

The Violence Against Women Act: A Housing Toolkit for Advocates



Dear LAV Grantees:

The National Housing Law Project has created the attached advocate toolkit outlining the housing provisions of the Violence Against Women Act of 2005 (VAWA). As you may know, VAWA's housing provisions apply to tenants living in public housing and Section 8 housing. VAWA protects tenants who are survivors of domestic violence, dating violence, and stalking. Under VAWA, applicants for such federally-subsidized housing cannot be rejected on the basis of their status as survivors of domestic violence, dating violence, or stalking. Further, these subsidized tenants cannot be evicted or have their subsidies terminated based on acts of domestic violence, dating violence, or stalking committed against them.

The toolkit is designed to provide advocates with an overview of VAWA's housing provisions and includes administrative guidance, recent legal developments, and sample advocacy materials. NHLP plans to release an additional advocate toolkit on survivors' rights under fair housing laws.

We hope that you find these materials helpful in aiding your clients. Should you have any questions regarding VAWA's housing provisions or survivors' housing rights in general, please contact:

Navneet Grewal
Staff Attorney
National Housing Law Project
510-251-9400 x. 3102
ngrewal@nhlp.org

Meliah Schultzman
Attorney/Equal Justice Works Fellow
National Housing Law Project
510-251-9400 x. 3116
mschultzman@nhlp.org

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The Violence Against Women Act: A Housing Toolkit for Advocates

I. Advocacy and Training Materials

- a. [Outline: Protecting the Housing Rights of Domestic Violence Survivors](#)
- b. [Statutory Compendium of the Housing Provisions of VAWA](#)
- c. [Mid-Minnesota Legal Assistance, sample tenant fact sheet](#)
- d. [VAWA: A Fact Sheet for Housing Providers](#)

II. Litigation Documents

- a. [Metro N. Owners, LLC v. Thorpe, 2008 WL 5381477 \(N.Y. Civ. Ct. 2008\)](#): A case finding that VAWA barred a landlord from evicting a Section 8 tenant due to a violent incident in her apartment.
- b. [Motion for summary judgment, Brooklyn Landlord v. RF](#): Documents from a case involving a Section 8 tenant who faced eviction because of her abuser's violent conduct.
- c. [Demand letter and complaint, Tenant v. Hous. Auth. of Salt Lake County](#): Documents from a case involving a Section 8 tenant who faced termination of her assistance because she fled her apartment.
- d. [Demand Letter, Legal Aid Foundation of Los Angeles](#): A letter written on behalf of a Section 8 tenant who faced termination of her assistance for reasons related to stalking.

III. Department of Housing and Urban Development (HUD) Guidance

- a. [73 Fed. Reg. 72,336 \(Nov. 28, 2008\)](#): Transmits an interim rule to amend subsidized housing regulations to conform with VAWA
- b. [Notice H 08-07 \(Sept. 30, 2008\)](#): Provides guidance to owners and managers administering project-based Section 8 properties.
- c. [72 Fed. Reg. 12,696 \(Mar. 16, 2007\)](#): Provides a general overview of housing authorities' and landlords' obligations under VAWA.
- d. [Notice PIH 2006-42 \(Dec. 27, 2006\)](#): provides guidance to housing authorities and owners regarding certification of incidents of abuse.
- e. [Certification Form 50066](#): Form that tenants can use to self-certify incidents of abuse.

The National Housing Law Project thanks the following for sharing their advocacy materials for inclusion in this packet:

- Legal Momentum, www.legalmomentum.org
- Denise McGranahan, Legal Aid Foundation of Los Angeles
- Mid-Minnesota Legal Assistance
- Marty Blaustein, Utah Legal Services

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Advocacy & Training Materials

The Housing Provisions of the Violence Against Women Act



Gaining access to and maintaining affordable housing is essential to helping domestic violence survivors to escape abusive relationships. The Violence Against Women Act of 2005 (VAWA) protects tenants living in federally subsidized housing from being evicted or having their assistance terminated based on acts of violence committed against them.

1. What laws did the Violence Against Women Act of 2005 (VAWA) amend, and whom does VAWA protect?

A. Statutory provisions amended by VAWA

Title VI of VAWA 2005 (Pub. L. 109-162; 119 Stat. 2960; HR 3402) amended the Public Housing Program, the Housing Choice Voucher Program, and the Project-Based Section 8 statutes. Section 606 of VAWA amends 42 U.S.C. § 1437d (Public Housing) and Section 607 amends 42 U.S.C. § 1437f (Section 8 programs).

B. Types of housing that VAWA covers

VAWA's protections cover tenants in:

- Public Housing (42 U.S.C. § 1437d): Public housing is housing owned and operated by a public housing agency (PHA). Tenants pay either an income-based rent (which is often 30 percent of their monthly income) or a flat rent set by the PHA.
- The Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f(o)): The PHA issues the family a voucher, which they use to rent housing from a private owner. The PHA pays a subsidy to the private owner. The family pays the difference between the monthly rent and the amount subsidized by the PHA, which is usually 30 percent of the family's monthly income. Usually, the family can move with their subsidy.
- Section 8 Project-Based housing (42 U.S.C. §§ 1437f(c), (d)): This program consists of privately owned projects that are subsidized by the Department of Housing and Urban Development (HUD). Unlike vouchers, the family cannot move and continue to receive rental assistance. The subsidy is attached to a particular unit.
- The Supportive Housing Program (72 Fed. Reg. 12,696): This program provides housing and services to persons who are elderly and/or have disabilities. It is administered by government entities and nonprofits.

VAWA does not cover HUD's other housing subsidy programs, programs administered by the Department of Agriculture's Rural Housing Service, or the Low-Income Housing Tax Credit program. VAWA also does not cover tenants living in private housing without any type of rental subsidy. However, as discussed below, these tenants may be protected by fair housing laws or by state laws granting certain housing protections to domestic violence survivors.

C. Parties whom VAWA protects

VAWA protects anyone who:

- (1) Is a victim of actual or threatened domestic violence, dating violence, or stalking, or an immediate family member of the victim (spouse, parent, sibling, child, or any other person living in the household who is related by blood or marriage, or any person to whom the victim stands in loco parentis); AND
 - (2) Is living in, or seeking admission to, Public Housing, the Section 8 Voucher program, Section 8 Project-Based Housing, or the Supportive Housing Program for the Homeless.
- See* 42 U.S.C. § 1437d(u)(3)(D); 42 U.S.C. § 1437f(f)(11).

2. How does VAWA define domestic violence, dating violence, and stalking, and must the incidents be repeated?

A. Domestic violence: 42 U.S.C. § 13925(a)(6)

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

- Current or former spouse of the victim
- Person with whom the victim shares a child
- Person who is cohabitating with or has cohabitated with the victim as a spouse
- Person similarly situated to a spouse of the victim under the domestic violence or family violence laws of the jurisdiction
- VAWA’s definition of domestic violence also includes crimes of violence committed against a person who is protected under the domestic violence or family violence laws of the jurisdiction.

B. Dating violence: 42 U.S.C. § 13925(a)(8)

“Dating violence” is violence committed by a person:

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

C. Stalking: 42 U.S.C. §§ 1437d(u)(3)(C), 1437f(f)(10)

VAWA defines “stalking” as

- To follow, pursue, or repeatedly commit acts with intent to kill, injure, harass, or intimidate; or
- To place under surveillance with intent to kill, injure, harass, or intimidate; and
- To place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to:
 - That person;

- A member of the immediate family of that person; or
- The spouse or intimate partner of that person.

D. Must the incidents be repeated?

VAWA does not include a minimum number of incidents of violence that must occur before a tenant or applicant may claim its protections. Rather, VAWA explicitly protects victims of any actual or threatened acts of domestic violence, dating violence, or stalking. Only one incident is required to trigger VAWA's protections, and the incident does not have to be one of actual violence.

3. Who is required to comply with VAWA, and when did the law become effective?

A. Parties who must comply with VAWA

Public housing agencies (PHAs) administering the Public Housing and Section 8 Voucher programs and all landlords, owners, and managers participating in the Section 8 Voucher and Project-Based programs must comply with VAWA.

B. Effective date

VAWA's housing provisions became effective January 5, 2006. HUD has issued notices instructing PHAs to implement the law without waiting for HUD to issue regulations.

4. How does VAWA affect admissions to federally subsidized housing?

A. Denials of admissions or housing assistance

An individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of admission or denial of housing assistance. *See* 42 U.S.C. § 1437d(c)(3); 42 U.S.C. § 1437f(c)(9)(A); 42 U.S.C. § 1437f(o)(6)(B). Therefore, victims cannot be denied admission to Public Housing or Section 8 Project-Based housing, or denied eligibility for the Section 8 Voucher program due to incidents of domestic violence, dating violence, or stalking committed against them. Owners renting to Section 8 tenants also cannot deny housing to victims on the basis of acts of abuse committed against them.

B. Areas that VAWA does not address

An individual's status as a victim of domestic violence, dating violence, or stalking does not guarantee that he or she will be accepted into a federally assisted housing program. VAWA does not require that PHAs institute a preference for victims of abuse when making admissions decisions. However, PHAs have discretion to institute such a preference, and local advocates can encourage them to do so.

VAWA does not explicitly address whether a PHA or owner must waive an admissions requirement if the applicant cannot meet the requirement due to incidents of abuse. For example, VAWA does not provide guidance for screening applicants who have been the victims of abuse and, as a result, have poor tenancy, credit, or work histories. Note that HUD has encouraged PHAs to inquire into the circumstances and whether domestic violence was a factor in the poor rental history. *See* U.S. Department of Housing and Urban Development, Public Housing Occupancy Guidebook § 19 (2003). Further, 24 C.F.R § 960.203 provides that if a PHA receives unfavorable information with respect to an applicant, “consideration shall be given to the time, nature, and extent of the applicant’s conduct (including the seriousness of the offense).”

5. Does VAWA address safety moves?

A. Portability of Section 8 vouchers

A PHA may permit a family with a Section 8 voucher to move to another jurisdiction if the family has complied with all other obligations of the program and is moving to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking. The PHA may permit the family to move even if the family’s lease term has not yet expired. *See* 42 U.S.C. § 1437f(r)(5). A PHA may ask for documentation from the family regarding the family’s desire to move to a new jurisdiction. *See* 42 U.S.C. § 1437f(ee).

VAWA does not address the liability that a tenant may incur from the Section 8 owner for breaking the lease. Advocates may need to work with their clients to negotiate an agreement with the landlord to terminate the lease. Additionally, several states have enacted laws permitting domestic violence survivors to terminate their leases early. For a list of these states, *see* www.nlchp.org/content/pubs/DV_Housing_State_Laws_Aug20081.pdf

B. Emergency transfers in public housing

VAWA does not explicitly address a PHA’s obligation to transfer a public housing tenant to another unit in the event that the tenant must move due to domestic violence, dating violence, or stalking. However, PHAs already have the discretion to adopt policies to ensure that a public housing tenant can move if he or she is experiencing domestic violence. HUD has urged housing authorities to implement such policies. *See* U.S. Department of Housing and Urban Development, Public Housing Occupancy Guidebook §§ 19.2, 19.4 (2003).

6. How does VAWA affect evictions?

A. Evictions directly related to abuse

VAWA establishes an exception to the federal “one-strike” criminal activity eviction rule. Actual or threatened criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds (either as a “serious or repeated violation of lease”, or as “good cause”) for terminating assistance, tenancy, or occupancy rights of the victim or an immediate family member of the victim. *See* 42 U.S.C. § 1437d(1)(5); 42 U.S.C. §

1437f(c)(9)(B); 42 U.S.C. § 1437f(d)(1)(B); 42 U.S.C. § 1437f(o)(7)(C); 42 U.S.C. § 1437f(o)(20)(A).

B. The “actual or imminent threat” provision

Despite the eviction protections described above, a PHA or owner may still evict a tenant if the PHA or owner can demonstrate an “actual and imminent threat” to other tenants or employees of the property if the tenant is not evicted. VAWA does not define the phrase “actual and imminent threat,” nor does it explain what evidence a PHA or owner must provide to establish such a threat. *See* 42 U.S.C. § 1437d(1)(6)(E); 42 U.S.C. §§ 1437f(c)(9)(C)(v) and (d)(1)(B)(iii)(V); 42 U.S.C. §§ 1437f(o)(7)(D)(v) and (o)(20)(D)(iv).

C. Criminal activity unrelated to abuse

VAWA protects tenants from being penalized for acts of violence committed against them. It does not protect them if the acts for which they are being evicted or denied admission are unrelated to domestic violence, dating violence, or stalking. However, in determining whether to evict, a PHA or owner may not hold a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants. *See* 42 U.S.C. § 1437d(1)(6)(D); 42 U.S.C. §§ 1437f(c)(9)(C)(iv) and (d)(1)(B)(iii)(IV); 42 U.S.C. § 1437f(o)(7)(D)(iv) and (o)(20)(D)(iii).

D. Removing an abuser from a unit

A PHA or owner may bifurcate a lease to evict, remove, or terminate assistance to any tenant who engages in criminal acts of violence against family members or others. This action may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim who is also a tenant or lawful occupant. The authority to bifurcate a lease or otherwise remove an individual is applicable to all leases for families participating in the public housing or Section 8 programs. The eviction or termination of assistance must be effected in accordance with federal, state, and local law. *See* 42 U.S.C. § 1437d(1)(6)(B); 42 U.S.C. § 1437f(o)(7)(D)

7. Can a PHA or owner ask for proof of the abuse?

A. Discretion of PHA or owner to ask for certification

PHAs and owners may, but are not required to, ask an individual for certification that he or she is a victim of domestic violence, dating violence, or stalking if the individual seeks to assert VAWA’s protections. At their discretion, owners or PHAs may apply VAWA to an individual based solely on the individual’s statement or other corroborating evidence. Any requests for certification must be in writing. *See* 42 U.S.C. §§ 1437d(u)(1); 42 U.S.C. § 1437f(ee)(1).

B. Types of certification permitted

If an individual seeks to assert VAWA’s protections, a PHA, owner, or manager may request in writing that the individual certify that he or she is a victim of domestic violence, dating violence or stalking. The individual can self-certify by completing form HUD-50066, available at

www.hud.gov/hudclips. The form requests the name of the victim, the name of the perpetrator, the date on which the incident occurred, and a brief description of the incident. The victim must sign the form and certify that the information is true and correct. The form provides that submission of false information is grounds for termination of assistance or eviction.

In lieu of the certification form, the victim may provide:

- Documentation signed by the victim and a victim service provider, an attorney, or a medical professional in which the professional attests under penalty of perjury to the professional's belief that the victim has experienced bona fide incidents of abuse; or
- A federal, state, tribal, territorial, or local police or court record.

See 42 U.S.C. § 1437d(u)(1)(D); 42 U.S.C. § 1437f(ee)(1)(D).

C. Certification time limit

After a PHA or owner has requested certification in writing, an individual has fourteen business days to respond to the request. If an individual does not provide the documentation within fourteen business days, a PHA or owner may bring eviction proceedings against the tenant or terminate assistance. However, a PHA or owner has discretion to extend this timeframe. 42 U.S.C. § 1437d(u)(1)(A), (B); 42 U.S.C. § 1437f(ee)(1)(A), (B).

D. Confidentiality

Any information provided to certify incidents of domestic violence, dating violence, or stalking must be kept confidential, including the individual's status as a victim. PHAs or owners may not enter the information into any shared database or provide it to any related entity. However, advocates should note that disclosure of the certification form may be required for use in an eviction proceeding if the housing authority or Section 8 landlord seeks to evict the batterer. The information may also be disclosed if the victim requests disclosure in writing, or if otherwise required by law. *See* 42 U.S.C. § 1437d(u)(2)(A); 42 U.S.C. § 1437f(ee)(2)(A).

8. What other obligations do PHAs and owners have under VAWA?

A. Obligation to honor court orders

PHAs and owners must honor court orders addressing rights of access to or control of property. Thus, PHAs and owners must observe civil protection orders issued to protect the victim, as well as court orders addressing the distribution or possession of property among household members when a family breaks up. *See* 42 U.S.C. § 1437d(l)(6)(C); 42 U.S.C. §§ 1437f(c)(9)(C)(iii) and (d)(1)(B)(iii)(III); 42 U.S.C. §§ 1437f(o)(7)(D)(iii) and (o)(20)(D)(ii).

