



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Special Attention of:

Regional and Field Office Directors
of Public Housing and Housing Choice
Vouchers; Public Housing Agencies;
Owners

Notice PIH-2017-08 (HA)

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Expires: This notice will remain in effect until
amended, superseded, or rescinded

Cross References:

81 FR 80724, as codified at 24 CFR parts 5, 905,
960, 966, 982 and 983

Supersedes:

PIH Notice 2007-5; PIH Notice 2006-42;
PIH Notice 2006-23

Subject: Violence Against Women Reauthorization Act of 2013 Guidance

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1. Purpose

This notice provides guidance to Public Housing Agencies (PHAs) and owners on the requirements of the Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, Final Rule, published in the [Federal Register on November 16, 2016](#), (81 Fed. Reg. 80724 (November 16, 2016)) (VAWA Final Rule) with respect to the Public Housing and Housing Choice Voucher (HCV) programs. This notice does not encompass every aspect of the VAWA Final Rule and should be used in conjunction with the VAWA Final Rule.

This notice supersedes HUD Notices PIH 2006-23, 2006-42, and 2007-5.

This notice also transmits an optional model *Notice to Owners of Rights and Obligations under the Violence Against Women Act*.

2. Applicability

Guidance contained in this Notice is for use by PHAs administering the Public Housing program, the HCV program (including the Project-Based Voucher program (PBV)), and Section 8 Moderate Rehabilitation (Mod Rehab), as well as owners participating in the aforementioned programs.

3. Background

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

the Federal Register Notice, PIH issued a letter to PHA Executive Directors on September 30, 2013, summarizing the August 6 Federal Register Notice.¹

On April 1, 2015, HUD published its proposed rule that provided amendments to HUD's existing regulations that HUD determined necessary to fully implement VAWA 2013. On November 16, 2016, HUD published its VAWA Final Rule implementing the requirements of VAWA 2013 through HUD regulations (81 FR 80724). Implementing regulations for the Public Housing and HCV programs can be found at Code of Federal Regulations (CFR) Part 5, Subpart L, Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, as well as various subparts of 24 CFR Parts 905, 960, 966, 982, and 983.

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

4. Summary of Major Changes

Major changes for the Public Housing, HCV, and PBV programs include:

- Specifies “sexual assault” as a crime covered by VAWA in HUD-covered programs. (See 24 CFR 5.2003.)
- Clarifies that, consistent with HUD's nondiscrimination and equal opportunity requirements, victims of domestic violence, dating violence, sexual assault, and stalking cannot be discriminated against on the basis of any protected class, and HUD programs must also be operated consistent with HUD's Equal Access Rule, which requires that HUD-assisted and HUD-insured housing must be available to all otherwise eligible individuals and families without regard to actual or perceived sexual orientation, gender identity or marital status. (See 24 CFR 5.2001(a).)
- Establishes new definitions (e.g., affiliated individual and sexual assault, and others) and revises previously defined terminology (e.g., bifurcate and stalking). (See 24 CFR 5.2003.)
- Establishes new requirements for notification of occupancy rights under VAWA, and transmits a model *Notice of Occupancy Rights Under the Violence Against Women Act* (form HUD-5380). (See 24 CFR 5.2005(a).)
- Provides that applicants and tenants may not be denied assistance or have assistance terminated under a covered housing program on the basis of or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. (See 24 CFR 5.2005(b)(1).)
- Establishes the requirement to establish an emergency transfer plan, establishes record keeping and reporting requirements, and provides a model *Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking* (form HUD-5381), and *Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking* form (form HUD-5383). (See 24 CFR 5.2005(e).)
- Revises requirements for documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking, and provides a new *Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation* (form HUD-5382). (See 24 CFR 5.2007.)
- Where the covered housing provider exercises the option to bifurcate a lease and the evicted or terminated tenant was the recipient of assistance at the time of bifurcation, establishes a new requirement for reasonable time periods during which a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking may remain in the unit while establishing eligibility under the

¹ Available at http://portal.hud.gov/hudportal/documents/huddoc?id=sept2013vawaltr_phas.pdf.

current housing program or under another covered housing program, or seeking alternate housing. (See 24 CFR 5.2009(b).)

- Revises various HCV, PBV, and public housing regulations from the 2005 reauthorization of VAWA (VAWA 2005) to broadly state that VAWA protections apply, so that all tenants and applicants, and not only those determined to be victims of domestic violence, dating violence, sexual assault, or stalking, receive statutorily required notification of their VAWA rights.
- Clarifies that PHAs may establish a preference for victims of dating violence, sexual assault, and stalking, in addition to domestic violence. (See 24 CFR 960.206(b)(4), and 982.207(b)(4).)
- Establishes new requirements under PBV for a family's right to move as a result of the family, or a member of the family, being or having been the victim of domestic violence, dating violence, dating violence, sexual assault, or stalking. (See 24 CFR 983.261.)

5. Definitions

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

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

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

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

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

Dating violence means violence committed by a person:

- a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - 1) The length of the relationship;
 - 2) The type of relationship; and
 - 3) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by:

- a. a current or former spouse or intimate partner of the victim,
- b. by a person with whom the victim shares a child in common,
- c. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- d. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- e. by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

The term “spouse or intimate partner of the victim” includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

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

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

- (1) Fear for the person’s individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

6. Who May Receive VAWA Protections?

6.1 Who is Eligible?

VAWA protections cover tenants and assisted families, as defined under applicable program regulations. VAWA protections also cover applicants when they are applying for admission to a covered housing program.

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

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

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

6.2 Who is Ineligible?

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

As a reasonable accommodation, a tenant/participant can request VAWA protections based on the grounds that the live-in aid is a victim of domestic violence, dating violence, sexual assault or stalking. In addition, other reasonable accommodations may be needed on a case-by-case basis.

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

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

7. Determining Eligibility for VAWA Protections

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

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

In addition to prohibiting a denial, termination, or eviction based on the fact that the applicant or tenant/participant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, the VAWA Final Rule prohibits covered housing providers from denying assistance or admission, terminating participation in, or evicting a tenant based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

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

Section 7.2 provides examples to give PHAs and owners a sense of the various instances in which an adverse factor may be a direct result of domestic violence, dating violence, sexual assault, or stalking.

Section 7.3 provides a framework for determining whether an adverse factor is a direct result of the fact that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking.

Section 7.4 discusses the need for notifying an individual and other considerations when the PHA or owner determines the prohibition does not apply to the individual's denial, termination, or eviction.

7.2 Examples of When Adverse Factors Might Be Direct Results of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking

On the surface, adverse factors may appear unrelated to domestic violence, dating violence, sexual assault, or stalking and may present legitimate reasons for denial, termination, or eviction. However, the presence of an adverse factor may be due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking. An adverse factor may be present during much of an abusive relationship, or it may present itself only when a victim is attempting to leave, or has left, the abusive relationship. The following examples are provided to give PHAs and owners a sense of the many instances in which adverse factors might be the "direct result" of domestic violence, dating violence, sexual assault, or stalking. Please note that this list is neither exhaustive nor definitive.

Poor credit history. Depending on the circumstances, poor credit history may be a direct result of domestic violence, dating violence, sexual assault, or stalking when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Forcing a victim to obtain credit, including credit cards for the perpetrator's use.
- Using a victim's credit or debit card without permission, or forcing them to do so.
- Selling victims' personally identifying information to identity thieves.
- Running up debt on joint accounts.
- Obtaining loans/mortgages in a victim's name.
- Preventing a victim from obtaining and/or maintaining employment.
- Sabotaging work or employment opportunities by stalking or harassing a victim at the workplace, or causing a victim to lose their job by physically battering the victim prior to important meetings or interviews.
- Placing utilities or other bills in a victim's name and then refusing to pay.
- Forcing a victim to work without pay in a family business, or forcing them to turn their earnings over to the abuser.
- Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking.
- Job loss or lost wages due to missed work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime.
- Hospitalization and medical bills the victim cannot pay or cannot pay along with other bills.

Poor rental history. Depending on the circumstances, poor rental history may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Property damage;
- Noise complaints;
- Harassment;
- Trespassing;
- Threats;
- Criminal activity;

- Missed or late utility payments(s);
- Missed or late rental payment(s);
- Writing bad checks to the landlord; or
- Early lease termination and/or short lease terms.

Criminal record. Depending on the circumstances, a criminal record may be a direct result of domestic violence, dating violence, sexual assault, or stalking when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Forcing a victim to write bad checks, misuse credit, or file fraudulent tax returns;
- Property damage;
- Theft;
- Disorderly conduct;
- Threats;
- Trespassing;
- Noise complaints;
- Family disturbance/trouble;
- 911 abuse;
- Public drunkenness;
- Drug activity (drug use and the selling of drugs);
- Crimes related to sex work;
- “Failure to protect” a child from a batterer’s violence and/or abuse;
- Crimes committed by a victim to defend themselves or in defense of third parties from domestic violence, dating violence, sexual assault, or stalking; or
- Human trafficking.

Failure to pay rent. Depending on the circumstances, temporary failure to pay rent may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when domestic violence, dating violence, sexual assault, or stalking results in, for example:

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

7.3 How to Determine if an Adverse Factor is a Direct Result of Domestic Violence, Dating Violence, Sexual Assault or Stalking

To trigger the direct result analysis, it is the responsibility of the applicant or tenant to:

1. Inform the PHA or owner that they are a victim of domestic violence, dating violence, sexual assault, or stalking; and
2. Provide enough information for the PHA or owner to make a determination regarding the adverse factor they are claiming was a direct result of domestic violence, dating violence, sexual assault, or stalking.

After the PHA or owner receives this information, the PHA or owner should consider the individual's statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking. If further information is necessary for this determination, the PHA or owner may request additional supporting documentation from the applicant or tenant. However, any request for additional documentation must:

- a. Be in accordance with the PHA or owners' policies or practices,
- b. Not require evidence of the domestic violence, dating violence, sexual assault, or stalking other than as specified in 24 CFR 5.2007 (see Section 8 of this Notice), and
- c. Not violate the VAWA Final Rule's confidentiality requirements or any other laws.

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

If the PHA or owner believes any information is not clear, it should speak to the victim and try to clarify the information. After the PHA or owner has received the information from the tenant or applicant, and if necessary, clarified this information with the tenant or applicant, the PHA or owner must make an objectively reasonable determination, based on all the circumstances, whether the adverse factor is a direct result of the fact that the applicant or tenant/participant is a victim of domestic violence, dating violence, sexual assault, or stalking.

7.4 Notification and Other Considerations

PHAs and owners must notify the applicant or tenant if the PHA or owner finds that the denial, termination, or eviction is not on the basis or as a "direct result" of being a victim of domestic violence, dating violence, sexual assault, or stalking, and the applicant or tenant is thus denied admission to, denied assistance under, terminate from participation in, or evicted from the housing. (See 24 CFR 5.2005(b)(1).) An applicant or tenant that disagrees with the finding should use the program's appeal procedures (if applicable).

