious bodily harm.”²⁶ Additionally, this section does not include language along the lines of that in proposed § 5.2005(d)(4), which notes eviction or termination should be pursued “only when there are no other actions that could be taken to reduce or eliminate the threat.”²⁷ The Notice makes no mention that HUD “strongly encourage[s]” providers to use “eviction or termination as a last resort.”²⁸ Providing this information would help victims and their advocates better understand the narrow circumstances

²⁵ HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. 66,246, 66,251 (Oct. 27, 2010) (codified at 24 C.F.R. pts. 5, 91, 880, et al.) (noting that victims cannot be required to specifically produce the self-certification form or the third-party documentation, but that the housing provider must accept whichever form of documentation is provided).

²⁶ Proposed Rule at 17,566 (Proposed § 5.2003)

²⁷ *Id.* at 17,568.

²⁸ *Id.* at 17,556.

under which the victim can be evicted or terminated because of a threat caused by his/her continued tenancy.

“For Additional Information”

As noted above, HUD should add a contact for the national routing line for sexual assault services, operated by the Rape, Abuse and Incest National Network (RAINN): 1-800-656-HOPE. The Notice should also refrain from using language that excludes those who may be victims, but who are not fleeing or escaping abuse. For example, victims of sexual assault may not necessarily be fleeing an abusive relationship, but instead may be in the process of recovering from an incidence of sexual assault. The Notice should say “if you are looking for help or support after a sexual assault, you can contact RAINN” and use words such as “looking for help,” “healing” or “recovering” in referencing their current circumstances.

D. Translation of the Notice for Persons with Limited English Proficiency

The Proposed Rule states that the Notice (as well as the HUD VAWA Self-Certification Form) “must be made available in multiple languages, consistent with guidance issued by HUD in accordance with Executive Order 13166.”²⁹ Given the particular hurdles faced by victims who are limited English proficient (LEP), we also strongly urge HUD to assume responsibility in the Final Rule for translating written copies of the Notice, as well as the Self-Certification Form, into a variety of languages. Doing so would be an important step towards ensuring that LEP victims would be able to meaningfully access the Notice and Self-Certification Form, and thus be aware of their rights under VAWA 2013. We agree with language access advocates who, in separate comments, discuss in greater detail the importance of HUD assuming the responsibility of translating the Notice and Self-Certification Form. See comments submitted by the National Language Access Advocates Network.

We feel that HUD is in a much better position than individual housing providers to provide translations expediently. This is particularly important for languages with smaller constituencies, as in some areas, housing providers would not otherwise be directed by the LEP Guidance to provide translated copies of the Notice (but would instead be directed by the Guidance to orally interpret the Notice’s contents). Providing translated forms would not be a new practice for HUD. In fact, HUD has provided translations of a variety of forms used in its programs, including Forms HUD-50066 and -91066 (the self-certification forms issued under VAWA 2005). Additionally, centralizing translation responsibility at HUD imposes consistency and uniformity in translation, as well as a central place whereby advocates can express concerns about any inaccuracies with the translations. It is important that HUD consider not only direct translation of notification/forms, but also trans-creation to ensure that the intended meaning resonates across cultures and languages.

E. Provision of Notice At Additional Junctures

²⁹ *Id.* at 17,567 (Proposed § 5.2005(a)(3)).

In addition to the three junctures at which VAWA requires the Notice to be distributed, the Final Rule should also instruct the responsible covered housing provider to distribute the Notice at additional junctures, including upon family break-up and as part of a tenant's recertification/reexamination process. HUD should also note in the Final Rule that covered housing providers have additional discretion to provide the Notice in other contexts, such as when a tenant raises safety concerns with the housing provider, but does not explicitly reference abuse or violence. We feel that providing the Notice at additional junctures prevents existing tenants from only being apprised of their VAWA rights when they face eviction or termination (beyond any one-time provision of the Notice to existing tenants by HUD).

Providing the Notice upon family break-up would allow the remaining household members to understand their rights under VAWA, such as the right to request a transfer to another unit if they do not feel safe remaining in the current unit. Additionally, providing a copy of the Notice upon recertification or reexamination allows for existing tenants to be provided the Notice on, at minimum, an annual basis as a matter of course going forward; regular distribution of the Notice will thus not be simply limited to times where the existing tenants are facing eviction or termination (again, beyond any one-time distribution of the Notice by HUD to existing tenants).

HUD should also instruct housing providers to provide a copy of the Notice to a tenant when he or she raises safety concerns with the housing provider (*e.g.*, requesting a lock change, requesting a transfer to another unit because he/she feels unsafe, seeking increased security patrols, etc.). Again, this simply provides the tenant with additional time to explore his or her options—such as locating a victim services provider or legal services attorney, and/or considering options such as bifurcating the lease—before an eviction or termination notice for a violation has been issued.

F. Proposal to Distribute the Notice to Existing Tenants Residing in Newly Covered Programs (Comment Solicitation #3)

HUD has specifically requested comment regarding the proposal to distribute the Notice to all existing tenants in the HUD programs newly covered by VAWA 2013. We recognize and applaud HUD for its willingness to take extra steps beyond what is required by the statute itself. That said, we not only support HUD's current proposal, but also would ask HUD to consider distributing the Notice to *all* current tenants, regardless of whether their programs were previously covered by VAWA. While VAWA 2005 required owners, managers, and housing authorities to distribute a notice of VAWA rights, there was no uniform notice received by all tenants in the then-covered HUD subsidized housing programs. Therefore, there is no way to ensure that existing tenants in programs that had already been covered by VAWA received the same information across programs. Additionally, VAWA 2013 includes new crucial housing protections, including extending VAWA's coverage to survivors of sexual assault, and providing for emergency transfers. Therefore, prior notices of VAWA rights have not sufficiently apprised existing tenants of changes in the law, and long-time existing tenants who are currently in crisis are unlikely to remember the former notice from several years ago – assuming they received one at all. Accordingly, we support HUD providing the Notice to *all* existing tenants.

Distributing to all persons, not just heads of household. In asking HUD to distribute the Notice to all existing tenants, we urge HUD to find various means and times at which to distribute a copy of the Notice to every existing individual adult tenant, *not just the head of household*. Distributing one Notice per household could result in a situation where the Notice is only seen by an abuser or perpetrator. Under these circumstances, it would be very unlikely that any victims would be apprised of their VAWA rights. For example, if a household participates in a program that requires in-person recertification/reexamination meetings, the covered housing provider should take such opportunities to provide copies of the Notice to all adult household members, not just one copy per household.

Distributing the Notice during such meetings as an in-person recertification/reexamination meeting increases the likelihood that all adult members of the household are present and will receive copies of the Notice. Additionally, the Final Rule should require covered housing providers to prominently post the Notice in visible, regularly-used common areas where other information is made available (*e.g.*, community bulletin boards, housing authority waiting areas, laundry rooms etc.). HUD should encourage housing providers to take advantage of other community events as opportunities to distribute the Notice.

Additional VAWA protections § 5.2005

The regulations should include a provision that discusses in greater detail how a covered housing provider should evaluate negative credit, tenancy, and criminal records when assessing a survivor's housing application.

The current regulations do not discuss VAWA protections in the application context in any detail. Currently, the statute provides:

An applicant for or tenant of housing 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.

42 U.S.C. § 14043e-11(b)(1). While the regulations go into further detail about impermissible terminations, they do not discuss how to evaluate when an applicant who is or has been a victim can show that he or she was denied on that basis.

As Congress, HUD, experts, and advocates have recognized, survivors are frequently denied housing based on the violence they have experienced. In particular, survivors may have negative credit, housing, or criminal records based on the violence committed against them that then disqualify them in the housing application process. HUD acknowledged this barrier even before VAWA's housing protections were enacted. In its 2003 Public Housing Occupancy Guidebook, HUD said: "In an attempt to ascertain whether domestic violence was a factor in the poor rental and tenancy history or criminal activity, staff should be encouraged to exercise discretion and inquire about the circumstances that may have contributed to the negative reporting. If the PHA determines that the negative reporting was a consequence of domestic violence against the

applicant, the PHA may exercise discretion and approve admission pursuant to its Admissions and Continued Occupancy Plan (ACOP).”³⁰

We recommend that the regulations contain similar guidance to covered housing providers. We ask HUD to include the following in § 5.2005: “Applications. Applicants should be provided with an opportunity to show that domestic violence, dating violence, sexual assault, or stalking was a factor in any negative rental, tenancy, or criminal records that would result in denial of admission or assistance. If the covered housing provider determines that the negative record was a consequence of domestic violence, dating violence, sexual assault, or stalking against the applicant, and the applicant otherwise qualifies, the covered housing provider must grant the application.”

Proposed 5.2005(d) should address situations where a prohibited basis in part motivates the denial, termination, or eviction.

We are aware of cases where covered housing providers terminated assistance to survivors on the basis of incidents of violence, as well as another ground that is not protected under VAWA. We are concerned that in many of these cases, the termination was initiated because of the violence. Thus, while the covered housing provider may have an independent basis on which to terminate, the VAWA violation triggered the adverse action against the tenant. Moreover, what might appear to be an independent ground for the action is often directly related to the violence. In these situations, in light of the VAWA violation that already occurred, HUD should require covered housing providers to, whenever possible, exercise their discretion in favor of the survivor and allow the survivor to obtain or maintain the housing or assistance. If a covered housing provider decides to pursue the denial, applicants should be given the opportunity to show if and how the independent basis to deny is related to the violence. If a covered housing provider decides to pursue a termination or eviction, the covered housing provider should be required to withdraw the case that was based on a prohibited basis under VAWA and re-initiate the case with only the independent grounds for termination or eviction.

We recommend that HUD add the following to 5.2005(d)(2): “Where a housing denial, termination of assistance, or eviction was in part based on a prohibited basis under this section, the covered housing provider will, whenever possible, exercise their discretion to approve the applicant’s housing or preserve the tenant’s housing, even when it has independent grounds to deny, terminate, or evict. In cases where the covered housing provider decides to pursue the denial, the provider will provide the applicant with the opportunity to explain if and how the independent grounds for denial are related to or caused by domestic violence, dating violence, sexual assault, or stalking. In cases where the covered housing provider decides to pursue termination or eviction, the provider must withdraw the notice or case that was based on the prohibited basis, re-initiate the termination or eviction process, and give the tenant the opportunity to explain if and how the independent grounds for termination or eviction are related to or caused by domestic violence, dating violence, sexual assault, or stalking.”

³⁰ U.S. Dep’t of Housing and Urban Development, Public Housing Occupancy Guidebook, at § 19.3 (June 2003).

EMERGENCY TRANSFER § 5.2005(e)

Proposed 24 C.F.R. § 5.2005(e) establishes the emergency transfer plan as part of the VAWA protections contained in 24 C.F.R. § 5.2005. It establishes that each covered housing provider, as identified in the program specific regulations for the covering housing program, shall adopt an emergency transfer plan based upon HUD's model emergency transfer plan. Pursuant to the rule, the plan must incorporate the following: (1) the plan must allow tenants who are victims of domestic violence, dating violence, sexual assault, and 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 safe and available; (2) the tenant must expressly request the transfer; (3) the tenant must reasonably believe 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 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 (4) 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 the violence against the tenant. Nothing in this subsection (e) may be construed to supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

HUD replacing "reasonable" confidentiality procedures with "strict" confidentiality procedures. HUD replaces the term "reasonable" with "strict" to reflect the importance of guarding the identity of victims and believes "strict" better reflects the intent of VAWA, which is the optimum protection for victims of violence.

We strongly support HUD's change here and for the priority it places on guarding the identity of victims of violence, and we believe this revision is consistent with the overall intent of VAWA. Advocates continue to report a failure by housing providers to comply with this requirement. As we said in our comments on the August 2013 notice, as the transfer processes begin to be used, it is extremely important that all owners, managers, landlords, and PHAs 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, in consultation with confidentiality and victim advocacy experts, should provide very direct and clear guidance, regulations, training, protocols and policies that help all entities maintain confidentiality within their practices. HUD should also establish a complaint process for alleged breaches of confidentiality. The confidentiality regulations must be cross-referenced in the governing regulations of the housing provider.

Additionally, the regulations must be amended to ensure that the confidentiality measures included in the emergency transfer section are at least as strong as the general confidentiality requirements in § 5.2007.

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. At a minimum, these measures must meet the standards outlined in § 5.2007(c), including prohibitions against employee access to confidential information, entering information into shared databases or disclosing, revealing or releasing information except for as provided in § 5.2007 (c).

Specific Solicitation for Comment #4 - Documentation Requirements for VAWA Transfers (§ 5.2007). HUD reads VAWA's existing documentation requirements to only be required for lease bifurcation, denial, termination of assistance, or eviction and notes that the statute is otherwise silent regarding documentation requirements for transfers. HUD notes that the statutory language refers to "tenants who are victims of domestic violence, dating violence, sexual assault, and stalking" possibly indicating that the tenant may have already been determined to be a victim of violence, and thus, no further documentation is required. HUD seeks comments on whether documentation should be required and if so, what type, including whether the documentation should be less stringent due the emergency nature of the transfer request or more stringent due to the increased costs and risks transfers might present to housing providers. HUD is also seeking comment on possibly requiring the documentation after the transfer is complete, which would provide a record for the housing provider on the necessity of the transfer.

Even if HUD reads VAWA's existing documentation requirements to only be required for lease bifurcation, denial, termination of assistance, or eviction, HUD can still replicate these documentation requirements for the VAWA transfers. HUD should not alter the form of proof permitted under VAWA, as these documentation requirements are well established and uniform. To alter the documentation requirements here will expose victims and housing providers to inconsistency and confusion. This means that a covered housing program is free to accept the victim's oral representation of their status or ask for proof which could include, at the victim's own determination, the VAWA self-certification form, police, court, or administrative record, or a statement from a victim service organization, mental health professional, attorney, or medical professional. HUD must continue to prohibit, as it does in § 5.2007(c), covered housing programs from requiring a victim to submit third party proof, as this documentation, by its very nature, cannot be easily secured or secured without the consent of a third party. The only important distinction here is as to when the covered housing provider can ask for the documentation. We urge that a tenant requesting a transfer be permitted to submit documentation at least 14 days (or any extension granted therein) after the transfer has been completed, so that the provider's focus is on completing the transfer. Gathering the requested documentation for an emergency transfer, particularly when violence is imminent, can impose undue burdens on survivors and should not unnecessarily delay the transfer process.

It must be clear to the tenant to whom the documentation must be submitted, since the move may result in the tenant moving to a different covered housing provider or program. HUD should also clarify that any required recertification (due to the change in household composition if the abuser no longer lives in the home, for example) should occur only after the tenant has been transferred. The covered housing provider is, however, free to change the size of the unit, if, for example, the abuser will not move with the transfer and thus the unit size eligibility is altered. In those cases where the tenant has already been identified as covered under VAWA, no additional documentation should be required.

We should note that in many cases, the first indication that a tenant is a victim of violence may be the request for an emergency transfer, so HUD's assumption here (that tenants making transfer requests have already been identified as covered by VAWA) is misplaced. In the experience of advocates who have established local emergency transfer programs for victims, many tenants requesting transfers have not already been identified as covered by VAWA. For many survivors, the request for an emergency transfer is the first time that they are notifying the housing program that they have experienced domestic violence, dating violence, sexual assault, and/or stalking. Their situations are frequently quite dangerous and thus the transfer process must be easy, uniform (as established by HUD), and transparent.

HUD must establish the documentation requirements for transfers across all covered housing programs and not permit covered housing providers to separately set documentation requirements in the model transfer plan for each program. For example, given the gross inconsistencies already present in documentation requirements for resident-initiated transfers among public housing authorities, it can be assumed the same would happen here, resulting in inconsistent burdens among transfer applicants.