B. Notification requirement

PHAs must inform tenants and owners of their rights and obligations under VAWA. For example, PHAs must provide tenants with notice that:

- Incidents of domestic violence, dating violence, or stalking do not qualify as serious or repeated violations of the lease or other “good cause” for termination of the assistance, tenancy, or occupancy rights of a victim of abuse;
- Criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for termination of the victim’s assistance, tenancy, or occupancy rights;
- Information provided for purposes of certifying that an individual is a victim of domestic violence, dating violence, or stalking must be kept confidential.

See 42 U.S.C. § 1437d(u)(2)(B); 42 U.S.C. § 1437f(ee)(2)(B).

Public housing leases must include this information, as must the Housing Assistance Payments (HAP) contract between PHAs and owners in the Section 8 Voucher program and contracts in the Project-Based Section 8 program. *See* 42 U.S.C. § 1437d(l)(5), (6); 42 U.S.C. § 1437f(o)(20); 42 U.S.C. § 1437f(o)(7)(C), (D).

C. PHA planning process

A PHA must include in its annual plan a description of any activities, services, or programs being undertaken to assist victims of domestic violence, dating violence, stalking, or sexual assault. A PHA must include in its five-year plan a description of any goals, objectives, policies, or programs it uses to serve victims’ housing needs. In addition, VAWA added the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking to the consolidated planning process that local communities undertake every five years to receive HUD assistance. *See* 42 U.S.C. §§ 1437c-1(a)(2), 1437c-1(d)(13); 42 U.S.C. § 12705(b)(1).

The National Housing Law Project is available to assist local advocates in urging housing authorities to update their annual plans, Section 8 Administrative Plans and public housing Admissions and Continued Occupancy Policies to address VAWA.

9. What other resources should I look to in enforcing survivors’ housing rights under VAWA?

A. VAWA’s findings section

VAWA contains several important findings, including:

- That there is a strong link between domestic violence and homelessness
- That women and families are experiencing housing discrimination because of their status as victims of domestic violence
- That victims of domestic violence often return to abusers because they cannot find long-term housing
- That victims often lack steady income, credit history, landlord references, and a current address due to financial abuse by their batterers

See 42 U.S.C. § 14043e.

B. State or local laws

VAWA sets out the minimum protections for survivors. Many states and local jurisdictions are developing laws that include added protections, such as laws that make VAWA's protections applicable to private housing. Where these state or local laws exist, they are not preempted by VAWA. *See* 42 U.S.C. § 1437d(u)(1)(E); 42 U.S.C. § 1437f(ee)(1)(F).

C. HUD documents implementing VAWA

The following documents may be useful to advocates working with PHAs and owners to implement VAWA's protections. All of the documents are available at www.hud.gov/hudclips

- **73 Fed. Reg. 72,336 (Nov. 28, 2008):** Transmits an interim rule that would amend existing regulations governing the federally subsidized housing programs to conform with VAWA. HUD has not yet published final regulations implementing VAWA.
- **HUD Notice PIH 2006-23:** States that VAWA became effective January 5, 2006 and directs PHAs to notify tenants and owners of their rights and obligations under VAWA.
- **HUD Notice PIH 2006-42:** Transmits Certification Form HUD-50066 and provides guidance to PHAs and owners regarding certification of incidents of abuse. Notes that a signed statement from a third party or a police or court record may be provided "in lieu of" the certification form.
- **Form HUD-50066:** The HUD-approved certification form that applicants and tenants in public housing and the Section 8 voucher program may use to certify that they are victims of domestic violence, dating violence, or stalking.
- **Form HUD-91066:** The HUD-approved certification form that applicants and tenants in the project-based Section 8 program may use to certify that they are victims of domestic violence, dating violence, or stalking.
- **HUD Notice PIH 2007-5:** Transmits the revised Housing Assistance Payments (HAP) contract and the revised Tenancy Addendum for the Section 8 voucher program, and directs PHAs to use these documents when executing any HAP contracts or approving new leases. Provides guidance to PHAs and owners regarding bifurcation and portability.
- **72 Fed. Reg. 12,696 (Mar. 16, 2007):** Reminds PHAs that VAWA's provisions are effective even without regulations from HUD. States that PHAs must include a VAWA statement in their annual plans "in their next regularly scheduled plan submission." States that victims can satisfy the certification requirement by providing a certification form, or third party verification, or a police or court record.
- **HUD Notice H 08-07:** Provides guidance to owners and managers administering project-based Section 8 properties.

10. Has any litigation been brought under VAWA?

- **Metro N. Owners LLC v. Thorpe, 2008 WL 5381477 (N.Y. Civ. Ct. 2008):** Landlord sought to evict Section 8 tenant on the grounds that she stabbed her partner during a domestic dispute. The tenant submitted police reports and a restraining order showing that she was the victim of domestic violence, along with evidence that the district attorney's office declined to prosecute her for the alleged stabbing. The court found that

the tenant was the victim of domestic violence, and that VAWA precluded the landlord from evicting her.

- **Brooklyn Landlord v. RF (N.Y. Civ. Ct. 2007):** The tenant lived in a project-based Section 8 unit with her children. The tenant's abuser, who had stalked and physically abused her for many years, confronted and shot at the security guard at her building. The tenant raised VAWA as an affirmative defense to eviction. The landlord eventually dismissed the eviction proceeding. Pleadings are available at www.legalmomentum.org
- **Tenant v. Hous. Auth. of Salt Lake County (D. Utah 2006):** Plaintiff alleged that her Section 8 voucher was terminated by the PHA after she was forced to flee her apartment due to domestic violence. Plaintiff alleged that PHA violated VAWA and fair housing laws by terminating Plaintiff's voucher because of her need to escape domestic violence. Case settled, with the client's voucher reinstated by the PHA.

11. What steps can advocates take to implement VAWA?

- Request a meeting with the PHA and local domestic violence agencies to discuss implementation.
- Offer to train PHA staff, hearing officers, Section 8 owners, and resident groups on VAWA and the dynamics of domestic violence.
- Offer to assist the PHA in developing procedures for assisting program participants who are experiencing domestic violence.
- Remind PHAs to revise their public housing leases to include VAWA's protections.
- Submit comments during the PHA's annual planning process.
- Urge the PHA to provide notice of VAWA rights through several different channels, such as denial of assistance letters, briefing packets, tenant newsletters, recertification meetings, termination letters, posters in the PHA's lobby, and the PHA's website.
- Develop intake screening tools to determine whether a denial of housing, eviction, or termination of assistance is related to domestic violence. Many subsidized housing participants are unaware of their VAWA rights, particularly those who live with their batterers or who are limited English proficient.

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Statutory Compendium of the Housing Provisions of the Violence Against Women Act of 2005¹



Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation
<p>Definition of “domestic violence”</p>	<p>42 U.S.C. § 13925(a)(6):</p> <p>“The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse 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, 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.”</p>	<p>42 U.S.C. § 1437d(u)(3)(A) incorporates the definition found at § 13925</p>	<p>42 U.S.C. § 1437f(f)(8) incorporates the definition found at § 13925</p>	<p>42 U.S.C. § 1437f(f)(8) incorporates the definition found at § 13925</p>
<p>Definition of “dating violence”</p>	<p>42 U.S.C. § 13925(a)(8):</p> <p>“The term "dating violence" means violence</p>	<p>42 U.S.C. § 1437d(u)(3)(B) incorporates the definition found at § 13925</p>	<p>42 U.S.C. § 1437f(f)(9) incorporates the definition found at § 13925</p>	<p>42 U.S.C. § 1437f(f)(9) incorporates the definition found at § 13925</p>

Statutory Compendium of the Housing Provisions of the Violence Against Women Act of 2005¹



Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation
	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: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.”			
Definition of stalking	N/A	42 U.S.C. § 1437d(u)(3)(C): “(C) the term "stalking" means- (i)(I) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or (II) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and (ii) in the course of, or as a result of, such following,	42 U.S.C. § 1437f(f)(10): “(10) the term "stalking" means- (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to	42 U.S.C. § 1437f(f)(10): See project-based Section 8 citation.

Statutory Compendium of the Housing Provisions of the Violence Against Women Act of 2005¹

Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation
		pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to- (I) that person; (II) a member of the immediate family of that person; or (III) the spouse or intimate partner of that person”	place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to- (i) that person; (ii) a member of the immediate family of that person; or (iii) the spouse or intimate partner of that person”	
Definition of immediate family member	N/A	42 U.S.C. § 1437d(u)(3)(D): “(D) the term "immediate family member" means, with respect to a person-- (i) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or (ii) any other person living in the household of that person and related to that person by blood or marriage.”	42 U.S.C. § 1437f(f)(11): “(11) the term "immediate family member" means, with respect to a person-- (A) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or (B) any other person living in the household of that person and related to that person by blood or marriage.”	42 U.S.C. § 1437f(f)(11): See project-based Section 8 citation
Housing Authority Annual Plan Requirements	42 U.S.C. § 1437c-1(d)(13): “(d) An annual public housing agency plan ... shall contain:	N/A	N/A	N/A



Statutory Compendium of the Housing Provisions of the Violence Against Women Act of 2005¹

Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation
	<p>(13) A description of-</p> <p>(A) 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;</p> <p>(B) any activities, services, or programs provided or offered by a public housing agency that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and</p> <p>(C) any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.”</p>			
Housing Authority Five-Year Plan Requirements	42 U.S.C. § 1437c-1(a)(2):	N/A	N/A	N/A



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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation
	“(a)(2) The 5-year plan shall include a statement by any public housing agency of the goals, objectives, policies, or programs that will enable the housing authority to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.”			
Consolidated Plan Requirements	42 U.S.C. § 12705(b)(1): “A housing strategy submitted under this section shall ... (1) describe the jurisdiction's estimated housing needs projected for the ensuing 5-year period, and the jurisdiction's need for assistance for ... victims of domestic violence, dating violence, sexual assault, and stalking”	N/A	N/A	N/A
Admissions: That an applicant has been a victim of domestic violence, dating violence, or stalking is not an	N/A	42 U.S.C. § 1437d(c)(3): “[T]he public housing agency shall not deny admission to the project to any applicant on the	42 U.S.C. § 1437f(c)(9)(A) “That an applicant or participant is or has been a victim of domestic violence, dating	42 U.S.C. § 1437f(o)(6)(B): “That an applicant or participant is or has been a victim of domestic violence, dating

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appropriate basis for denial of program assistance or for denial of admission.		basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking if the applicant otherwise qualifies for assistance or admission”	violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.”	violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission.”
Termination of tenancy or assistance: An incident of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim and will not be good cause for terminating the assistance or tenancy of the victim.	N/A	42 U.S.C. § 1437d(1)(5): “[A]n incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence”	42 U.S.C. § 1437f(c)(9)(B): “An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.”	42 U.S.C. § 1437f(o)(20)(B): “Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered a serious or repeated violation of the lease by the victim or threatened victim of that criminal activity justifying termination of assistance to the victim or threatened victim.”
Criminal activity directly related to abuse: Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be cause for termination of the victim’s tenancy or assistance.	N/A	42 U.S.C. § 1437d(1)(6)(A): “[C]riminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, shall not be cause for termination of the	42 U.S.C. § 1437f(c)(9)(C)(i): “Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control shall not be	42 U.S.C. § 1437f(o)(20)(C): “Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered cause for termination of assistance for any participant or immediate member of a participant’s family who is a victim of the domestic violence,

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		tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking”	cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking.”	dating violence, or stalking.”
Actual and imminent threat provision: A PHA, owner or manager may evict or terminate assistance to a victim if the PHA, owner, or manager can demonstrate an actual and imminent threat to other tenants or employees at the property if the tenant is not evicted or terminated from assistance.	N/A	42 U.S.C. § 1437d(1)(6)(E): “[N]othing in [this section] may be construed to limit the authority of a public housing agency to terminate the tenancy of any tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated”	42 U.S.C. § 1437f(c)(9)(C)(v) “Nothing in [this section] may be construed to limit the authority of an owner, manager, or public housing agency to evict or terminate from assistance any tenant or lawful occupant if the owner, manager or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance.”	42 U.S.C. § 1437f(o)(20)(D)(iv): “Nothing in [this section] may be construed to limit the authority of the public housing agency to terminate voucher assistance to a tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property or public housing agency if that tenant is not evicted or terminated from assistance.”
Victims must be held to same standard as other tenants: For lease violations unrelated to abuse, a PHA, owner or	N/A	42 U.S.C. § 1437d(1)(6)(D): “[N]othing in [this section] limits any otherwise available authority of a public housing	42 U.S.C. § 1437f(c)(9)(C)(iv) “Nothing in [this section] limits any otherwise available	42 U.S.C. § 1437f(o)(20)(D)(iii): “Nothing in [this section] limits any otherwise available authority

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<p>manager must not subject an individual who is a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.</p>		<p>agency to evict a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate”</p>	<p>authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.”</p>	<p>of the public housing agency to terminate voucher assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to terminate.”</p>
<p>Bifurcation: A PHA, owner, or manager may evict, remove, or terminate assistance to the abuser without evicting or terminating assistance to the victim</p>	<p>N/A</p>	<p>42 U.S.C. § 1437d(1)(6)(B): “[N]otwithstanding . . . any Federal, State, or local law to the contrary, a public housing agency may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in</p>	<p>42 U.S.C. § 1437f(c)(9)(C)(ii): “Notwithstanding . . . any Federal, State, or local law to the contrary, an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who</p>	<p>42 U.S.C. § 1437f(o)(20)(D)(i): “Nothing in [this section] may be construed to limit the authority of the public housing agency to terminate voucher assistance to individuals who engage in criminal acts of physical violence against family members or others.”</p>

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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation
		<p>criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant and such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing”</p>	<p>engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.”</p>	
<p>Portability: Even if moving would otherwise violate the lease, a Section 8 voucher family may move to another jurisdiction if the family has complied with all program obligations and is moving to protect the safety of a victim of domestic violence, dating violence, or stalking.</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>42 U.S.C. § 1437f(r)(5): “[A] family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she</p>

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				was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.”
Court orders: VAWA does not limit the authority of PHAs, owners, or managers to honor court orders addressing rights of access to or control of property.	N/A	42 U.S.C. § 1437d(1)(6)(C): “[N]othing in [this section] may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up”	42 U.S.C. § 1437f(c)(9)(C)(iii): “Nothing in [this section] may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.”	42 U.S.C. § 1437f(o)(20)(D)(ii): “Nothing in [this section] may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.”
Certification— Discretion of PHAs and owners: PHAs and owners are not required to demand official documentation of victim status. PHAs and owners may rely solely on the individual’s statement.	N/A	42 U.S.C. § 1437d(u)(1)(D): “Nothing in this subsection shall be construed to require any public housing agency to demand that an individual produce official documentation or physical proof of the individual’s status as a victim of domestic violence, dating violence, or	42 U.S.C. § 1437f(ee)(1)(D): “Nothing in this subsection shall be construed to require an owner, manager, or public housing agency to demand that an individual produce official documentation or physical proof of the individual’s status as a victim of domestic violence, dating violence, or stalking in order to receive any of the	42 U.S.C. § 1437f(ee)(1)(D): See project-based Section 8 citation.