In the case of a termination or eviction, PHAs and owners must comply with the prohibition in 5.2005(d)(2), which provides:

[T]he covered housing provider must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.

Therefore, even if the direct result prohibition does not apply, the PHA or owner cannot use that violation to terminate or evict a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, if the covered housing provider does not ordinarily terminate or evict tenants for that violation.

See discussion of limitations in VAWA at Section 18 of this Notice.

8. Certification and Documentation of Domestic Violence, Sexual Assault, Dating Violence, or Stalking

8.1 Certification of domestic violence, dating violence, sexual assault, dating violence, or stalking

VAWA 2013 required that HUD create a certification form that serves as a means of documenting the incident or incidents of domestic violence, dating violence, sexual assault, or stalking. (See 24 CFR 5.2005(a).) The VAWA Final Rule transmitted this certification form, *Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation*, form HUD-5382. The PHA must include form HUD-5382 with the VAWA Notice of Occupancy Rights (form HUD-5380) described in Section 10. These forms are available at hud.gov/hudclips.

Note: Under the Mod Rehab program, the PHA may provide form HUD-5382 to owners, and charge owners with distributing it to tenants along with the VAWA Notice of Occupancy Rights as described above. (See 24 CFR 882.102.)

Form HUD-50066, *Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking*, previously used for the Public Housing and HCV programs to serve as a means of documenting the incident or incidents of domestic violence, dating violence, sexual assault, or stalking is obsolete.

Form HUD-5382 is for use by all HUD-covered programs, including Public Housing and HCV programs (e.g., a PHA or owner may receive this form) and it must be publicly available and provided upon request.

The form HUD-5382:

- Provides that VAWA 2013 protects applicants, tenants, and program participants from being evicted, denied assistance, or terminated from housing assistance based on act of domestic violence, dating violence, sexual assault, or stalking.
- Is an optional way for victims to comply with a written request for documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking for persons seeking VAWA protections.
- Provides that the victim or someone on the victim's behalf may complete the form.
- Provides a list of alternative third-party documentation to satisfy a request by a PHA or owner for documentation. (See below regarding requests for documentation.)
- Explains the time period for responding to a written request for documentation.
- Describes the confidentiality protections under VAWA.
- Requires that the victim or someone filling out the form on the victim's behalf must answer 10 numbered questions and provide a brief description of the incident(s).
- Clarifies that the name of the accused perpetrator does not have to be provided if it is unknown to the victim or it cannot be provided safely.
- Clarifies that the date and time of incident should be completed only if known by the victim.

- Requires the victim or someone filling out the form on the victim’s behalf to certify to the truth and accuracy of the information being provided, and explains that false information could be the basis for denial of admission, termination of assistance, or eviction.
- Includes required public reporting burden information.

When practicable, HUD encourages PHAs and owners to advise applicants, tenants, and program participants that when the PHA or owner receives a form submitted on their behalf, such submission will take the place of the applicants, tenants, or program participants submitting their own statement. Thus, applicants, tenants, or program participants should ensure, to the extent possible, that the information is accurate and comprehensive.

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

8.2 Certification or Documentation

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

a. Acceptance of Verbal Statement

The VAWA Final Rule clarifies that PHAs and owners are not required to ask for documentation when an individual presents a claim for VAWA protections; the PHA or owner may instead choose to provide benefits to an individual based solely on the individual’s verbal statement or other corroborating evidence. HUD recommends that PHAs and owners develop written policies for how and under what circumstances a verbal statement will be accepted (e.g., the PHA was aware of the abuse and encouraged the victim to request VAWA protections). It is recommended that in cases where a PHA or owner decides to rely on such information, the PHA or owner document, in a confidential manner, the individual’s verbal statement or other corroborating evidence.

b. Requesting Documentation

If the PHA or owner chooses to request an individual to document their claim of domestic violence, dating violence, sexual assault, or stalking, the PHA or owner must make such request in writing. Simply providing the victim the form HUD-5382 does not constitute a written request for documentation, unless the form HUD-5382 is accompanied by a dated letter requesting documentation. (See 24 CFR 5.2007(a)(1).)

The individual may satisfy this request by providing **any** one of the following documents as described under 24 CFR 5.2007(b)(1):

- a. Form HUD-5382; or
- b. A document:

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

The PHA or owner must accept any of the above items (a – c), as provided under 24 CFR 5.2007. For example, form HUD-5382 must be accepted in lieu of any of the third-party documents outlined above (b or c), if the individual chooses to self-certify to satisfy the PHA or owner’s request for documentation; and the submitted documentation does not contain conflicting information.

The PHA or owner has discretion to accept a statement or other evidence (d). PHAs are encouraged to develop written policies as to whether they will exercise discretion as provided for under (d). PHAs are encouraged to note whether a statement **or** other evidence will be accepted. If other evidence will be accepted, HUD recommends that the PHA or owner define acceptable evidence.

The PHA or owner is prohibited from requiring third-party documentation of victim status, except as outlined in Section 8.2(e) of this Notice.

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

c. Time to Submit Documentation

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

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

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

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the PHA or owner is encouraged to acknowledge receipt of the documentation in a timely manner.

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

- a. Deny admission by the applicant or tenant to the housing or program;
- b. Deny assistance under the covered housing program to the applicant or tenant;
- c. Terminate the participation of the tenant in the covered housing program; or
- d. Evict the tenant, or a lawful occupant that commits a violation of a lease.

An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings. If the PHA denies VAWA protections, it must still follow its established procedures for grievance hearings, informal hearings, or informal reviews.

e. Requests for Third-Party Documentation of Victim Status

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

- More than one applicant or tenant provides documentation to show they are victims of domestic violence, dating violence, sexual assault or stalking, and the information in one person's documentation conflicts with the information in another person's documentation; or
- Submitted documentation contains information that conflicts with existing information already available to the PHA or owner.

In these circumstances, the regulations at 24 CFR 5.2007(b)(2), allow a PHA or owner to require the applicant(s) or tenant(s) to submit third-party documentation that meets the criteria in 24 CFR 5.2007(b)(1)(ii), (b)(1)(iii), or (b)(1)(iv). According to the criteria, the applicant or tenant may submit any of the following to meet the third-party documentation request:

- a. A document:
 - Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, "professional") from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;
 - Signed by the applicant or tenant; and
 - That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for

protection and remedies under the VAWA Final Rule, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or

- b. A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency (for example, a police report) that documents the incident of domestic violence, dating violence, sexual assault, or stalking.
- c. At the discretion of the covered housing provider, a statement or other evidence provided by the applicant or tenant.

The applicant(s) or tenant(s) must be given 30 calendar days from the date of the request to provide such documentation. If an applicant or tenant responds with third-party documentation that meets the criteria above and supports the applicant or tenant's VAWA request, the PHA or owner is prohibited from requiring further documentation of the applicant or tenant's status as a victim of domestic violence, dating violence, sexual assault, or stalking. However, if an applicant or tenant does not submit any third-party documentation within the required time period or submits documentation that does not meet the criteria above, the PHA or owner may, but is not required to, accept that applicant or tenant's assertion of victim status for the purpose of the VAWA protections.

For purposes of providing VAWA protections, satisfying the documentation requirements in section 24 CFR 5.2007(b) resolves the question of whether the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking.

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

When requesting third-party documentation, the PHA is encouraged to provide contact information for local domestic violence agencies so that the applicant(s) or tenant(s) can seek services and plan for their safety. The PHA may also provide the applicant(s) or tenant(s) with contact information for local legal aid offices, which may be able to assist in providing appropriate referrals, obtaining restraining orders, and preparing for grievance hearings.

If the PHA or owner requests, but does not receive third-party documentation, the PHA or owner has the option to deny VAWA protections and must notify the applicant or tenant. If this results in a tenant(s) being terminated from assistance, the PHA must hold a separate informal hearing (HCV) or grievance hearing (public housing) for the tenant. When denying VAWA protections, the PHA or owner must ensure that it complies with PIH Notice 2015-19.

Alternatively, the PHA may have a family break-up policy allowing for assistance to be provided to both persons seeking VAWA protections.

Example: A two-person household was notified by an owner that they were being evicted from their unit due to a history of neighbors having to call the police for loud disturbances coming from the tenant-household's unit in violation of the noise provision in their lease. Each member of the tenant-household provides certification to the owner that they are a victim of domestic violence, and the disturbances arose from their partner's abuse. The owner has a policy of requesting third party documentation when there are conflicting certifications. Thus, the owner requests third party documentation individually from both members of the household. Within 30 calendar days the owner receives third-party certification from only one member of the household. The owner treats the household member that submits third party documentation as a victim of domestic violence for

purposes of VAWA and notifies the other household member, who did not submit third party documentation, that the owner has denied VAWA protections for the other household member. The owner must notify the household member being terminated from assistance and hold the appropriate hearing.

Note: Perpetrators sometimes obtain temporary restraining orders or file police reports against victims as a form of retaliation. Further, many victims are unable to timely access the courts or law enforcement due to the language barriers, disabilities, cultural norms, or fear for their safety. As a result, the fact that only one party submitted third-party documentation is not always a reliable indicator of domestic violence, dating violence, sexual assault, or stalking.

f. Documentation Conflicts with PHA or Owner Information

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

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

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

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

9. PHA Documentation Requirements

The VAWA regulations and requirements require that updates be made to applicable plans. There are also several discretionary areas where PHAs need to implement policies explained in their Administrative Plans and Admissions and Continued Occupancy Policy (ACOP), as applicable. Below is a summary of the requirements and a sample list of policy questions for the various PHA documents.

9.1 5-Year and Annual Plans

PHAs are required to include a brief description in their Annual Plan (as applicable) and 5-Year Plan of goals, activities, objectives, policies, programs, or services for child and adult victims of domestic violence, dating violence, sexual assault, or stalking, as required in 24 CFR 903.6(a)(3) and 24 CFR 903.7(m)(5) and described below. The VAWA Final Rule did not change this requirement. The availability of new PHA Annual and 5-Year PHA Plan templates that include the provisions of VAWA 2013 were first made available through Notice PIH 2015-18 (HA). HUD encourages reference to the PHA's Emergency Transfer Plan described in Section 12. All PHAs are required to submit a 5-Year Plan for HUD's approval (MTW PHAs excepted).

Annual PHA Plan Templates require PHAs to report any changes to Plan elements, which include VAWA provisions at 24 CFR 903.7(m)(5), under the safety and crime prevention element. The following information must be included:

- A statement of any domestic violence, dating violence, sexual assault, and stalking prevention programs;
- A description of any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;
- A description of any activities, services, or programs provided or offered by a PHA that help child and adult victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing; and
- A description of any activities, services, or programs provided or offered by a PHA to prevent domestic violence, dating violence, sexual assault, or stalking, or to enhance victim safety in assisted families.

When PHAs first adopt policy changes in accordance with the VAWA Final Rule, all covered PHAs must report those changes in their next Annual Plan submission cycle. However, if the policy changes trigger a significant amendment to the PHA Plan based on the PHA's significant amendment definition, then a Significant Amendment to the current annual plan must be submitted. In subsequent Annual Plan submission cycles, a PHA is only required to report changes, if any, to the VAWA policies they have adopted.