HUD should also clarify that a survivor's eligibility for an emergency transfer should focus on the victim's reasonable belief of the threat she or he 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 (Bloom, Harris, Campbell, Felitti & Anda, etc.). Eligibility should be determined by whether a person in the victim's shoes, with his or her particular experiences and responses to violence, threats, harassment and trauma, would reasonably believe he or she is threatened with imminent harm from further violence or further psychological harm without a transfer. 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. For that reason, under no circumstances must HUD require or permit the covered housing program to require that a reasonable belief of a threat be proved by third party evidence.

Specific Solicitation of Comment #6 - Model Emergency Transfer Request Form. HUD seeks comments on whether it would be helpful for providers to have a model transfer request form that includes criteria for requesting the transfer – i.e., reasonable belief that the tenant is being threatened or that a sexual assault occurred on the premises. We proposed the development of a transfer form as part of the 2013 comments, in part so that the request is documented for the tenant, the tenant's own words articulate the safety or trauma needs, and the timing of the request is established. If HUD develops a transfer request form, any description of the need for a transfer by a tenant must be brief and in the tenant's own words. If HUD develops a transfer request form it must have a date the request was made and the date it was granted or denied, and a description of where the tenant believes she or he will be safe or unsafe to move. If HUD develops a transfer request form however, this form should be used as documentation of the need for a transfer – the

existing documentation requirements under § 5.2007 should be supplanted by this form and this should be adopted in regulations under section § 5.2005.

Notice of Transfer Rights as part of the Notice of Occupancy Rights under the Violence Against Women Act– Appendix A. The transfer right must be described in the proposed Notice of VAWA rights in more detail for a tenant to sufficiently be able to act on that right (p. 135) and to understand that this is an emergency transfer, not the traditional, slow transfer process in place for many covered housing programs. The current language (p. 135) is too vague for a tenant to understand what rights they have to a transfer or what documentation they must provide in order to be approved for a transfer. As stated above, HUD should establish what uniform documentation requirements are necessary for tenants to be eligible for an emergency transfer. Should that be submission of the emergency transfer form as suggested above, it should state that in the notice and attach the form. The language should not use the term “another unit” because it gives the impression that the move is only to a unit within the existing covered housing project. The language should state that:

If you reasonably believe there is a threat of imminent harm from violence if you stay in the same unit or development where you live now, or if you are a victim of sexual assault that recently happened at your development, you have the right to ask for an emergency transfer to a different unit, including a unit in a different development, different type of affordable housing, and in a different location. Your request for a transfer and the location of where you move will be kept confidential.

[Based upon what documentation HUD decides is required, HUD should describe it here and state the opportunity to present this documentation AFTER the emergency move. State the opportunity to grieve any decision by a provider if they deny the transfer]

The covered housing program’s emergency transfer plan must also be publicly available and prominently displayed at the project site, so that tenants understand they have this option. Otherwise, advocates will continue to see victims flee their assisted housing without the chance to transfer, be safe, and receive continued housing assistance.

Specific Solicitation for Comment # 5 - Available and safe dwelling unit. HUD states that “available and safe” dwelling unit reflects 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.

We suggest a set of criteria to consider in transferring a tenant: (1) expressed safety concerns, including geographic or locational safety concerns of the tenant; (2) availability of safe housing, determined by #1, within the housing providers’ control; (3) availability of safe housing, determined by #1, of the same covered housing program type; and (4) availability of safe housing, determined by #1, of a different covered housing program type. This consideration of “safe” dwelling unit should be entirely focused on the perception of the tenant who is requesting the transfer.

“Safe” – What is considered safe should be based on survivor tenant’s personal knowledge and reasonable belief about what areas of the city, or what developments, would be unsafe to transfer to. Establishing both physical and psychological safety can be a critical factor for survivors to recover from violence.

“Available” – In order to effectuate the intent of VAWA to permit tenants to transfer across covered housing programs, it should be required that all options be explored for finding a safe and available unit, in and outside of the covered housing program’s control and that covered housing program in general, before an emergency transfer request is denied.

“Under a Covered housing program” – Again, in order to effectuate the intent of VAWA to permit tenants to transfer across covered housing programs in order to be safe, it should be required that all options be explored for finding a safe dwelling unit, in and outside of the covered housing provider’s control or program. The criteria established above to assist with that process.

Waiting list barriers. HUD should expressly state that housing providers’ obligation to help tenants transfer to safe housing supersedes wait list, tenant preference, or prioritization obligations. Otherwise, the emergency transfer provision of VAWA will be rendered meaningless. Providers who currently operate emergency transfer programs for survivors have expressed this issue as a key impediment to helping survivors make safe emergency moves.

Institutionalization of Emergency Transfer Policies. In addition to creating a model emergency transfer policy for survivors, HUD can provide guidance to covered housing programs so that emergency transfer policies are institutionalized and implemented at all levels of the agency. Given the high turnover rate of employees at many housing authorities, it is imperative that emergency transfer policies and procedures be put in place so future employees are aware of what they must do when such requests are made. Such procedures include employee desk manuals and forms used to process transfers. Housing agencies should also take measures to shorten transfer wait times, and to give survivors specific timeframes on when they can expect to be transferred. Without consistent and reliable timeframes, a tenant is unable to know how the emergency transfer process will differ from any other request for a transfer.

One example of a transfer policy that is working is from Philadelphia. The Philadelphia Housing Authority’s Board of Commissioners passed a resolution on June 19, 2014 to amend PHA’s policy for public housing and the housing choice voucher program, updating it to incorporate the requirements of VAWA 2013. The policies now explicitly permit PHA to provide an emergency transfer to the survivors if “the tenant expressly requests the transfer, and the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains in the unit.” The newly revised transfer policy has already proven to be more effective than a less specific policy.

Housing providers should be required to effectuate these transfers as expeditiously as possible; otherwise, transfers out of the provider’s control may not happen or happen quickly, even though in many if not most instances that type of transfer will be necessary.

Transfer Oversight: As we stated in 2013, Secretary-level points of contact should oversee and ensure accountability for each covered housing program’s emergency transfer plan. 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 and regional offices could lead and guide transfer efforts within their area, similar to what is being done in the Chicago HUD Multifamily Regional Office. 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 identifying 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.

Developing the transfer plan: Transfer plans and other policies developed to address domestic violence, sexual assault, dating violence and stalking are greatly improved when developed in consultation with victim advocacy experts. Therefore, we recommend inserting in § 5.2005(e)(3): “All plans must be developed with the consultation of state and local experts on domestic violence, dating violence, sexual assault and stalking.”

Specific Solicitation for Comment # 7 - Transfer Costs. HUD proposes that covered housing providers follow, to the extent possible, existing policies and procedures in place with respect to transfers, and make efforts to facilitate transfers as fast as possible, and to minimize costs or bear costs consistent with existing policies and practices. HUD asks for information on existing costs for transfers among covered housing programs as well as information on the anticipated costs of such transfers and any paperwork involved.

We applaud HUD for including a provision that encourages covered housing providers to bear emergency transfer costs. Many victims opt to stay in dangerous housing situations rather than relocate because of factors contributing to the risk of homelessness, including the high cost of housing and financial penalties that accompany early lease terminations. Only about half the states have protections for victims who terminate their leases to escape from violence and heal from victimization.³¹ This means that half the states do not have laws that explicitly shield victims from liability for ending their leases due to the violence or abuse. Owners and landlords in these states may seek to require victims ending leases to pay the remaining rent owed on the leases and they may be able to keep the victims’ security deposits for the lease terminations. Such actions that penalize victims for taking measures to protect their lives and further

³¹ See NHLP, *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium* (May 2014), available at <http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf>.

discourage victims from seeking emergency transfers are contrary to VAWA's intentions. Regulatory protections must be available for victims who end their leases because of an emergency transfer under VAWA. Therefore, we recommend that HUD require that covered housing providers not penalize victims who meet the emergency transfer requirements under VAWA for exercising these transfer rights.

We suggest that covered housing providers be responsible for covering the costs of such transfers (i.e. moving costs). Under the Philadelphia Housing Authority lease agreement, the housing authority agrees to pay for reasonable costs related to mandatory transfers and reasonable accommodation transfers. Emergency VAWA transfers should be considered mandatory transfers (similar to transfers as a result of a fire, for example), and that covered housing program should be responsible for all reasonable moving costs. Moving costs, such as moving trucks and security deposits, are often extremely prohibitive for some survivor tenants, causing major delays in their ability to move out of unsafe conditions. Also, as part of a model emergency transfer program for the project-based Section 8 housing in Chicago as administered by the HUD Multifamily Region 5 office, providers have never come forth to claim they are incurring costs as part of those emergency transfers.

Sexual Assault Survivors. All of HUD's guidance, rules, documents, templates, and model plans and forms should make clear that sexual assault survivors can request a transfer under both circumstances, which is either a reasonable threat or that a sexual assault occurred on the premises in the last 90 days prior to the transfer request being made with or without the ongoing threat.

The provision regarding sexual assault tracks the statutory language, but is too restrictive. Covered housing providers should be encouraged to apply a longer time frame when necessary. Additionally, this language may cause some confusion or be misinterpreted to suggest that moves to protect the health and safety of the family also must be within the 90-day time frame or experienced on the premises. At a minimum, we recommend that the language of the proposed regulation be changed to include the following:

2.5005(e)(b)(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. Nothing with respect to this subsection prohibits a housing provider from considering and approving transfers for victims of sexual assault when the sexual assault occurred more than 90 days before the transfer request was made and/or the sexual assault did not occur on the premises.³²

Speed of Transfer, Grievance Rights. 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

³² Note that HUD issued a similar regulation informing PHAs and owners that the time limitations in a federal statute were a minimum and that there is flexibility to expand upon that minimum. *See* 24 C.F.R. 5.852(d).

prior to any transfer and being asked to submit multiple forms of proof requirements. For that reason, what 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.

HUD's model emergency transfer plan must emphasize and mandate that the transfers should 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.

Finally, when a tenant is denied a VAWA transfer or other adverse action is taken against them (i.e., 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.** All transfer denials should be in writing and explain the PHA or project owner's basis for the denial of the housing transfer. If transfer is not granted within 72 hours, the tenant can assume it has been denied and grieve or appeal the decision (and it must be made clear to whom the tenant makes this appeal).

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

Planning Documents, Guidebooks, Leases, and Other Documents. HUD should instruct the PHAs, including Moving To Work Housing Authorities, to amend planning documents, such as the PHA 5 Year Plan and the Administrative Plan and ACOP and public housing and Moderate Rehabilitation tenant leases project management plans, house rules, etc., to incorporate a model emergency transfer policy. HUD should also instruct owners of Sections 221d3, 236, 202 and 811 properties and project-based Section 8 to revise their tenant selection plans and review all tenant leases to determine that the current lease for the tenant contains the language regarding VAWA protections in the event of an eviction or determination to reduce the tenant rental subsidy.

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 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.

For HOME funds that are distributed by formula to units of local government and to states, 24 CFR 92.50. These government entities are required to submit a consolidated plan. 24 CFR Part 91. HUD should require local and state governments to revise their consolidated plans to address the VAWA emergency transfer policies obligations as they relate to HOME properties.

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.

Regional Planning on Emergency Transfers. In the course of recommending amendments to these documents to incorporate a model emergency transfer policy, HUD should also encourage that those documents detail efforts to create regional cooperative 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. See e.g., 24 CFR 92.101 (HOME rules on consortium).

Tenant Protection Vouchers for Victims Requesting an Emergency Transfer. Under VAWA 2013, HUD is required to establish policies and procedures for how victims requesting an emergency transfer may receive tenant protection vouchers (VAWA vouchers), subject to their availability.³³ The Proposed Rule did not provide policies and procedures for these vouchers. While the VAWA vouchers have yet to be appropriated by Congress, President Obama's budget for FY 2016 includes approximately 5,000 vouchers for this purpose.³⁴ In addition, it makes sense to spell out a policy for these vouchers in the context of HUD's model emergency transfer plan since the VAWA vouchers create another critical option for survivors to escape the abuse and find safe and affordable housing quickly. We urge that HUD, as part of finalizing the agency's model emergency transfer plan, also outline how victims seeking emergency transfers can access these VAWA vouchers.

Appendix B. The Model Emergency Transfer Plan should be modified to reflect all of these proposed changes to the transfer policy, including inserting time frames, grievance rights, ease of or waiver of documentation requirements, and no costs assigned to the tenants seeking the transfer.

Documentation and Certification Form § 5.2007

It is essential that the documentation requirements included in the regulation reflect the statute and clarify exactly what type of documentation is required. The crimes of domestic violence, sexual assault, dating violence and stalking are often unreported and are traumatizing experiences. It is very likely that a survivor has never sought help for the abuse or reported it to law enforcement. Therefore, it is essential that the documentation requirements follow the statute and allow survivors to self-certify in most instances.

Since VAWA's passage in 2005, there has been wide misinterpretation and misapplication of the rules around documentation. Advocates note that housing providers currently require additional proof which is inconsistent with VAWA and the HUD VAWA regulations. For example, PHAs and project owners are demanding Orders of Protection, Harassment orders, Trespass Orders, or

³³ 42 U.S.C. § 14043e-11(f).

police reports. Demanding such third party documentation is contrary to HUD's directive to PHAs and project owners that third party documentation cannot be required. As well, some PHAs and project owners require documentation that is "current," such as a less than 30 day old police report. Finally, some PHAs and project owners are requiring multiple forms of proof.

The regulations must be clear on this section in order to reduce these unlawful and onerous documentation practices. HUD's preamble in the 2005 VAWA regulations make this point: "With respect to the issue of third-party verification, HUD has determined that an individual requesting protection cannot be required to provide third-party documentation. If a documentation request is made to an individual seeking protection under VAWA 2005, the PHA, owner, or management agent must accept the standard HUD certification form as a complete request for relief, without insisting on additional documentation." (p. 66251).

To this point, we recommend adding to § 5.2007(a):

(4) Nothing in this paragraph (b) shall be construed to require a participant to provide documentation other than the self-certification form except as outlined in (a)(2).

With regard to the documentation form, we commend HUD for shortening the space for descriptive text as to discourage disclosure of unnecessary details of the domestic violence, sexual assault, dating violence and stalking.

We are concerned that the form is written at a reading level that may be too high and that efforts should be made to make it more readable, as discussed *infra*. HUD should consider the translation obligation for limited English proficiency applicants/residents. A lower reading level is usually easier and more cost effective to translate.

Recommended changes:

- In Purpose of Form, HUD should add "qualified applicants" as a protected class and add "from being denied admission to" as one of the protections.
- Do not use "domestic violence" as the general umbrella term for the four crimes. List domestic violence, dating violence, sexual assault, and stalking separately each time.
- Use of Form, add: "If you, a family member or other lawful occupant has been a victim of . . ."
- Number 7 – strike "accused" perpetrator; regulation does not mention "accused" perpetrator in other sections of the regulation and the statute says: "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."
- Number 9 – "time of incident" is excessive and unnecessary. Strike this question.

As currently drafted, the Alternate Documentation section is confusing and inaccurate. For instance, (1) and (2) are written as though they are referring to two different documents when they are indeed elements of the same document. The section also is unclear on the circumstances in which a provider may request documentation. We suggestion the following re-write:

“Alternative Documentation: Instead of this form, the applicant or tenant may submit the following:

- (1) A document which:*
 - a. Is 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 effect of abuse/perpetration;*
 - b. Is signed by the applicant; and*
 - c. Specifies that, under penalty of perjury, the professional believes the incident of domestic violence, dating violence, sexual assault or stalking is grounds for protection and remedies under this subpart meets the applicable definition under 5.2003; or*
- (2) A record of a Federal, state, tribal, territorial or local law enforcement agency, court or administrative agency; or*
- (3) A statement or other evidence provided by the applicant or tenant.*

Please note: Your housing provider can only require third-party documentation in cases where the provider receives documentation containing conflicting information (including certification forms from two or more members of a household each claiming VAWA protections and naming one or more of the other petitioning household members as the perpetrator).”