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		<p>stalking in order to receive any of the benefits provided in this section. At the public housing agency's discretion, a public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.”</p>	<p>benefits provided in this section. At their discretion, the owner, manager, or public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.”</p>	
<p>Certification—HUD-approved form:</p> <p>A PHA, owner, or manager may request that an individual certify via a HUD-approved form that the individual is a victim of domestic violence, dating violence, or stalking. Such certification shall include the name of the perpetrator.</p>	<p>N/A</p>	<p>42 U.S.C. § 1437d(u)(1)(A):</p> <p>“A public housing agency responding to subsection (l)(5) and (6) of this section may request that an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the aforementioned paragraphs. Such certification shall include the name of the perpetrator.”</p>	<p>42 U.S.C. § 1437f(ee)(1)(A):</p> <p>“An owner, manager, or public housing agency responding to subsections (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), and (r)(5) of this section may request that an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the aforementioned paragraphs. Such certification shall include the name of the perpetrator.”</p>	<p>42 U.S.C. § 1437f(ee)(1)(A): See project-based Section 8 citation.</p>
<p>Certification—other permissible documents: In lieu of the HUD-</p>	<p>N/A</p>	<p>42 U.S.C. § 1437d(u)(1)(C):</p>	<p>42 U.S.C. § 1437f(ee)(1)(C):</p> <p>An individual may satisfy the</p>	<p>42 U.S.C. § 1437f(ee)(1)(C): See project-based Section 8 citation.</p>

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<p>approved form, a victim may certify by providing: (1) a statement signed by the victim and a victim service provider, attorney, or medical professional; or (2) a police or court record.</p>		<p>“An individual may satisfy the certification requirement of subparagraph (A) by-- (i) providing the requesting public housing agency with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or (ii) producing a Federal, State, tribal, territorial, or local police or court record.”</p>	<p>certification requirement of subparagraph (A) by-- (i) providing the requesting owner, manager, or public housing agency with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or (ii) producing a Federal, State, tribal, territorial, or local police or court record.</p>	
<p>Certification—Timeline: If an individual does not provide certification within 14 business days after receiving a written request, the PHA or owner may evict any</p>	<p>N/A</p>	<p>42 U.S.C. § 1437d(u)(1)(B): “If the individual does not provide the certification within 14 business days after the</p>	<p>42 U.S.C. § 1437f(ee)(1)(B): “If the individual does not provide the certification within 14 business days after the individual has received a request</p>	<p>42 U.S.C. § 1437f(ee)(1)(B): See project-based Section 8 citation.</p>

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<p>individual who commits lease violations. The PHA or owner may extend the 14-day deadline at their discretion.</p>		<p>individual has received a request in writing for such certification from the public housing agency, nothing in this subsection . . . may be construed to limit the authority of the public housing agency to evict any tenant or lawful occupant that commits violations of a lease. The public housing agency may extend the 14-day deadline at its discretion.”</p>	<p>in writing for such certification for the owner, manager, or public housing agency, nothing in this subsection . . . may be construed to limit the authority of an owner or manager to evict, or the public housing agency or assisted housing provider to terminate voucher assistance for, any tenant or lawful occupant that commits violations of a lease. The owner, manager or public housing agency may extend the 14-day deadline at their discretion.”</p>	
<p>Confidentiality: A PHA or owner shall keep confidential the information an individual provides to certify victim status.</p>	<p>N/A</p>	<p>42 U.S.C. § 1437d(u)(2)(A):</p> <p>“All information provided to any public housing agency pursuant to paragraph (1), including the fact that an individual is a victim of domestic violence, dating violence, or stalking, shall be retained in confidence by such public housing agency, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is-- (i) requested or consented to by the individual in writing;</p>	<p>42 U.S.C. § 1437f(ee)(2)(A):</p> <p>“All information provided to any public housing agency pursuant to paragraph (1), including the fact that an individual is a victim of domestic violence, dating violence, or stalking, shall be retained in confidence by such public housing agency, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is-- (i) requested or consented to by the individual in writing; (ii) required for use in an eviction proceeding . . . ; or</p>	<p>42 U.S.C. § 1437f(ee)(2)(A): See project-based Section 8 citation.</p>

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		(ii) required for use in an eviction proceeding . . . ; or (iii) otherwise required by applicable law.”	(iii) otherwise required by applicable law.”	
Notification: PHAs must provide notice to tenants, owners, and managers of their rights and obligations under VAWA.	N/A	42 U.S.C. § 1437d(u)(2)(B): “Public housing agencies must provide notice to tenants assisted under this section of their rights under this section and subsection (1)(5) and (6) of this section, including their right to confidentiality and the limits thereof.”	42 U.S.C. § 1437f(ee)(2)(B): “Public housing agencies must provide notice to tenants assisted under this section of their rights under this section and subsection (1)(5) and (6) of this section, including their right to confidentiality and the limits thereof.”	42 U.S.C. § 1437f(ee)(2)(B): See project-based Section 8 citation.
Preemption: VAWA does not preempt any Federal, State, or local law that provides greater protections for victims of domestic violence, dating violence, or stalking.	N/A	42 U.S.C. § 1437d(u)(1)(E): “Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.”	42 U.S.C. § 1437f(ee)(1)(F): “Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.”	42 U.S.C. § 1437f(ee)(1)(F): See project-based Section 8 citation.

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SUBSIDIZED HOUSING RIGHTS FOR VICTIMS OF DOMESTIC VIOLENCE

VICTIMS OF DOMESTIC VIOLENCE IN SUBSIDIZED HOUSING HAVE SPECIAL RIGHTS

There is a new law that helps you if you are a victim of domestic violence and apply for or live in Public Housing, Subsidized Housing or Section 8 Voucher Programs. It is called VAWA. VAWA stands for the Violence Against Women Act. It says that a housing program cannot turn you down for housing, terminate you or evict you because of your abuser's actions against you or a family member



Domestic violence can be violence against you or a family member, dating violence and stalking.

The housing agency or landlord can ask you to prove the domestic violence. They may terminate the lease of the abuser and keep renting just to you. This law does not mean that the housing agency or landlord cannot enforce other housing program rules or other terms of the lease.

HOW DO I KNOW IF VAWA CAN HELP ME?

Look at the boxes below. Pick the one that is about your situation- are you applying or already a tenant? If you answer "Yes" to all 4 questions in the box you picked, then you may be protected by VAWA. Use the letter that comes with this fact sheet to tell the housing authority or landlord that you are protected by VAWA. Make sure you sign the letter and keep a copy for yourself.

APPLYING	Yes	No
I applied for public housing, a subsidized apartment, or Section 8 Voucher		
My application was denied		
Someone in my household has been a victim of domestic violence		
My application was denied because of what the abuser did		

ALREADY A TENANT	Yes	No
I live in public housing, subsidized apartment, or have a Section 8 Voucher		
I got a notice of lease violation, a notice of termination or eviction papers		
Someone in my household has been a victim of domestic violence		
I am being terminated or evicted because of what the abuser did		

If you are not safe because of domestic violence call: 1 (800) 289-6177. If you need more information, legal help to claim your rights under VAWA, or have been told that VAWA does not apply to you, call your legal aid office.

Minneapolis Legal Aid – CLE
MN Legal Services Coalition
2324 University Avenue W- Suite 101B
St. Paul, MN 55114

Don't use this fact sheet if it is more than 1 year old.
Write us for updates, a fact sheet list, or alternate formats.
Fact Sheets aren't a complete answer to a legal problem.
See a lawyer for advice.

For More Help Go to www.midmlegal.org or www.LawHelpMN.org

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NOTICE

TO: Housing Authority or Landlord

RE: VAWA Protections

I understand that I should not be denied housing assistance, have my lease terminated or be evicted for reasons that are the result of domestic violence, dating violence or stalking against me or a member of my household. These protections became the law in the Violence Against Women Act (VAWA) enacted in January 2006. (Pub. L. 109-162)

Please apply the protections of VAWA to my situation when reviewing my application or before any lease termination or eviction against me or my household.

Please contact me for any information you need in order to provide my VAWA protections.

DATE: _____ **NAME:** _____

SIGN HERE: _____

The Violence Against Women Act of 2005 (VAWA): A Fact Sheet for Housing Providers

When did VAWA become effective, and who is required to comply with the law?

VAWA's housing provisions became effective January 5, 2006. HUD has issued notices stating that the law is effective even without implementing regulations. Housing authorities administering the public housing and Section 8 voucher programs and all landlords, owners, and managers participating in the Section 8 voucher and project-based programs must comply with VAWA.

What types of housing does VAWA cover, and whom does VAWA protect?

VAWA applies to public housing, the Section 8 voucher program, project-based Section 8 units, and the supportive housing program. VAWA protects anyone who is:

- (1) A victim of actual or threatened domestic violence, dating violence, or stalking, or an immediate family member of the victim (spouse, parent, sibling, child, or any other person living in the household who is related by blood or marriage); AND
- (2) Living in, or seeking admission to, public, Section 8 voucher, or project-based Section 8 housing.

How does VAWA affect admissions and terminations?

An individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of admission or denial of housing assistance.

VAWA establishes an exception to the "one-strike" criminal activity eviction rule. Actual or threatened criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds (either as a "serious or repeated violation of lease", or as "good cause") for terminating assistance, tenancy, or occupancy rights of the victim or an immediate family member of the victim.

Despite the protections described above, a housing provider may still evict the victim if the housing provider can demonstrate an "actual and imminent threat" to other tenants or employees of the property if the victim is not evicted. VAWA does not define "actual and imminent threat" or explain what evidence a housing provider must provide.

What about criminal activity unrelated to abuse?

VAWA does not protect tenants if the criminal incident for which they are being evicted or denied admission is unrelated to domestic violence, dating violence, or stalking. In determining whether to evict, a housing provider may not hold a victim of abuse to a more demanding standard than other tenants.

Can the abuser alone be evicted or terminated?

A housing provider may bifurcate a lease to evict or terminate assistance to a tenant who commits acts of violence against family members. This action may be taken without evicting or terminating assistance to the victim who is also a tenant. Bifurcation is applicable to all leases in the public housing or Section 8 programs. The eviction or termination must comply with federal, state, and local law.

Can a housing provider ask for proof of the abuse?

Housing providers may, but are not required to, ask an individual for certification that he or she is a victim of abuse if the individual seeks to assert VAWA's protections. At their discretion, housing providers may apply VAWA to an individual based solely on the individual's statement.

If a housing provider requests documentation, the victim may provide:

- A HUD-approved certification form (Form HUD-50066 or Form HUD-91066)
- Documentation signed by the victim and a victim service provider, an attorney, or a medical professional in which the professional attests under penalty of perjury to the professional's belief that the victim has experienced bona fide incidents of abuse.
- A federal, state, tribal, territorial, or local police or court record.

After a housing provider requests certification, an individual has fourteen business days to respond. If an individual fails to respond, a housing provider may terminate assistance. However, a housing provider is free to extend this timeframe.

Any information provided must be kept confidential. Housing providers may not enter the information into any shared database or provide it to any related entity. The only exceptions are: (1) the victim consents to disclosure in writing; (2) the information is required for use in an eviction proceeding; or (3) disclosure is otherwise required by law.

What guidance is available?

- VAWA's public housing provisions are at 42 U.S.C. § 1437d; the project-based Section 8 provisions are at 42 U.S.C. § 1437f(c), (d); the voucher provisions are at 42 U.S.C. § 1437f(o).
- HUD Notice PIH 2006-42: Transmits Certification Form HUD-50066 and provides guidance to PHAs and owners regarding certification and confidentiality.
- Form HUD-50066: The form that applicants and tenants in public housing and the Section 8 voucher program may use to certify that they are victims of abuse.
- Form HUD-91066: The form that applicants and tenants in the project-based Section 8 program may use to certify that they are victims of abuse.
- HUD Notice PIH 2007-5: Provides guidance to PHAs and owners on bifurcation and portability in the voucher program.
- HUD Notice H 08-07: Provides guidance to owners in the project-based Section 8 program; transmits a mandatory lease addendum for that program.
- 72 Fed. Reg. 12,696 (Mar. 16, 2007): Provides an overview of how VAWA affects the various HUD programs.

Litigation Documents

2008 NY Slip Op 28522
METRO NORTH OWNERS, LLC, Petitioner,
v.
SONYA THORPE, Respondent.
79149/08
Civil Court of the City of New York, New York County.
Decided December 25, 2008.

Gutman, Mintz, Baker & Sonnenfeldt, P.C., New York City (Gary Friedman and Neil Sonnenfeldt), for petitioner.

The Legal Aid Society, Harlem Community Law Offices, New York City (Gretchen Gonzalez of counsel), for respondent.

GERALD LEOVITS, J.

In this holdover proceeding, petitioner alleges that respondent, Sonya Thorpe, a Section 8 tenant, violated her lease by creating a nuisance. According to petitioner's notice of termination, respondent engaged in illegal and violent behavior during domestic disputes. Petitioner alleges that respondent stabbed John Capers on April 1, 2008, in one of numerous disturbances she allegedly created in and around the building.

Respondent denies these allegations and instead claims that Capers engaged in domestic violence against her. Invoking two subsections of the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), signed into law on January 5, 2006, to remedy abuses in which landlords tried to evict domestic-violence victims (*see* Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 Am U J Gender Soc Pol'y & L 377 [2003] [documenting abusive practices and citing strict-liability regulations that allowed domestic-violence victims to be evicted]; Tara M. Vrettos, Note, *Victimizing the Victim: Evicting Domestic Violence Victims from Public Housing Based on the Zero-Tolerance Policy*, 9 Cardozo Women's LJ 97, 102 [2002] [same]; Veronica L. Zoltowski, Note, *Zero Tolerance Policies: Fighting Drugs or Punishing Domestic Violence Victims?*, 37 New Eng L Rev 1231, 1266-1267 [2003] [same]), respondent argues in this motion for summary judgment under CPLR 3212 that VAWA 2005 forbids petitioner to terminate her federal-government-assisted Section 8 tenancy.

Respondent's motion is granted.

Both petitioner and respondent agree that a violent incident occurred at 420 East 102ⁿ Street, the subject premises, and that the New York Police Department and Emergency Medical Services responded to it. Both petitioner and respondent also agree that Capers told a security guard that he was stabbed. Respondent admits that Capers told the police that she stabbed him but denies that she stabbed anyone on the date in question and further claims that she was a victim of domestic violence, not the aggressor, as petitioner claims.

Respondent asserts that as a victim of domestic violence, she deserves VAWA's protection. According to VAWA 2005, 42 USC § 1437 f (c) (9) (B) and (C) (i), an incident of domestic violence or criminal activity relating to domestic violence will not be construed to violate a public-housing or government-assisted lease and shall not be good cause to terminate a public-housing or government-assisted tenancy (such as a Section 8 tenancy) if the tenant is the victim or threatened victim of that domestic violence. (*See American Civil Liberties Union, New Federal Law Forbids Domestic Violence Discrimination in Public Housing*, Jan. 25, 2006, at <http://www.aclu.org/womensrights/violence/23929res20060125.html> [accessed Dec. 25, 2008] [explaining contours of VAWA 2005 as they affect eviction proceedings].) VAWA's goal is to prevent a landlord from penalizing a tenant for being a victim of domestic violence. (*See generally* Kristen M. Ross, Note, *Eviction, Discrimination, and Domestic Violence: Unfair Housing Practices Against Domestic Violence Survivors*, 18 *Hastings Women's LJ* 249, 262-264 (2007); Elizabeth M. Whitehorn, Comment, *Unlawful Evictions of Female Victims of Domestic Violence: Extending Title VII's Sex Stereotyping Theories to the Fair Housing Act*, 101 *Nw U L Rev* 1419, 1423 (2007). Respondent argues that because petitioner's allegations of nuisance are based solely on acts of domestic violence committed against her, VAWA 2005 prevents her tenancy from being terminated.

VAWA 2005, 42 USC § 1437 f (c) (9) (B), provides that

"An incident or incidents of actual or threatened domestic violence . . . will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence."

VAWA 2005, 42 USC § 1437f (c) (9) (C) (i), also provides that

"Criminal activity directly relating to domestic violence . . . engaged in by a . . . guest . . . shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant . . . is the victim or threatened victim of that domestic violence"

The movant on a motion for summary judgment bears the burden of presenting evidentiary proof in admissible form to establish a prima facie showing an entitlement to a judgment as a matter of law. (*E.g. GTF Mktg, Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 967 [1987] ["A [party] moving for summary judgment has the initial burden of coming forward with admissible evidence, such as affidavits by persons having knowledge of the facts, reciting the material facts and showing that the cause of action has no merit"].) Summary judgment should be granted in the movant's favor only when a defense or cause of action is sufficiently established to warrant the court to direct judgment. (CPLR 3212 [b].)

To defeat a motion for summary judgment, the opposing party must "show facts sufficient to require a trial of an issue of fact." (*Zuckerman v City of NY*, 49 NY2d 557, 562; CPLR 3212 [b].) The rule allows flexibility for the party opposing the motion. The opposing party may present evidentiary proof that falls short of the strict requirement to tender evidence in admissible form. An opposing party that does not produce evidentiary proof in admissible form sufficient to require a trial on material questions of fact must offer an acceptable excuse for its

failure to meet the requirements of tender in admissible form; mere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient. (*Zuckerman*, 49 NY2d at 562; *Johnson v Phillips*, 261 AD2d 269, 270 [1st Dept 1999]; *see also Shaw v Looking Glass Assocs., LP*, 8 AD3d 100, 103 [1st Dept 2004] ["Conclusory assertions tailored to meet statutory requirements . . . are insufficient to rebut defendants' prima facie showing."].)

As the movant for summary judgment, respondent asks this court to consider the entire history between her and Capers as proof that she is a domestic-violence victim. She submits evidence of complaint reports she filed with the New York Police Department in November 2006, January 2007, and February 2007, along with an order of protection she obtained against Capers in March 2007 from the New York City Criminal Court. Respondent also submits evidence that the New York District Attorney's Office declined to prosecute her for allegedly stabbing Capers in April 2008. Respondent submits her evidence to raise an inference that Capers was the aggressor in April 2008 and that, as the past would show, she, as in November 2006, January 2007, and February 2007, was once again the victim of domestic violence, and hence protected by VAWA, 42 USC § 1437f.