While PHAs are not required to provide services or activities beyond the victim protections and remedies included in the VAWA Final Rule, HUD encourages PHAs to develop strategies and relationships with community organizations, domestic violence victim advocates, and local law enforcement to provide services and resources to victims of domestic violence, dating violence, sexual assault, or stalking as described in detail at Section 14. For example, a PHA may partner with a local domestic violence service provider to offer a workshop to educate tenants/participants about their VAWA rights or other rights available to tenants/participants under state and local domestic violence laws or programs. If the PHA so chooses to partner with a local domestic violence service provider, HUD recommends that these services and activities should be included in the Annual Plan (as applicable) and 5-Year Plan.

Nothing in the Annual Plan submission requirement at 24 CFR 903.7 requires PHAs to undertake activities, services, or programs beyond the victim protections and remedies included in the VAWA Final Rule, although HUD encourages PHAs to do so.

Qualified PHAs must comply with 5 Year Plan submission requirements: Nothing in VAWA 2013 or the VAWA Final Rule supersedes Section 2702 of Title VII—Small Public Housing Authorities Paperwork Reduction Act of the Housing and Economic Recovery Act of 2008 exemption of qualified PHAs from preparing and submitting an Annual Plan. As such, Qualified PHAs are not required to comply with the Annual Plan submission requirements of VAWA. Qualified PHAs are required to comply with the 5-Year Plan

submission requirements of VAWA and to hold annual public hearings on their activities; including their implementation of VAWA protections.

Small PHAs must comply with 5 Year Plan submission requirements: PHAs that meet the definition of small PHA and are using the streamlined Annual PHA Plan Template, are not required to submit the VAWA information described above. (See form HUD-50075-SM.)

HCV Only PHAs must comply with 5 Year Plan submission requirements: HCV only PHAs using the streamlined Annual PHA Plan Template for PHAs that only administer an HCV program are not required to submit the VAWA information described above. (See form HUD-50075-HCV.)

MTW PHAs: PHAs that participate in the Moving to Work (MTW) demonstration are not required to complete the Annual and 5-Year PHA Plans described above. Instead, MTW PHAs complete Annual Plans and Reports as required in HUD Form 50900: *Elements for the Annual MTW Plan and Annual MTW Report*. MTW PHAs must comply with the requirements of VAWA.

9.2 HCV Program Documents

Administrative Plan: The administrative plan states PHA policy on matters for which the PHA has discretion to establish local policies (24 CFR 982.54). PHAs must include in the administrative plan any local PHA policies regarding domestic violence, dating violence, sexual assault or stalking that are not already explicitly required by the VAWA Final Rule and this implementing guidance.

HCV Tenancy Addendum and Housing Assistance Payments Contract: The VAWA Final Rule retains the provisions of HUD's regulations implementing VAWA 2005, which requires that a description of specific protections afforded to victims of domestic violence, dating violence, or stalking must be included in the HCV tenancy addendum and Housing Assistance Payments (HAP) contract. (See 24 CFR 5.2005(a)(4).)

The HCV tenancy addendum (form HUD-52641-A for tenant-based assistance; form HUD-52530-C for project-based assistance); the HAP Contract for tenant based assistance (form HUD-52641); and the PBV HAP Contract (form HUD-52530A and 52530B) will be revised to include the updated provisions of 24 CFR Part 5, Subpart L. The HAP Contract for manufactured home space rental (form HUD-52642) does not currently include VAWA provisions and will be revised at a later date to include the provisions of 24 CFR Part 5, Subpart L. PHAs continue to use the current version of these forms until the HUD update is complete. PHAs do not alter these forms or add their own addendum to the HAP contract or tenancy addendum in the interim.

9.3 Public Housing Program Documents

Admissions and Continued Occupancy Plan (ACOP): A PHA's ACOP states the PHA's policy on matters for which the PHA has discretion to establish local policies. PHAs must therefore include in the ACOP any PHA policies regarding domestic violence, dating violence, sexual assault or stalking, that are not already explicitly required by the VAWA Final Rule and further explained in this guidance.

Public Housing Lease: The VAWA Final Rule retains the provisions of HUD's regulations implementing VAWA 2005, which requires that a description of specific protections afforded to victims of domestic violence, dating violence, or stalking must be included in the public housing lease. (See 24 CFR 5.2005(a)(4).)

PHAs must ensure that their public housing leases contain the updated provisions of 24 CFR Part 5, Subpart L, including:

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

PHAs are encouraged to include in the lease any additional protections made available to victims of domestic violence, dating violence, sexual assault, or stalking.

10. Notice of Occupancy Rights

The VAWA Final Rule revises the requirements for notice of VAWA rights at 24 CFR 5.2005(a). VAWA 2013 requires that HUD create a notice of VAWA rights. The VAWA Final Rule includes a Notice of Occupancy Rights under the Violence Against Women Act; VAWA Notice of Occupancy Rights, form HUD-5380. HUD's VAWA Notice of Occupancy Rights is available at hud.gov/hudclips. The VAWA Notice of Occupancy Rights is for use by all HUD-covered programs, including Public Housing, HCV, and PBV. However, PHAs, not owners, are the covered housing provider responsible for this activity.

Note: Under the Mod Rehab program, the PHA may provide the VAWA Notice of Occupancy Rights to owners, and charge owners with distributing the notice and form to tenants. (See 24 CFR 882.102.)

PHAs must issue the VAWA Notice of Occupancy Rights without changes to the core protections and confidentiality rights in the Notice. PHAs must 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 VAWA Notice of Occupancy Rights.

For example, PHAs must add to the VAWA Notice of Occupancy Rights information that identifies the covered program at issue (e.g., public housing), the name of the PHA (e.g., the Housing Authority of Any Town), and any additional information and terminology that is used in the program and makes the VAWA Notice of Occupancy Rights more meaningful to the applicants, and tenants/participants that receive the Notice (e.g., use of “apartment” or “housing” in lieu of “unit”). This may include additional language in places other than where the VAWA Notice of Occupancy Rights provides instructions to do so, so long as the language does not make changes to the core protections and confidentiality rights as noted above. For example, the additional language cannot add additional requirements to receive VAWA protections, but additional language may be provided to better explain VAWA.

The VAWA Notice of Occupancy Rights must be provided to:

- Adult applicants of public housing, HCV, and PBV; and
- Each adult tenant of public housing, HCV and PBV adult participant.

The VAWA Notice of Occupancy Rights must be provided no later than each of the following times:

For applicants:

- At the time the individual is provided assistance or admission²; and
- At the time the applicant is denied assistance or admission.

For tenants/participants:

- With any PHA notification of eviction or termination of assistance; and
- By December 16, 2017, either during the PHA annual recertification or lease renewal process (as applicable). If there will be no recertification or lease renewal during the first year, through other means within the first year as determined by the PHA.

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

11. Victim Confidentiality

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

The VAWA Final Rule clarified that any information submitted to a covered housing provider under 24 CFR 5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

- a. Employees of the PHA or owner (or those who administer assistance on their behalf, (e.g., contractors) must not have access to the information unless explicitly authorized by the PHA or owner for reasons that specifically call for these individuals to have access to such information under applicable Federal, State, or local law (e.g., the information is needed by a PHA employee to provide the VAWA protections to the victim); and
- b. The PHA or owner must not enter this information into any shared database, or disclose this information to any other entity or individual (e.g. a prospective owner of participant's unit), except to the extent that disclosure is:
 - 1) Requested or consented to in writing by the individual (victim) in a time-limited release;
 - 2) Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
 - 3) Otherwise required by applicable law.

The prohibition against entering this information into any shared database does not preclude a PHA or owner from entering this information into a database system used by the PHA or owner that meets all requirements for

² For the HCV program, this term refers to the date the tenant actually begins receiving assistance (HAP contract execution), not the date at which the tenant is first selected for assistance (voucher issuance), though the PHA may provide the notice earlier.

securing sensitive personally identifiable information (PII), including the Privacy Act of 1974 (5 U.S.C. § 552a), as long as the requirements listed above and provided at 24 CFR 5.2007(c) are also met (e.g. the victim consents to in writing in a time-limited release). For additional guidance on maintaining confidentiality, see Notice PIH-2015-06, HUD Privacy Protection Guidance for Third Parties.

11.1 Communicating with the Victim

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

The VAWA Final Rule is silent on how a PHA or owner is to balance the confidentiality requirement at 24 CFR 5.2007(c) with the requirement at 24 CFR 5.2007(a) when requesting documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking in writing. PHAs and owners may determine the procedures for requesting documentation in writing on a case-by-case basis, or adopt general policy guidelines for how to handle these requests. For example, requiring the individual requesting VAWA protections to come to an office or other space that may be safe for the individual to receive the written request, making reasonable accommodations as necessary.

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

When discussing these matters directly with the victim, PHAs and owners must take reasonable precautions to ensure that no one can overhear the conversation. For example, PHA employees are encouraged to make the documentation request in a private room; not in an open space at the PHA. PHAs and owners may require that the victim come into the office to pick up the certification form and are encouraged to work with tenants to make delivery arrangements that do not place the victim at risk.

The covered housing provider must comply with all nondiscrimination and civil rights statutes and requirements in implementing their policies. This includes, for example, providing reasonable accommodations to permit individuals to follow or access any rules, policies, practices, or services, such as modifying a policy requiring that the victim come into the office to pick up the certification form to instead deliver the form to the victim. This also includes ensuring effective communication with persons with disabilities, e.g., providing sign language interpreters for persons who are deaf, accessible documents and assistance filling out forms for

persons who are blind or have low vision, and providing language assistance for persons with limited English proficiency.

PHAs and owners may suggest, but cannot require, that the victim designate an attorney, advocate, or other secure contact for communications regarding the request of VAWA protections. This may reduce the PHA's or owner's burden in ensuring confidentiality in communications with the victim.

11.2 Best Practices to Collect Information and Avoid Unintentional Disclosure

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

- Conduct the intake session in a private room, where the individual and staff person can talk without the risk of other staff or clients overhearing.
- Explain the PHA's information sharing policies.
- Communicate to the individual who in the PHA is responsible for handling questions or complaints about confidentiality.
- Provide adequate time for the individual to review and sign forms.
- Post confidentiality notices in the intake room and around the PHA.
- Ensure relevant staff understand confidentiality policies and procedures through regular staff training.
- Post notices about the importance of maintaining confidentiality throughout the office.
- Direct staff to respond to third-party inquiries only after verifying that written client consent has been obtained.
- Clarify information sharing policies with referring/referral agencies and other service and business partners.
- Maintain distinct phone lines for certain purposes.
- Avoid using language referencing domestic violence or sexual assault in agency names, program names, organization names, and staff titles.
- Use a PHA post office box to receive written correspondence.
- Serve individuals off-site as needed or when appropriate.
- Provide interpretation and/or documents translated into the appropriate language when necessary.
- Provide accessible documents or assistance filling out forms for individuals with disabilities.