Amend the Confidentiality clause as the end of the form as follows:

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 databases. 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, reveal or release this information to any other entity or individual, except to the extent that the disclosure is (i) consented to by the victim in a time-limited written release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

The Proposed Form’s inclusion of the “Public Reporting Burden” Paragraph is unnecessary for survivors or housing providers so should be deleted. If there is a legal reason it has to be on the form, we recommend that it be moved to the end of the form. The Confidentiality paragraph is of greater importance and relevance to survivors and housing providers and should be moved higher on the form.

We commend HUD for addressing the barriers to obtaining third-party documentation in comment solicitation #9: *HUD requests comment on whether the 14 business day period for submitting documentation requested by the covered housing providers 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.

We agree that 14 days is not enough time to obtain and provide third party documentation. For instance, it can take longer to obtain an order of protection and ordering police records also takes time. When victims are fleeing or have fled abuse, they can lack access to records. Additionally, if victims are working with a lawyer, counselor or advocate, it can take time to understand their legal rights when information is shared. We recommend that HUD allow 28 business days from the date the written request for documentation was received to obtain 3rd party documentation. Housing providers should use their discretion to extend the deadline past 28 days, acknowledging the barriers outside of the victims' control. The housing provider should allow applicants/residents the opportunity to show good cause why they were unable to meet the 28 day requirement. We reiterate our position that the 3rd party documentation is only allowed to be required in instances where there is conflicting certification and that HUD must make this explicitly clear to housing providers.

Conflicting certification

Housing providers may receive documentation in which both parties claim VAWA protections. In guidance it issues in the future on VAWA 2013, not these regulations, HUD should include the following for those situations when conflicting certifications have been received from two parties claiming VAWA protections:

- The party providing third-party documentation when two parties claim VAWA protections in the same incident is **not** automatically deemed the victim. Abusers sometimes obtain a restraining order, protective order or file a police reports as forms of continued abuse, control or retaliation. Many survivors are unable to timely access courts or law enforcement (frequent third party verification sources) due to language barriers, disabilities, cultural norms or safety concerns.
- 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, housing providers should use a grievance hearing or administrative review process to determine which party is the victim to be protected by VAWA. In 2011, HUD was drafting guidance for conflicting VAWA claims for public and Section 8 Voucher Programs. At that time, housing and anti-domestic violence advocacy organizations discussed with HUD staff what guidance should be issued to ensure survivors' safety and confidentiality. This HUD guidance has not yet been issued. HUD Guidance on VAWA 2013 should build upon these discussions so housing providers can structure their grievance or administrative review processes to ensure survivors' safety and make determinations with knowledge of the dynamics of domestic and sexual violence.

Confidentiality § 5.2007(c)

Confidentiality and privacy are paramount for victims' safety. The National Intimate Partner and Sexual Violence Survey found that 7 million women experienced rape, physical assault or

stalking by an intimate partner in the 12 months preceding the study. Unfortunately, leaving an abusive relationship often does not stop the violence. In fact, the most dangerous time for a victim of domestic violence is when she/he takes steps to leave the relationship. Many victims are stalked for years after having escaped from their partners. Abusers who stalk their former partners are the most dangerous and pose the highest lethality risk. Fifty nine percent of female stalking victims are stalked by current or former intimate partners, and 76% of women killed by their abusers had been stalked prior to their murder. In the U.S., three women are killed each day by a former or current intimate partner. The severity of this “separation violence” often compels women to stay in abusive relationships rather than risk greater injury to themselves or their children. Many of those who succeed in leaving their abuser live in constant fear of being found. For victims of sexual assault, guarding information about this most intimate violation is of paramount concern. Assurances of confidentiality are needed in order for victims to believe they can safely access their rights and supportive options.

Because of the above, it is essential that the confidentiality provisions are strong, well-understood and enforced. When documents are provided, housing providers are obligated to keep the information confidential. Under VAWA, housing providers are prohibited from disclosing any information a survivor provides to document incidents of domestic violence, dating violence, stalking or sexual assault. They may not enter the information into any shared database or provide it to another entity. Employees of a PHA, owner or management agent are prohibited from having access to information regarding domestic violence unless they are specifically and explicitly authorized to access this information because it is necessary to their work. As the transfer processes begin to be used, it is extremely important that all owners, managers, landlords, and PHAs 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.

- We commend HUD for maintaining “shall not be entered” instead of “may not be entered” into shared databases; we wholeheartedly agree that the prohibition is firm, not discretionary.
- We recommend inserting in § 5.2007(c)(2) “reveal or release” after “disclose.” This follows VAWA confidentiality standards and clarifies that all methods of information sharing are prohibited. This must be cross-referenced in the Notice as well.
- We recommend inserting in § 5.2007(c)(2)(i): Requested or consented to “by an individual in an informed, written, and reasonably time-limited release.”

Recordkeeping. Although there is no section in the regulation on recordkeeping, this is an essential element in ensuring confidentiality. We are particularly concerned that confidentiality and documentation regulations be built into existing regulations for covered housing programs. Without the cross-reference, we are concerned that the housing providers will maintain recordkeeping and information entering, storage, and disclosure practices that are built into their practices and affirmed by their governing regulations.

Oversight. HUD should also establish a complaint process for alleged breaches of confidentiality.

Lease bifurcation, § 5.2009(a)

HUD notes that VAWA 2013 reiterates the language that the option to bifurcate a lease is subject to other Federal, State, or local law that may address bifurcation of a lease. HUD should make clear that covered providers may bifurcate a lease under VAWA regardless of whether state law specifically provides for lease bifurcation, but that they shall do so using processes consistent with federal, state, and local law. Many states currently do not lay out a statutory mechanism for the bifurcation of leases. Thus, it is imperative that the regulations continue to provide for the option to bifurcate under VAWA, as they did following the enactment of VAWA 2005, even if state law does not explicitly provide for lease bifurcations for tenants. We therefore recommend that HUD clarify that lease bifurcation is a potential option for every covered housing provider, regardless of the state in which they are located, but that bifurcation shall be carried out in accordance with any requirements or procedures as described by federal, state, or local law.

Lease bifurcation and “reasonable time,” proposed 24 C.F.R. § 5.2009(b)

Proposed 24 C.F.R. § 5.2009(b) indicates that tenants who remain after a lease bifurcation have 60 calendar days to establish eligibility for the current housing program or another covered housing program. Under the Proposed Rule, this time period may, at the covered housing provider’s discretion, be extended for another 30 calendar days. The Proposed Rule further provides another 30 calendar days for the remaining tenants to find alternative housing if they cannot establish eligibility for the covered programs. All of these provisions are subject to the program-specific regulations.

Upon close consideration of the experiences of survivors and the operation of housing programs, we have concluded that the time periods of 60 calendar days for remaining tenants to establish eligibility and another 30 calendar days to relocate are not reasonable. In the preamble, HUD justifies using 90 days total for two reasons – because (1) under 24 C.F.R. § 5.216, the agency uses the same amount of time to allow a household to obtain a SSN for a new household member under six years old and (2) HUD provides 90 days for an individual to produce a SSN so as to maintain eligibility for the Section 8 Moderate Rehabilitation SRO program. However, these two examples bolster an argument that 90 days should be used as a floor and not a ceiling for remaining tenants to establish eligibility for a covered housing program. The two regulatory provisions highlighted by HUD show that it can take up to 90 days for a household member just to provide a single piece of information, SSNs, to a housing provider. The 90-day timeframes in these regulations do not account for the additional time necessary for an individual or family to apply for and ultimately establish eligibility for a program. How long that process takes often depends on whether the covered housing provider determines eligibility in a timely manner. For example, our experience with many public housing authorities is that they take months to process applications for public housing or voucher assistance. In addition, there are certain parts of the eligibility process that are out of the control of the housing provider and the household members, but can nevertheless cause unreasonable delay in determining eligibility. For instance, income verifications by third parties can take weeks and months.

This discussion raises several issues. First, “reasonable time” periods under VAWA must be time periods that exceed what is acceptable for the general population. HUD must keep in mind that victims are in crisis situations and require more time to rebuild their lives. We recommend that “the reasonable time” to establish eligibility be extended to 120 calendar days. HUD has provided a time period of 120 days for tenants to provide information for purposes of maintaining continued housing assistance. For instance, in HUD Handbook 4350.3, multifamily owners must give tenants 120-day, 90-day, and 60-day notices before the tenant’s recertification anniversary date.³⁵ Therefore, HUD has acknowledged that it can take well over 60 or 90 days for a tenant to recertify, which is generally a shorter process than when a household is trying to establish eligibility for a program from scratch. Furthermore, given how difficult it is generally for tenants to find alternative housing, a time period longer than 30 days is necessary. Therefore, we recommend that HUD set the “reasonable time” for remaining tenants who cannot establish eligibility to find other housing at 60 calendar days. Altogether, we urge HUD to provide remaining tenants with a minimum of 180 calendar days total to establish eligibility for a covered program and find other housing.

Second, it is extremely important for HUD to outline a process and timeframe for victims to exercise their right to establish eligibility for the current program. This process must create responsibilities both for tenants to apply for assistance and housing providers to determine the tenants’ eligibility for the assistance. The Proposed Rule and the preamble only mention the tenant’s responsibility to establish eligibility for assistance. However, by not outlining duties for the housing providers, HUD creates incentives for housing providers, some who may already be adverse to helping victims stay in the units, not to do anything when they receive applications for assistance from victims and allow the eligibility clock to run out.

HUD should establish a process that is modeled off of one that already exists for the multifamily programs in the recertification context.³⁶ Specifically, in situations where there is a lease bifurcation, the covered housing provider of the existing program must immediately provide a 120-day notice to the remaining tenants stating their VAWA right to establish eligibility under the current program within 120 days. Importantly, the 120-day time period does not start to run unless the required notice has been sent. The notice must detail how the tenants can apply for the program and include a deadline of at least 30 days from the date of the notice, by which the tenants must contact the housing provider and submit the information necessary to apply for the program. If the tenants cannot meet the deadline because of extenuating circumstances, then the notice must allow the tenants to request an extension of at least another 30 days. Once tenants have provided the necessary information to apply for the program, the rule must also require that the housing provider determine the household’s eligibility for the program and issue a notice of determination within 60 days of receiving the application. The rule must further provide for an opportunity to appeal a housing provider’s decision of denial in accordance with program regulations. When there is an appeal, the 120-day time period should be tolled until an appeal decision is final so that victims and other remaining tenants are not adversely impacted for

³⁵ HUD Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, ¶ 7-7, Figure 7-4 (Nov. 2013).

³⁶ *Cf. id.*

exercising due process rights. Alternatively, for remaining tenants who do not respond to the initial notice in a timely manner, the housing provider must send a notice stating that the remaining tenants have waived their right to establish eligibility for the current program under VAWA. However, this notice must be clear that the waiver does not preclude the tenants from applying for the program in the future.

Furthermore, HUD mentions in the preamble that many of these covered programs have long waiting lists and, therefore, for these programs, the proposed reasonable time period is a maximum of 90 days total without extension. While we appreciate HUD's concern for existing families who are waiting for housing assistance, we believe that victims' housing rights under VAWA must be prioritized so as to ensure that victims and their families are not homeless because of the violence or abuse committed against them. As such, it is critical that HUD provides "reasonable times" that are appropriate for victims and their families.

The preamble further indicates that the "reasonable time" only applies to project-based assistance and not when there is only tenant-based assistance. We do not completely understand why HUD has created this distinction. Is the idea that those seeking tenant-based assistance would not be subject to any time period requirements? If so, the current VAWA regulation governing the Section 8 Housing Choice Voucher program and family breakups is consistent with this understanding. Specifically, when families with Section 8 vouchers breakup due to the violence or abuse, the victim can request that the voucher assistance be transferred to his/her name. Under 24 C.F.R. § 982.315(a), the housing authority must ensure that the victim retains assistance. 24 C.F.R. § 982.315(b) provides a series of factors that the housing authority can consider in deciding who gets the voucher. Section 982.315 does not provide for any time period in which the victim must establish eligibility for the voucher. We recommend that similarly there be no reasonable time period requirement for remaining tenants trying to transfer to their names any tenant-based assistance covered by VAWA. This is particularly important because the evicted abuser or perpetrator who has the tenant-based assistance is entitled to due process rights, including a notice of assistance termination and right to a hearing. If the abuser or perpetrator chooses to exercise these rights, the timeline of when a victim can establish eligibility for the tenant-based assistance becomes very unpredictable.

Proposed 24 C.F.R. § 5.2009(b)(1)(ii)

Proposed 24 C.F.R. § 5.2009(b)(1)(ii) states that "[t]he 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." For several reasons, we strongly urge HUD to consider removing this sentence from the proposed rule. First, this statement is contrary to Congress's intent to require covered housing providers to give tenants who remain after a lease bifurcation the right to have "reasonable time" to establish eligibility for a covered housing program.³⁷ By mandating a "reasonable time" in this context, Congress chose to suspend, for a limited time, applicable program eligibility requirements so that victims do not lose housing assistance just because the abuser or perpetrator has been evicted. Instead, victims have the opportunity to establish eligibility for the assistance

³⁷ See 42 U.S.C. § 14043e-11(b)(3)(B)(ii).

themselves. This provision is critical for victims who must choose between their safety and maintaining affordable housing. However, HUD's proposed provision contravenes Congress's goal by assuming that the tenants are ineligible before any eligibility determination has been made and then takes away a victim's right to establish eligibility under VAWA based on that faulty assumption. As such, this provision effectively nullifies VAWA's "reasonable time" requirement and goes against Congress's intent to provide a right to victims and their families who remain in the units. Second, it is unclear what program statutes the provision is referring to or if they truly exist. We do not know of statutes that authorize an ineligible person to remain in units without assistance. In housing statutes, Congress defines who is eligible for programs, but they do not authorize ineligible persons to remain.

Proposed 24 C.F.R. § 5.2009(b)(1)(ii) continues by indicating that the 60 days does not supersede any time period to establish eligibility that may already be provided by the covered housing program. We are confused about the intention of this proposed provision. If the statement is referring to existing time period requirements for remaining family members to establish eligibility, we urge HUD to specify that "reasonable time" is whichever time period is longer – the one outlined in proposed 24 C.F.R. § 5.2009(b) or under specific program regulations for remaining family members. However, if the purpose of this provision is to indicate that there are programs with regulations implementing VAWA that outline their own "reasonable time" periods, then HUD should rewrite the provision to clarify.

Lease bifurcation and interim rent

During the time that remaining tenants establish eligibility for a covered housing program or seek alternative housing, there is a question as to what amount of rent these tenants should pay before eligibility is determined or the family finds other housing. HUD seeks comments on how a covered housing provider can establish this interim rent for remaining tenants and whether these tenants should pay full rent during the time to establish eligibility.

We strongly urge that under all circumstances, victims and their family members who remain after a lease bifurcation must continue to receive housing assistance while the remaining tenants' program eligibility is being determined and while they are finding other housing. In almost all cases, not ensuring this assistance for victims and their families will lead to evictions and homelessness. Housing assistance is critical in making sure that victims and their families maintain safe and stable housing. A study showed that over 80% of domestic violence victims entering shelters identified "finding housing I can afford" as a need, second only to "safety for myself" (85%).³⁸ In a 2010 study, seventy-two percent of the surveyed advocates indicated that housing issues were key concerns for victims of sexual violence.³⁹

³⁸ Eleanor Lyon and Shannon Lane, *Meeting Survivor's Needs: A Multi-State Study of Domestic Violence Shelter Experiences* (Feb 18, 2009).