Respondent and Capers's history may not be used to show respondent's propensity to stab Capers. The acts of domestic violence committed against respondent resulting in police reports and the Criminal Court protection order against Capers are relevant, however, to offer in proving necessary background information in establishing a pattern of domestic violence in which respondent is a victim. (*See People v Demchenko*, 259 AD2d 304, 120 [1st Dept 1999] ["Defendant's prior acts of domestic violence against the complainant, resulting in the order of protection violated by defendant in this case, were properly admitted . . . to provide necessary background information."].)

Respondent's affidavit, specifically her recollection of the April 2008 stabbing, identifies herself as the victim. Respondent states that an intoxicated and disheveled Capers arrived at her apartment and, despite her telling him to leave, forced his way into her apartment and assaulted her. During the assault, Capers threw respondent into a bathroom cabinet, causing glass to shatter on both of them, and that Capers injured himself on the glass. Respondent's affidavit about the incident is admissible because she is a person with knowledge of the relevant facts. Respondent's affidavit, police incident reports, and a judge-decreed protection order from Criminal Court against Capers depict respondent as the victim of domestic violence and shifts the burden of proof to petitioner to allege otherwise. Petitioner must show that its causes of action have merit and that triable issues of fact warrant a trial.

Petitioner submits an affidavit by Miriam Velette, petitioner's property manager, and a security guard's incident report dated April 2, 2008, in opposition to respondent's motion for summary judgment. Velette alleges that she is involved in the daily management and oversight of petitioner's properties and that even after Criminal Court granted the order of protection in March 2007, respondent gave Capers ongoing access to the building several times. Velette further alleges that respondent used obscenities when building security denied Capers access onto the subject premises and that "there have been several instances where the respondent has engaged in loud fighting, yelling, and screaming with Mr. John Capers who is apparently the respondent's ex-husband/boyfriend." Velette also claims that respondent stabbed Capers on April

1, 2008, causing him serious harm, and that this violent conduct shows her to be threat to the safety of the other tenants in the building.

Velette fails to give the court a time frame for any of the alleged prior disputes between respondent and Capers. Moreover, besides indicating that she does not have first-hand knowledge of the couple's relationship by using words like "apparently" and besides basing her reasoning on hearsay, her statement is ambiguous. A party's acts of domestic violence can be admissible to establish a party's status, even if established solely by testimony, if relevant "to establish motive and intent and to provide appropriate background." (*People v Meseck*, 52 AD3d 948, 950 [3d Dept 2008].) Nowhere in Velette's affidavit or in petitioner's opposing papers as a whole is any evidence that the prior disputes were the fault of or initiated by respondent. Rather, the only evidence that respondent poses a threat to the tenants of the building or that her conduct is an ongoing nuisance is Velette's single, generalized, and neutral statement that these alleged "several instances" are a "threat to the tenants" of the building. Petitioner fails to offer any documentation to establish a triable issue of fact for any of the allegations, such as hospital records, injury-aided reports, police reports, affidavits from the security guard, Capers, or other tenants or employees, or affidavits from anyone describing the tumultuous relationship between respondent and Capers.

Velette's statement that respondent stabbed Capers is unsubstantiated and conclusory. Velette is a person not familiar with the relevant facts. She was absent during the stabbing and she does not say how she concluded that respondent stabbed Capers. She did not witness any of the alleged prior disputes and provides no reliable basis to explain how she obtained her information. Her affidavit is a conclusory statement based solely on hearsay that does not fall under any of the hearsay exceptions. Her unsubstantiated and conclusory affidavit is merely an attempt to find 42 USC § 1437 f inapplicable to this case.

Petitioner's security guard, Specialist R. Ward, identifies respondent and Capers in his incident report as a person involved in the stabbing. In his report, Ward claims that an anonymous tenant told him a man had fallen on the grounds and that when Ward spoke to Capers, Capers told him that "he had been stabbed." Ward's report, not even an affidavit, is also hearsay because Ward is not knowledgeable of the relevant facts. He arrived after Capers had already been injured. He did not see what happened. Respondent is not identified as the assailant by the anonymous tenant who reported the incident, by Capers, or by Ward himself. The only mention of respondent in the incident report concerns the March 2007 protection order respondent obtained from Criminal Court and the alleged ongoing disputes between the respondent and Capers.

Petitioner submits proof in inadmissible form and fails to demonstrate an acceptable excuse for its failure to meet the requirements of tender in admissible form. Petitioner does not suggest that it engaged in a good-faith attempt to obtain additional evidence or establish a reasonable nexus to prove that respondent stabbed Capers. All that petitioner offers into evidence to defeat respondent's motion is a property manager's affidavit containing conclusory statements and an unsworn incident report based on hearsay filled out by a security guard responding in the aftermath. Petitioner alleges that respondent lacks credibility but itself presents no evidence to discredit her or her affidavit and ultimately bases all its allegations that respondent is a nuisance

and a threat to the tenants of the subject premises on inadmissible hearsay and prior, ambiguous, unspecific, undated acts.

Even if petitioner's evidence were not based on hearsay and conclusory statements, the court would find that the supposed stabbing incident is a domestic dispute and that respondent is a victim or a threatened victim of domestic violence. Although petitioner alleges that respondent allowed Capers access to the subject premises shortly after obtaining a protection order, her behavior, even if true, does not determine that respondent was not a victim of domestic abuse. The battered-woman syndrome, a well-established concept in law and science, explains the concept of anticipatory self-defense and seemingly inconsistent victim behavior. (*E.g. People v Torres*, 128 Misc 2d 129, 135 [Sup Ct, Bronx County 1985].) The battered-woman syndrome explains the behavioral pattern of abused women and how the abuse affects their conduct. (*People v Hryckewicz*, 221 AD2d 990, 991 [4th Dept 1995].) The syndrome is "a series of common characteristics found in women who are abused both physically and emotionally by the dominant male figures in their lives over a prolonged length of time." (*People v Ellis*, 170 Misc 2d 945, 950 [Sup Ct, NY County 1996], quoting Christine Emerson, *United States v. Willis: No Room for the Battered Woman Syndrome in the Fifth Circuit?*, 48 Baylor L Rev 317, 320 [1996].) One "characteristic is that [i]f charges are filed, the battered woman may change her mind about prosecuting the batterer and withdraw her complaint, refuse to testify as a witness, or recant." (*Id.*, quoting Joan M. Schroeder, *Using Battered Woman Syndrome Evidence in the Prosecution of a Batterer*, 76 Iowa L. Rev. 553, 560 [1991].)

Respondent might have changed her mind after she obtained the March 2007 protection order and allowed Capers access to the subject premises. Unrepresentative and inconsistent victim behavior toward an alleged aggressor fits into the cycle of domestic violence. Domestic violence is cyclical in nature. The battered woman's inconsistent behavior allows the victim to anticipate oncoming violence and entices her to remain with her abuser after the violence ends. (*Id.*, quoting Joann D'Emilio, *Battered Woman's Syndrome and Premenstrual Syndrome: A Comparison of Their Possible Use as Defenses to Criminal Liability*, 59 St John's L Rev 558, 563-564 [1985].) Respondent's seemingly inconsistent behavior toward Capers, even if true, characterizes a battered woman.

Respondent's motion for summary judgment is granted. Because the only admissible evidentiary proof submitted is respondent's affidavit, the court rests its decision on the factual scenario she presents. Petitioner failed properly to raise a triable issue of fact about whether respondent was a victim or aggressor. Accordingly, the court finds that respondent was a victim of domestic violence. As such, VAWA 2005 forbids petitioner to terminate respondent's Section 8 tenancy. Respondent is either a victim of incidents of domestic violence under 42 USC § 1437 f (c) (9) (B) or a victim of criminal activity relating to domestic violence under 42 USC § 1437 f (c) (9) (C) (i).

The petition is dismissed.

This opinion is the court's decision and order.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART A

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XXXXX,

INDEX NO. L&T XXXXX

Petitioner,

-against-

XXXXX

JOHN DOE and JANE DOE
Brooklyn, NY,

Respondent(s).

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RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

JOHN C. GRAY, ESQ.
SOUTH BROOKLYN LEGAL SERVICES
Brent Meltzer, of Counsel
105 Court Street, 3rd Floor
Brooklyn, New York, 11201
(718) 237-5533

Jennifer K. Brown
Maya Raghu
LEGAL MOMENTUM
395 Hudson Street, 5th Floor
New York, NY 10014
(212) 925-6635

Attorneys for Respondent-Tenant

TO: Tennenbaum & Berger LLP
26 Court Street, Penthouse
Brooklyn, NY 11242
718-596-3800

Attorneys for Petitioner

PRELIMINARY STATEMENT

In this holdover proceeding, Petitioner is attempting to evict Respondent RF, a victim of domestic violence and stalking and a longtime tenant in Petitioner's federally subsidized housing project, for three inter-connected acts of her abusive ex-boyfriend L.E. in April and May 2006 that were either acts of domestic violence or stalking against her, or criminal activity directly related to the domestic violence or stalking. While Petitioner's eviction of Ms. F for the abusive behavior of Mr. E is common among landlords, it violates federal, state and local laws.

First, Congress recently enacted the Violence Against Women and Department of Justice Reauthorization Act of 2005 to address this exact situation. This law specifically forbids landlords of federally subsidized housing projects from evicting tenants for acts of domestic violence or stalking against them, or for criminal activity by third parties which is directly related to such violence.

Second, Petitioner's attempt to evict Ms. F, a victim of domestic violence and stalking, also constitutes sex discrimination in violation of the federal Fair Housing Act, the New York State Human Rights Law and the New York City Human Rights Law.

Finally, Petitioner alleges that the eviction is justified by Ms. F's failure to report her abuser on her most recent Section 8 recertification. However, Mr. E has never lived with Ms. F or been a member of her family, and she had no obligation, or indeed, basis, to include him on her recertification form.

Failure to dismiss the Petition and grant Respondent's motion for summary judgment would condone punishing victims of domestic violence for the criminal acts of

their abusers, endorse sex discrimination, and place women like Ms. F in the untenable position of facing homelessness to ensure their safety and that of their family members.

FACTS

The facts pertinent to this motion, which are also set forth in the accompanying affidavit of RF in support of motion for summary judgment, are as follows:

RF moved into _____ in or about May 1996. Her apartment is federally subsidized under the project-based Section 8 program and her share of the rent is \$152.00 per month. *See* Lease Amendment dated September 20, 2006, attached hereto as Exhibit A.

Ms. F lives with her three children: _____. Other than her children, no one else lives or has lived in the apartment with her.

When Ms. F moved into her apartment, she met LE, a tenant who resided at _____, the adjoining building managed by her landlord. In fact, Ms. F's building is commonly referred to as _____ and both _____ are owned by Petitioner and are joined together.

From 1996 through 2000, Ms. F was involved in an intimate relationship with Mr. E and they had a child together, Junior, who was born on January 16, 1997. Despite the fact that they were in a relationship, Mr. E had his own apartment in _____, and therefore each maintained their separate residences and never lived together or were married to each other.

During the time that Ms. F had a relationship with Mr. E, he was verbally and physically abusive towards her. Based in part on the abuse, Ms. F ended the relationship with Mr. E sometime in the year 2000. Unfortunately, even though the relationship had

ended, Mr. E abusive actions did not, and he has continued to abuse, stalk and harass Ms. F.

In 2002, Ms. F was walking down ___ Street in Brooklyn with her friend when they were confronted by Mr. E. Mr. E began screaming and threatening Ms. F and then punched her in the face, causing Ms. F to bleed and both of her eyes to turn black. Ms. F was taken to the hospital for treatment and it was eventually determined that she had a deviated septum from the punch that required surgery in November 2002.

On or about February 2003, Mr. E was evicted from his apartment at ____. but he has continued to be present in the building. Upon information and belief, Mr. E lived at _____ from birth until his eviction, and therefore has many friends and family in the buildings who allowed him access to the buildings even after he was evicted. In addition, the front doors to _____ have not had working locks in many years, so Mr. E was able to gain admittance to the buildings even after he was evicted.

Both prior to and after his eviction, Mr. E would come to Ms. F's door intoxicated and shout obscenities at her and carve these obscenities into her door. In addition, Mr. E would constantly loiter in the front of the building, even after he was evicted. Whenever he saw Ms. F walking into her building, he would yell obscenities at her and otherwise intimidate her. Initially, Ms. F would begin a conversation with a police officer on the street in the hope that this would scare Mr. E away from the front of her building. Eventually, Ms. F was forced to use alternative entrances to her building rather than confront the verbal abuse and on September 12, 2005, she even made a formal complaint to the police.

On or about the last week in April 2006, Mr. E again came to Ms. F's apartment and precipitated a series of acts referenced in Petitioner's court papers. At approximately 4 a.m., Mr. E, apparently intoxicated, began kicking and banging on Ms. F's door demanding to be let into her apartment. She was in the apartment with her three young children and based on the prior abuse, she was afraid to confront him. Instead, Ms. F contacted building security to send someone over to her apartment for assistance.

BR was the building security guard who responded to Ms. F's request for assistance and he confronted Mr. E. He asked Ms. F if Mr. E lived in the apartment or if Mr. E was on the lease. Ms. F stated that he did not live in the apartment and that he was not on the lease. Accordingly, Mr. R stated that if Mr. E did not leave the premises, he would call the police. Mr. R and Mr. E argued. When Mr. E refused to leave, Mr. R called the police and Mr. E left before the police arrived.

Upon information and belief, on or about May 5, 2006, Mr. E came to the buildings on _____ and confronted Mr. R about the incident at Ms. F's apartment in April 2006. After several words were spoken, Mr. E punched Mr. R in the mouth and Mr. R walked away. Mr. E returned shortly thereafter with a gun and proceeded to fire shots at Mr. R, missing each time he fired. Upon information and belief, Mr. E was arrested by the police, and upon his arrest stated that he was Ms. F's spouse and that he lived with her in her apartment.

Almost two and a half months later, Petitioner served a Ten (10) Day Notice of Termination (the "Notice") upon Ms. F seeking her eviction for the actions of Mr. E in April and on May 5, 2006. *See* Notice of Termination, attached hereto as Exhibit B. The Notice erroneously stated that the incidents in late April and May 5

occurred on the same night, and that the incident in April occurred in Ms. F's apartment. In addition, the Notice mistakenly asserted that Mr. E was Ms. F's spouse, member of her household or a guest on the night that he banged on Ms. F's door and also the day that he physically assaulted Mr. R.

The Notice also stated that Ms. F failed to place Mr. E on her Section 8 recertification form. *See* Notice of Termination, attached hereto as Exhibit B. Mr. E has never lived with Ms. F and therefore she had no obligation or basis to place him on her recertification forms. Ms. F has always placed her children, the only people who have ever lived with her, on her recertification forms. Upon information and belief, Mr. E is now living at _____ with his aunt. *See* Lease, attached hereto as Exhibit C.

Prior to commencing this proceeding, Petitioner never once attempted to discuss the matter with Ms. F. After she received the Notice, Ms. F went to the management office to discuss the eviction proceeding, and spoke with JT. Ms. T told Ms. F that she must go to court and that the management office would only discuss rent matters.

On or about August 14, 2006, Petitioner prepared a Notice of Petition and Petition and served them upon Ms. F. *See* Notice of Petition and Petition, attached hereto as Exhibit D. After several adjournments, Ms. F served an Answer to the Petition. *See* Answer, attached hereto as Exhibit E.

Since Mr. E's intimidating behavior in April 2006, he has not returned to Ms. F's apartment. However, she is still fearful of him. Several years ago, Ms. F asked Petitioner's predecessor in interest for a transfer to another building because of Mr. E. She was told that she could only move internally within the building. Ms. F continues to seek a transfer to another building but Petitioner has refused to consider this alternative.

In addition, Petitioner has never taken any steps to address Mr. E's behavior. Petitioner could have banned Mr. E from the buildings after he was evicted or instituted trespass or nuisance actions against him. Banning Mr. E would not prove difficult, since Petitioner hired security for the building at the beginning of 2006 -- the very security Ms. F contacted when Mr. E was banging on her door at 4 a.m. Nevertheless, instead of taking action to deal with the person actually causing problems and committing criminal acts, Petitioner preferred to evict Ms. F.