12. Emergency Transfers

The VAWA Final Rule requires PHAs to adopt an Emergency Transfer Plan, based on HUD's model Emergency Transfer Plan (form HUD-5381). HUD's model Emergency Transfer Plan is available at hud.gov/hudclips. (See 24 CFR 5.2005(e).) Owners of assisted housing or HCV (including project-based voucher) properties that are not PHAs or considered "PHA-Owned" are not the covered housing provider under this provision, and therefore, are not required to adopt an Emergency Transfer Plan. If an owner receives a request for an emergency transfer, the owner is encouraged to explain to the victim that the PHA is the covered housing provider for this activity, and that the PHA should be contacted directly.

PHAs must adopt an Emergency Transfer Plan no later than June 14, 2017.

PHAs administering Public Housing, HCV (including PBV), and Section 8 Mod Rehab must ensure that their Emergency Transfer Plan covers these programs.

The Emergency Transfer Plan must:

- Define tenants/participants eligible for an emergency transfer;
- List documentation needed to request an emergency transfer;
- Outline confidentiality protections; and
- Describe how an emergency transfer may occur.

The Emergency Transfer Plan may require documentation from a tenant seeking emergency transfer, pursuant to 24 CFR 5.2005(e)(10) and 24 CFR 5.2007 and further explained in Section 8 of this Notice. However, a tenant is not required to provide documentation other than that which is specified in 5.2005(e)(10). (See 24 CFR 5.2005(e)(10)(iii).)

The PHA's Emergency Transfer Plan must allow tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to make an internal emergency transfer under VAWA when a safe unit is immediately available. A victim determines whether the unit is safe. (See 24 CFR 5.2005(e)(1)(iii)). The VAWA Final Rule does not define immediately available. A best practice would be to define immediately available as a vacant unit, ready for move-in within a reasonable period of time as defined in the PHA's Emergency Transfer Plan, where the PHA also defines reasonable period of time based on local factors. HUD encourages PHAs to engage the victim in a conversation as to what they may consider safe or what factors the victim considers unsafe. This may allow the PHA to better tailor its emergency transfer response.

The Emergency Transfer Plan must describe policies for assisting a tenant in making an internal emergency transfer when a safe unit is not immediately available, and describe reasonable efforts the PHA will take to assist a tenant who wishes to make an external emergency transfer when a unit that meets the victim's safety standard is not available. The Emergency Transfer Plan must also incorporate strict confidentiality measures. (See 24 CFR 5.2005(e)(4).)

In developing their Emergency Transfer Plans, PHAs are encouraged to review their admissions and transfer policies to determine if revisions are necessary to facilitate emergency transfers. In determining whether changes to the existing policies are necessary, PHAs may want to consider the following:

- Availability and location of units administered by the PHA;
- Demand by applicants for assistance under the program;
- Frequency of mandatory or emergency transfers; and
- Availability of alternative housing opportunities.

12.1 Eligibility for Emergency Transfers

The Emergency Transfer Plan must provide that tenant/participant receiving rental assistance through, or residing in a unit subsidized under, a covered housing program who is a victim of domestic violence, dating violence, sexual assault, or stalking qualifies for an emergency transfer if:

- a. The tenant/participant expressly requests the transfer; and
- b. Either:
 1. The tenant/participant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit; or

2. In the case of sexual assault, the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premise during the 90-day period preceding the date of the request for transfer. (See 24 CFR § 5.2005(e)(2).)

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

The Emergency Transfer Plan should also make clear that qualifying for an emergency transfer does not guarantee continued assistance under the program or a transfer to another covered housing program. The emergency transfer requirements do not supersede any eligibility or occupancy requirements that may apply under a covered housing program. (See 24 CFR 5.2005(e)(13).) For example, if a tenant qualifies for an emergency transfer to escape an abusive partner, but the tenant would not meet the program eligibility requirements, the tenant cannot be rehoused under that program.

12.2 Emergency Transfer Request

The PHA's Emergency Transfer Plan must indicate how a tenant/participant requests an emergency transfer. A PHA may either allow for a verbal self-certification, or require a written request before any transfer occurs. A PHA should include in its Emergency Transfer Plan and related VAWA policies whether verbal self-certification is sufficient to initiate an emergency transfer.

The verbal self-certification, if permitted, or the written request must include:

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

HUD has created a model Emergency Transfer Request document that PHAs requiring written request for emergency transfer may use (form HUD-5383). PHAs using the emergency transfer request document must make it available to the tenant/participant. HUD's model Emergency Transfer Request document is available at hud.gov/hudclips.

The model Emergency Transfer Request document:

- Provides that victims of domestic violence, dating violence, sexual assault, or stalking may use this form to request an emergency transfer;
- May be used to certify that the victim meets the requirements of eligibility for an emergency transfer under VAWA;
- Defines the qualifications for an emergency transfer;
- Advises that victims that have third-party documentation that demonstrates why they are eligible for an emergency transfer should submit this information to the housing provider (PHA) if it is safe to do so;
- Describes the confidentiality protections under VAWA;

- Provides examples of third-party documentation;
- Requires that the victim answer 11 numbered questions, and provides the option to list any third-party documentation that may be voluntarily submitted;
- Clarifies that the name of the accused perpetrator does not have to be provided if it is unknown to the victim or it cannot be provided safely, as determined by the victim; and
- Requires the victim to certify to the truth and accuracy of the information being provided, and explains that false information could be the basis for denial of admission, termination of assistance, or eviction.

PHAs are encouraged to customize the model Emergency Transfer Request document to reflect the specific assistance provided under the particular covered housing program, and to their program operations that may pertain to or affect the emergency transfer provisions. For example, the model Emergency Transfer Request document does not include details about a PHA's emergency transfer policy because it is incumbent on the housing provider to provide such information in its Emergency Transfer Plan.

A PHA may also request in writing that the victim provide documentation of an occurrence of domestic violence, dating violence, sexual assault, or stalking in accordance with the regulation at 24 CFR 5.2007. However, no other documentation may be required to qualify the tenant for an emergency transfer.

12.3 Emergency Transfers Policies for the Public Housing Program

The VAWA Final Rule requires PHAs to establish policies for internal and external emergency transfers, which must be included in the Emergency Transfer Plan. (See 24 CFR 5.2005(e)(1).) Under the Public Housing program, PHAs administering public housing generally have discretion to establish policies for how they will treat transfer requests by a tenant, and transfers that may be determined to be mandatory by the PHA. A PHA may categorize these transfer types in a way that allows them to prioritize or otherwise make determinations about the urgency of a transfer. Common PHA terminology for transfers includes, but is not limited to: mandatory transfers, tenant requested transfers, and emergency transfers. The VAWA Final Rule did not change PHA authority to establish and define other transfer policies; it only requires that new policies be established for transfers under VAWA.

An internal emergency transfer is a move of a tenant to another unit assisted under the same program where the tenant would not be categorized as a new applicant. For example, a move from one public housing unit to another public housing unit owned by the same PHA.

Note: The Emergency Transfer Plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available. The plan must also describe policies for assisting tenants when a safe unit is not immediately available. Those policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.

An external emergency transfer refers to an emergency transfer of a tenant to another unit or form of assistance where the tenant would be categorized as a new applicant. For example, a move from a public housing unit owned by one PHA to a public housing unit owned by another PHA.

The Emergency Transfer Plan must describe reasonable efforts the PHA will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available. The Emergency Transfer Plan must include policies for assisting a tenant who is seeking an external emergency transfer under VAWA

out of the public housing program or unit and a tenant who is seeking an external emergency transfer under VAWA into the public housing program or unit.

A tenant must be allowed to seek an internal and external emergency transfer concurrently if an internal safe unit is not immediately available. For example, if a PHA owns one public housing building and there are no vacancies in the foreseeable future, a victim may seek an internal and external emergency transfer concurrently, as there is no unit immediately available. In this instance, a PHA may decide to provide the victim a voucher (if available) or make other referrals as is described in their Emergency Transfer Plan.

HUD strongly encourages PHAs to consider the following when creating their external emergency transfer policies:

- Arrangements, including memoranda of understanding, with other covered housing providers to facilitate moves.
- Expedited application review processes for new housing units in situations where a new application would be required. If the PHA adopts an expedited application process, it must explain such measures in the Emergency Transfer Plan. Such processes may include, with the written consent of the victim of domestic violence, dating violence, sexual assault, or stalking, procedures which would allow the receiving PHA to accept and use the prior covered housing provider's determination of eligibility and tenant screening and all related verification information, including form HUD 50058 (Family Report). (See 24 CFR 960.203.)
- Outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking. See Section 15 for additional guidance on developing partnerships with domestic violence service providers.
- Creation of an admissions preference for victims seeking an external emergency transfer from another VAWA covered housing provider. This would allow a victim to more quickly access an available unit under a program administered by the PHA without being placed on the bottom of an applicant waiting list. See Section 19 for additional guidance on adopting an admissions preference.
- A form to be completed by the PHA that the victim may share with prospective housing providers indicating that the victim is eligible for an emergency transfer, and is seeking an external emergency transfer because a safe unit is not immediately available.

12.4 Emergency Transfer Policies and the Housing Choice Voucher and PBV Program

HCV

The VAWA Final Rule included a requirement that the Emergency Transfer Plan must describe policies for a tenant who has tenant-based assistance and who meets the requirements for an emergency transfer. (See 24 CFR 5.2005(e)(9).) As vouchers are inherently mobile, a victim who wants to move may request an emergency transfer under Section 12.2. If the victim requests to move outside of the PHA's jurisdiction, the portability regulations apply. (See Notice PIH 2016-09.)

PHAs are strongly encouraged to consider the following policies for inclusion in their Emergency Transfer Plan for participants with tenant-based assistance:

- Expediting administrative processes for participants who wish to move with their tenant-based assistance, including when the victim and perpetrator are members of the same household.
- References to the following:

- PHA's family break-up policy. (See 24 CFR 982.315.)
- Where a family can move with tenant-based assistance. (See 24 CFR 982.353.)
- Moves with continued tenant-based assistance. (See 24 CFR 982.354.)
- Preferences in other housing programs administered by the PHA.

HUD encourages PHAs to detail in their Emergency Transfer plan not only how vouchers will be provided to HCV participants seeking emergency transfers under VAWA, but also what transfer or referral options may be available if the family needs a temporary place to stay while conducting their housing search for a new unit to lease under the HCV program.

HUD notes that many of the policies noted above are features of the HCV program already in place that may be used by participants to move from their current unit to another unit that may provide for victim safety (e.g., moving with continued assistance, and portability.)

Project-Based Voucher

Because owners receiving HAP on behalf of an HCV participant in PBV are not required to establish an Emergency Transfer Plan, it is the PHA that must have emergency transfer policies for PBV participants.