³⁹National Sexual Violence Resource Center, *National Survey of Advocates of Sexual Violence, Housing & Violence Against Women Act*, available at http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Reports_National-survey-of-advocates-on-sexual-violence-housing-and-VAWA.pdf

We recommend that for tenants who remain in the units after lease bifurcations that HUD require these families to pay the same amount of rent owed before the lease bifurcations until (1) the time periods in the regulations to establish eligibility and find other housing run out or (2) until the family is able to establish eligibility for a covered housing program or has found other housing, whichever happens first. Alternatively, we suggest that the remaining tenants pay the minimum rents, as outlined in the respective program rules, until (1) the time periods in the regulations to establish eligibility and find other housing run out or (2) until the family is able to establish eligibility for a covered housing program or has found other housing, whichever happens first. For those covered housing programs that do not have minimum rents, we recommend that HUD require the remaining tenants in these units to pay 30% of the remaining tenants' income until (1) the time periods under the regulations to establish eligibility and find other housing run out or (2) until the family is able to establish eligibility for a covered housing program or has found other housing, whichever happens first. The rules for these interim rents should also include hardship exemptions for the remaining tenants who cannot pay because of the violence or abuse.

Equally as important, setting interim rents in this manner encourages covered housing providers to work with remaining families to determine eligibility for covered housing programs. This last statement is consistent with HUD's goal to encourage covered housing providers to help VAWA victims remain in assisted units.⁴⁰

Efforts to promote housing stability for victims, proposed 24 C.F.R. § 5.2009(c)

Proposed § 5.2009(c) encourages covered housing providers to assist tenants who are VAWA victims to remain in their units or other units of the covered housing programs, and to bear costs of any transfer, where permissible. HUD has requested comments on what actions covered housing providers can take to help remaining tenants stay in housing or continue to receive assistance consistent with program requirements.

We commend HUD for including a provision that encourages covered housing providers to assist victims. Given the limited supply of affordable housing, it is critical that housing providers work with victims and their families to facilitate victims' continued access to this scarce resource. We recommend that HUD clarify in this section that covered housing providers should only provide assistance to victims and their household members who want to remain in the units. If victims and their household members do not feel safe staying in these units, then they should not be pressured to do so by housing providers. In these situations, the covered housing providers should be encouraged to work with the victims to find safe and affordable units elsewhere, including any safe and affordable units that may be owned or managed by the current covered housing providers.

Entitlement to VAWA Protection Multiple Times, Without Additional Conditions

The Rule should make clear that a tenant or household can be entitled to VAWA protection on more than one occasion and cannot be subjected to additional conditions because they have

⁴⁰ See proposed 24 C.F.R. § 5.2009(c).

invoked VAWA protection. From our experience, survivors too often face frustration, hostility, or dismissive attitudes if they need to invoke VAWA protection more than once. Indeed, one of the questions raised during a teleconference discussion of the Proposed Rule with HUD asked how to deal with situations where a survivor is confronting repeated violence.

HUD should make clear that there is no numerical limit to how many times VAWA may apply to protect the housing of a tenant or household. Perpetrators of domestic violence, dating violence, sexual assault, and stalking often commit these abuses more than once and over a period of time. In these situations especially, survivors should receive support from covered housing providers. Nothing in VAWA restricts their ability to exercise their rights.

In addition, we have dealt with covered housing providers who decided to impose additional requirements on tenants who sought VAWA protections, such as requiring tenants to obtain protective orders or call the police at every contact with the abuser, that they do not impose on other tenants, including those who are crime victims. These requirements conflict with recognized best practices, which affirm that the most effective way to ensure a survivor's safety is to respect his or her autonomy in deciding whether to obtain a protective order or to call the police. Because such measures frequently increase the risk of retaliation, requiring a survivor to take these steps only jeopardizes his or her safety further. They also conflict with VAWA, which provides that a covered housing provider cannot subject a victim to a more demanding standard than other tenants. After invoking VAWA protection, a victim should not face eviction or termination because she fails to meet a new requirement that is imposed by the covered housing provider that is not required of other tenants.

We recommend that HUD add the following language to the current proposed § 5.2005 or § 5.2009:

The covered housing provider may not limit the protections and remedies available under VAWA based on the number of times an applicant or tenant has sought relief. A covered housing provider cannot impose additional conditions on the applicant or tenant as a prerequisite to or as a result of receiving VAWA protections that it does not require of other applicants or tenants, except as otherwise provided in this section.

Same or greater protections § 5.2011

Proposed § 5.2011 should be amended to clarify that VAWA 2013 provides the same or greater protections to survivors that existed at the time of its enactment. The Proposed Rule does not appear to reference or mention the rule of construction contained in VAWA 2013. The rule of construction provides:

(3) RULE OF CONSTRUCTION.—Nothing in this Act, or the amendments made by this Act, shall be construed—

(A) to limit the rights or remedies available to any person under section 6 or 8 of the United States Housing Act of 1937 (42 U.S.C. 1437d and 1437f), as in effect on the day before the date of enactment of this Act;

(B) to limit any right, remedy, or procedure otherwise available under any provision of part 5, 91, 880, 882, 883, 884, 886, 891, 903, 960, 966, 982, or 983 of title 24, Code of Federal Regulations, that—

- (i) was issued under the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109–162; 119 Stat. 2960) or an amendment made by that Act; and
- (ii) provides greater protection for victims of domestic violence, dating violence, sexual assault, and stalking than this Act . . .

Violence Against Women Reauthorization Act of 2013, P.L. 113-4, March 7, 2013, 127 Stat 54.

Thus, VAWA 2013 states that survivors continue to have the rights or remedies available on March 6, 2013 under 42 U.S.C. § 1437d and 1437f, as well as the rights or remedies available in federal regulations, including the regulations promulgated in 2010 by HUD interpreting VAWA. The rule of construction makes clear that VAWA 2013 must be interpreted as extending the same or greater protections to survivors as they had previous to enactment.

For example, to the extent that VAWA 2013 contains some ambiguity about whether bifurcation should be available to survivors in states where state law does not specifically provide for bifurcation, the rule of construction would apply to preserve the ability of landlords to bifurcate for VAWA-covered tenants, because that remedy previously existed as an option for all survivors under § 5.2009(a). It would be appropriate, however, for HUD to state that such bifurcations must be done in accordance with state law housing procedures.

We urge HUD to use this rule of construction as it promulgates the final regulation and to incorporate the rule into the proposed § 5.2011, which discusses the effect of VAWA 2013 on other laws. We anticipate that future questions of interpretation will arise that would benefit from relying on the rule of construction, and including the statutory directive in the regulation would help resolve these questions. We recommend that HUD add the following language to the current proposed § 5.2011:

Nothing in VAWA 2013, this subpart, or any amendments shall be construed—(a) to limit the rights or remedies available to any person under section 6 or 8 of the United States Housing Act of 1937 (42 U.S.C. 1437d and 1437f), as in effect on March 6, 2013, or (b) to limit any right, remedy, or procedure otherwise available under any provision of part 5, 91, 880, 882, 883, 884, 886, 891, 903, 960, 966, 982, or 983 of title 24, Code of Federal Regulations, that—was issued under the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109–162; 119 Stat. 2960) or an amendment made by that Act; and provides greater protection for victims of domestic violence, dating violence, sexual assault, and stalking than this Act.

Small Entities

The preamble to the Proposed Rule notes that while there is no exception to VAWA's requirements for covered housing providers that may qualify as small entities under the Regulatory Flexibility Act, such small entities "are not required to carry out" bifurcation and emergency transfers "that may be more burdensome, and, indeed may not be feasible given the fewer number of units generally managed by small entities."

We are concerned that this language conflicts with the statute, which does not exempt any covered housing provider from bifurcating leases or carrying out transfers based on their size. Depending on the situation, a small housing provider may be required to carry out a lease bifurcation, even though doing so is technically discretionary (*e.g.*, in cases where there is a permanent protective order that excludes the abuser from the premises). We also do not believe that "small entity" housing providers should automatically be excused of any emergency transfer obligation. At a minimum, these providers should be required to examine whether there are "safe and available" transfer options in their portfolios that could be offered to survivors. HUD must also include a definition of a small entity.

Mechanisms for Review re: VAWA violations

The Rule should provide mechanisms for review for victims who believe their VAWA rights have been violated.

Currently, victims who have been denied, terminated, or evicted from housing do not have a federal administrative remedy for VAWA violations. While HUD's Office of Fair Housing and Equal Opportunity (FHEO) has the most direct contact with the public in its role of accepting and investigating fair housing complaints, FHEO regional offices will only investigate VAWA violations that sufficiently present an allegation of discrimination under the Fair Housing Act.⁴¹ In a few specific cases, advocates have contacted HUD staff in Washington, DC who work with the specific covered program regarding VAWA violations and such contact has been extremely helpful. However, there is no publicly available information regarding which staff at HUD, either in headquarters or the regional offices, will handle such requests and thus survivors and their advocates are generally unaware of this option.

Without mechanisms for oversight and accountability for implementing VAWA, many victims will have no recourse in cases where they have been improperly denied their housing rights under VAWA. Currently, there is no procedure for seeking corrective action in cases where a housing authority has failed to amend its plans, to provide adequate notice, to grant an emergency transfer, or to provide the required level of confidentiality to survivors. Furthermore, there are instances where local HUD offices do not recognize the application of VAWA. For example, a victim was engaged in litigation with the Boston Housing Authority for several months regarding his request to be added to the public housing lease after the mother of his children was removed for committing domestic violence. After HUD reached out to counsel for the BHA, the BHA reversed course and allowed the survivor to establish his eligibility for the public housing unit pursuant to 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii).

⁴¹ See HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66,246, 66,256 (Oct. 27, 2010).

Survivors need clear mechanisms within HUD and other agencies overseeing covered programs through which they can seek relief if they have been denied their VAWA housing rights. Establishing these mechanisms would give victims and housing providers an opportunity to informally resolve VAWA complaints. In many cases, an administrative remedy would be preferable for all parties involved as it would avoid lengthy and expensive litigation, reduce stress on victims, and accomplish VAWA's goal of ensuring that victims maintain their assisted housing.

We reiterate our recommendations from October 2013 regarding the creation of mechanisms for administrative enforcement of VAWA rights. We believe that some aspects of these recommendations have been implemented in an informal way, and urge HUD to formalize these mechanisms so they are available to all who need them.

Establishing a system for oversight and coordination within HUD headquarters. We recommend that a special assistant or advisor within the Office of the Secretary be named who would oversee coordination of VAWA implementation, including with programs not covered by HUD, and resolution of complaints of VAWA violations. In addition, a staff person(s) within each program covered by VAWA should be designated in HUD headquarters to respond to questions and issues with VAWA implementation (including emergency transfer issues) and to address complaints of VAWA violations, in conjunction with regional offices. The names and contact information for these staff should be made public.

We also reiterate our long-standing recommendation that the Office of Fair Housing and Equal Opportunity receive and investigate complaints of VAWA violations. As the component of HUD that regularly receives and investigates complaints from the public, and in light of the intersections between the Fair Housing Act and VAWA, FHEO is best positioned to act on such complaints.

Coordinating investigation of VAWA violations with Fair Housing Act violations. We were pleased to learn on a recent call with HUD that FHEO is developing ways to be involved in screening for VAWA violations and training. To reiterate our previous comments on this point, we recommend that HUD create a mechanism to ensure that complaints regarding a VAWA violation or a Fair Housing Act violation based on domestic violence, sexual assault, dating violence, or stalking are screened for violations of the other law in order to ensure that survivors receive all of the legal relief to which they are entitled. For example, if FHEO receives a complaint alleging a FHA violation based on forms of violence covered by VAWA, FHEO should ensure that the complaint is appropriately screened or referred for potential VAWA violations. Likewise, if other HUD programs or other agencies administering other covered programs receive complaints alleging a VAWA violation, the complaint should also be reviewed by FHEO for compliance with the FHA. A potential model would be the joint review process established by FHEO and the Office of Public and Indian Housing in cases relating to public housing demolition and disposition.⁴² Because members of the public who experience violation

⁴² See Joint Agreement of Office of Fair Housing and Equal Opportunity & Office of Public and Indian Housing – Special Application Center, Demolition-Disposition Review Protocol (Apr. 2011).

of federal housing law most often pursue their grievances through the fair housing process, we recommend that all FHEO investigators receive training on the intersection of VAWA 2013 and the Fair Housing Act as it applies to cases alleging discrimination based on violence.

Moreover, as discussed in further detail in our comments on the program-specific regulations, we urge that HUD provide additional guidance for specific programs on the available review mechanisms when a person seeks VAWA relief.

Inclusion of VAWA 2013 Implementation in Planning Documents

The Final Rule should also require HUD funding recipients to include steps taken to implement VAWA 2013's protections in their consolidated plans, as well as the PHA annual and five-year plans.

Covered housing programs

Overarching comments

Congress intended to apply VAWA 2013 to all affordable housing administered by HUD. We applaud HUD for acknowledging this congressional intent by applying VAWA to units that will be funded by the Housing Trust Fund. We urge HUD to continue to use its authority to ensure that all affordable units with HUD funds are subject to VAWA. This includes making sure that VAWA applies to existing units that undergo affordable housing preservation efforts by HUD, such as the Rental Assistance Demonstration (RAD) units, Choice Neighborhood units, and multifamily units that HUD continues to make affordable despite foreclosures (discussed below). We urge that HUD generally state in the regulations that VAWA will apply to these affordable units that HUD preserves and, where applicable, that the VAWA obligation be set forth in any relevant Notice of Funding Availability (NOFA). We further recommend that HUD indicate in the regulations that HUD has the authority to expand VAWA protections to other types of HUD affordable housing that may be established in the future and the agency will do so by HUD notice or notice in the Federal Register.

Public housing

The intent of VAWA is to cover applicants and tenants of all public housing units. We are concerned that the definition of what is public housing in the Proposed Rule is too narrow and should include not only any housing under Section 6 but also any housing funded with public housing dollars or with other federal dollars to preserve the affordability of such housing. Section 6 makes many cross-references to the funding of public housing and authorizes sanctions related to funding. A resident or applicant to any unit that receives public housing funds now or in the future should be subject to VAWA. It should also be clear that VAWA applies regardless of the entity that owns or manages the unit. Thus, if the public housing unit is owned by another public or private entity, VAWA applies because the unit is subject to public housing rules and receives public housing funding.

In addition, because of new funding opportunities designed to preserve public housing, the proposed definition needs to be expanded to provide VAWA protections for all applicants and residents of public housing units that have been converted to other programs in order to preserve them. For example, currently, through the Rental Assistance Demonstration (RAD) program, some public housing is being converted to project-based vouchers (PBVs) and project-based rental assistance (PBRA). (Significantly, the applicants and tenants in these units are to have the same rights as under section 6. H. Conf. Rept. 112-284, 112 Cong. 1st Sess. (Nov. 18, 2011)). In general, applicants and residents of these units will be covered by VAWA because VAWA applies to Section 8. However, it is possible that a converted property will be subject to the abatement or termination of the Section 8 Housing Assistance Payments Contract (HAP). If this situation occurs, the RAD Use Agreement provides that certain requirements continue to apply for a period of time. These requirements include compliance with fair housing and other civil rights laws; restrictions regarding incomes for new tenants and rent; and transfer of the use agreement. We urge HUD to make clear that in these situations, the VAWA protections continue to apply to all tenants and new applicants. It would be unfair and inconsistent with VAWA for applicants or tenants in former public housing units that are preserved through RAD to lose VAWA protections when the Section 8 HAP contract is terminated (most likely for owner malfeasance) while other important use restrictions continue to apply.

We suggest that the Proposed Rule be changed as follows:

Section 5.2003 Definitions

Covered housing program consists of the following programs

(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), public housing that has been assisted by, for example, HOPE VI (section 24 of USHA), Mixed Finance (24 CFR 941 subpart F), Choice Neighborhoods, or converted under the Rental Assistance Demonstration (RAD) program.

Section 202 programs

HUD's decision to exclude the Section 202 Direct Loan program from VAWA's coverage is based on an interpretation that is unnecessarily restrictive and violates the statute. When describing the Section 202 program, VAWA 2013 states: "the program under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q)".⁴³ This plain statutory language is broad in scope, expressing no further limitation or ambiguity. Any property funded under Section 202 qualifies, regardless of which of the three phases of the program under which it was developed (as well as any HUD-developed newer versions).⁴⁴ While Congress could have specifically referenced the

⁴³ 127 Stat. 102 (Mar. 7, 2013).