ARGUMENT

Rule 3212 of the C.P.L.R. provides that a motion for summary judgment shall be granted where "upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." C.P.L.R. § 3212(b). Summary judgment is designed to expedite civil cases, by removing claims that can be resolved as a matter of law from the trial calendar. *Andre v. Pomeroy*, 35 N.Y.2d 361, 362 N.Y.S.2d 131 (1974). Where no triable issue of fact exists, the Court should not be reluctant to employ the remedy of summary judgment. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 585 (1980); *Andre*, 35 N.Y.2d at 361.

To defeat a motion for summary judgment, one opposing the motion must "show facts sufficient to require a trial on any issue of fact." C.P.L.R. § 3212(b). The party in opposition must "produce evidentiary proof in admissible form to require a trial of material questions of fact on which he rests his claim." *Zuckerman*, 49 N.Y.2d at 562, 427 N.Y.S.2d at 598.

I. PURSUANT TO THE VIOLENCE AGAINST WOMEN ACT, PETITIONER MAY NOT TERMINATE MS. F'S TENANCY BASED ON DOMESTIC VIOLENCE OR STALKING AGAINST HER, OR CRIMINAL ACTIVITY BY A THIRD PARTY RELATED TO THE DOMESTIC VIOLENCE OR STALKING.

Petitioner commenced the instant proceeding seeking to evict Ms. F, a tenant in Petitioner's federally subsidized housing project and a victim of domestic violence and stalking, for three inter-connected acts by her alleged "spouse" that occurred during and were related to a "domestic dispute."¹ However, the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005") specifically precludes Petitioner from terminating Ms. F's tenancy based on incidents of domestic violence or stalking against her, or criminal activity by a third party related to such domestic violence or stalking.

Petitioner's response to the domestic abuse and related criminal activity -- eviction of the victim of violence in an attempt to "get rid" of the problem -- is a common one among landlords providing federally subsidized housing, as Congress has recognized. *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, 42 U.S.C. §§ 14043e(3) and (4). Congress also found that this response has serious consequences for women and their children who are dealing with violence. *Id.*

In response to this widespread problem, Congress enacted VAWA 2005, which contains provisions that specifically preclude Petitioner from terminating Ms. F tenancy based on incidents of domestic violence or stalking against her, or criminal activity by a third party related to such domestic violence or stalking. VAWA 2005 amended 42

¹ Ms. F has never been married and categorically denies that the individual identified in the Notice of Termination is her husband, a member of her household or was her guest. *See* Affidavit in Support of Motion for Summary Judgment, ¶¶ 8, 9, and 25, ("F Aff."). However, said dispute is immaterial and Petitioner's recitation of the facts may be deemed true solely for the purposes of this motion for summary judgment.

U.S.C. § 1437f to include specific protections for tenants in subsidized housing who are victims of domestic violence, dating violence or stalking. It provides that:

. an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.

42 U.S.C. §§ 1437f(c)(9)(B) & (d)(1)(B)(ii). VAWA 2005 also amended the statute so that:

. a criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking.

42 U.S.C. §§ 1437f(c)(9)(C)(i) & (d)(1)(B)(iii).

According to Petitioner's Notice, there are three inter-related incidents that are the basis for the eviction: 1) the "domestic dispute"; 2) Mr. E's physical altercation with the security guard; and 3) Mr. E's shooting at the security guard. *See* Notice of Termination, attached hereto as Exhibit B. As each incident is either an incident of domestic violence or stalking against Ms. F, or criminal activity by a third party related to such domestic violence or stalking, the protections of VAWA 2005 provide both an affirmative defense to the attempted eviction of Ms. F for any of these incidents, as well as the basis for her counterclaims, and her motion for summary judgment should be granted.

A. Petitioner's Termination of Ms. F's Lease Because of the Domestic Violence and Stalking Against Her is Unlawful Under VAWA 2005.

There is little doubt that the "domestic dispute" mentioned in the Notice as a basis for Ms. F's eviction is an incident of domestic violence and stalking within the meaning of

VAWA 2005. Indeed, that incident was merely the latest instance of a long pattern of domestic violence and stalking by Mr. E against Ms. F. Pursuant to VAWA 2005, “the term ‘domestic violence’ includes felony or misdemeanor crimes of violence committed . . . by a person with whom the victim shares a child in common.” 42 U.S.C. § 13925(6). “Stalking” is defined as “to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person” and in the course of or as a result of such “stalking,” that person or her immediate family are placed “in a reasonable fear of” death, “serious bodily injury,” or “substantial emotional harm.” 42 U.S.C. § 1437f(f)(10).

The person identified in the Notice is LE, the father of Ms. F’s child Junior. On the night identified in the Notice, Ms. F was in her apartment with her three children _____. See Affidavit in Support of Motion for Summary Judgment, ¶20. At approximately 4 a.m., Mr. E, apparently intoxicated, began banging and kicking Ms. F’s door demanding that he be let into the apartment.² *Id.* Ms. F was afraid to open the door and step into the hallway to confront Mr. E, so she called building security to address the situation. *Id.* When security guard BR arrived at her apartment, he confronted Mr. E and asked him to leave the premises. *Id.* at ¶21. Mr. E then argued with Mr. R and left the building after Mr. R called the police.³ *Id.*

Indeed, on the night of Mr. E’s appearance, Ms. F had every reason to be fearful of Mr. E based on their previous interactions. During the time that Mr. E and Ms. F were in an intimate relationship, from 1996-2000, Mr. E verbally and physically abused Ms. F.

² In the Notice, Petitioner asserts that the “domestic dispute” occurred in Ms. F’s apartment. See Notice of Termination, attached hereto as Exhibit B. Ms. F denies that Mr. E was in her apartment that night, but the discrepancy is immaterial to Ms. F’s motion for summary judgment and may be deemed true for the purposes of motion.

³ As discussed in section I.B., *infra*, Mr. E returned to the building approximately one week later to seek revenge on Mr. R for rendering assistance to Ms. F and asking Mr. E to cease and desist his stalking and domestic violence. Mr. E punched Mr. R and subsequently shot at him.

See F Aff. ¶10. Even after their relationship ended in 2000, Mr. E continued to verbally and physically abuse Ms. F, as is common in abusive relationships where the abuser refuses to relinquish control over the abused. *Id.* at ¶12. Despite being evicted from his apartment in the building on or about February 2003, Mr. E continued to sit in front of the entrance to the building with his friends, and would verbally abuse Ms. F whenever he saw her entering the building. *Id.* at ¶18. Just as in the “domestic dispute” incident cited by Petitioner, Mr. E would frequently bang on Ms. F’s door, shout obscenities at her, and carve obscenities into her door while intoxicated. *Id.* at ¶17.

Throughout this period, Petitioner took no action to address the situation, such as barring Mr. E from the building or commencing trespass or nuisance proceedings against Mr. E to keep him from the premises after his eviction.⁴ In fact, Petitioner even denied Ms. F’s request to transfer to another building. *Id.* at ¶31 and 32.

In or about July 2002, Mr. E escalated the level of abuse when he saw Ms. F walking with a male friend on ___ St., whereupon he struck her in the nose after shouting obscenities at her. *Id.* at ¶13. Ms. F was taken to the hospital, and eventually required surgery in November 2002 to repair the damage caused by Mr. E. *Id.* After that incident, Mr. E continued to verbally abuse Ms. F as she was walking into the building and she would be forced to use alternative entrances in order to avoid him. *Id.* at ¶18. This continued pattern of abuse culminated in the April and May 2006 incidents discussed above.

⁴ VAWA 2005 even permits landlords to bifurcate a lease and evict a tenant who is a perpetrator of domestic violence or stalking, while permitting the tenant who is a victim of domestic violence to remain. See 42 U.S.C. § 1437f(c)(9)(C)(ii). Although Mr. E was not listed on Ms. F’s lease, it is notable that Petitioner failed to take advantage of *any* of the numerous available options to address Mr. E’s behavior.

These acts satisfy VAWA 2005's definition of stalking and domestic violence against Ms. F. Petitioner terminated Ms. F's lease due to the "domestic dispute." See Notice of Termination, attached hereto as Exhibit B. Because the "domestic dispute" was the latest in a chain of incidents constituting domestic violence and stalking against Ms. F, Petitioner's eviction is action against a victim of domestic violence and stalking that is unlawful under VAWA 2005. See 42 U.S.C. § 1437f(c)(9)(B). Accordingly, the Petition should be dismissed and Ms. F motion for summary judgment granted as to her VAWA 2005 claims.

B. Petitioner's Termination of Ms. F's Lease Because of Mr. E's Assault on and Shooting at the Security Guard is Unlawful Under VAWA 2005.

In a similar manner, Petitioner's attempt to evict Ms. F for Mr. E's altercations with and shooting at the security guard in May 2006, following the pattern of abuse and the "domestic dispute," is also unlawful under VAWA 2005 as it constitutes an eviction based upon "criminal activity directly related to domestic violence...or stalking." See 42 U.S.C. § 1437f(c)(9)(C)(i).

As discussed previously, Ms. F was fearful of confronting Mr. E when he was banging on her door at 4 a.m. and instead requested the assistance of security, as she had been instructed to do by management. See F Aff. ¶20. Ms. F remained in her apartment until BR, a security guard in the building, arrived to address the situation. *Id.* at ¶21. Mr. R confronted Mr. E and asked him to leave the premises. *Id.* Based on Mr. R's assistance to Ms. F and his request that Mr. E cease and desist his stalking and domestic violence, Mr. E punched Mr. R and subsequently shot at him. *Id.* at ¶23

Both Mr. E's punching and shooting at the security guard were directly related to Mr. E's attempt to gain access to Ms. F's apartment at 4 a.m. the week before. Had Mr. E not attempted to gain access, Ms. F would never have called security. Had Ms. F never called security, Mr. R would never have confronted Mr. E and the ensuing altercations would not have transpired.

Pursuant to VAWA 2005, criminal activity of a third party directly related to domestic violence or stalking engaged in by a person under the control of the abused tenant may not form the basis for the eviction of an abused tenant. Petitioner has violated VAWA 2005 by attempting to evict Ms. F and terminate her tenancy for the criminal activity of Mr. E (a person allegedly under her control), which was directly related to domestic violence and stalking.⁵ Accordingly, the Petition must be dismissed as to these claims and summary judgment entered in Ms. F's favor.

II. PETITIONER'S EVICTION OF MS. F CONSTITUTES SEX DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT, THE NEW YORK STATE HUMAN RIGHTS LAW, AND THE NEW YORK CITY HUMAN RIGHTS LAW.

Petitioner's eviction of Ms. F, a victim of domestic violence and stalking, for the acts of her abuser constitutes disparate impact and intentional sex discrimination in violation of the federal Fair Housing Act, as amended ('FHA'), 42 U.S.C. §§ 3604(a) and (b); the New York State Human Rights Law ('NYSHRL'), N.Y. Exec. Law §§ 296.2-a(a) and (b) and §§ 296.5(a)(1) and (2); and the New York City Human Rights Law ('NYCHRL'), N.Y.C. Admin. Code, §§ 8-107(5)(a)(1) and (2).⁶ The anti-discrimination

⁵ Ms. F denies that Mr. E is a household member, guest or a person otherwise under her control. FAff. ¶25. Assuming either set of facts, Petitioner has violated VAWA 2005, as it is equally clear that evicting Ms. F, a person who had no role in the criminal activity that motivated the eviction, is also impermissible under VAWA 2005.

⁶ Federal precedent interpreting the Fair Housing Act is applicable to housing discrimination claims under the New York State Human Rights Law and the New York City Human Rights Law. *See Tyler v.*

protections of these laws provide both an affirmative defense to Petitioner's attempted eviction, warranting dismissal of this proceeding, and the basis for Ms. F's counterclaims. Because Petitioner cannot meet its burden of demonstrating that its actions were not discriminatory, the Petition should be dismissed and Ms. F's motion for summary judgment should be granted.

A. Evicting Female Tenants For the Criminal Acts of Their Abusers Has a Disparate Impact on Women.

Petitioner has discriminated against Ms. F by evicting her pursuant to a practice that has a disparate impact upon women, thereby violating the FHA, the NYSHRL, and the NYCHRL. In order to establish a prima facie case of disparate impact housing discrimination, the victim of discrimination must show“(1) the occurrence of certain outwardly neutral practices and (2) a significantly adverse or disproportionate impact on persons of a particular type produced by the [landlord's] facially neutral acts or practices.” *Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 575 (2d Cir. 2003) (elements of disparate impact housing claim under the FHA). *See People of the State of New York v. New York City Transit Authority*, 59 N.Y.2d 343, 349 (1983) (elements of disparate impact employment claim under NYSHRL); N.Y.C. Admin. Code § 8-107(17)(a)(1) (elements of disparate impact claim under NYCHRL).

Here, Petitioner engaged in a facially neutral practice: evicting a tenant living in subsidized housing for violations of her lease due to domestic violence or stalking against her or the criminal acts of an alleged guest, household or family member. The fact that

Bethlehem Steel Corp., 958 F.2d 1176, 1180 (2d Cir. 1992) (“New York courts have consistently looked to federal caselaw in expounding the [state] Human Rights Law”); *Lynn v. Vill. of Pomona*, 373 F. Supp. 2d 418, 434 (S.D.N.Y. 2005) (“The elements of plaintiffs' claims under the NYSHRL and the County Human Rights Law are the same as that under the FHA. Therefore, our above analysis applies equally to those claims....”); *Hughes v. The Lillian Goldman Family, LLC*, 153 F. Supp. 2d 435, 453 n.11 (S.D.N.Y. 2001) (“Stating a housing discrimination claim under the [New York State] HRL or the NYCHRL, however, is substantially similar to stating a housing discrimination claim under the Fair Housing Act.”).

the policy may have been unwritten or a single instance is irrelevant to whether it has discriminatory disparate impact. *See, e.g., Council 31 v. Ward*, 978 F.2d 373, 377 (7th Cir. 1992) (“To the extent that members of a protected class can show significant disparities stemming from a single decision, there is no reason that decision should not be actionable.”); *Winsor v. Regency Prop. Mgmt., Inc.* No. 94 CV 2349 (Wisc. Cir. Ct. Oct. 2, 1995) (holding that a single decision to refuse to rent an apartment to prospective tenants because they were victims of domestic violence sufficient to state a sex discrimination claim under a disparate impact theory).

While facially neutral, it is indisputable that Petitioner’s practice has a disproportionate negative impact upon the protected class to which Ms. F belongs, women. Both national and New York studies confirm that the vast majority of victims of domestic abuse are women. For example, a widely-respected national study conducted by the U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women. *See* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (February 2003).

Moreover, women living in rental housing experience intimate partner violence at more than three times the rate of women who own their homes, Callie Marie Rennison & Sarah Welchans, U.S. Dept of Justice, NCJ 178247, *Intimate Partner Violence* at 5 (2000), and women with annual household incomes of less than \$7,500 were nearly seven times more likely than women with annual household incomes of over \$7,500 to experience domestic violence. *Id.* at 4.

Stalking is also a form of violence disproportionately experienced by women: they constitute 78% percent of all stalking victims. Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Just. & Ctrs. for Disease Control and Prevention, *Stalking in America: Findings from the National Violence Against Women Survey* at 2 (April 1998). Women are more likely than men (59 percent and 30 percent, respectively) to be stalked by current or former intimate partners. *Id.* Significantly, 43% of female victims were stalked by former partners *after* the intimate relationship ended. *Id.* at 6. Similarly, a study found that 89% of the domestic violence homicides committed in New York State from 1990-97 included "indications of prior abuse," while 19% of such homicides included indications of "prior non-physical abuse, such as stalking, telephone harassment and threats." New York State Commission on Domestic Violence Fatalities, *Report to the Governor* at 16 (October 1997).

Many domestic violence and stalking victims, the vast majority of whom are women, lose their housing based on the acts of their abusers. *See* 42 U.S.C. §§ 14043e(3) and (4) (finding women and families "are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence" and noting survey documenting cases where tenants have been "evicted because of the domestic violence crimes committed against [them]"); Public Advocate of New York City, *Safety Shortage: The Unmet Shelter And Housing Needs Of New York City's Domestic Violence Survivors* at 8 (March 2005) ("survivors searching for housing face discrimination from landlords who fear that batterers will find survivors in their new homes and create problems on the premises"); New York City Council, *Report of the Governmental Affairs Division on Int. No. 305* at 2 (Apr. 28, 2004) ("Abusers or stalkers

frequently follow victims to their homes, assault and harass victims in their homes and engage in other behaviors that undermine victims' security in their homes. In addition, victims face the danger of losing secure housing when property owners become aware of the problem. Advocates report that many victims attacked in their homes are served with eviction notices for 'allowing' criminal activity to occur on the premises?").