Unlike families receiving tenant-based assistance under the HCV program, PBV families cannot move with their project-based assistance, as the assistance is tied to the unit. Nonetheless, if a victim makes an emergency transfer request and has been living in the PBV unit for one year or more, the PHA must give the victim priority to receive the next available opportunity for continued tenant-based rental assistance. (See 24 CFR 983.261.) A family or member of the family is not required to give advanced written notice, with a copy to the PHA, of intent to vacate the PBV unit if the family moved to protect the health or safety of the victim.

PHAs must include in their Emergency Transfer Plan policies that address when:

- The victim has been living in a unit for less than one year; or
- The victim seeks to move sooner than a tenant-based voucher will be available.³

The PHA should refer the victim to other housing opportunities in the community as described in the PHA's Emergency Transfer Plan if:

- The PHA does not offer other assistance to the victim (because the victim has not lived in the PBV unit for one year);
- Tenant-based assistance is not immediately available; or
- Another safe PBV unit is not immediately available.

PHAs are strongly encouraged to consider the following policies for inclusion in their Emergency Transfer Plan for participants with project-based assistance:

- Expediting administrative processes for participants who wish to move to another available PBV unit administered by the PHA.
- Expediting administrative processes for participants wishing to move with tenant-based assistance.
- Establishing preferences in other housing programs administered by the PHA.

³ If tenant-based assistance is not available at this time, the PHA must give the family priority to receive the next available opportunity for tenant-based assistance, even if they have left the unit to protect the family's safety.

As noted above, PHAs must include in their Emergency Transfer Plan policies for when the victim has been living in a PBV unit for less than one year. This is because the requirement that the PHA offer the family the opportunity for continued tenant-based rental assistance applies only when the family terminates the assisted lease after the first year of occupancy. (See 24 CFR 983.261.) This requirement does not apply to families within the first year of the lease. PHAs may have a policy to provide continued tenant-based rental assistance to victims making an emergency transfer request that have lived in a PBV unit for less than one year. Such families must be selected off the waiting list for the applicable program.

Note: The examples below include scenarios that are fact-intensive and are intended to be illustrative. Real-world cases of victims seeking VAWA protections must be approached in a way that takes in consideration the specifics of each case, and addressed pursuant to program requirements and PHA policy.

12.5 Handling Moves with Continued Tenant-Based Assistance

Victims of domestic violence, dating violence, sexual assault, or stalking, may need to move to protect their health or safety. The VAWA Final Rule provides several exceptions for such victims to enable them to move with continued assistance in the tenant-based voucher program.

In accordance with 24 CFR 982.354(c)(2)(iii), the PHA's policies on restricting timing and number of moves do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member.

The VAWA Final Rule at 24 CFR 982.354 (HCV) and 24 CFR 983.261(c)(1) (PBV) provides that a PHA may not terminate assistance if the family, with or without prior notification to the PHA, has already moved out of a unit in violation of a lease, if such a move occurred to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking; and who reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit, or if any family member has been the victim of sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

12.6 Emergency Transfer Example - Public Housing

Scenario: Tenant approaches PHA informing them that they are a victim of dating violence and fearful of further violence. The household consists of the victim (head of household) and two children under the age of 18.

Step 1: The PHA provides the victim with the PHA's VAWA Notice of Occupancy Rights, when requested, so to ensure that they understand the rights and protections afforded them. If the PHA previously has not provided notification to the family members of their VAWA rights, then, in accordance with 24 CFR 5.2005(a)(2), the PHA must provide notice to the victim of their rights.

Step 2: The PHA can decide to accept the victim's verbal statement, or request documentation per 24 CFR 5.2007.

Step 3: The PHA accepts the documentation (if requested and provided as specified under 24 CFR 5.2007), or verbal statement for VAWA protections.

Step 4: The victim informs the PHA that they are seeking an emergency transfer and certifies that the victim meets the requirements for an emergency transfer. See the requirements for an emergency transfer at Section 12.2.

Step 5: The PHA can decide to accept the victim's statement, or request a written request for an emergency transfer.

Step 6: The PHA accepts the written request (if requested and provided as specified in 24 CFR 5.2005(e)(10)) or verbal statement.

Step 7: The PHA refers to their Emergency Transfer Plan to work with the victim and inform them of their options.

- a. Internal Emergency Transfer:** The PHA offers to put the victim on an internal emergency transfer waiting list. A safe unit is not immediately available within a reasonable time period. Because a safe unit is not immediately available, the PHA also explains external emergency transfer opportunities.
- b. External Emergency Transfer:**
 - 1) The PHA offers to place the victim on the applicant list for their HCV program. A voucher is not immediately available.
 - 2) The PHA provides the victim with a list of housing providers in the community for which the PHA has partnered to serve victims of domestic violence, dating violence, sexual assault, and stalking.

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

Step 9: The victim decides to stay in their current public housing unit until they are able to secure a voucher or another public housing unit. Although not required under the VAWA Final Rule, the PHA takes steps to reduce the threat of further violence against the victim: changing the victim's locks; installing better lighting around the perimeter of the building; and reminding the victim that they are allowed temporary absence from the unit in accordance with PHA policy. (See absence from unit at 24 CFR 982.312.)

Step 10: A public housing unit becomes available. The PHA notifies the victim of the availability of a unit and provides a tour of the unit.

Step 11: The victim determines the unit to be safe. The PHA expeditiously follows its policies for the move. A service provider funds the move of the victim's belongings.

12.7 Emergency Transfer Example – HCV

Scenario: Participant approaches PHA informing them that they are a victim of domestic violence and fearful for their safety if they remain in their current home. The victim and perpetrator are co-head members of the household.

Step 1: The PHA provides the victim with the PHA's VAWA Notice of Occupancy Rights, when requested, so to ensure that they understand the rights and protections afforded them. If the PHA previously has not provided notification to the family members of their VAWA rights, then, in accordance with 24 CFR 5.2005(a)(2), the PHA must provide notice to the victim of their rights PHA provides victim with VAWA Notice of Occupancy Rights.

Step 2: The PHA can decide to accept the victim's verbal statement, or request documentation per 24 CFR 5.2007.

Step 3: The PHA accepts the documentation (if requested and provided as specified under 24 CFR 5.2007) or verbal statement for VAWA protections.

Step 4: The victim informs the PHA that they are seeking an emergency transfer. See the requirements for an emergency transfer at Section 12.2.

Step 5: The PHA can decide to accept the victim's statement, if it meets the requirements discussed in Section 12.2, or request a written request for an emergency transfer.

Step 6: The PHA accepts the written request (if requested and provided as specified in 24 CFR 5.2005(e)(10)) or verbal statement.

Step 7: The PHA refers to their Emergency Transfer plan to work with the victim and inform them of their options. Because the victim and perpetrator are co-head members of the household, the PHA refers to its family break-up policy. When a family break-up results from the occurrence of domestic violence, the PHA must ensure that the victim retains assistance. (See 24 CFR 982.315(a).)

As part of a PHA's Emergency Transfer Plan, the PHA may choose to provide a voucher to facilitate the emergency transfer without having first terminated assistance to the perpetrator.

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

Step 9: The PHA issues a voucher to the victim.

Step 10: The PHA expedites the administrative process, consistent with due process protections, for carrying out the family break-up policies, and terminates the assistance of the perpetrator. The HAP contract is terminated automatically when program assistance for the family has been terminated. The lease terminates as a result of the HAP contract being terminated.

Step 11: The victim identifies a safe home and the PHA expeditiously inspects the unit, conducts a rent reasonableness determination, approves subsidy, prepares HAP contract, and the PHA and owner execute HAP contract. The victim moves into the new home.

12.8 Emergency Transfer Example – PBV

Scenario: Participant approaches PHA informing them that they are a victim of stalking and fearful for their safety if they remain in their current home. The victim is the head of household, and has lived in the PBV unit for more than one year.

Step 1: The PHA provides the victim with the PHA's VAWA Notice of Occupancy Rights, when requested, so to ensure that they understand the rights and protections afforded them. If the PHA previously has not provided notification to the family members of their VAWA rights, then, in accordance with 24 CFR 5.2005(a)(2), the PHA must provide notice to the victim of their rights.

Step 2: The PHA can decide to accept the victim's statement, or request documentation per 24 CFR 5.2007.

Step 3: The PHA accepts the documentation (if requested and provided as specified under 24 CFR 5.2007) or verbal statement for VAWA protections.

Step 4: The victim informs the PHA that they are seeking an emergency transfer. See the requirements for an emergency transfer at Section 12.2.

Step 5: The PHA can decide to accept the victim's statement, if it meets the requirements discussed in Section 12.2, or request a written request for an emergency transfer.

Step 6: The PHA accepts the written request (if requested and provided as specified in 24 CFR 5.2005(e)(10),) or verbal statement.

Step 7: The PHA refers to their Emergency Transfer plan to work with the victim and inform them of their options. Because the victim has lived in the PBV unit for more than one year, the victim may exercise their right to move per 24 CFR 983.261.

A voucher is not currently available.

The PHA follows its Emergency Transfer Plan for what actions it will take when a voucher is not immediately available. Based on its Emergency Transfer Plan, the PHA may:

- Offer to allow the tenant to move to another PBV unit at the same site if the individual deems the unit safe, or to a unit in another PBV project under the PHA.⁴
- Offer to place the victim on their Public Housing waiting list.
- Provide the victim with a list of housing providers in the community for which the PHA has partnered to serve victims of domestic violence, dating violence, sexual assault, and stalking.

Step 8: Using the list of housing providers provided by the PHA, the victim reaches out to other housing providers in the community. Two housing providers that the PHA has partnered with have a waiting list preference for victims seeking emergency transfers from the PHA, and the PHAs place the victim on the respective waiting lists.

Step 9: The PHA informs the victim that local victim service providers may be able to assist them with identifying temporary shelter while they await a housing offer if they choose not to remain in their PBV unit. The providers may have resources such as: safety planning, counseling, and emergency funding. The PHA provides the victim with contact information.

Step 10: The victim moves out of their current home to stay at a domestic violence shelter.

Step 11: After moving, the victim notifies the owner of their previous home that they moved out of the unit as a result of domestic violence by the other member of the household.

Step 12: The initial PHA does not yet have a voucher available. One of the two partnering housing providers notifies the victim that they have a unit available.

⁴ HUD understands that a transfer to a unit within the same development in which the perpetrator resides might not be safe for victims. However, if the unit in the same development is the only one available this option should be available to the victim. The victim is in the best position to make this decision. (See 24 CFR 5.2005(e)(1)(iii).)

Step 13: The victim visits the unit and determines that it is safe. The victim chooses to move into their new project-based assisted unit instead of waiting for the next available voucher. As a result, the PHA does not provide tenant-based rental assistance to the family under 24 CFR 983.261.

13. Family Break-up

The occurrence of domestic violence, dating violence, sexual assault, or stalking may lead to the break-up of the assisted family in many instances. Family break-up involves terminating the assistance of the perpetrator while continuing the assistance to the victim, ensuring that the victim understands his or her rights, documenting the abuse, maintaining the confidentiality of the victim, and ensuring the safety of the victim. PHAs, not owners, are the covered housing provider for this activity. To help PHAs understand each of the steps involved with this process, this Notice presents the following scenarios.