⁴⁴ 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

Section 202 Direct Loan variant, that was unnecessary in light of the general reference to the Section 202 program. By using this broad reference to the 1959 Act, Congress established and certainly did not preclude an inclusive definition. Moreover, from a policy perspective, covering Section 202 Direct Loan properties without Section 8 contracts extends these important protections to all similar HUD-supported housing programs – something Congress was clearly intending to do with VAWA 2013, and which HUD is attempting to implement through this rulemaking. All of these HUD-subsidized mortgage programs serve a similar population,⁴⁵ and their similarly situated applicants and tenants, who all benefit from rent and affordability restrictions, are in need of VAWA protections from wrongful denials or evictions.

Multifamily programs

In accordance with the congressional intent to apply VAWA to all affordable housing administered by HUD, we strongly recommend that HUD include the Rent Supplement Program⁴⁶ under VAWA’s coverage. Under this program, HUD makes rent supplement payments to private nonprofit or limited-profit landlords on behalf of low-income tenants in housing that was newly constructed or substantially rehabilitated. In addition, we urge HUD to include general language in the regulations indicating that VAWA applies to units that undergo affordable housing preservation efforts by HUD. For example, in the multifamily context, HUD has stepped in when units in buildings with mortgage interest rate subsidies provided by the agency have been foreclosed on. In these situations, HUD, through use restrictions, has required that the affordability of these units continue despite the foreclosure.

HOPWA and McKinney-Vento Safe Havens

Proposed § 574.604(a)(2) states that VAWA is not applicable to short-term supportive housing. We believe that this exception is too broad. Short-term supportive housing includes rent payments. If rental assistance is provided and there is a written agreement or a lease, VAWA should apply.

Proposed § 578.00(j) states that VAWA is not applicable McKinney-Vento Safe Havens. We believe that this exception is too broad. If rental assistance is provided and there is a written agreement or a lease, VAWA should apply.

Conforming amendments to program-specific regulations

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.

⁴⁵ “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.

⁴⁶ 12 U.S.C. § 1701s. The regulations for this program are at 24 C.F.R. §§ 215 (repealed, but saved), 219 (savings provision only), 245, 246, and 247.

Overarching comments

Remove effective dates. We urge HUD to remove the proposed effective dates for VAWA compliance. These dates only appear in the proposed rules for the programs administered by the Office of Community Planning and Development (CPD) and restrict VAWA implementation to applicants and tenants in future assisted buildings/units or with future tenant-based contracts and rental assistance. HUD does not explain why any HUD program would require such effective dates. More importantly, there is no indication that Congress anticipated or directed HUD to implement VAWA 2013 only for these tenants and applicants. In fact, because HUD implemented VAWA 2005 for the then-covered programs for all applicants and tenants in existing as well as future assisted buildings or units or with current and future tenant-based contracts and rental assistance, it would be logical to conclude that Congress assumed a similar breath of implementation for other HUD-assisted units and programs.

VAWA protections after family breakups. The “family break up” rule set forth in the Housing Choice Voucher (HCV) rules should be included in the rules for all of the HUD-covered housing programs. The most critical aspect of the rule is that it clearly states that if the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the housing provider must ensure that the victim retains the assistance. Another very helpful aspect of the rule sets forth factors to be considered in the event of family breakup in making the decision to allocate the HCV. These factors include whether any member is receiving protection as a victim and whether the abuser or perpetrator is still in the household. These are key rules that seek to fulfill the objectives of VAWA while protecting victims. As such, we recommend that they be included in the rules for all HUD covered housing programs. Furthermore, the proposed HOME rule adds another element to consider in the event of family breakup, which should also apply to all programs. The HOME rule at proposed § 92.359(d)(3)(ii) permits the housing provider to determine that after a family breakup, both newly formed families could receive assistance. Assuming that the victim would always be able to retain housing assistance, such flexibility can protect the victim by expediting the process to allocate the assistance.

Ensuring consistent VAWA occupancy requirements and rights. VAWA applies to admission, to occupancy rights, and at eviction and termination. The proposed rules conforming VAWA to the individual programs fairly consistently address the applicability of VAWA at admission, eviction, and termination. There is less consistency to the applicability of VAWA to occupancy rights. For example, compare proposed § 886.132 that mentions “occupancy requirements” with the language of the HOME program that does not mention occupancy requirements or rights. We recommend that HUD ensure that language concerning occupancy requirements and rights under VAWA is consistent across all the programs.

Provision of VAWA rights notice and certification form. VAWA requires that applicants and tenants receive the notice of VAWA rights and certification form at three important junctures: at denial of admission, at the time of admission, and at the time of eviction and termination. However, the proposed rules are often unclear as to who must provide the notices, especially when there is more than one responsible entity or “covered housing provider” at the local level (e.g. a PHA and owner; grantee, project sponsor, and owner). This confusion must be corrected

for the protection of victims as well as to avoid uncertainty between the covered housing providers at the local level. To address this concern, we suggest including general language in the rules that the entity taking the action (i.e. admitting, denying admission or assistance, or evicting) is responsible for providing the notice of VAWA rights and certification form to the applicant or tenant.

Tenant leases and lease addenda. For many of the HUD-assisted programs, the owners are required to use a HUD-approved lease. In other situations, HUD by regulation spells out minimum lease requirements for the programs. We assume that HUD will update all of the required lease forms according to VAWA 2013. We recommend that HUD amend the applicable rules relating to lease provisions for each of the HUD-covered programs. (See discussion below regarding each of the programs.) We urge that HUD set forth specifically the regulatory language that is required to incorporate VAWA's protections and requirements into the leases and to publish the required VAWA lease addenda. In addition, we strongly urge that translations of these leases and lease addenda continue to be provided by HUD.

Confidentiality. Maintaining confidentiality is a critical VAWA protection. At various points, the conforming regulations state that confidentiality must be maintained by the entity that obtains the information from the victim. We believe that this language must be expanded so that confidentiality is guaranteed even if a victim gives the information to the wrong party or a housing provider mistakenly gains access to it. We recommend that the regulations state that any entity, including a PHA, grantee, project sponsor, or owner, that receives the information concerning the victim's status as a victim should be required to maintain confidentiality under VAWA.

Additional considerations. We understand that HUD has the difficult task of superimposing VAWA obligations on existing program regulations that were adopted over many years and are unique to each program. At the same, we notice many instances where the proposed program-specific regulations include language that is inconsistent with VAWA and Congressional intent. To address this problem, we urge HUD to adopt an overarching policy statement indicating that any interpretation of a covered housing program's regulations should include a presumption that the VAWA rules will apply. We also urge HUD to review the proposed program-specific rules to identify and amend any errors, mistakes and inconsistencies, as well as to provide clarity on important provisions.

In addition, many HUD programs have regulations with multiple or overlapping provisions relating to admission, selection, occupancy rights, eviction and termination. The Proposed Rule references VAWA in many of these provisions for each program, but not all. To ensure that VAWA is fully implemented in all aspects of these programs, we propose a catch-all by adding to each program a clause such as the following: “Notwithstanding any other provisions in these regulations relating to [add the name of the relevant housing program, such as public housing, Section 8 Set aside for Section 515, etc], in the event of conflict, the regulations at 24 CFR part 5, subpart L, etc. shall control.”

Public housing

- *“Covered housing provider”*

Proposed § 960.102 provides the definition of “covered housing provider” for public housing and states that it is the public housing authority (PHA). This definition is appropriate for conventional public housing, when the PHA is the owner and manages or contracts with another entity to manage the units. However, the proposed language is not appropriate nor will it be effective in those situations where another entity owns the public housing units and the PHA manages the units. This can occur, for example, in mixed finance units, HOPE VI units, or Choice Neighborhoods developments. In situations where the PHA is not the owner of the property, HUD must be clear on allocating VAWA responsibilities between the PHA and the owner.

Under the Proposed Rule, a covered housing provider is obligated to or is prohibited from taking a number of actions. The following is a partial list of the responsibilities of a covered housing provider:

1. Providing VAWA rights notice and self-certification form at three junctures;
2. Complying with court orders concerning property rights;
3. Determining whether to evict or terminate for reasons other than the domestic violence, sexual assault, dating violence, or stalking (provided the rules for victims are not more demanding than for other tenants);
4. Determining whether to evict or terminate if there is a demonstration of “actual and imminent threat” as a last resort;
5. Adopting an emergency transfer plan;
6. Requesting documentation concerning the occurrence of domestic violence, sexual assault, dating violence, or stalking and keeping that information confidential;
7. Determining whether to bifurcate the lease and, if so, providing “reasonable time” for remaining tenants to establish eligibility for a covered program or find other housing;
8. Assisting victims to remain in their units and bearing the cost of transfer, where permissible.⁴⁷

For the public housing units that are not owned by the PHA, the responsibilities outlined in items 2, 6, and 7 must apply to both the PHA and the owner. The owner, who has the lease with the tenant, must be responsible for items 1, 3, 4, and 8. In addition, the PHA must adopt an emergency transfer plan (item 5) with which the owner must comply. Owners further should be restricted from taking any steps toward evicting or terminating a tenant until the PHA notifies the owner that the documentation from a claimed victim has not been received or conflicting claims of victimization have been resolved. We recommend that HUD amend §§ 960.102, 960.103(d), 960.203(c)(4), 966.4(e) to acknowledge situations where the public housing units are owned by a private owner and are managed by a PHA.

- *VAWA’s notice and self-certification form requirement*

⁴⁷ Note that proposed § 5.2005(b) and (c) by operation also impose the following obligations on a covered housing provider: (1) prohibitions regarding denial or termination of assistance or eviction and (2) construction of lease terms and terms of assistance.

The proposed rule making VAWA applicable to public housing tenant leases is limited to an individual who becomes a victim. VAWA requires covered housing providers to provide the VAWA notice and self-certification form to all applicants and tenants at three junctures, regardless of whether that tenant is a victim or an affiliated member of a victim. Therefore, we recommend that the following changes be made:

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE
SUBPART A—DWELLING LEASES, PROCEDURES, AND REQUIREMENTS

Section 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.

(vii) The notice of VAWA rights and self-certification form, required by 24 C.F.R. § 5.2005(a), is a mandatory attachment to all leases.

(1)***

(3) Lease termination notice.

(vi) Any notice to terminate must include the notice of VAWA rights and self-certification form, as required by 24 C.F.R. 5.2005(a)

- *Grievance hearing and criminal activity*

Under the current regulations, a PHA may exclude certain tenants from a grievance hearing because of criminal activity. Victims of domestic violence, dating violence, sexual assault and stalking should not be excluded from a grievance hearing because of the violence committed against them. Therefore, we recommend that the following paragraph (v) be added to the current rules:

PART 966, SUBPART B—GRIEVANCE PROCEDURES AND REQUIREMENTS

Section 966.51 (a)(2)

Add(v) A PHA must apply 24 C.F.R., part 5, subpart L (Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking) in all cases involving domestic violence, dating violence, sexual assault or stalking before making any decision to exclude from the PHA administrative grievance procedure under this subpart any grievance due to a termination of tenancy or eviction that involves criminal activity.

Section 8 Housing Choice Voucher Program

- *Preference for VAWA victims*

The rules should list a preference for victims of domestic violence, dating violence, sexual assault or stalking as an example. We recommend the following change:

PART 982—SECTION 8 TENANT—BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

Section 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; preference for victims of domestic violence, dating violence, sexual assault or stalking; or other local preference.

- *VAWA protections in lease and tenancy rules*

The current HCV lease and tenancy rules must be amended to reference the VAWA protections. We recommend the following paragraphs (iii), (iv) and (v) be added to the current rules:

Section 982.308 Lease and tenancy.

(f) Tenancy addendum.

(1) The HAP contract form required by HUD shall include an addendum (the “tenancy addendum”), that sets forth:

(i) The tenancy requirements for the program (in accordance with this section and §§ 982.309 and 982.310);

(ii) The composition of the household as approved by the PHA (family members and any PHA-approved live-in aide);

(iii) The regulations at 24 C.F.R. part 5, subpart L (Protection for Victims of Domestic Violence Dating Violence, Sexual Assault, or Stalking) apply to occupancy requirements, construction of lease terms, lease bifurcation, and evictions in cases involving domestic violence, dating violence, sexual assault, or stalking;

(iv) Any notice of eviction shall include a notice of occupancy rights under VAWA and a self-certification form as provided for in 24 C.F.R. § 5.2005(a);

(v) The notice of VAWA rights and self-certification form are required as attachments to the lease.

- *Portability*

The proposed rules regarding portability allow a family to move out of the unit and terminate the lease due to domestic violence, dating violence, sexual assault, or stalking to protect the health and safety of the victim and his/her family. In addition, a victim of sexual assault can be protected if the assault occurred within the prior 90 days and on the project premises. The provision regarding sexual assault tracks the statutory language, but it is too restrictive. The presence or proximity of an offender can cause continued or new safety concerns for the victim after 90 days. In addition, victims' post-traumatic reactions may continue or worsen after this 90-day period and make it untenable for a victim to stay on the premises. Psychological safety is imperative for victims to function well in their daily lives including finding or keeping employment, continuing education, and caring for children. Therefore, PHAs should be encouraged to apply a longer time frame when necessary.

Furthermore, this proposed regulatory language may cause some confusion or be misinterpreted to suggest that moves to protect the health and safety of the family also must be within the 90-day time frame or experienced on the premises. At a minimum, we recommend that the language of the proposed regulation be changed to include the following:

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

Nothing in section 982.353 prohibits a PHA or owner from increasing the protections for victims of sexual assault by increasing the time period within which the sexual assault occurred or expanding the location within which the sexual assault occurred.⁴⁸

- *Confidentiality*

The current rules require the PHA to provide available information to a landlord regarding the prior residence of a tenant and information regarding prior tenancy history including criminal activity. The PHA's obligation to provide known information regarding prior landlords can threaten the health and safety of an individual or family that is fleeing violence or abuse. Confidentiality must be maintained for victims and their families. We recommend the following change:

Section 982.307 Tenant screening.

(b)

(1) The PHA must give the owner:

(i) The family's current and prior address (as shown in the PHA records); and
(ii) The name and address (if known to the PHA) of the landlord at the family's current and prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession, about the family, including information about the tenancy history of family members, or about drug-trafficking by family members.

⁴⁸ Note that HUD issued a similar regulation informing PHAs and owners that the time limitations in a federal statute were a minimum and that there is flexibility to expand upon that minimum. *See* 24 C.F.R. 5.852(d).

- (3) The PHA must give the family a statement of the PHA policy on providing information to owners. The statement must be included in the information packet that is given to a family selected to participate in the program. The PHA policy must provide that the PHA will give the same types of information to all families and to all owners.
- (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. The PHA shall maintain the confidentiality of any information provided by the applicant relating to domestic violence, dating violence, sexual assault, or stalking in accordance with 24 C.F.R. § 5.2007(c). If the applicant is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA shall not provide any information to an owner or landlord regarding current or prior landlords, addresses, or tenancy history subject to 24 C.F.R. § 5.2007(c).

Project-based Voucher Program

- *VAWA protections for applicants*

We recommend that HUD add the below section to § 983.253 so as to make clear that owners in selecting tenants cannot discriminate against victims and their affiliated individuals because of domestic violence, dating violence, sexual assault, or stalking.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

Section 983.253 Leasing of contract units.

(a) ***

(4) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to owner selection of tenants.

- *Confidentiality*

The current rules require the PHA to provide available information to a landlord regarding the prior residence of a tenant and information regarding prior tenancy history including criminal activity. The PHA's obligation to provide known information regarding prior landlords can threaten the health and safety of an individual or family that is fleeing violence or abuse. Confidentiality must be maintained for victims and their families. We recommend the following change:

Section 983.255 Tenant screening

(c) Providing tenant information to owner.

(1) The PHA must give the owner:

- (i) The family's current and prior address (as shown in the PHA records); and
- (ii) The name and address (if known to the PHA) of the landlord at the family's current and any prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession about the family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members.