These statistics demonstrate the discriminatory effect that Petitioner's practice has on women as compared to men. Because women make up the vast majority of domestic violence and stalking victims, a policy that penalizes these victims in particular for the acts of their abusers affects disproportionate numbers of women among Petitioner's tenants. Indeed, the percentage of women victimized by domestic violence and stalking is likely higher among those subsidized housing tenants subject to Petitioner's practice, because, as noted above, women who live in rental housing with low incomes are far more likely to experience abuse than home-owning, more affluent women.

In light of these statistics, several courts and agencies around the country, including in New York, have concluded that housing policies and practices that discriminate against victims of abuse disparately impact women and violate the sex discrimination provisions of fair housing law. The New York Attorney General opined as early as 1985 that denial of rentals to persons based on their status as domestic violence victims has a discriminatory impact on women and therefore violates sex discrimination provisions of the New York State Human Rights Law. *See* Formal Op. No. 85-F15, 1985 N.Y. Op. Atty Gen. 45 (Nov. 22, 1985); *Cox v. Related Companies*, No. 11026/86 (N.Y. Sup. Ct. Monroe Cty Dec. 1, 1986) (order and judgment adopting legal analysis of 1985 N.Y. Op. Atty. Gen. 45). Significantly, in a case similar to the one

at issue, a landlord's policy that required eviction of victims of domestic violence because of an abuser's criminal activity was found to have a discriminatory impact on women under the federal Fair Housing Act. *United States v. CBM Group*, No. HUDALJ 10-99-0538-8 (HUD Ore. Apr. 16, 2001). *See also Winsor v. Regency Prop. Mgmt., Inc.* No. 94 CV 2349 (Wisc. Cir. Ct. Oct. 2, 1995) (holding that under Wisconsin fair housing law, modeled after federal Fair Housing Act, a landlord's single decision to refuse to rent an apartment to prospective tenants because they were victims of domestic violence was sufficient to state a sex discrimination claim under a disparate impact theory); *O'Neil v. Karahlais*, 13 M.D.L.R. 2004 (Mass. Comm'n Against Discrim. Oct. 21, 1991) (same with respect to Massachusetts law).

Since Respondent has established a prima facie case of discriminatory impact, the burden then shifts to Petitioner to demonstrate that its practice of evicting victims of violence for the acts of their abusers is compelled by a legitimate business objective. *See Tsombanidis*, 352 F.3d at 575; N.Y.C. Exec. Law § 8-107(17)(a)(2). A valid business objective defense shows that the challenged practice "bears a significant relationship to a significant business objective." N.Y.C. Exec. Law § 8-107(17)(a)(2). Petitioner cannot demonstrate any legitimate business objective sufficient to justify evicting Ms. F for the violence and criminal acts of her abuser.

Even if Petitioner's actions were motivated by a legitimate business objective, which they are not, many alternative policies were available to accomplish its objectives without discriminatory effects. *See Tsombanidis*, 352 F.3d at 575. First, Petitioner could have implemented the less drastic alternative of simply transferring Ms. F to another property it owned, instead of evicting her. Indeed, Ms. F requested a transfer on

a previous occasion as a way to escape Mr. E's abusive behavior and stalking, but Petitioner denied that request. F Aff. ¶31. Petitioner continued to refuse Ms. F's request for a transfer even after it instituted this proceeding. *Id.* at ¶32.

Second, instead of penalizing a longtime tenant in good standing, Petitioner could have taken action against the actual perpetrator, Mr. E, by barring him from the building or commencing a nuisance or trespass action against him. Although Mr. E continued, even after his 2003 eviction from the building, to loiter outside the building and enter the buildings -- on numerous occasions to harass Ms. F, F Aff. ¶17 and 18 -- at no time did Petitioner ever take steps to prevent Mr. E from entering the property. Petitioner failed to take even minimal steps to ensure its tenants' safety: the building entrance doors have not had locks for many years, *id.* at ¶16, and Petitioner did not hire building security until 2006. *Id.* at ¶33.

Petitioner cannot offer any evidence regarding necessity, cost, inconvenience, or other burdens to explain why it failed to transfer Ms. F, to take steps to bar Mr. E from the property, or to explain why evicting Ms. F was the appropriate action. *See Bronson v. Crestwood Lake Section 1 Holding Corp.*, 724 F. Supp. 148 (S.D.N.Y. 1989) (in Fair Housing Act disparate impact race discrimination case, rejecting defendant landlord's proffered business necessity for rental policy in part because it was not "reasonably necessary"). Petitioner's practice of evicting tenants for domestic violence and stalking against them and the criminal acts of their abusers disparately impacts women in violation of fair housing law. Accordingly, the Petition should be dismissed and Ms. F's motion for summary judgment should be granted.

B. Petitioner Evicted Ms. F, a Victim of Domestic Violence and Stalking, on the Basis of Intentional Sex Discrimination.

Ms. F can establish the elements of a prima facie case of intentional sex discrimination under the FHA, the NYSHRL, and the NYCHRL: she is a member of a protected class, women; she was qualified to rent the housing; she is being evicted; and the eviction occurred under circumstances giving rise to an inference of unlawful discrimination.⁷ *See Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1038 (2d Cir. 1979); *Dunleavy v. Hilton Hall Apts. Co., LLC*, 789 N.Y.S.2d 164, 166 (App. Div., 2d Dep't 2005).

Here, Petitioner evicted Ms. F because it chose to believe the claim of a man who had been evicted from its property and had committed a criminal act against one of its employees over the word of Ms. F, a longtime female tenant in good standing. Petitioner's eviction is based on the assumption that Mr. E was Ms. F's household or family member or a guest, and that he resided with her. However, none of those assumptions are true, and the evidence supports the inference that Petitioner's willingness to believe Mr. E and its failure to ascertain the truth before evicting Ms. F was based a discriminatory motive.⁸

⁷ Ms. F need not show that a similarly situated tenant was treated differently, and better, in order to establish her prima facie case of sex discrimination. As the Second Circuit has noted, in some cases there are no persons similarly situated to the individual at issue. *Abdu-Brisson v. Delta Airlines, Inc.*, 239 F.3d 456, 467 (2d Cir. 2001). Accordingly, given the "flexible spirit" of the prima facie case requirement, an individual can create an inference of discrimination by other means. *Id.* at 468.

⁸ Any claim by Petitioner that the eviction was a legitimate nondiscriminatory practice to protect the health and safety of other tenants is significantly undermined by its own failure to address the situation expeditiously. Mr. E is alleged to have punched the building security guard and shot at him on May 5, 2006. Petitioner's ten-day notice of eviction is dated July 13, 2006, more than two months after the criminal act at issue. *See* Notice of Termination, attached hereto as Exhibit B. Petitioner did not file its holdover petition until August 14, 2006. *See* Petition, attached hereto as Exhibit D. Even assuming, *arguendo*, that Mr. E was her guest or household member, which he was not, Petitioner took more than two months to address the situation. If the health and safety of other tenants was in fact a serious concern, and if Ms. F had indeed violated her lease because of the criminal act and failing to report a change in her family composition, Petitioner surely would have acted more quickly to resolve the issue. Significantly,

Having established her prima facie case of intentional sex discrimination, the burden then shifts to Petitioner to demonstrate that Ms. F was evicted for legitimate, non-discriminatory reasons. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Mitchell v. Shane*, 350 F.3d 39, 47 (2d Cir. 2003) (applying *McDonnell Douglas* burden-shifting framework to housing discrimination claims brought pursuant to Fair Housing Act and New York State Human Rights Law); *Hughes*, 153 F. Supp. 2d at 453 n.11 (applying *McDonnell Douglas* burden-shifting framework to housing discrimination claims brought pursuant to Fair Housing Act, New York State Human Rights Law, and New York City Human Rights Law). Petitioner here may attempt to meet that burden by proffering two reasons. First, Petitioner may claim that Ms. F violated her lease by “willfully” failing to report a person allegedly residing with her as part of her family composition in violation of HUD regulations. Second, Petitioner may claim that Ms. F and/or “members of [her] household and/or [her] guests and/or persons under [her] control” engaged in criminal activity. *See Notice*.

Ms. F, however, can meet her burden of offering ample evidence to demonstrate that Petitioner’s proffered reasons for eviction are false and mere pretext for unlawful discrimination against a female victim of domestic violence and stalking. *See Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 119-20 (2000) (“[p]roof that the defendant’s explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive”). Therefore, the Petition should be dismissed and her motion for summary judgment should be granted.

Petitioner could have quickly addressed its safety concerns by barring Mr. E from the property and/or taking action against him. However, Petitioner failed to do so, instead penalizing Ms. F.

As previously discussed in section I.A., *supra*, Ms. F is a victim of domestic violence and stalking. Even more importantly, *Petitioner* believed Ms. F to be a victim of domestic violence and/or stalking. The Notice states that Ms. F was involved in a ‘domestic dispute’ in her apartment with someone who was her spouse or a household or family member. *See* Notice of Termination, attached hereto as Exhibit B. This belief that she was a victim of domestic violence and stalking colored *Petitioner’s* perceptions of Ms. F, caused it to impute various harmful gender stereotypes to her, and formed the basis of its discriminatory actions.

Most significantly, *Petitioner* utterly failed to make any effort to ascertain the relevant facts from Ms. F before moving to evict her. *Petitioner* easily could have had a meeting with Ms. F to ascertain whether Mr. E was in fact a member of her family or household or was a guest living with her, and to determine the exact circumstances surrounding the events of April and May 2006. However, *Petitioner* failed to do so, preferring to believe the word of a perpetrator of criminal acts over a longtime female tenant. If *Petitioner* had made any effort, it would have learned that in fact, Mr. E and Ms. F were never married and he was never a member of her household. *F Aff.* ¶8 and 9. The evidence in the record also shows Mr. E was not her “guest.” *Id.* at ¶21 and 25. Furthermore, there is no evidence in the record to support the claim that Mr. E resided with Ms. F. In contrast, Ms. F has stated that Mr. E has never resided with her during the time she lived at _____. *Id.* at ¶8 and 26. During the April 2006 incident, Ms. F told the security officer, BR, that Mr. E did not live with her and he was not on her lease. *Id.* at ¶21.

In short, Petitioner believed that the word of Mr. E, the perpetrator of the abuse and criminal acts on its property, was more credible than that of Ms. F, the victim of violence. After the April and May 2006 incidents, Petitioner accused Ms. F of lying during her HUD recertification process about her family composition and residents as an excuse to evict her. *See* Notice of Termination, attached hereto as Exhibit B. However, it is disingenuous for Petitioner to assert that Ms. F “willfully” failed to report the fact that Mr. E was living with her, since Petitioner never bothered to ascertain whether or not Mr. E was *in fact* her spouse or was residing with her. Tellingly, Petitioner did not make any attempt to learn the truth and simply chose to rely on Mr. E’s self-serving assertion at the time of his arrest, which is unsupported by any evidence. Ms. F had no duty to report Mr. E on her housing recertification and she has produced evidence demonstrating that Mr. E and Ms. F were never married, he was never family or household member or guest, and that he never resided with her.

By refusing to believe Ms. F, holding her responsible for Mr. E’s criminal act and evicting her for it, Petitioner is blaming a female victim for acts of her abuser and denying her access to housing, which constitutes unlawful sex discrimination in violation of federal and state laws. Denying housing to a victim of domestic violence, particularly based on actual or feared acts of the abuser, is a form of sex discrimination in violation of the NYSHRL. *See* Formal Op. No. 85-F15, 1985 N.Y. Op. Atty. Gen. 45 (Nov. 22, 1985) (addressing common stereotypes associated with abused women, finding that “the violent conduct of a spouse or other party should not be conclusively attributed to a battered woman so as to prevent her from obtaining housing;” and finding that a broad policy barring all victims of domestic violence from housing violates N.Y. Exec. Law §§

296.2-a(a) and (b) and 296.5(a)(1) and (2)). *See also Bouley v. Young-Sabourin*, 394 F. Supp.2d 675, 677 (D. Vt. 2005) (denying defendant landlord's motion for summary judgment, finding that plaintiff stated a case of intentional sex discrimination under the Fair Housing Act when, based on status as an abuse victim, her landlord issued an eviction notice less than 72 hours after her husband assaulted her).

Taken together, the evidence at hand demonstrates that purported lease violations were not the true reason for Ms. F's eviction. *See Reeves*, 530 U.S. at 119-20. Because Ms. F has carried her burden of demonstrating intentional sex discrimination in violation of federal, state and local laws, the Petition should be dismissed and her motion for summary judgment should be granted.

III. MS. F HAS NEVER FAILED TO REPORT THOSE LIVING WITH HER ON HER ANNUAL RECERTIFICATION FORMS.

As one of its grounds for eviction, Petitioner alleges that Mr. E resided with Ms. F as a family or household member or guest, and that she "willfully" failed to include Mr. E in her family composition on her most recent recertification as required by Department of Housing and Urban Development ("HUD") rules. Upon information and belief, Petitioner's sole basis for this allegation is a statement made by Mr. E, Ms. F's abuser, when he was arrested after banging on Ms. F's door at 4 a.m. seeking entrance to her apartment and subsequently attacking a security guard.

Ms. F denies that Mr. E has ever lived in her apartment and therefore she has not violated HUD rules by failing to place Mr. E on her family composition. *See F Aff.* ¶26. In fact, Mr. E had his own apartment at the subject premises until February 2003 when he was evicted. *Id.* at ¶14. Upon information and belief, Mr. E lives with his aunt at _____. *See Lease*, attached hereto as Exhibit C.

Ms. F has lived and continues to live only with her three children, _____. F Aff. ¶2. She has never failed to report those living in her apartment on her recertification forms, and accordingly that portion of the Petition must be dismissed and her motion for summary judgment granted.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court dismiss the Petition and grant her Motion for Summary Judgment in its entirety.

Date: January 8, 2007
Brooklyn, NY

Respectfully submitted,

JOHN C. GRAY, JR., ESQ.
SOUTH BROOKLYN LEGAL SERVICES
Brent Meltzer, Of Counsel
105 Court Street
Brooklyn, New York 11201
(718) 237-5500

Jennifer K. Brown
Maya Raghu
LEGAL MOMENTUM
395 Hudson Street, 5th Floor
New York, NY 10014
(212) 925-6635

Attorneys for Respondent

To:

Tennenbaum & Berger LLP
26 Court Street, Penthouse
Brooklyn, NY 11242
718-596-3800

Attorneys for Petitioner



UTAH LEGAL SERVICES, INC.

at the Community Legal Center • 205 North 400 West

Salt Lake City, Utah 84103

(801) 328-8891 • (800) 662-4245 **toll free**

Fax: (801) 328-8898

Writer's e-mail: KGUNNISON@ANDJUSTICEFORALL.ORG • **Phone ext:** 3312

June 15, 2007

[REDACTED]
Housing Authority of the County of Salt Lake
3995 South Main Street
Salt Lake City, Utah 84115

Dear [REDACTED]

As you know, the Housing Authority terminated [REDACTED] housing assistance after a hearing on April 3, 2007. Although the Housing Authority stated it terminated [REDACTED] assistance because she broke her lease, in fact, she had no other choice but to leave her home because of domestic violence.

The U.S. Department of Housing and Urban Development's PIH 2006-42 states, "[t]he Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA) protects tenants and family members of tenants who are victims of domestic violence . . . from being evicted or terminated from housing assistance based on acts of such violence against them. These provisions apply to both public housing agencies . . . and Section 8 programs."

[REDACTED] not only told her case worker that she was in an abusive situation in early February, but also told her that he had punched a hole in the door and that the violence was escalating. [REDACTED] also told the Housing Authority in her request for a hearing and at the hearing that there was a history of domestic violence and that, she needed to leave the apartment, not because she wanted to break the lease, but because she needed to protect herself and her children. She did not call the police because she feared further abuse from her husband. The Housing Authority noted in its hearing notes that it was aware of the domestic violence, but still chose to terminate her housing because she broke the lease.

[REDACTED] called the police in the past because of her husband's violence against her and the children, which included threats to kill her, throwing her to the ground and grabbing her by the throat. She called the police numerous times to have him removed from the house because of escalating violence. When [REDACTED] allowed her husband to move into her apartment, she believed that she and her children were safe. However, [REDACTED] began drinking again and [REDACTED] quickly realized that the cycle of violence was going to begin again. The police reports attached to this letter verify that [REDACTED] has been a victim of domestic abuse repeatedly over the

Ogden

893 24th St., #300 • 84401
(801) 394-9431
1-800-662-2538

Salt Lake City

205 North 400 West • 84103
(801) 328-8891
1-800-662-4245

Cedar City

965 S. Main #3 • 84720
(435) 586-2571
1-800-662-1772



past several years. When [REDACTED] requested that she be able to move and break her lease, it was based on a very real need to leave her apartment for her own safety. [REDACTED] had begun to exhibit the same behavior that had led to physical abuse in the past, including punching a hole in the door, which [REDACTED] had to repair. The receipt for that repair is also attached.