Note: The examples below include scenarios that are fact-intensive. Real-world cases of victims seeking VAWA protections must be approached in a way that takes into consideration the specifics of each case, and addressed pursuant to program requirements and PHA policy.

13.1 Public Housing Scenario

Scenario: The victim informs the PHA that their family member is committing domestic violence against them, and they wish to retain assistance. The victim may choose to inform the PHA of the abuse after the PHA has notified the household that they are being evicted (due to criminal activity, for example), or at any other point.

Step 1: If the PHA previously has not provided notification to the family members of their VAWA rights, then in accordance with 24 CFR 5.2005(a)(2), the PHA must provide notice to the victim of their VAWA rights. If they have been previously notified of their VAWA rights, the PHA is encouraged to again provide the victim with the PHA's VAWA notice to ensure that they fully understand the rights and the protections afforded them.

Step 2: The PHA can decide to accept the victim's statement, or request documentation per 24 CFR 5.2007.

Step 3: Upon provision of documentation (if requested and provided as specified in 24 CFR 5.2007), the PHA is encouraged to ensure the victim knows of the upcoming notification of eviction of the perpetrator, including the exact date the notification will take place. As part of this notification to the victim, the PHA is encouraged to provide the victim with contact information of local victim service providers, providing the victim an opportunity to create a safety plan (e.g., the victim may need to leave the unit temporarily and stay in a domestic violence shelter until the eviction takes place). The PHA is encouraged to utilize any partnerships it may have established with local law enforcement and victim service providers to ensure the safety of the victim.

Step 4: The PHA begins the process to evict the perpetrator under 24 CFR 966.4(1)(5)(ii)(A), *Threat to other residents*. If the victim wants to move out of the unit for their safety, the PHA must first determine the tenant qualifies for an emergency transfer, and then follow its Emergency Transfer Plan. If the victim wants to stay in the unit, the PHA bifurcates the lease by evicting the perpetrator and allowing the victim to remain on the lease (Step 6). The PHA must expeditiously conduct an interim reexamination to determine the new rent computations.

Step 5: The PHA should provide the perpetrator with no more than 30 days (in most cases) notice of termination (24 CFR 966.4(1)(3)(i)(B).) If the perpetrator requests a grievance hearing, the PHA is encouraged to conduct an expedited grievance procedure (24 CFR 966.55(g)) after a determination of threat to health and safety. The perpetrator has a right to examine the PHA's documentation relevant to the eviction (24 CFR

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

PHAs are encouraged to consult a local domestic violence expert or victim service provider that has not worked with either the victim or perpetrator, to be on the grievance hearing panel.

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

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

13.2 HCV Scenario

Scenario: The victim informs the PHA that their family member is committing domestic violence, dating violence, sexual assault, or stalking against them, and the victim wishes to retain assistance. The victim may choose to inform the PHA of the abuse after the owner has notified the household that they are being evicted (due to criminal activity), or at any other point.

Step 1: The PHA provides the victim with the PHA's VAWA Notice of Occupancy Rights, after requested, so to ensure that the victim fully understands the rights and the protections afforded to them. If the PHA previously has not provided notification to the family members of their VAWA rights, e.g., an annual recertification or lease renewal has not occurred since the effective date of the VAWA Final Rule, then the PHA must provide the VAWA Notice of Occupancy Rights. In accordance with 24 CFR 982.315(a)(2), the PHA must ensure that the victim retains the assistance if a family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking.

Step 2: The PHA can decide to accept the victim's statement, or request documentation per 24 CFR 5.2007.

Step 3: Upon provision of documentation (if requested and provided as specified in 24 CFR 5.2007), the PHA is encouraged to ensure the victim knows of the upcoming notification of termination of the perpetrator, including the exact date the notification will take place. As part of this notification to the victim, the PHA is encouraged to provide the victim with contact information of local victim service providers – providing the victim an opportunity to create a safety plan (e.g., even if the victim does not wish to move out of the unit, the victim may need to leave the unit temporarily and stay in a domestic violence shelter until the termination takes place, and/or obtain a protection order giving the victim possession of the apartment, and change the locks; and/or ask the owner to bifurcate the lease to remove the perpetrator from the lease).

Step 4: The PHA begins the process to terminate the perpetrator for violation of family obligations, 24 CFR 982.551(l), *Crime by household members*.

Step 5: The PHA must provide the perpetrator prompt written notice of termination (24 CFR 982.555(c)(2)). If the perpetrator requests an informal hearing, the PHA must proceed with the hearing in a reasonably expeditious manner upon request of the perpetrator (24 CFR 982.555(d)). The perpetrator has a right to examine the PHA's documentation directly relevant to the hearing (24 CFR 982.555(e)(2)(i)). Per 24 CFR 5.2007(c)(2)(ii) the PHA may disclose documentation required for use in an eviction or hearing regarding termination of assistance. The PHA must remove or otherwise withhold information that may place the victim

at risk of further violence. For example, if the victim has secured a temporary living situation and the location is included in the documentation, the PHA must remove or otherwise hide this information (i.e. blackout or redact).

PHAs are encouraged to consult a local domestic violence expert or victim service provider that has not worked with either the victim or perpetrator, to be on the informal hearing panel. The hearing officer or hearing panel provides the victim and the perpetrator with a written decision.

Step 6: If the victim wishes to move, the PHA is encouraged to assist the victim in negotiating a mutual rescission of the lease, if needed. If the victim moves out of the unit in violation of the lease (in order to protect the health or safety of the victim), the PHA must allow the victim in the tenant-based voucher program to move with continued tenant-based assistance (24 CFR 982.314(b)(4), 982.353(b)). Termination of the HAP for the family results in the termination of the lease.

13.3 HUD-VASH

In HUD-Veterans Affairs Supportive Housing (HUD-VASH), when a veteran's family member is receiving protection as a victim of domestic violence, dating violence, sexual assault, or stalking, and the veteran is the perpetrator of such violence, the victim must continue to be assisted.

Upon termination of the perpetrator's HUD-VASH voucher due to the perpetrator's acts of domestic violence, dating violence, sexual assault, or stalking, the victim receiving protections under 24 CFR part 5, subpart L should be given a regular HCV if one is available, and the perpetrator's HUD-VASH voucher should be used to serve another eligible veteran family. If a regular HCV is not available for the victim, the perpetrator must be terminated from assistance, and the victim will continue to utilize the HUD-VASH voucher. In the case of the victim utilizing the HUD-VASH voucher upon termination of the perpetrator, this HUD-VASH voucher must be issued to another eligible veteran family upon the voucher's turnover.

14. Record Keeping and Reporting Requirements

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

The VAWA Final Rule further requires that these requests and outcomes of such requests be reported to HUD annually. The requirement to report this information to HUD is not in effect until:

- a. PHAs begins to provide emergency transfers, and
- b. HUD completes the Paperwork Reduction Act requirements.

HUD will communicate additional details about the record keeping requirement at a later date. Until such time, PHAs are not required to report this information to HUD. HUD notes that it would be beneficial for PHAs to maintain this information to facilitate future reporting to HUD.

15. Developing Partnerships with Victim Service Providers

HUD encourages ongoing PHA efforts to strengthen access to supportive services for victims of domestic violence, dating violence, sexual assault, or stalking. Successful PHAs have developed valuable relationships with domestic violence victim advocates, legal aid services, and law enforcement agencies to ensure that victims are getting the necessary supportive services they need. These relationships have bolstered PHA awareness of domestic violence, dating violence, sexual assault, and stalking. Most importantly, these efforts have saved lives and resulted in victims accessing critical supportive services to rebuild their lives.

HUD also encourages PHAs to share their best practices in developing a strong domestic violence, dating violence, sexual assault, or stalking education and service program. Such practices have included:

- Participating in regular domestic violence working groups with domestic violence victim advocates, legal aid services, and law enforcement agencies;
- Inviting domestic violence victim advocates to speak to resident groups, PHA governing board, and employees;
- Providing easy-to-access and easy-to-understand information pamphlets;
- Facilitating counseling and support groups through available community space;
- Working with domestic violence victim advocates to make policy changes to better protect victims; and
- Establishing tenant admission preferences to prioritize victims for housing assistance, including victims referred through the local Continuum of Care (CoC).

These efforts can also help a PHA identify local domestic violence experts for participation in grievance hearings, informal hearings, or informal reviews.

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

16. Lease Bifurcation

In accordance with 24 CFR 5.2009(a), PHAs or owners may choose to bifurcate a lease, or remove a household member or lawful occupant from a lease to evict, remove, terminate occupancy rights, or terminate assistance to such member who engage in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual. Bifurcation must be consistent with Section 17 of the Notice.

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

Court-ordered eviction of the perpetrator pursuant to applicable laws results in the underlying lease becoming null and void once the PHA regains possession of the unit. The PHA or owner would then execute a new lease with the victim. HUD also encourages PHAs and owners to simultaneously attempt to reach agreement to the mutual termination of the lease, if it is safe to do so.

16.1 Owner Lease Bifurcation

In instances where the owner allows for lease bifurcation as remedy to an incident of domestic violence, dating violence, sexual assault, or stalking, the owner may (but is not required to) bifurcate the lease, which evicts or removes the perpetrator from the unit without evicting or removing the victim from the unit. (See 24 CFR 5.2009(a).) If the owner does bifurcate the lease, the owner must immediately notify the PHA of the change in the lease and provide a copy of all such changes to the PHA. (See 24 CFR 982.308(g) for tenant-based HCV and 24 CFR 983.256(e) for PBV.) Except for PHA-owned units, the PHA is not a party to the lease and therefore cannot bifurcate a lease agreement between an owner and a tenant. It is up to the owner to bifurcate the family's lease to evict or remove the perpetrator from the unit.

Bifurcating the lease and evicting certain family members may have consequences for both the owner and the family. For example, a change in family size and composition may impact the determination of the appropriate number of bedrooms and the amount of subsidy paid by the PHA to the owner. To the extent that the change would adversely impact the subsidy standard for the family, PHAs may grant an exception to its established subsidy standards if the PHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members, or other personal circumstances. (See 24 CFR 982.402(b)(8).) A PHA may adopt a policy to include an instance of domestic violence, dating violence, sexual assault, or stalking under other personal circumstances.

A best practice in the event an owner will bifurcate the lease as a result of domestic violence, dating violence, sexual assault, or stalking, is for the owner to refer the family to the PHA in advance of the bifurcation. This may allow the PHA to offer assistance or otherwise provide service referrals to the victim in advance of the bifurcation.

17. Reasonable Time to Establish Eligibility Following Bifurcation of a Lease.

The VAWA Final Rule at 24 CFR 5.2009(b) establishes a reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation in situations where the individual who was evicted or whom assistance was terminated was the eligible tenant. This would only be an issue for mixed families, where assistance is being provided to the perpetrator and the victim is a member of the household who hasn't contended eligible immigration status.