(3) The PHA must give the family a description of the PHA policy on providing information to owners.

(4) The PHA policy must provide that the PHA will give the same types of information to all owners.

(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. The PHA shall maintain the confidentiality of any information provided by the applicant relating to domestic violence, dating violence, sexual assault, or stalking in accordance with 24 C.F.R. § 5.2007(c). If the applicant is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA shall not provide any information to an owner or landlord regarding current or prior landlords or addresses or tenancy history subject to 24 C.F.R. § 5.2007(c).

Multifamily programs: Part 200 – Introduction to FHA Programs

To ensure that the VAWA protections outlined in proposed 24 C.F.R. § 200.38 apply to all parts of the Section 236 and 221(d)(3) & (d)(5) BMIR programs, we make a few suggestions. The program rules for Section 236 do not explicitly cross reference to Part 200, although Part 200 applies to those program rules by its terms. To avoid any confusion, we recommend that in 24 C.F.R. § 236.1, HUD insert a cross-reference to proposed § 200.38.

In addition, the eviction rules in Part 247 that are explicitly made applicable to the Section 236, 221(d)(3) & (d)(5) BMIR, and 202 programs by 24 C.F.R. § 247.2 must be amended to include VAWA protections. Importantly, the primary rule governing good cause for eviction, 24 C.F.R. § 247.3, does not reference VAWA or 24 CFR Part 5, Subpart L. We recommend that there be such a cross-reference to Part 5, Subpart L at 24 C.F.R. § 247.3 and any place else in Part 247 that HUD deems necessary to make clear that VAWA applies in the context of eviction for these programs.

Project-based Section 8 programs, Supportive Housing for the Elderly and Persons with Disabilities: §§ 880.201 New Construction, 882.102 Moderate Rehabilitation, 883.302 State Housing Agencies, 884.102 Section 515 Rental Housing, 886.102 Special Allocations – Definitions, 891.105 Supportive Housing for the Elderly and Persons with Disabilities – Definitions

- *Overarching comments*

For all the project-based Section 8 programs, including the Supportive Housing for the Elderly and Persons with Disabilities, it is important that HUD amends the Proposed Rule to identify correctly who the covered housing provider(s) are and specifically clarify what entity/covered housing provider has the responsibility to provide the VAWA rights notice and form. It may be helpful to state generally that the entity that is taking the action (i.e. denying admission, evicting,

terminating assistance) is the party responsible for providing the notice and form. Furthermore, we recommend that the VAWA lease addenda for these programs include copies of the VAWA rights notice and certification form as well as language informing tenants that they must be given the notice and form at the three junctures.

- *“Covered housing provider”*

Sections 880.201 New Construction, 883.302 State Housing Agencies, 884.102 Section 515 Rental Housing, 886.102 Special Allocations, 891.105 Supportive Housing for the Elderly and Persons with Disabilities. We strongly urge that the rules for these project-based Section 8 programs, including Supportive Housing for the Elderly and Persons with Disabilities, be amended to reflect that the “covered housing provider” is the owner, not the PHA. The proposed definitions for these programs indicate that the PHA is the “covered housing provider” responsible for the VAWA obligations. However, delegating these responsibilities to the PHA is incorrect because the PHA is typically not involved with these project-based Section 8 programs. For example, the Proposed Rule indicates that “the PHA (not the owner) is . . . responsible for providing the ‘notice of occupancy rights under VAWA, and certification form.’” We recommend that the regulations be amended to require HUD to provide copies of the notice and certification form to the owner, and then the owner must give the notice and form to the applicant at the three junctures – when the applicant is denied, at the time the individual is admitted, and at the time of any notification of eviction and/or termination of assistance.

In addition, the Proposed Rule incorrectly states that the PHA, as the covered housing provider, is responsible for providing the reasonable time to establish eligibility for the same covered housing program or to establish eligibility under another covered housing program. For project-based Section 8, it is the owner, not the PHA, who establishes eligibility. Therefore, it is the owner, not the PHA, who should provide the tenant a reasonable time to establish eligibility. We recommend that this amendment be made as well.

882.102 Moderate Rehabilitation; 882.802 Moderate Rehabilitation SRO. Similarly, for these programs, the VAWA obligations of the PHA and the owner must be clarified. For the PHA-administered Moderate Rehabilitation program, the Proposed Rule indicates that the covered housing provider is either the PHA or the owner. For the Moderate Rehabilitation SRO program, the Proposed Rule states that the owner is the covered housing provider. However, it is unclear why the PHA is not also considered the covered housing provider in the SRO program since the PHA has duties in administering the program. In addition, the Proposed Rule does not address how the various VAWA obligations will be delegated or shared among the PHA and the owner. It is unclear, for example, what entity is responsible for adopting, administering, and facilitating the emergency transfer plan. It is further unclear who is responsible for maintaining confidentiality and lease bifurcation. We believe that for both programs confidentiality must be maintained by the entity who obtains the information about the victim, regardless of how that information is obtained. Further, when a lease bifurcation occurs, the owner and the PHA must coordinate to provide a reasonable time for the tenant to establish eligibility for the same covered

program or another covered program.⁴⁹ We strongly urge that HUD provide clarity on these important issues.

In addition, HUD must clarify what entity must provide the VAWA notice and form. For both Moderate Rehabilitation programs, the PHA determines eligibility and the owner selects the tenant.⁵⁰ If the PHA determines that an applicant is ineligible or otherwise rejected, the PHA should be the covered housing provider that must provide the VAWA rights notice and certification form to the applicant. Accordingly, if the owner selects or does not select the applicant, the owner must provide the VAWA rights notice and self-certification form. For both programs, the PHA may subsequently deny the family eligibility.⁵¹ If a PHA acts to remove assistance, the PHA would be obligated to provide the tenant with a notice and form. If the owner decides to take action to evict, the owner must provide a notice and form. We recommend that HUD state generally that the entity taking the action (i.e. denying admission, evicting, terminating assistance) is the party responsible for providing the notice and form.

- *Integrating VAWA into the program-specific regulations*

We recommend the following changes to the program-specific regulations so that the VAWA requirements are fully implemented in all the programs:

- This language should be added to § 880.603(b)(4) and to the respective subsections in §§ 883, 884, and 886.
The fact that an applicant is or has been a victim of domestic violence, sexual assault, or stalking is not an appropriate basis for denial of tenancy or interference with occupancy rights.
- Section 882.511 Lease and termination of tenancy

(d) *Notice of termination of tenancy.*

(2) The notice of termination must:
(i) State the reasons for such termination with enough specificity to enable the Family to prepare a defense.
(ii) Advise the Family that if a judicial proceeding for eviction is instituted, the tenant may present a defense in that proceeding.
(iii) Be served on the Family by sending a prepaid first class properly addressed letter (return receipt requested) to the tenant at the dwelling unit or by delivering a copy of the notice to the dwelling unit.
(iv) Provide the notice of VAWA rights and certification form in accordance with 5.2005(a).

⁴⁹ Under both programs, the PHA in very limited situations—where the owner has evicted the individual illegally—may convert the Moderate Rehabilitation assistance to tenant-based assistance. 24 C.F.R. § 882.514(e). This very limited authority could be used to assist a victim to relocate in an emergency.

⁵⁰ 24 C.F.R. §§ 882.514(a)-(c), 882.808(b)(2).

⁵¹ 24 C.F.R §§ 882.514(f), 882.808.

- Section 882.511(g) must be revised to add a reference to occupancy rights. Note that other Section 8 programs reference the applicability of VAWA to “occupancy requirements.” *See, e.g.,* 880.540(f).
- Section 882.511 Lease and termination of tenancy

(g) In actions or potential actions related to occupancy rights or 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.
- In § 882.514(c), clarification is needed to ensure that the changes proposed by HUD are limited to changing the one sentence that begins with the word “However” in the current regulations and retaining all of the other sentences.
- Section 882.514(d) Briefing of Families.
(1) ***
(iii) Significant aspects of Federal, State and local fair housing laws and of the Violence Against Women Act;

- Section 882.518 Denial of admission and termination of assistance for criminals and alcohol abusers.

(d) the PHA must comply with Violence Against Women Act and not deny or terminate assistance solely due to criminal activity if the individual or affiliate of such individual is the victim of such criminal activity or such criminal activity was engaged in by the victim as a result of domestic violence, dating violence, sexual assault, or stalking.
- Section 884.215 Lease requirements.

The Lease shall contain all required provisions specified in paragraph (b) of this section and none of the prohibited provisions listed in paragraph (c) of this section.

(a) Term of lease. The term of the Lease shall be for not less than one year. The Lease may (or, in the case of a Lease for a term of more than one year, shall) contain a provision permitting termination upon 30 days advance written notice by either party.

(b) Required provisions. The Lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

Addendum to Lease

The following additional Lease provisions are incorporated in full in the Lease between _____ (Lessor) and _____ (Lessee) for the following dwelling unit: _____. In case of any conflict between these and any other provisions of

the Lease, these provisions shall prevail.

- a. The total rent shall be \$ _____ per month.
- b. Of the total rent, \$ _____ shall be payable by or at the direction of the Department of Housing and Urban Development (“HUD”) as housing assistance payments on behalf of the Lessee and \$ _____ shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the Lessee’s family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by HUD, or the PHA, if appropriate, of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification to the Lessee.
- c. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin. The Lessor shall comply with the requirements of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence Dating Violence, Sexual Assault, or Stalking) in the provision of services or eviction or termination of housing assistance.
- d. The Lessor shall provide the following services and maintenance:

Lessor

By

Date

Lessee

Date

- Section 886.127 Lease requirements; and Section 886.127 Lease requirements

(b) Required and prohibited provisions. The lease between the owner and the family must comply with HUD regulations and requirements, including HUD regulations at 24 CFR part 5, subpart L (Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking) and must be in the form required by HUD. The lease may not contain any of the following types of prohibited provisions:

- Section 886.313 (disposition of HUD-owned projects), Other federal requirements, add to 886.313(a) this language.
Compliance with the requirements in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).
- Owners of units or borrowers subject to 24 CFR 891 must use a HUD-prescribed lease form.⁵² We assume that HUD will update that lease form to be consistent with VAWA 2013. The lease should state that the tenant be advised of VAWA rights in the event of actions or potential actions to terminate the tenancy. We also urge HUD to require the owner to attach to the lease the notice of VAWA rights and certification form provided at the time of admission.

⁵² 24 C.F.R. §§ 891.425, 981.625.

- Section 891.820 Civil rights requirements.

The mixed-finance development must comply with the following: all fair housing and accessibility requirements, including the design and construction requirements of the Fair Housing Act; the requirements of section 504 of the Rehabilitation Act of 1973; accessibility requirements, project standards, and site and neighborhood standards under 24 CFR 891.120, 891.125, 891.210, 891.310, and 891.320, as applicable; and 24 CFR 8.4(b)(5), which prohibits the selection of a site or location which has the purpose or effect of excluding persons with disabilities from federally assisted programs or activities. For cases involving, or allegedly involving domestic violence, dating violence, sexual assault, or stalking or criminal activity directly relating to such violence, the provisions at 24 CFR part 5, subpart L apply.

- PART 91 CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS AND PART 903 PUBLIC HOUSING AGENCY PLANS

HUD should encourage local jurisdictions and PHAs to take affirmative actions to address issues of domestic violence, dating violence, sexual assault and stalking. It could do so by amending the regulations regarding the PHA plan and Consolidated Plans, as follows.

For all covered housing programs listed in VAWA 2013, HUD should encourage local jurisdictions and PHAs that provide assistance to such covered housing programs to verify and ensure VAWA compliance by the housing providers and, if the housing program is not a covered program under VAWA 2013, to apply VAWA-like protections to such housing or rental assistance.

HOME

- *Effective date*

The proposed rule states that VAWA 2013 requirements apply to HOME tenant-based assistance and rental housing assisted with HOME funds. However, under proposed § 92.359(b), VAWA compliance is not required if the HOME funding was provided earlier than the date that the final rule will be published. This exception to compliance is unjustified, too broad, and contrary to HUD rules and notices and HUD's determination of the applicability of VAWA to other similar HUD programs.

The proposed regulations are contrary to current HUD policy. The introductory comments to the Proposed Rule state that HUD offices had reached out to participants in the HUD programs to advise them that the basic protections of VAWA—not to deny or terminate assistance to victims of domestic violence, dating violence, sexual assault, or dating violence—were currently in effect, and did not require notice and comment rulemaking for compliance.⁵³ Furthermore, in

⁵³ 80 Fed. Reg. 17548, 17550 (April 1, 2015).

December 2013, HUD advised housing providers with HOME funds to comply with the basic VAWA protections.⁵⁴ Therefore, it is completely contradictory for HUD to indicate in the Proposed Rule that VAWA only applies to units funded by the HOME program prospectively.

Furthermore, HUD has provided no justification for treating HOME differently from other covered housing programs. HUD determined that VAWA is immediately applicable to the Housing Choice Voucher program, the major tenant-based housing program, and many other assisted housing programs, including public housing, project-based Section 8, Section 202 and Section 811 (Supportive housing) and Section 221d3 and Section 236. There is no reason, and HUD has provided none, to distinguish the HOME program and require only prospective compliance. We strongly urge HUD to remove the effective date provision in proposed § 92.359(b).

- *Good cause*

To make clear that VAWA applies in the context of evictions in the HOME program, we strongly recommend that HUD add a reference to VAWA or 24 CFR Part 5, Subpart L in current § 92.253(c), which provides that there must be good cause for tenancy terminations.

- *Owner tenant selection*

We recommend that HUD explain in the rules that an owner's tenant selection policies may not deny a family admission to the HOME program, now or in the future, solely on the basis of criminal activity directly relating to domestic violence. The language proposed for the Housing Choice Voucher program would be appropriate to incorporate, see proposed § 982.452(b)(1).

- *Owner's obligation to provide VAWA rights notice*

Proposed § 92.359(c)(2) provides that the entity administering the HOME tenant-based assistance program must provide the tenant with the VAWA rights notice when "the entity learns that the tenant's housing owner intends to provide the tenant with notification of eviction." We recommend that the proposed rule be amended to add the requirement that the owner provide to the family the VAWA rights notice along with the eviction notice.

We note that the rules regarding the proposed lease term/addendum requires the owner to notify the entity administering HOME tenant-based program of a notification of eviction. However, it would be simpler and more efficient to impose the notice obligation on both the owner and the entity administering the program. Nevertheless, the rules should continue to require the owner to notify the entity administering the program of a possible eviction, to the extent that the entity can assist in resolving any disputes or provide alternative housing to the victim.

⁵⁴ HOMEfires, Vol 11, No. 1 (Dec. 2013). In the HOMEfires newsletter, HUD acknowledged that VAWA 2013 applied to the HOME program. In addition, it provided that "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."

- *Lease bifurcation and “reasonable time”/ “reasonable opportunity”*

HUD’s proposed regulations for lease bifurcation in the HOME program must be amended to ensure that victims’ protections after lease bifurcations are consistent within the HOME program. Proposed § 92.359(d) indicates that the general “reasonable time” provisions in § 5.2009(b) do not apply to the HOME program. However, HUD does not explain why the general “reasonable time” provisions would not work for this program. Instead, proposed § 92.359(d) sets forth a different and parallel system for defining what a bifurcation policy must provide regarding “reasonable opportunity” to establish eligibility for assistance or find alternative housing following lease bifurcations. The proposed regulation essentially allows participating jurisdictions to develop their own VAWA lease bifurcation policies and provide a “reasonable opportunity” for the remaining tenant to establish eligibility as appropriate.