VAWA amended provisions of 42 U.S.C. § 1437d and f to forbid housing authorities from using domestic violence as a basis for termination of assistance. “An incident or incidences of actual or threatened domestic violence . . . will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.” VAWA, Pub. L. 109-162, 119 Stat. 2960, 3041-42 (2006). Additionally, while housing authorities may terminate assistance on other grounds other than domestic violence, the termination cannot be based on the violence. *Id.* at 3042. “Nothing . . . limits . . . the public housing agency to terminate assistance to a tenant for any violations of a lease not premised on the act or acts of violence in question against the tenant.” *Id.*

Here, the Housing Authority, while purporting to terminate [REDACTED] assistance because she wanted to break the lease, is ignoring the underlying reason she needed to leave the apartment. [REDACTED] was abusing her and she was frightened for her own safety and that of her children. The warning signs had appeared - [REDACTED] drinking increased, he had begun to threaten her and verbally abuse her and he had punched a hole in the door. [REDACTED] long record of verbal and physical abuse is an ample record to show that [REDACTED] had a legitimate fear for her life and needed to leave.

The Housing Authority’s decision left [REDACTED] not only with no other option than to leave her apartment and lose her assistance. The decision is in violation of VAWA and we urge you to reconsider and restore [REDACTED] assistance as soon as possible.

Sincerely,

s/Katherine P. Gunnison

Katherine P. Gunnison
Staff Attorney
Utah Legal Services, Inc.

Katherine G. Reymann (11225)
Martin S. Blaustein (3993)
UTAH LEGAL SERVICES, INC.
205 North 400 West
Salt Lake City, Utah 84103
Telephone & Fax: (801) 328-8891
In-State Toll Free: 1-800-662-4245
Email: kgreymann@andjusticeforall.org
mblaustein@andjusticeforall.org

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DISTRICT OF UTAH

U.S. DISTRICT COURT
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

VERIFIED COMPLAINT

Plaintiff,

vs.

HOUSING AUTHORITY OF SALT LAKE
COUNTY,

Defendant.

Case: [REDACTED]
Assigned To : Kimball, Dale A.
Assign. Date : 10/2/2007
Description: [REDACTED] Housing
Authority of Salt Lake County

Plaintiff [REDACTED] hereby complains against the Housing
Authority of Salt Lake County, (hereinafter "Housing Authority) and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. [REDACTED] is an individual residing in [REDACTED]
2. The Housing Authority is a locally established and administered public body situated in Salt Lake City, Salt Lake County, Utah. The Housing Authority administers the Section 8 Housing Voucher Program for Salt Lake County.

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under federal law, including (1) the Violence Against Women and Department of Justice Reauthorization Act of 2005, (hereinafter “VAWA 2005”) 42 U.S.C. §§ 1437f, 1437d(1)(5), and 1437d(1)(6)(A), which prohibits a housing authority from using domestic violence as a violation of a lease; (2) 28 U.S.C. 1343(a)(3), as this is a civil action arising under federal law, which regulates violations rights secured under Acts of Congress; (3) 42 U.S.C.A. 3613(c)(1) as this is a civil action arising under the Federal Fair Housing Act which allows for injunctive relief to be granted; and (4) 28 U.S.C. § 1337, as this is a civil action arising under federal housing acts, which are acts regulating commerce;

NATURE OF THE CASE

4. ██████ received a Section 8 Voucher through the Housing Authority pursuant to Section 8 of the U.S. Housing Act of 1937 (hereinafter the “Act”) 42 U.S.C. § 1437f and 24 C.F.R. § 982, *et seq.*

5. ██████ voucher was illegally terminated by the Housing Authority after she was forced to flee from her apartment because she was a victim of domestic violence.

6. ██████ asks this court for declaratory and injunctive relief with respect to the Housing Authority’s illegal termination of her Section 8 voucher.

7. ██████ seeks declaratory and injunctive relief under the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (b), under the Violence Against Women and Department of Justice Reauthorization Act of 2005, 42 U.S.C. § 1437f and under her right to due process guaranteed under the Fourteen Amendment of the United States Constitution.

STATUTORY BACKGROUND

THE VIOLENCE AGAINST WOMEN AND DEPARTMENT OF JUSTICE REAUTHORIZATION ACT OF 2005

8. VAWA 2005 included amendments meant to address issues of domestic violence in low-income housing. The purpose of these amendments is to protect victims of domestic violence from discrimination on the basis of their domestic violence victim status.

9. Among other things, VAWA 2005 protects victims of domestic violence from loss of their housing assistance solely on the basis of domestic violence in their households. The statute specifically provides that “[a] public housing agency *may not* terminate assistance to a participant in the voucher program on the basis of an incident or incidents of actual or threatened domestic violence . . .” *See generally* 42 U.S.C. §§ 1437d(1)(5) and 1437d(1)(6)(A), *see also* 42 U.S.C. § 1437f(9)(A) (emphasis added).

FAIR HOUSING ACT

10. The Fair Housing Act of 1964 prohibits discrimination on the basis of sex in housing. *See* 42 U.S.C. § 3604(a) and (b).

11. Sex discrimination in housing has a disparate impact on women who are victims of domestic violence.

12. The Fair Housing Act prohibits public housing authorities from discrimination against women on the basis of their sex in housing matters.

13. Under governing precedent, a three-pronged test applies to disparate impact claims under the Fair Housing Act. *See Mountain Side Mobile Estates P’ship. v. HUD*, 56 F.3d 1243, 1251-52 (10th Cir. 1995). In particular:

(a) First, a plaintiff must show discriminatory effect. “[T]he necessary premise of the disparate impact approach is that some [housing] practices, adopted without a deliberately discriminatory motive, may in operation be functionally equivalent to intentional discrimination.” *Id.* at 1251-52 (quoting *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 987 (1988)). National and local statistics are enough to show disparate impact. *Id.* at 1251-52. Congress has found that “[w]omen and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.” See. VAWA 2005 42 U.S.C. §§ 14043e(3) and (4). In Utah, one woman for every five has called the police to report domestic abuse against herself or someone else. See Domestic Violence Incidence and Prevalence Study, Dan Jones & Associates, Inc., (April-May 1997).

(b) Second, the defendant must show a “valid non-pretextual reasons for the challenged practices.” See *Mountain Side Mobile Estates*, 56 F.3d at 1251-52. The Housing Authority has shown no valid interest here. The Housing Authority terminated the [REDACTED] assistance because she moved out before the lease was up, but she had no choice in the matter. She needed to move because of the escalating violence against her and her children.

(c) Third, the final prong is “whether the plaintiff seeks to compel the defendant affirmatively to provide housing for members of a protected class or merely to restrain the defendant from interfering with individual property owners who wish to provide such housing.” *Id.* [REDACTED] is petitioning this court for the reinstatement of her voucher. The Housing Authority is subject to federal housing laws.

FACTUAL ALLEGATIONS

14. [REDACTED] married her ex-husband Mr. [REDACTED] on June 3, 2000.

15. Throughout their entire marriage [REDACTED] abused [REDACTED] with intimidation and threats as well as physical abuse.

16. [REDACTED] called the police many times during their marriage because of Mr. [REDACTED] ongoing threats and abuse.

17. This abuse included [REDACTED] threatening to buy a gun and kill [REDACTED], hitting her in the face, choking her, and threatening her when she tried to leave the marriage.

18. Each time [REDACTED] called the police, [REDACTED] would lie to the police and blame her for the abuse.

19. [REDACTED] applied for and received a Section 8 Voucher from the Housing Authority.

20. In connection with and pursuant to her Section 8 Voucher, [REDACTED] moved into her apartment at [REDACTED] (the "Home") in December of 2006.

21. [REDACTED] allowed [REDACTED] to move back into the Home in January of 2007 after obtaining permission from the Housing Authority.

22. At the time that [REDACTED] moved back into the Home, the Housing Authority was aware of the previous domestic abuse by [REDACTED] because [REDACTED] had previously been arrested on February 9, 2002 for charges of Domestic Violence Assault and Domestic Violence Criminal Mischief.

23. Because of his arrest, the Housing Authority required that [REDACTED] complete a FBI background check before being allowed to move into the Home.

24. A few weeks after [REDACTED] moved into the Home, [REDACTED] discovered that Mr. [REDACTED] had begun to drink alcohol again. Among other things, [REDACTED] discovered piles of beer cans in one of the closets. This discovery was significant because, in the past, [REDACTED] drinking had been the cause of the abuse against [REDACTED]. When [REDACTED] confronted Mr. [REDACTED] about his drinking, he became angry and began yelling and threatening her.

25. Because of [REDACTED]' long history of abuse, [REDACTED] recognized immediately that his renewed drinking would likely fuel his violence towards her and her children.

26. [REDACTED] was nevertheless frightened to call the police because she feared that [REDACTED] would again lie to the police and place the blame on her.

27. [REDACTED] increased drinking led to increased violence towards [REDACTED] and her children. Among other things, [REDACTED] grabbed his son and his violent behavior adversely affected the children, who began to act out in school.

28. [REDACTED] became more and more threatening toward [REDACTED], who still was frightened to call the police based on her fear of retaliation from [REDACTED].

29. [REDACTED] did not notify the Housing Authority immediately of the foregoing events because she was scared for her personal well-being, legitimately fearful of reprisals and retaliation from [REDACTED], ashamed, and embarrassed.

30. On February 20, 2007, [REDACTED] punched a hole in the bedroom door of the Home. [REDACTED] knew at that time that she would risk physical harm, as would her children, if she remained in the Home with [REDACTED].

31. [REDACTED] subsequently asked [REDACTED] to leave the home because she did not want to leave her home and lose her housing subsidy. He refused to do so.

32. [REDACTED] thereafter called her caseworker, [REDACTED] at the Housing Authority, to inform her of [REDACTED] abusive behavior and to advise her that she needed to leave the Home because she feared for her safety and for her children's safety. [REDACTED] explained that [REDACTED] had begun to drink alcohol again, that his violence toward her and her children had started to escalate, and that she needed to move before she and her children were seriously hurt.

33. [REDACTED] refused to allow [REDACTED] to move from the Home and keep her housing assistance, instead asserting that [REDACTED] was "planning to leave anyway" and that she would have to sign a termination notice when she moved out.

34. [REDACTED] moved out of the Home on March 2, 2007 because she was frightened of [REDACTED] escalating violence towards her and because she feared for her safety and that of her children.

35. On March 5, 2007 the Housing Authority required that [REDACTED] sign a termination notice of her housing assistance. [REDACTED] complied with this requirement and then filed a hearing request to protest the termination.

36. The hearing request filed by [REDACTED] stated that the couple were not getting along and that, because of the history of domestic violence, [REDACTED] had to leave the Home because she was afraid of [REDACTED]

37. The Housing Authority held a hearing on April 3, 2007, at which [REDACTED] again reiterated her fear of [REDACTED] and her reasons for leaving the Home.

38. Although the Housing Authority noted the history of domestic violence affecting ██████ in its hearing notes, noting that ██████ did not call the police because of the history of violence, it remarkably admonished her for not calling the police.

39. The Housing Authority decided that termination of ██████ Section 8 Voucher was “appropriate,” in spite of being aware the domestic violence was the reason for ██████ leaving the Home.

40. Subsequent to this hearing, ██████ requested a meeting with ██████, the Section 8 Supervisor for the Housing Authority. During this meeting, ██████ asked Ms. ██████ to join the meeting. ██████ originally denied knowing about the domestic violence inflicted on ██████ by ██████. However, ██████ later admitted to knowing about the domestic violence prior to ██████ request for a hearing. Yet ██████ proceeded to trivialize that violence against ██████ by stating that, “[a] lot of people bust up doors, this might not be domestic violence.”

41. Following this meeting, the Housing Authority refused to reinstate ██████ Section 8 voucher.

42. ██████ contacted an attorney at Utah Legal Services for assistance with her denial, who then sent a letter requesting the Housing Authority to reconsider its decision. (See Exhibit A).

43. Utah Legal Services informed the Housing Authority that its decision to terminate ██████ Section 8 voucher violated VOWA 2005 because her sole reasons for moving were due to domestic violence. The Housing Authority, however, reviewed the letter and did not reverse its decision.

44. Currently, [REDACTED] does not have a housing voucher and has been forced to pay full rent since moving out in the beginning of March 2007. [REDACTED] subsists at 125% of the federal poverty level and has struggled to make ends meet since losing her housing assistance.

45. The Housing Authority has shown no valid interest in terminating [REDACTED] housing assistance. The Housing Authority alleges that it terminated the assistance because Ms. [REDACTED] moved out before the lease was up, but she had no choice in the matter. She needed to move because of the escalating violence against her and her children.

46. The Housing Authority's decision to terminate [REDACTED] voucher because she moved from the Home during the first year of her lease was a violation of VAWA 2005, as she was forced to leave the Home due to the domestic violence.

47. Women represent the majority of domestic violence victims in the United States. More than three million women reported some kind of domestic abuse in 1998. *See* The Commonwealth Fund, *Health Concerns Across A Woman's Lifespan: 1998 Survey of Women's Health*, (May 1999). In Utah, one in five women has reported domestic abuse to the police due to their own domestic violence or someone else's. *See* *Domestic Violence Incidence and Prevalence Study*, Dan Jones & Associates, Inc., (April-May 1997). Eighty-five percent of intimate partner violence victims were women in 2001. *See* Bureau of Justice Statistics Crime Data Brief, *intimate Partner Violence, 1993-2001*, (February 2003).

48. The Housing Authority should be aware that women are more likely than men to be the victims of domestic violence.

49. The Housing Authority should be aware that VAWA 2005 strictly prohibits termination of a domestic violence victim's voucher because she was forced to move because of domestic violence.

FIRST CAUSE OF ACTION
Violation of VAWA 2005

50. Plaintiff hereby incorporates the foregoing allegations of this Complaint as if fully set forth herein.

51. [REDACTED] was a victim of domestic violence and was forced to move out of her apartment because of the ongoing abuse by [REDACTED]

52. [REDACTED], as a participant in the Section 8 Voucher Program, is protected by VAWA 2005, which prohibits public housing authorities from terminating an individual's voucher in the event that she has to move because of domestic violence. *See* 42 U.S.C. §§ 1437d(l)(5) and 1437d(l)(6)(A).

53. [REDACTED] is a victim of domestic violence under the statutory definition of domestic violence as defined in VAWA 2005, which provides that "[t]he term 'domestic violence' includes felony or misdemeanor crimes of violence committed by a current or former spouse 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, 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." 42 U.S.C.A. § 13925.

54. VAWA 2005 explicitly states that an incident or incidences of domestic violence may not be used as a basis for termination of a voucher if the victim qualifies for housing assistance. *Id.*

55. Such incidences of domestic abuse may not be regarded as a violation of the lease. *Id.*

56. Because she feared for her safety as well as her childrens' safety, [REDACTED] was forced to vacate the Home before the end of her lease.

57. The Housing Authority was aware of the domestic violence and knew that Ms. [REDACTED] had asked for permission to leave because of the domestic violence.

58. [REDACTED] stated in her request for a hearing that she had been forced to move because of domestic violence.

59. The Housing Authority alleges that because [REDACTED] moved out of her apartment prior to the end of the lease, she violated her lease and this created a basis for her termination from assistance. This allegation is unfounded because the Housing Authority was aware of the reason why [REDACTED] needed to vacate her apartment.

60. The Housing Authority has violated VAWA 2005 by terminating [REDACTED] voucher because of her need to escape domestic violence.

61. [REDACTED] has been damaged by the actions of the Housing Authority and is entitled to all appropriate relief, including but not limited to damages and reinstatement of her Section 8 Voucher retroactive to March 1, 2007.

SECOND CAUSE OF ACTION

Violation of the Fair Housing Act, 42 U.S.C. §§ 3604 (a) and (b)—Protected Class

62. Plaintiff hereby incorporates the foregoing allegations of this Complaint as if fully set forth herein.

63. The Fair Housing Act provides a remedy and relief for persons who have suffered discrimination under the Act. 42 U.S.C. 3613(c)(1).

64. ██████████, a woman, is a member of protected class under the Fair Housing Act, 42 U.S.C. §§ 3604 (a) and (b), which prohibits discrimination on the basis of sex in housing.