If a PHA or owner exercises the option to bifurcate a lease, and the individual who was evicted or for whom assistance was terminated was the eligible tenant, the covered housing provider must provide to any remaining tenant or tenants that were not already eligible a period of 30 calendar days from the date of bifurcation of the lease to:

- a) Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease;
- b) Establish eligibility under another covered housing program; or
- c) Find alternative housing.

The VAWA Final Rule allows for 90 days except where prohibited by statute. HUD clarified in the VAWA Final Rule that the 90-day time period does not apply to the HCV and Public Housing programs. **Assistance is limited to 30 days if the remaining family member has not submitted documentation evidencing a**

satisfactory immigration status or a pending appeal of a verification determination of the family member's immigration status. This is because Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a(d)(4)(A)) requires that assistance under these programs be terminated after 30 days if the remaining family members cannot indicate they have a satisfactory immigration status.

Public Housing – The PHA must not initiate eviction procedures until 30 days after the lease bifurcation.

HCV – The PHA must not stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month. If the victim requests to move, the PHA should not issue a new voucher until eligibility has been determined.

For the HCV program, the victim and PHA do not have to wait for an owner to bifurcate the lease for the PHA to offer continued assistance for the unit (where victim is planning to stay in the unit). While the family would not have to wait for bifurcation to occur, it would have to wait for eligibility to be determined if the victim was planning on moving with the assistance.

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

The VAWA Final Rule at 24 CFR 5.2005 prohibits denial of admission or assistance, termination from participation, or eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

However, the VAWA Final Rule does not prohibit a PHA or owner from evicting or terminating assistance for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. (See 24 CFR 5.2005(d)(2).)

The rule does not prohibit the PHA or owner from terminating assistance or evicting a tenant if the PHA or owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to the property would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 24 CFR 5.2005(d)(3).) In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the PHA must have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk;
- The nature and severity of the potential harm;
- The likelihood that the potential harm will occur; and
- The length of time before the potential harm would occur.

Eviction or termination of assistance should only be used by a PHA or owner when there are no other actions or remedies to reduce or eliminate the threat, including when actions or remedies are unavailable. This is the case

even when time periods could reasonably be called “immediate.” Some possible actions for a PHA or owner to take to reduce or eliminate the threat are listed at 24 CFR 5.2005(d)(4) and in this Section. HUD encourages PHAs and owners to work with local law enforcement to prevent or remedy instances where a threat may occur to better protect the victim and other tenants in the community.

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

- a) Barring the perpetrator from the property;
- b) Changing the victim’s locks;
- c) Installing basic security features (e.g., better lighting or an alarm);
- d) Encouraging the victim to seek an emergency transfer;
- e) Allowing an early lease termination;
- f) Allowing the victim temporary absence from the assisted unit;
- g) Helping the victim access available services and support (e.g., providing information for a local victim service provider and civil legal assistance providers, to help the victim get any necessary court orders); and/or
- h) Working with police and victim service providers to develop a safety plan for the property and victim.

19. Establishing Waiting List Preferences

The VAWA Final Rule clarifies that PHAs may establish preference for victims of dating violence, sexual assault, and stalking, in addition to domestic violence. (See 24 CFR 960.206(b)(4), 982.207(b)(4).) PHAs should consider whether to adopt a local preference for admission of families that include victims of domestic violence, dating violence, sexual assault, or stalking.

A PHA’s system of local preferences must be based on local housing needs and priorities by using generally accepted data sources and information obtained through the PHA Plan public comment process. HUD encourages PHAs to work collaboratively with health care providers, social service providers, homeless services providers, Continuums of Care (CoCs), and local offices of government and community organizations to establish a system of preferences based on local housing needs collectively identified by the community.

HUD recommends that a PHA’s local housing needs assessment specifically include people experiencing domestic violence, dating violence, sexual assault, and stalking.

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

20. Homeownership: Move with Continued Tenant-Based Assistance

The VAWA Final Rule introduced two new protections under the Homeownership Voucher Program at 24 CFR 982.637.

1. An exception was created to the prohibition of PHAs offering continued tenant-based assistance for occupancy of a new unit so long as any family member owns any title or other interest in the prior home. (See 24 CFR 982.637(a)(2).) When a family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, and the move is needed to protect the health or safety of the family or family member (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move), such family or family member may be assisted with continued tenant-based assistance even if such family or family member owns any title or other interest in the prior home.
2. An exception was created to the flexibility PHAs have to establish policies that prohibit more than one move by the family during any one-year period. A PHA must make an exception to its policy on number of moves for when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. (See 24 CFR 982.637(a)(3).)

A PHA must not continue homeownership assistance to a participant after commencing tenant-based rental assistance. Per 24 CFR 982.352(c)(2), a family may not receive the benefit of tenant-based assistance while receiving the benefit of other Section 8 assistance (including other tenant-based assistance). Additionally, per 24 CFR 982.633(a), if the family moves out of the home, the PHA may not continue homeownership assistance after the month when the family moves out.

Once a PHA has commenced tenant-based rental assistance and the participant is no longer a participant in the homeownership program, the participant's sale of the home or the participant's potential loss of the home due to foreclosure must not affect the participant's continued participation in the HCV program. Specifically, a PHA's obligation under 24 CFR 982.638(d) to terminate voucher homeownership assistance upon mortgage foreclosure only applies while the participant is still in the homeownership program, and does not apply to the termination of tenant-based rental assistance for a participant who is no longer in the homeownership program. Additionally, 24 CFR 982.625(h) requires that the PHA must not recapture voucher homeownership assistance on the sale or refinancing of a home purchased with assistance under the homeownership option.

21. Owners in the HCV Program

21.1 Notification to Owners

Educating owners on their rights and responsibilities under VAWA may lead to greater compliance, resulting in increased victim safety. HUD encourages PHAs to identify opportunities to provide notice and/or training to owners participating in the HCV program of their rights and obligations under VAWA.

PHAs are encouraged to attach the PHA's Emergency Transfer Plan, and form HUD-5382 to the notice they provide to owners.

To assist the efforts of PHAs in providing notice to owners, a template that can be amended to reflect local needs and protections has been attached to this notice. The use of this template is entirely optional and HUD encourages PHAs that choose to issue notice to owners to determine what is most appropriate for their community. PHAs may also choose not to provide notice, instead relying on the VAWA information contained in the HAP contract.

21.2 Mandatory Owner Obligations Under VAWA

The following chart lists mandatory obligations of owners under VAWA. The chart references the section of this Notice that describes in more detail the specific obligation.

Activity	Description	Applicable Section(s) of Notice
Tenancy Screening and Eviction	An Owner must not deny the tenancy of an applicant, or evict a tenant on the basis or as a <i>direct result</i> of the fact that the applicant 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.	7
Certification or Documentation	Owners are not required to ask for documentation when an individual presents a claim for VAWA protections. If the owner chooses to request an individual to document their claim of domestic violence, dating violence, sexual assault, or stalking, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1). Exceptions to this provision in cases of conflicting documentation.	8
Victim Confidentiality	Information submitted to an owner, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in confidence.	11

21.3 Lease Revision Resulting from Domestic Violence, Dating Violence, Sexual Assault, or Stalking

PHAs may encourage owners to allow tenants out of their lease if a family member is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and the family needs to move out to protect the health or safety of the victim. The PHA may not terminate assistance if the family moves out of the unit with or without prior notification as required by 24 CFR 982.354, in violation of the lease in order to protect the health or safety of the victim, as the victim reasonably believed they were imminently threatened by harm from further

violence if they remained in the dwelling unit. Similarly, if the family moves out of the assisted unit in violation of the lease in order to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit, and has otherwise complied with all other obligation under the HCV program, the family may receive a voucher from the PHA and move to another jurisdiction. (See 24 CFR 982.353(b).) However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move is not required to believe that they were threatened with imminent harm from further violence if they remained in the dwelling unit.

State or local law may have protections for victims beyond those in VAWA or HUD regulations. Nothing in VAWA should be construed to supersede any provision of any Federal, State, or local law that provides greater protection than VAWA for victims of domestic violence, dating violence, sexual assault, or stalking; as such, owners in jurisdictions that provide greater protections for victims must grant those protections for victims.

When the entire family moves from the contract unit for any reason, including to protect the health or safety of the family member that is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, the HAP contract terminates automatically. The PHA must not pay HAP to the owner of the previously occupied unit once the family moves out.

If the perpetrator remains in the unit, the PHA continues to pay the owner until the PHA terminates the perpetrator from the HCV program.

If the HAP contract terminates for any reason, the lease terminates automatically. (See forms HUD-52641, 52642, and 52530(c).) If a family moves out of the property at any time during the month, the owner may keep the housing assistance payment (HAP) for the month when the family moves out of the unit (24 CFR 982.311(d)(1)).

In the event the PHA executes a new HAP contract with a new owner after the victim moves out of the original unit to protect his or her health or safety, the PHA must not disclose the victim's new address (or any other information collected on the new HAP contract) to the original owner, as the information collected in the HAP contract is protected by the Privacy Act.

22. Assistance Under More Than One Covered Housing Program

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

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

Example: HOME Investment Partnership Program (HOME) funds were used for the rehabilitation of a development that also has 20% of units under PBV. In this scenario, both the PHA and owner are covered housing providers under the respective programs. The PHA must follow the requirements of VAWA under

PBV, and the owner must follow the VAWA requirements under PBV and HOME. A victim seeking VAWA protections, e.g., an emergency transfer, may seek an emergency transfer from under either or both covered housing programs.

23. Fair Housing and Nondiscrimination

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

Housing providers must also ensure that communications and materials are provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and their implementing regulations. Housing providers must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed, e.g., Braille, audio, large type, assistive listening devices, and sign language interpreters. Housing providers must also take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals. Please see the Department's Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance), http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.

24. Paperwork Reduction Act

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

25. Contact Information

Questions concerning this Notice should be directed to your local [HUD Field Office of Public Housing](#). Persons with hearing or speech impairments may access their field office via TTY by calling the Federal Information Relay Service at (800) 877-8339.

/S/

Jemine A. Bryon
General Deputy Assistant Secretary for
Public and Indian Housing

Appendix I: Discretionary Policies and Procedures

Subject	Regulatory Citation	Notice PIH 2017-08 Section	Discretionary Policies and Procedures
Form HUD-5382	24 CFR 5.2005(a)	8	<ul style="list-style-type: none"> • How and where will the form be made available?
Certification or Documentation	24 CFR 5.2007	8	<ul style="list-style-type: none"> • Will the PHA ask for documentation when an individual presents a claim for VAWA protections, and if so, under what circumstances? • When will the PHA exercise discretion? • How will the PHA define the term “other evidence”? • Will the PHA require submission of documentation within 14 business days? • Will the PHA provide for greater time? • Under what circumstances will greater time be allowed? • How long will the PHA take to acknowledge receipt of documentation?
5-Year Plan	24 CFR 903.6	9	<ul style="list-style-type: none"> • What are the PHA’s goals and objectives to serve the needs of victims? • What activities, policies, or programs will the PHA undertake beyond those required to enable it to serve the needs of victims?
Annual Plan	24 CFR 903.7	9	<ul style="list-style-type: none"> • Will the PHA offer any domestic violence, dating violence, sexual assault, or stalking prevention programs? • Will the PHA offer any activities, services, or programs either directly or in partnership with other service providers beyond those required? • Will the PHA offer any activities, services, or programs provided or offered by a PHA that help child and adult victims obtain or maintain housing beyond those required? • Will the PHA offer any activities, services, or programs either directly or in partnership with other service providers to enhance victim safety in assisted families?