We believe that this proposed regulation provides participating jurisdictions with too much discretion to determine “reasonable time”/ “reasonable opportunity” and can lead to the unintended consequence of adversely impacting the VAWA protections of victims and their families. By allowing participating jurisdictions to craft their own bifurcation policies, victims and their families in the HOME program can have different lease bifurcation rights depending on the jurisdiction that is providing the rental assistance. Under the proposed regime, the remaining tenants’ “reasonable opportunity” time periods to establish eligibility for HOME assistance can vary. While some jurisdictions may adopt HUD’s “reasonable time” periods in proposed § 5.2009(b), other jurisdictions may choose shorter periods of time, which would adversely affect victims’ ability to establish eligibility for the HOME program. We do not see how HUD can justify such vast discrepancies in VAWA protections for victims who are participating in the same program. In addition, such variations in policy within the same program will cause great confusion among victims and their families who are claiming this protection to maintain safe and affordable housing.

Furthermore, proposed § 92.359(d) does not reflect VAWA’s requirement that allows tenants who remain after bifurcations to have “reasonable time” to establish eligibility for the existing program and “reasonable time” to establish eligibility for other covered housing programs. This latter requirement must be added to the HOME regulations. In addition, while proposed § 92.359(d)(2) mentions that remaining tenants who cannot establish eligibility for HOME project-based assistance are entitled to at least 60 days to find other housing, this additional time to find other housing is not available for HOME tenant-based assistance. This requirement also needs to be included for tenant-based assistance.

To address the aforementioned concerns, we recommend that HUD adopt the general “reasonable time” language as outlined in proposed § 5.2009(b) and as amended by these comments.⁵⁵ We further suggest that HUD retain the language in § 92.359(d)(3)(ii) concerning family breakups and add to this subsection language stating that remaining tenants who do not get HOME tenant-based assistance have the same reasonable time as in the HOME project-based context to find other housing. In the same section concerning tenant-based assistance and family

⁵⁵ See section on lease bifurcations and “reasonable time” *supra*)

breakups, we also suggest adding language similar to what exists for the Housing Choice Voucher program – the housing provider must ensure that the victim retains the assistance.

Finally, it is unclear why HUD included proposed § 92.359(d)(1)(iii), which states that a participating jurisdiction can decide if any of the provisions in the VAWA lease term/addendum for HOME tenant-based assistance would apply for remaining tenants. We do not understand why the VAWA protections for the remaining tenants would differ if the existing assistance were tenant-based versus project-based. Congress intended that tenants who remain following lease bifurcations would get the same VAWA protections without making distinctions concerning whether or not the assistance traveled with the subsidy holder. These protections include the ability for the remaining tenants to stay in the units and have “reasonable times” to establish eligibility for covered programs and find other housing. It would be contrary to VAWA to assume that because the tenant-based assistance moved with the evicted abuser or perpetrator that, as a result, VAWA protections for the remaining tenants are limited or do not exist. We strongly urge that HUD remove proposed § 92.359(d)(1)(iii).

- *VAWA lease term/addendum*

Proposed § 92.359(e) makes the participating jurisdiction responsible for developing a VAWA lease term/addendum that incorporates the VAWA requirements that apply to the owner, including the prohibited bases for eviction and restrictions on construing lease terms under proposed § 5.2005(b) and (c). Under proposed § 92.359(e), this VAWA lease term/addendum must allow a tenant to terminate the lease without penalty if the participating jurisdiction determines the tenant has qualified for an emergency transfer. Furthermore, when HOME tenant-based assistance is involved, the lease term/addendum must require the owner to notify the entity administering the tenant-based assistance before the owner can bifurcate a lease or provide an eviction notice to the tenant. According to the rule, if HOME tenant-based assistance is the only assistance involved, then the VAWA lease term/addendum can be written to expire at the end of the assistance period.

First, we urge that HUD, and not the participating jurisdiction, develop the VAWA lease addendum for the HOME program. Our experience has shown that providing information in leases and lease addenda presents a critical, and, in some situations, the only, opportunity for tenants to become aware of their housing responsibilities and rights under the law. Therefore, it is essential that HUD provides quality control so that the VAWA lease addendum conveys accurate and uniform information to tenants. We are very concerned that allowing individual jurisdictions and housing providers to create this lease addendum will lead to inconsistencies in the information relayed and, more importantly, misunderstandings by victims concerning their VAWA rights and protections. Our experience with housing authorities that had to develop a VAWA 2005 rights notice for tenants confirmed that without this quality control, VAWA notices developed by housing providers will vary in accuracy, readability, and coverage. Therefore, we strongly recommend that HUD develop the VAWA lease addendum.

The basic elements of the lease addendum can be modeled after the VAWA 2005 lease addenda for the Section 8 housing programs.⁵⁶ Since many of the key VAWA lease requirements and tenant protections are applicable to all of the HUD housing programs, this new lease addendum could serve as a template for other HUD programs newly covered by VAWA. If there are unique features of a particular program, HUD could tailor the lease addendum for that program. For issues that must be decided locally, these issues can be identified and the unique information left blank, to be completed by the appropriate covered housing provider.

Second, we commend HUD for allowing victims who receive emergency transfers to terminate their leases without penalty. Victims often do not leave their homes despite the violence or abuse because of the possibility of being financially penalized for terminating their leases. We recommend that this provision be expanded to permit a tenant in VAWA-covered housing, who certifies that s/he is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, to terminate the lease upon a 30-day written notice. Many of the HUD housing programs allow for a tenant to terminate the tenancy upon 30-day notice. This 30-day notice would not be required in emergency transfer situations.

Third, proposed § 92.359(e) states that the owner must notify the entity administering HOME tenant-based program prior to starting a lease bifurcation. We are concerned that this requirement will cause unnecessary delay in addressing a dangerous, and likely life-threatening, situation for tenants who are victims and are living with their abusers or perpetrators. HUD regulations for the Housing Choice Voucher program, the major tenant-based assistance program, do not have a similar requirement for private owners who choose to bifurcate leases. We would recommend that this proposed provision be amended as follows:

When HOME tenant-based rental assistance is provided, the lease term/addendum must require the owner to notify the entity administering the HOME tenant-based rental assistance when the owner bifurcates a lease and in non-lease bifurcation circumstances before the owner provides notification of eviction to the tenant.

HOPWA

- *Effective date*

The proposed HOPWA regulations state that 24 C.F.R. part 5, subpart L applies, but then states in proposed § 574.604(c) that VAWA compliance is not required for any project for which the date of the HOPWA funding commitment is earlier than the effective date of the final rule or, in the case of competitive grants, VAWA requirements will only be incorporated into the annual NOFA made applicable to a grant agreement executed for the first full fiscal year that commences on the effective date of the rule. There is no justification for such a broad exception to full and immediate application of VAWA to HOPWA program tenants and applicants. There is no reason for treating owners of HOPWA-assisted units or with tenant-based assistance differently than the other HUD programs covered by VAWA. Congress, when authorizing the

⁵⁶ We assume that under VAWA 2013, HUD will continue the VAWA lease addenda for the Housing Choice Voucher and project-based Section 8, Section 202, and Section 811 supportive housing programs.

HOPWA program, emphasized the similarity to Section 8 and commanded that the HOPWA program “shall be provided in the manner provided under 1437f.”⁵⁷ Thus, as with the Section 8 program, VAWA must be immediately applicable to all current and future HOPWA units and tenant-based assistance. Not applying VAWA to units currently funded by HOPWA funds would be contrary to HUD’s policy that the basic protections of VAWA – no denial or termination of victims – are in effect for all HUD covered housing programs.⁵⁸ We strongly urge that proposed § 574.604(c) be removed.

- *VAWA lease term/addendum*

Proposed § 574.604(f) provides that the HOPWA facility or housing owner is obligated to develop the lease addendum “to incorporate all obligations and prohibitions that apply to the housing owner under 24 CFR part 5, subpart L, including the prohibited basis for eviction under 24 CFR 5.2005(b).” For the same reasons iterated in the HOME program,⁵⁹ we urge HUD to develop the required basic elements of the lease addendum for the HOPWA program.

In addition, the following cross-reference to proposed § 5.2005(c) must be added to proposed § 574.604(f) to ensure that all of the relevant provisions of proposed § 5.2005 that deal with prohibited evictions and terminations are applicable to HOPWA.

Section 574.604(f) VAWA lease term/addendum. ...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) and (c).

In addition, proposed § 574.604(f) states that a tenant may terminate the lease without penalty if the tenant has met the conditions for emergency transfer. We commend HUD for allowing victims who receive emergency transfers to terminate their leases without penalty. Victims often stay in their homes despite violence or abuse because of the possibility of being financially penalized for terminating their leases. We recommend that this provision be expanded to permit a tenant in VAWA-covered housing, who certifies that she or he is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, to terminate the lease upon a 30-day written notice. Many of the HUD housing programs allow for a tenant to terminate the tenancy upon 30-day notice. This 30-day notice would not be required in emergency transfer situations.

- *Notification and form requirements*

Proposed §§ 574.604(b)(1)(i)(B) and 574.604(b)(2)(i)(B) must be amended to ensure that the responsible entity provides the VAWA rights notice and the self-certification form at all three mandated junctures. We strongly recommend the following changes:

⁵⁷ 42 U.S.C. § 12908. *See also* 42 U.S.C. § 12909.

⁵⁸ *Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs; Proposed Rule*, 80 Fed. Reg. 17,548, 17,550 (Apr. 1, 2015).

⁵⁹ *See* section on VAWA lease term/addendum and HOME program *supra*.

Section 574.604(b)(1)(i)(B)

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

Section 574.604(b)(2)(i)(B)

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

- *Add VAWA protections to HOPWA terminations and eligibility*

Current HOPWA program rules permit the owner to terminate a “participant's assistance...only in the most severe cases.”⁶⁰ The HOPWA regulation regarding termination should be expanded with a reference to the obligation to comply with VAWA. Also, the current limitations on eligibility should be expanded to prohibit a denial of assistance to an applicant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking. We suggest the following changes:

Section 574.310 General standards for eligible housing activities.

(e) Termination of assistance—

(2) Violation of requirements—

(i) Basis. Assistance to participants who reside in housing programs assisted under this part may be terminated if the participant violates program requirements or conditions of occupancy. Grantees must ensure that supportive services are provided, so that a participant's assistance is terminated only in the most severe cases. In actions or potential actions to terminate assistance, the housing or facility owner, the grantee or project sponsor shall comply with 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(ii) Any tenant served with a notice of eviction or termination must be given the notice of VAWA rights and certification form in accordance with 5.2005(a).

The following language regarding admissions/eligibility should be added to either the definition of an “eligible person” at § 574.3 or a new section (f) added to § 574.310, General standards for eligible housing activities:

The fact that an applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking is not an appropriate basis for denial of tenancy, rental assistance, or occupancy rights.

McKinney-Vento/HEARTH Act programs

In the spirit of VAWA, HUD should support guidance, training and standards that reduce discrimination and lack of access for survivors across the homelessness and housing service and

⁶⁰ 24 C.F.R. 574.310(e).

resource continuum. Though the regulations do not cover emergency and homeless shelters in the covered housing programs, we know that survivors face discrimination in these contexts. Admission and termination policies and practices at homeless shelters can often exclude survivors of domestic violence, dating violence, sexual assault and stalking. Victims of domestic violence report having to recount the violence and report being subject to a higher standard of admission and conditions of stay than other participants. For instance, survivors are required by programs to produce orders of protection. They are also denied admission if they are considered “unsafe” for the program. In family shelters, domestic violence survivors are sometimes terminated from the program along with perpetrator if they are abused on the property. These practices violate the spirit of VAWA which is meant to provide greater housing stability and access to housing and safety for survivors.

Additionally, there are barriers to accessing covered housing resources that may not be considered a denial but are the result of policies that disadvantage victims. For instance, Continuums of Care that utilize HMIS/shared databases for their admissions and distribution of resources often exclude victims of violence from accessing the housing resources. This is either because the survivor is being served by a victim service program barred from entering information into HMIS or because the survivor chooses to not have their information entered in HMIS for safety reasons. While communities are trying to find ways to ensure that victims can access housing resources without having their personally identifying information entered into shared databases, there is no nationally proposed solution. Additionally, housing assessment measures that under-assess the housing needs of survivors can reduce the number of survivors prioritized for housing resources. Program outcomes that do not reflect the housing and safety goals of survivors (who often need longer support before securing permanent housing) can jeopardize the resources available to survivors. These and other barriers mean that survivors are not fully accessing the housing resources they need. HUD should clarify that communities need to include the full participation of domestic violence and sexual assault experts in their Continuums of Care, release further guidance directing communities to ensure that the safety needs of survivors are met and that survivors can have preference in allocating housing resources. HUD’s continued work to address these issues of access will be in the spirit of the VAWA law and will help survivors across HUD’s programs.

Rural Housing Stability Assistance Program (RSHP)

The Proposed Rule does not provide any amendments to the RHSP proposed rule that was issued on March 27, 2013.⁶¹ The RHSP proposed rule was released 20 days after VAWA 2013 was signed into law. Therefore, it is understandable that the RHSP proposed rule did not thoroughly address VAWA’s requirements. However, we urge HUD to ensure that the RHSP final rule comprehensively incorporate VAWA’s protections for victims and VAWA’s obligations for covered housing providers. This point is particularly important because the RHSP proposed rule issued in 2013 was limited and inconsistent in addressing how VAWA applied to the program. For example, the RHSP proposed rule provided an exception for VAWA victims who needed to relocate for safety reasons by allowing victims with tenant-based assistance to move out of the

⁶¹ See *Homeless Emergency Assistance and Rapid Transition to Housing: Rural Housing Stability Assistance Program and Revisions to the Definition of “Chronically Homeless”*, 78 Fed. Reg. 18,726-18,761 (Mar. 27, 2013)

county with the assistance to protect their health and safety but the requirements are inconsistent with VAWA.⁶² Additionally, there is no mention of VAWA in the RHSP rule governing termination of assistance.⁶³ Equally as important, we urge HUD to make sure that the VAWA obligations and policies of the RHSP program are consistent not only within the HEARTH Act programs, but also across all CPD programs and programs covered by VAWA 2013 that are administered by HUD's Offices of Housing and Public and Indian Housing. This consistency is crucial in guaranteeing that victims are aware of and can claim VAWA protections regardless of the program for which they are applying or in which they are participating. Specific recommendations are included below and in the section on confidentiality.

§579.418 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).

§ 579.424 Applicability of other federal requirements

Include parallel to §578.99 and §576.407, as amended after comment period.

Damages after bifurcation/transfer §576.105 and §578.7

The rule allows the use of ESG and CoC funds to pay for damages resulting from early lease terminations if the tenant meets the emergency transfer requirements under VAWA. We understand that this policy will help in maintaining important relationships with owners and landlords participating in these programs. However, we are concerned that the policy will deplete limited funds intended to be used to provide critical resources and housing to homeless families. We are also concerned that owners/landlords will turn to these funds before attempting to mitigate damages caused by the lease terminations, such as work with the tenant to find new renters. We recommend that HUD develop a process for owners/landlords to apply for these funds. To be eligible, the owners/landlords must document the hardship and explain why the funds are needed to pay for the damages. In addition, owners/landlords should be required to report their efforts to mitigate damages.

Duties to carry out VAWA obligations and protections §576.407 and §578.99

We recommend more clarity about the duties for the ESG and CoC agents with regard to enacting VAWA protections. In particular, when a survivor wants to invoke her/his VAWA rights in response to a threatened action against her (eviction/termination, etc.), the process should be very clear. The proposed rule does not address how the various VAWA obligations will be delegated or shared among the recipient, subrecipient, owner or landlord – particularly evictions and establishing reasonable time to establish eligibility or find alternative housing. We recommend that HUD state generally that the entity taking the action (i.e. denying admission, evicting, terminating assistance) is the party responsible for providing the notice and form. We recommend that HUD further clarify these roles in regulation, guidance, and training.

⁶² *Id.* at 18,746, proposed 24 C.F.R. § 579.216(c)(2).

⁶³ *See* 78 Fed. Reg. at 18,755-18,756, proposed 24 C.F.R. § 579.418.

Optional policy: §576.407(g)(4) and §578.99 (j)(2): It seems that HUD anticipates complexity of roles in some of the ESG and CoC relationships and in response develops an optional policy for how a survivor might “prevent a landlord” from taking unlawful actions against her. We support that the subrecipient/recipient could play a relatively positive ombudsman-type role in this situation. It is essential that all organizations and individuals understand their roles and obligations. The current draft of the optional policy places a strange onus on the participants in invoking their VAWA rights – to prevent “an owner from taking actions prohibited by VAWA.” We instead recommend that the policy be drafted to outline the responsibilities of the various agents. HUD should draft a model policy to maintain consistency.

§576.407 (g)(4) The recipient or subrecipient that administers ESG rental assistance must establish a written policy that allows program participants to seek the recipient or subrecipient’s assistance when invoking VAWA protections against denial, termination of assistance, or eviction. 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 invoking VAWA protections:

Add: (iv) Nothing in this policy prohibits the participant from seeking legal counsel.

§ 578.99(j)(5) A recipient or subrecipient must establish a written policy that allows program participants to seek the recipient’s or subrecipient’s assistance in invoking VAWA protections provided 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 invoking VAWA protection provided under 24 CFR part 5, subpart L, 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.

Add: (iv) Nothing in this policy prohibits the participant from seeking legal counsel.

Comment Solicitation #11: HUD requests comments on its ESG and CoC programs. HUD requests comment on what lease requirements should apply when tenant-based rental assistance is used for homelessness prevention under ESG and CoC programs, and the family wants to stay in existing housing.

We appreciate HUD soliciting feedback on this section and understand the dilemma in changing lease requirements in the homelessness prevention context. At the same time, we believe that it is essential that survivors are able to invoke their statutory rights when accessing these housing

resources. We recommend that in instances where the lease would be amended to reflect the rental assistance, the same VAWA amendments that are in the leases and rental agreements at §576.106 (e) and (g) §578.99 (j)(6) should apply. In instances where no changes are made to the lease, recipients and subrecipients must include the notice of VAWA rights in communication with the participant and in any communication (i.e. when the rental assistance is paid) to the landlord/owner. Relatedly, HUD should consider how it can encourage owners to include VAWA coverage in leases after the federal assistance has ended. In §576.106 and §578.99 (j)(6), clarify that owners and landlords may continue to include the VAWA protections after the assistance has ended. Owners should be encouraged to maintain the protections to keep consistency across their properties and for the benefit of survivors.

Emergency transfer plans

Detailing the emergency transfer plan, at § 576.407(g)(3)(i)*, the proposed rule gives the recipient a number of options for designating which entity is responsible for developing and implementing the emergency transfer plan. To simplify, we recommend this change:

- Strike (3)(i)
- Replace with: The recipient must develop an emergency transfer plan to meet the requirements of 24 CFR part 5, subpart L. §5.2005 (e) and each Continuum of Care, in which subrecipients are located, must submit for approval by the recipient, a Continuum-specific plan in compliance with the recipient’s plan which provides Continuum implementation detail. All plans must be developed with the consultation of state and local experts on domestic violence, dating violence, sexual assault and stalking.
- Strike (A)-(C).

*The proposed rule has an error – there are two entries of §576.407 (g)(3). We are referring to the second entry.

Reasonable time to establish eligibility or find new housing §578.75 (i)(2)

Section § 578.75 (i)(2) should be clarified to include transitional housing and to establish that the person could seek to be the person to establish eligibility for the unit or have a reasonable time granted to find new housing. There will be occasions where the time left on the lease is shorter than the reasonable time allowed to establish eligibility or find new housing. HUD should direct programs to use whatever period is longer – the rest of the time on the lease or the amount of time permitted by the general lease bifurcation provision

- § 578.75 (i)(2) Remaining programs participants following bifurcation of a lease or eviction as a result of domestic violence. For permanent supportive housing, or transitional housing, 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 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 and have the right to attempt to establish eligibility as provided in 24 CFR part 5, subpart L. § 5.2009. The member should have the right to the unit for whichever time is longer.

- Strike § 578.99 (j)(8)–Reasonable time requirements of VAWA should apply in the scenario where the time remaining on the lease is shorter than the reasonable time to establish eligibility.

Transfer and Documentation

The preamble notes that the 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 at § 578.51 (c)(3) and the documentation requirements at § 578.103. A similar option is provided in the Rural Stability Assistance program at § 579.216 (c)(2). We commend HUD for including the, often lifesaving, option for victims of domestic violence, dating violence, sexual assault or stalking to move to another Continuum and maintain their rental assistance and providing this option before VAWA included an emergency transfer.

As these regulations pre-date the passage of VAWA and the provisions are clearly a transfer option provided by the Continuum, it is important that it is amended to reflect the transfer and documentation requirements in VAWA. The Continuums will be able to add additional transfer options in their plans but it is important that each option reflect the same documentation requirements. The newly-covered programs will be working to comply with their new obligations under VAWA. HUD should work to ensure that the requirements are consistent which will help housing providers improve compliance and provide greater protection for survivors.

The documentation requirements in the CoC and RHSP rules far exceed the VAWA standard and will likely further endanger victims. Domestic violence, dating violence, sexual assault and stalking are by their nature private crimes that take place without witnesses. This is true of past and threatened future abuse. Many abusers make very serious and credible threats against victims that may not be documented anywhere. All involved, however, should take seriously the victim’s word that a perpetrator will commit future threatened violence. This rule absolutely should not maintain different and more demanding documentation requirements for “original incidence” and “reasonable belief of imminent threat of further domestic violence,” but rather should simply allow a victim to attest to the violence or assault. Specifically, we request that §578.51 and §578.103 and §579.216 and §579.504 be amended in the following ways:

§ 578.51

(c)(3) Program participants who have complied with all program requirements during their residence and who have been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual, or stalking (which could include threats from a third party, such as a friend or family member of the perpetrator of the violence), if they remain in the assisted unit, or additionally in the case of a participant 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, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the assisted unit to protect their health and safety. The participant should provide the same documentation as required in 24 CFR part 5, subpart L. § 5.2005(e).

§ 578.103

(a)(5) Records of reasonable belief of imminent threat of harm. For each program participant who moved to a different Continuum of Care due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under § 578.51(c)(3), each recipient or subrecipient of assistance under this part must retain record of the VAWA emergency transfer request at 24 CFR part 5 subpart L § 5.2005(e). These documents must not be stored or recorded in shared databases. (Strike (1) and (2))

§ 579.216

(c)(2) Fleeing domestic violence, sexual assault, dating violence or stalking. 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, and who 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 they remain in the assisted unit, or additionally in the case of a participant 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, and are able to provide documentation as outlined in 24 CFR part 5 subpart L § 5.2005(e), may retain the rental assistance, through the term of assistance, and move to a different county if they move out of the assisted unit to protect their health and safety.

§ 579.504

(f) Records of reasonable belief of imminent threat of harm. For each program participant who moved to a different county due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under § 579.216, each recipient or subrecipient of assistance under this part must retain the record of the VAWA emergency transfer request at 24 CFR part 5 subpart L § 5.2005 (e). These documents must not be stored or recorded in shared databases. (Strike (1) and (2)).

Once these documents are collected, it is essential that records are limited and kept confidential, and not ever included in shared databases. Any records to establish status as a victim should be noted in files by employees and then destroyed or returned to the victim.

Program compliance: In both the Rural Housing Stability Program and Continuum of Care program, participants must be in compliance with the program in order to have the option to transfer their assistance to another community. It is important for HUD to note and to provide guidance and training on the reasons why someone might seem out of compliance with a program, as the actions of perpetrators can cause a victim to seem out of “program compliance.” Many perpetrators control finances which could cause victims to miss rent payments. Abusers may also damage property and exert other controls over the victim that result in violations of program rules. These issues should be considered when assessing “program compliance.”

Cross-references for Confidentiality

- In § 91.325 (c)(3) The State will develop and implement procedures to ensure the confidentiality of records pertaining to any individual who is a victim of family

- violence, domestic violence, dating violence, sexual assault or stalking under any project assisted under the ESG program, including those who have received VAWA protections at 24 CFR part 5, subpart L. and whose information and confidentiality are protected under 24 CFR subpart L § 5.2005(e), § 5.2007(c) at 42 USC § 13925 and 42 USC § 10402 and (Strike “including”) protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter;
- In § 578.103
 - (b), after subrecipients, add based on guidance issued by HUD
 - (b) (1), amend to say: All records containing protected identifying information of any individual or family who applies for or receives Continuum of Care assistance will be kept secure and confidential. Personally identifying information of victims of domestic violence, dating violence, sexual assault or stalking and information and records pertaining to the violence or abuse will not be entered into any shared databases.
 - Add sub (4): (4) Confidentiality requirements to protect the privacy and safety of victims of domestic violence, dating violence, sexual assault and stalking as provided at 24 CFR part 5, subpart L. § 5.2005(e), § 5.2007(c), at 42 USC § 13925 and 42 USC § 10402.
 - In § 580.31(g) Other requirements. (1) An HMIS Lead must develop a privacy policy. At a minimum, the privacy policy must include data collection limitations; purpose and use limitations; allowable uses and disclosures; openness description; access and correction standards; accountability standards; protections for victims of domestic violence, dating violence, sexual assault, and stalking; and such additional information and standards as may be established by HUD in notice, in compliance VAWA confidentiality requirements at 24 CFR part 5, subpart L. § 5.2005 (e), § 5.2007(c), at 42 USC § 13925 and 42 USC § 10402.
 - In § 579.304
 - (i) Maintain the confidentiality of records pertaining to any individual or family who was provided services or assistance who is a victim of family violence, domestic violence, sexual assault or stalking through the project per 24 CFR subpart L § 5.2005 (e), § 5.2007(c) at 42 USC § 13925 and 42 USC § 10402 is kept confidential;
 - (ii) Maintain the confidentiality of the address or location of any domestic violence or family violence shelter project assisted under this part, except with written authorization of the person responsible for the operation of such project;
 - In § 579.504
 - (u) Confidentiality. (1) The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under this program will not be made public, except with written authorization of the person responsible for the operation of the shelter and that information protected under 24 CFR subpart L § 5.2005(e), § 5.2007(c) at 42 USC § 13925 and 42 USC § 10402 is kept confidential and (iii) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient

and consistent with State and local laws regarding privacy and obligations of confidentiality.

Housing Trust Fund

HUD proposes to apply VAWA protections to rental housing assisted under the Housing Trust Fund (HTF) in the same manner HUD has proposed to apply VAWA protections to rental housing assisted under the HOME Investment Partnerships program (HOME). Although HUD's recent interim rule on the HTF codifies the program's regulations in a new part separate from HOME's regulations to highlight the HTF as a distinct program, we agree that VAWA protections should still be applied to the HTF in the same manner.

While HTF specifically targets affordable rental housing for extremely low income households, and to a lesser extent very low income households, many of the HTF's program requirements are similar to those that apply to the HOME program. As HUD states in the preamble to the HTF interim rule, "[E]ach State is a participating jurisdiction in the HOME program, and all States or their designated housing entities will be HTF grantees. Consequently, many of the participation and submission requirements as well as many of the program requirements are modeled on provisions found in the regulations for HOME." Interim Rule on the Housing Trust Fund, 80 Fed. Reg. 5200 (Jan. 30, 2015).

However, we have many of the same concerns and recommendations discussed in the section on the proposed VAWA regulations that apply specifically to the HOME program.⁶⁴

Conclusion

The VAWA 2013 housing protections were passed into law to allow survivors to maintain or obtain safe housing. In order to be fully realized, the law requires consistent and strong regulations to ensure that survivors in all types of assisted housing are protected. Our comments detail specifics and offer general strategies for HUD to ensure tailored regulations that will encourage uniform implementation. We look forward to a final rule that meets these criteria and we look forward to working with the Administration on the law's strong implementation.

Please send any questions to Monica McLaughlin, National Network to End Domestic Violence at mmclaughlin@nnev.org.

Sincerely,

National Organizations

American Civil Liberties Union
National AIDS Housing Coalition (NAHC)
National Alliance to End Sexual Violence
National Coalition Against Domestic Violence

⁶⁴ See section on HOME Investment Partnerships Program: good cause; owner tenant selection; owner's obligation to provide VAWA rights notice; lease bifurcation and "reasonable time"/"reasonable opportunity"; VAWA lease term/addendum *supra*.

National Coalition of Anti-Violence Programs
National Domestic Violence Hotline
National Housing Law Project
National Fair Housing Alliance
National Law Center on Homelessness & Poverty
National Low Income Housing Coalition
National Network to End Domestic Violence
National Resource Center on Domestic Violence
Sargent Shriver National Center on Poverty Law

State and Local Organizations

Alaska Network on Domestic Violence and Sexual Assault
Arizona Coalition to End Sexual and Domestic Violence
Arkansas Coalition Against Sexual Assault
Bet Tzedek Legal Services, Los Angeles, California
California Partnership to End Domestic Violence
Colorado Coalition Against Domestic Violence
Connecticut Coalition Against Domestic Violence
Community Legal Services of Philadelphia
DC Coalition Against Domestic Violence
DC Rape Crisis Center
Delaware Coalition Against Domestic Violence
District Alliance for Safe Housing, Inc. (DASH), Washington, D.C.
Florida Coalition Against Domestic Violence
Florida Council Against Sexual Violence
Georgia Coalition Against Domestic Violence
Greater Boston Legal Services, Inc.
Haven House Family Shelter, Mississippi
Hawaii State Coalition Against Domestic Violence
Housing Assistance Council, Washington, D.C.
Idaho Coalition Against Sexual and Domestic Violence
Illinois Coalition Against Domestic Violence
Indiana Coalition Against Domestic Violence
Iowa Coalition Against Domestic Violence
Kansas Coalition Against Sexual and Domestic Violence
Kentucky Coalition Against Domestic Violence
Legal Aid Foundation of Los Angeles
Legal Aid Service of Broward County, Inc., Plantation, Florida
Legal Aid Society of the District of Columbia
Legal Assistance Foundation of Metropolitan Chicago
Legal Services of Greater Miami, Inc.
Louisiana Coalition Against Domestic Violence
Maine Coalition Against Sexual Assault
Maine Coalition to End Domestic Violence
Maryland Coalition Against Sexual Assault
Maryland Network Against Domestic Violence

Jane Doe Inc, Massachusetts Coalition Against Domestic and Sexual Violence
Michigan Coalition to End Domestic and Sexual Violence
Mid-Minnesota Legal Aid
Minnesota Coalition for Battered Women
Missouri Coalition Against Domestic and Sexual Violence
Montana Coalition Against Domestic and Sexual Violence
My Sister's Place, Washington, D.C.
Nebraska Coalition to End Sexual and Domestic Violence
Nevada Network Against Domestic Violence
New Hampshire Coalition Against Domestic and Sexual Violence
New Jersey Coalition for Battered Women
New Mexico Coalition Against Domestic Violence
New York State Coalition Against Domestic Violence
New York State Coalition Against Sexual Violence
North Carolina Coalition Against Domestic Violence
North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North
Dakota
Ohio Domestic Violence Network
Pennsylvania Coalition Against Domestic Violence
Pennsylvania Coalition Against Rape and the National Sexual Violence Resource Center
Public Justice Center, Baltimore, Maryland
Rhode Island Coalition Against Domestic Violence
South Carolina Coalition Against Domestic Violence and Sexual Assault
Tennessee Coalition to End Domestic and Sexual Violence
Texas Association Against Sexual Assault
Texas Council on Family Violence
The Legal Services Center of Harvard Law School
The Public Interest Law Project, Oakland, California
Utah Coalition Against Sexual Assault
Vermont Network Against Domestic and Sexual Violence
Virginia Sexual and Domestic Violence Action Alliance
VOA Oregon Home Free
Washington State Coalition Against Domestic Violence
Western Center on Law & Poverty, Los Angeles, California
West Virginia Coalition Against Domestic Violence
End Domestic Abuse WI – the Wisconsin Coalition Against Domestic Violence
Wyoming Coalition Against Domestic Violence and Sexual Assault