Subject	Regulatory Citation	Notice PIH 2017-08 Section	Discretionary Policies and Procedures
HCV Administrative Plan	24 CFR 982.54	9	<ul style="list-style-type: none"> • Does the PHA have any policies regarding domestic violence, dating violence, sexual assault, or stalking, beyond those required? • Under what conditions will an extension of the 14 business day period for submitting documentation be allowed? • Under what conditions will a perpetrator of domestic violence, dating violence, sexual assault or stalking be allowed to rejoin the household upon request of the family? • Will the PHA have a waiting list preference for victims of domestic violence, dating violence, sexual assault, or stalking?
Public Housing ACOP		9	<ul style="list-style-type: none"> • Does the PHA have policies regarding domestic violence, dating violence, sexual assault, or stalking, beyond those required? • Under what conditions will extensions of the 14-business day period for submitting documentation be allowed? • Under what conditions will a perpetrator of domestic violence, dating violence, sexual assault or stalking be allowed to rejoin the household upon request of the family? • Will the PHA have a waiting list preference for victims of domestic violence, dating violence, sexual assault, or stalking?
Public Housing Lease	24 CFR 5.2005(a)(4) and 966.4	9	<ul style="list-style-type: none"> • What remedies will be made available to victims of domestic violence, dating violence, sexual assault, or stalking beyond those required?
VAWA Notice of Occupancy Rights	24 CFR 5.2005(a)	10	<ul style="list-style-type: none"> • If there will be no recertification or lease renewal during the first year, how will the PHA provide the VAWA Notice of Occupancy Rights to each applicant, tenant, or participant?

Subject	Regulatory Citation	Notice PIH 2017-08 Section	Discretionary Policies and Procedures
Victim Confidentiality	24 CFR 5.2007	11	<ul style="list-style-type: none"> • Who will have access to VAWA information? • How will information be stored and secured? • How will information be accessed? • Who are the PHA's VAWA points of contacts for tenants/participants? • How will the PHA determine appropriate communications with victim? • What procedures will the PHA undertake to ensure others will not overhear conversations with victims? • Will victims be required to come into a PHA office? • Will the PHA suggest that a victim designate a point of contact for communications?
Emergency Transfer Plan	24 CFR 5.2005(e)	12	<ul style="list-style-type: none"> • Will the PHA accept verbal-certification or require a written request? • Will the PHA require the use of the emergency transfer request document? • How will the PHA define immediately available and reasonable time? • What efforts will the PHA make to assist a tenant who wishes to make an external emergency transfer? • What arrangements, including memoranda of understanding, with other covered housing providers will the PHA undertake to facilitate moves (internal and external)? • What outreach activities will the PHA conduct to organizations that assist or provide resources to victims? • Will the PHA adopt admissions preference for victims seeking an external emergency transfer from another VAWA covered housing provider? • Will the PHA expedite administrative processes for participants who wish to move with their tenant-based assistance, including expedited unit inspections?

Subject	Regulatory Citation	Notice PIH 2017-08 Section	Discretionary Policies and Procedures
Partnerships		15	<ul style="list-style-type: none"> • What partnerships with domestic violence victim advocates, legal aid services, and law enforcement agencies will the PHA develop to further VAWA protections? • Will the PHA participate in domestic violence working groups? • Will the PHA invite domestic violence victim advocates to speak to resident groups, PHA governing board, and employees? • Will the PHA create pamphlets, posters, and other media to help inform applicants, tenants, and participants about the VAWA protections available to them? • Will the PHA facilitate counseling and support groups through available PHA or community space?
Lease Bifurcation	24 CFR 5.2009(a)	16	<ul style="list-style-type: none"> • Will the PHA offer lease bifurcation?
Conflicting Claims of Abuse	24 CFR 5.2007(b)(2)	8	<ul style="list-style-type: none"> • What will the PHA do in cases of conflicting third-party documentation? • Will hearings include a trained third party with experience in adjudicating domestic violence cases?
Waiting List Preferences	24 CFR 960(b)(4), 982.207(b)(4)	19	<ul style="list-style-type: none"> • Will the PHA adopt waiting list preferences for victims? • What priority will be given to victims? • Will the PHA treat external emergency transfer victims the same or different than other victims not previously assisted under a covered housing program? • Will the PHA limit the preference to persons referred by a partnering service organization or consortia of organizations?

Subject	Regulatory Citation	Notice PIH 2017-08 Section	Discretionary Policies and Procedures
Notification to Owners		21, Appendix II	<ul style="list-style-type: none"> • Will the PHA provide notice to owners participating in the HCV program of their rights and obligations under VAWA? • Are there State or local laws that provide greater protections than those provided under VAWA that an owner should be made aware of? • Will the PHA provide contact information for local service providers? • How should the owner contact the PHA regarding instances of domestic violence, dating violence, sexual assault, or stalking by or against tenants?

Appendix II: Model Owner Notification of Rights and Obligations

[Insert Name of Housing Provider]
**NOTIFICATION OF YOUR RIGHTS AND OBLIGATIONS
UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

VAWA provides protections for Section 8 Housing Choice Voucher (HCV) and PBV applicants, tenants, and participants from being denied assistance on the basis or as a direct result of being a victim of domestic violence, dating violence, sexual assault and stalking.

Purpose

Many of VAWA's protections to victims of domestic violence, dating violence, sexual assault and stalking involve action by the public housing agency (PHA), but some situations involve action by owners of assisted housing. The purpose of this notice (herein called "Notice") is to explain your rights and obligations under VAWA, as an owner of housing assisted through [insert name of housing provider] HCV program. Each component of this Notice also provides citations to HUD's applicable regulations.

Denial of Tenancy

Protections for applicants: Owners cannot deny tenancy based on the applicant having been or currently being a victim of domestic violence, dating violence, sexual assault, or stalking. However, the applicant must be otherwise eligible for tenancy. (See 24 Code of Federal Regulations (CFR) 982.452(b)(1).)

Eviction

Protections for HCV participants: Incidents or threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a serious or repeated lease violation by the victim, or good cause to terminate the tenancy of the victim (24 CFR 5.2005(c)). Protection also applies to criminal activity related directly to domestic violence, dating violence, sexual assault, or stalking, conducted by a member of a tenant's household or any guest or other person under the tenant's control, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2005(b)(2)).

Limitations of VAWA protections:

- a. Nothing in the VAWA Final Rule limits the authority of an owner, when notified of a court order, to comply with a court order with respect to (24 CFR 5.2005(d)(1)):
 - 1) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or
 - 2) The distribution or possession of property among members of a household in a case.
- b. Nothing in the VAWA Final Rule limits an owner from evicting a victim of domestic violence, dating violence, sexual assault, or stalking for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, or stalking, as long as the owner does not subject the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)
- c. Nothing in the VAWA Final Rule limits an owner from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, or stalking) if the owner can demonstrate an actual and imminent

threat to other tenants or those employed at or providing services to the HCV property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)

- i. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the following standards: An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.)
- ii. Any eviction due to “actual and imminent threat” should be utilized by an owner only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).)

Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

If an applicant or tenant requests VAWA protection based on status as a victim of domestic violence, dating violence, sexual assault, or stalking, the owner has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. However, nothing in HUD’s regulation requires a covered housing provider to request this documentation. (See 24 CFR 5.2007(b)(3).)

If the owner chooses to request this documentation, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1):

- a. Form HUD-55383 (Self-Certification Form); or
- b. A document:
 - 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;
 - 2) Signed by the applicant or tenant; and
 - 3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under 24 CFR part 5, subpart L, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or
- c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- d. At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

The owner must accept any of the above items (a – c). The owner has discretion to accept a statement or other evidence (d).

The owner is prohibited from requiring third-party documentation of the domestic violence, dating violence, sexual assault, or stalking, unless the submitted documentation contains conflicting information.

If the owner makes a written request for documentation, the owner may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The owner may extend this time period at its discretion. During the 14 business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the owner is encouraged to acknowledge receipt of the documentation in a timely manner.

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

- a. Deny admission by the applicant or tenant to the housing or program;
- b. Deny assistance under the covered housing program to the applicant or tenant;
- c. Terminate the participation of the tenant in the covered housing program; or
- d. Evict the tenant, or a lawful occupant that commits a violation of a lease.

An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings.

Moves

A victim of domestic violence, dating violence, sexual assault, or stalking may move in violation of their lease if the move is required to protect their safety. If a move results in the termination of the Housing Assistance Payment Contract, the lease is automatically terminated.

Lease Bifurcation

Owners may choose to bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual. (See 24 CFR 5.2009(a).) If an owner chooses to bifurcate the lease, the owner must comply with the reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation provision in 24 CFR 5.2009(b). VAWA protections, including bifurcation, do not apply to guests or unreported members of a household or anyone else residing in a household who is not a tenant.

Eviction, removal, termination of occupancy rights, or termination of assistance must be effected in accordance with the procedures prescribed by federal, state, or local law for termination of leases.

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

Evictions Due to “Actual and Imminent Threat” or Violations Not Premised on Abuse

The VAWA Final Rule generally prohibits eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for assistance, participation or occupancy. (See 24 CFR 5.2005.)

However, the VAWA Final Rule does not prohibit an owner from evicting a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. Nor does the VAWA Final Rule prohibit an owner from evicting a tenant if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to property of the owner would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 5.2005(d)(2) and (3).)

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

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk;
- The nature and severity of the potential harm;
- The likelihood that the potential harm will occur; and
- The length of time before the potential harm would occur.

(See 24 CFR 5.2003 and 5.2005(d)(2).)

Confidentiality

Any information submitted to a covered housing provider under 24 CFR 5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in strict confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

Employees of the owner (or those within their employ, e.g., contractors) must not have access to the information unless explicitly authorized by the owner for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law (e.g., the information is needed by an employee to provide the VAWA protections to the victim).

The owner must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:

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

When communicating with the victim, owners must take precautions to ensure compliance with these confidentiality requirements.

Service Providers

[insert name of housing provider] has extensive relationships with local service providers. **[insert name of housing provider]** staff are available to provide referrals to shelters, counselors, and advocates. These resources are also provided in **[insert name of housing provider]** Annual and 5-Year Plan, Administrative Plan, VAWA Notice of Occupancy Rights, and Emergency Transfer Plan. A list of local service providers is attached to this Notice.

Definitions

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

- (1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
- (2) Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Dating violence means violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship;
 - (ii) The type of relationship; and
 - (iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

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

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

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

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

Attached:

Legal services and the domestic violence resources for the Metro area
Form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
[insert name of housing provider] VAWA Notice of Occupancy Rights