65. The Housing Authority intentionally discriminated against ██████████ on the basis of her sex and her status as a domestic violence victim when it refused to rent to her and further discriminated against her in the terms, conditions, or privileges of rental of a dwelling.

66. ██████████ has lost her housing assistance and subsequently suffered financially because of the Housing Authority's discrimination.

67. ██████████ has been damaged by the actions of the Housing Authority and is entitled to all appropriate relief, including but not limited to damages and reinstatement of her Section 8 Voucher retroactive to March 1, 2007.

THIRD CAUSE OF ACTION

Violation of the Fair Housing Act, 42 U.S.C. §§ 3604 (a) and (b)—Disparate Impact

68. Plaintiff hereby incorporates the foregoing allegations of this Complaint as if fully set forth herein.

69. The Fair Housing Act provides a remedy and relief for persons who have suffered discrimination under the Act. 42 U.S.C. 3613(c)(1).

70. The Housing Authority's decision to terminate ██████ voucher because she was fleeing domestic violence has a disparate impact on women, as women represent the majority of domestic violence victims in the United States and in Utah.

71. The decision of the Housing Authority constitutes sex discrimination under the Fair Housing Act, U.S.C. §§ 3604 (a) and (b).

72. Eighty-five percent of intimate partner violence victims were women in 2001.

73. As Congress has recognized, "[w]omen and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence." *See* 42 U.S.C. § 14043e(3)

74. "A recent survey of legal service providers around the country found that these providers have responded to almost 150 documented eviction cases in the last year alone where the tenant was evicted because of the domestic violence crimes committed against her. In addition, nearly 100 clients were denied housing because of their status as victims of domestic violence." *Id.* at (4).

75. The Housing Authority's decision to terminate ██████ assistance, rather than allow her to move, is discriminatory on the basis on ██████ status as a domestic violence victim, causes and sustains a disparate impact, and is in violation of the Fair Housing Act.

76. ██████ has been damaged by the actions of the Housing Authority and is entitled to all appropriate relief, including but not limited to damages and reinstatement of her Section 8 Voucher retroactive to March 1, 2007.

PRAYER FOR RELIEF

██████████ and her family have been harmed by the Housing Authority's violation of VAWA 2005 and the Fair Housing Act. These violations constitute discrimination on the basis of Ms. Jones' protected status as a victim of domestic violence under VAWA and as a woman under the Fair Housing Act. The Housing Authority should be enjoined from refusing to reinstate her assistance.

WHEREFORE, ██████████ demand that the Court:

77. Assume jurisdiction of this case;
78. Enter a declaratory judgment that the Housing Authority must strictly comply with VAWA 2005;
79. Enter a permanent injunction mandating that the Housing Authority follow VAWA 2005 and HUD regulations and that it not abuse its discretion in matters relating to domestic violence;
80. Immediately reinstate ██████████ housing assistance, including her Section 8 voucher, retroactive to the date of termination, March 1, 2007;
81. Refund to ██████████ all rents paid since she was forced to vacate her apartment due to the domestic abuse retroactive to the date of the termination, March 1, 2007;
82. Award ██████████ all compensatory and other damages incurred as a result of Defendant's actions; and
83. For any and all further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the *Federal Rules of Civil Procedure*, [REDACTED] demands a trial by jury in this action on all issues triable thereto.

DATED this 26th day of September 2007.

UTAH LEGAL SERVICES, INC.


Katherine G. Reymann
Attorneys for Plaintiff

LEGAL AID FOUNDATION OF LOS ANGELES

Central Office
1550 W. Eighth Street
Los Angeles, CA 90017-4316
(213) 640-3881

East Office
5228 E. Whittier Boulevard
Los Angeles, CA 90022-4013
(213) 640-3883

ATTORNEYS AT LAW
1640 Fifth Street, Suite 124
Santa Monica, California 90401-3343
Telephone: (310) 899-6200
Fax: (310) 899-6208

Long Beach Office
110 Pine Avenue, Suite 420
Long Beach, CA 90802-4421
(562) 435-3501

South Central Office
8601 S. Broadway
Los Angeles, CA 90003-3319
(213) 640-3884

West Office
1102 Crenshaw Boulevard
Los Angeles, CA 90019-3111
(323) 801-7989

Writer's Direct Dial Number 323-801-7966

Our File Number

February 27, 2008

VIA FACSIMILE NO. 310-264-7757 AND U.S. MAIL

Peter Mezza
Director of Santa Monica Housing Authority
Santa Monica Housing Authority
2121 Cloverfield Blvd., Suite 131
Santa Monica, CA 90404

Re: [REDACTED]
Request for Reinstatement of Section 8 Voucher under VAWA and For Improper Notice and Inadequate Due Process; Alternative Request for New Informal Hearing as Reasonable Accommodation. Request that SMHA Resume Section 8 HAP's Pending Requests.

Dear Mr. Mezza:

This office represents [REDACTED]
[REDACTED] suggested that I direct this letter to you concerning termination of [REDACTED] Section 8 assistance.

Santa Monica Housing Authority's (hereinafter "SMHA") letter of September 26, 2007 to [REDACTED] stated that her housing assistance was terminated based on her failure to attend one scheduled appointment on September 25, 2007. (See letter dated September 26, 2007, Exhibit A) However, she didn't attend this meeting as a direct result of her being a victim of stalking. [REDACTED] requested a hearing, and a hearing was held on November 29, 2007. (See letter dated October 3, 2007, Exhibit B) Following the hearing, Ms. [REDACTED], the informal hearing examiner for the SMHA, sent a letter to [REDACTED] upholding the termination. [REDACTED]'s assistance was terminated effective January 31, 2008. (See letter dated December 6, 2007, Exhibit C), She is now facing eviction.

We request that SMHA rescind the termination and restore [REDACTED]'s voucher retroactive to January 31, 2008 on three grounds. First, the Violence Against Women Act (VAWA) provides that a victim of violence cannot be terminated if the termination was directly related to her status as a victim of stalking. As will be discussed below, Ms. [REDACTED] did not attend the September 25, 2008 meeting because she was traumatized by her stalker, [REDACTED].

Second, SMHA failed to provide [REDACTED] basic due process by upholding her termination on a basis that was not disclosed in its termination letter of September 26, 2007. (See Exhibits A and C.) The SMHA even gave an altogether different reason to [REDACTED]'s landlord, for her termination than they gave her. (See letter, dated September 26, 2007 from [REDACTED], Exhibit D.)

Third, it is arguably an abuse of discretion to terminate Section 8 benefits based on missing one meeting, which constitutes only a minor violation of regulations.

Assuming for sake of argument that SMHA refuses to rescind the termination, we request as a reasonable accommodation for [REDACTED] a new hearing which would permit her to have the assistance of counsel. As discussed below, [REDACTED] was disabled at the time of the November hearing because she was viciously assaulted by her stalker on October 17, 2007. As part of the reasonable accommodation and to preserve the status quo, we also ask that the SMHA resume the Section 8 payments to her landlord pending its decision on this request.

[REDACTED] was a victim of Stalking, and Stalking Prevented [REDACTED] From Attending the Meeting on September 25, 2007.

The federal law entitled the Violence Against Women Act (VAWA) of 2005 provides protections for victims of stalking that live in public housing or receive federal housing money in the form of a voucher. Commencing January 5, 2006, all recipients of federal housing funds were required to follow these regulations. On April 25, 2007, the SMHA sent a notice to rental assistance owners and participants, including [REDACTED] informing them of their rights under this law. (See letter dated April 25, 2007, attached as Exhibit E)

VAWA 2005 defines "Stalking" as "to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person" and in the course of or as a result of such "stalking," that person is placed "in a reasonable fear of" death, "serious bodily injury," or "substantial emotional harm." 42 U.S.C. § 1437f(f)(10).

The statute specifically states that the fact that a "participant is or has been a victim of domestic violence, dating violence, **or stalking is not an appropriate basis for denial of program assistance** or for denial of admission, if the applicant otherwise qualifies for assistance or admission." (Emphasis Added) 42 U.S.C. §1437f (c)(9)(C).

It is important to have a basic understanding of the dynamics of stalking, and how it impacts victims, to appreciate the rationale behind this provision. Stalking is essentially a pattern of conduct intentionally targeted at a specific person that *terrorizes* him or her. The most commonly recognized stalking behavior is following the victim and keeping the victim under constant surveillance. However, the conduct is often far more expansive and stalking tactics may include a combination of vandalism, harassing letters, blackmail, identity theft, telephone harassment, verbal or physical threats and lying in wait. Stalkers also may manipulate their victims by creating financial and emotional dependency, sometimes through kindness and other times through intimidation. As a result, victims may live in a constant state of siege, unable to regain confidence or lead normal lives. It is a domesticated version of terrorism we all came to know after 9/11.

██████████ had been stalked by ██████████ for some time before he assaulted her on October 17, 2008. ██████████ met ██████████, who is 30 years her senior, about three years ago when her mother and his wife were dying in the same convalescent home. His wife died and ██████████'s mother survived. ██████████ did not stay in touch with Mr.

██████████. About a year later he contacted her out of the blue to find out how she was doing. Her mother was still in the convalescent home and, because her car was not working, she was having a hard time with transportation to visit her mother. Mr. ██████████ presented himself as a kind gentleman who understood her pain, and wanted to help her. He bought a car and let her drive it. When the car was totaled, he gave her a portion of the proceeds¹. He bought her a cell phone. He offered to take care of her after her mother passed away. He did other things to ingratiate himself to her.

Ms. ██████████ originally believed that ██████████ was just a friend, an angel who would help her through a difficult time. ██████████, however, began making romantic advances toward her, but she repeatedly and completely rejected them. He proposed to her and asked her to move into his home. As he realized that she had no romantic interest in him, he began to try to control her and to make her dependent on him. She rejected all his romantic advances, and hoped he would come to his senses.

During the period of September 2006 through September 2007, ██████████ was stalking ██████████. He was following her and calling her. At first, ██████████ tried to shrug off his insistent efforts to win her over as harmless badgering. Over time, however, she became more and more worried and concerned. During this time she learned that ██████████ had been convicted of manslaughter for killing the mother of his children in a domestic violence incident, claiming self-defense. After learning that, she tried to end all communication, but he would not leave her alone.²

██████████ changed her phone number, but he found the new number. He made copies of her keys and entered her apartment on several occasions, without her permission or

¹ ██████████ reported this income to SMHA.

² What she didn't know is that domestic violence statistics demonstrate that the most dangerous time for a victim is when the perpetrator perceives that the victim is ending the relationship. Two thirds of all homicides of victims of domestic violence occur after they leave.

knowledge. On one occasion, she was shocked to find him in her home going through her paperwork. She got that set of keys back. She does not know what personal financial information he took, but she believes he must have obtained her social security number.

However, on August 14, 2007, ██████████ met with ██████████ a SMHA investigator, who called the meeting to talk about her finances. ██████████ now believes that the SMHA's investigation into her finances in the summer of 2007 was a direct result of Mr. ██████████ stealing her identity, and perhaps even making calls to the SMHA about her finances. ██████████ told ██████████ that her credit report showed a \$34,000 debt to a Discover Card, with \$654 per month payments. She was shocked. She had never taken out such a loan or applied for the credit card. But, the credit report also contained personal information about ██████████. It listed an additional name for ██████████ as ██████████." ██████████ has never used that name. She knows that ██████████ has a daughter named ██████████." ██████████ was also concerned that, among other things, the SMHA was asking for proof of automobile registration and insurance, even though she did not own an automobile. ██████████ told ██████████ that she would look into the matter further and get back to him.

Even though she was very scared, ██████████ confronted ██████████ in late August 2007 about the credit report, his involvement in her personal finances, and how she was being investigated by the SMHA. She hoped she could obtain documentation to prove to the SMHA that the information they had about her was false. ██████████ responded by asking her how she found out about it and he claimed he didn't know anything. He became agitated and then commented, "I am getting the house ready," which she took to mean that she would have to move in with him if she lost her voucher and had to move because of this false information.

After that, ██████████ refused talk to ██████████ and told him never to call her again. This appeared to agitate ██████████ even more. Shortly after that, he came to Ms. ██████████'s apartment door at 3:00 a.m. and banged on the door. After she threatened to call the police, he left.

On September 17, 2007, ██████████ attempted to break into ██████████'s apartment. Ms. ██████████ believes that he was staking out her home and he became incensed when he saw her son's father enter the apartment building. She called the Santa Monica Police, and they came to the apartment before he could gain entry. The SMPD did not arrest him. They took an incident report. (Attached as Exhibit F is the card she was given which lists the incident as ██████████ ██████████ does not yet have a copy of this police report.)

After this incident, the stalking intensified and ██████████ called ██████████ 5-6 times per day. He said, "I'll destroy you" and "You are playing with fire." ██████████ was emotionally traumatized and distracted; she was afraid for the welfare of her young son. ██████████ made threats. He also called some of ██████████'s relatives at all hours of the

day and night, and said destructive things about her. ██████████ was enveloped by terror. She just didn't know what ██████████ would do next, and she feared him intensely.

Under the pressure of the constant stalking and harassment, ██████████ was finding it increasingly difficult to cope with her responsibilities. Eight days after she called the police, on September 25, 2007, ██████████ was scheduled to attend an appointment at the SMHA. She missed this appointment because she was too emotionally traumatized and afraid that ██████████ would injure her and her son. She was, in a word, terrorized. She didn't know what he would do next. Had she known, she would have gone into hiding, but —of course—she didn't know.

On October 17, 2008 at 4:30 p.m., ██████████, a SMHA housing authority specialist, entered ██████████'s apartment to perform an HQS inspection. ██████████ believes that this visit may have set off ██████████ because he was insanely jealous of any man visiting her. That evening, ██████████ forced his way into ██████████'s apartment and viciously attacked her. He punched, choked, bit her and hit her in the head with a carpenter's hammer. (See Santa Monica Police Department, Crime Report No. ██████████ Photograph, attached as Exhibits G, and H, respectively). Her 13 year-old son was not injured although he was a witness. If it were not for the fact that he ran to a neighbor's apartment and called 911, his mother would not have survived the ordeal. She suffered a head injury described as a "subdural hematoma secondary to an assault with a hammer" and was hospitalized for 5 days. (See UCLA Healthcare, Home Discharge Instructions, dated 10/22/07 attached as Exhibit I). She is still under treatment, still impaired, and still traumatized.

Mr. ██████████ was arrested and is in custody on attempted murder and other charges with bail set at one million dollars. The criminal case number is ██████████ and the case is called ██████████ (See LA Sheriff's Department, Inmate Information print out and Docket Sheet attached as Exhibits J and K.)

Since ██████████ is clearly a victim of stalking, terminating her rental assistance is a violation of VAWA, and would constitute a denial of program assistance based Ms. ██████████'s status as a victim of stalking. Not only does the stalking explain why Ms. ██████████ could not comply with program requirements such as failing to attending one or more meetings, it also explains why the SMHA began investigating Ms. ██████████'s finances, and why the SMHA may have assumed that ██████████ was uncooperative with its investigation into her finances.

Additionally, because ██████████ was a victim of stalking, she was unable to adequately represent herself at the hearing on November 29, 2007. Due to having suffered a head injury and emotional trauma at the hands of ██████████, she could not provide an explanation regarding the circumstances surrounding her failure to attend the September 25th appointment, or her inability to comply with whatever program requirements the SMHA believed she had violated.

The Decision Upholding the Termination Is Defective.

██████████ was informed on September 26, 2007 that she was being terminated for missing the September 25th appointment, but her landlord was given a different reason. He was informed in a September 26, 2007 letter that ██████████ was terminated for failing to provide income verification. (See Exhibits A and C)

On December 6, 2008, ██████████ upheld the termination of ██████████'s voucher based upon a reason that was different than the reason given to ██████████ or her landlord. She stated that the termination was based on ██████████'s failure to attend three scheduled appointments. ██████████ disputes that she missed two other meetings, but the September 26, 2007 letter said she was being terminated for missing only one appointment.³ Moreover, she had no prior notice that the hearing would be about failure to provide income verification.⁴

The hearing should have been confined to why she missed the September 25th appointment and only that topic because that was the reason given to ██████████ for termination. The subject of the hearing is confined to the issues presented in the notice to the applicant of the adverse action. Thus, information should not be presented at the hearing if it was not the basis for the denial because the participant has no opportunity to investigate so as to rebut the information. *See Wolff v. McDonnell*, 418 U.S. 539, 564 (1974) [Due process requires that the notice give the charged party a chance to marshal the facts in her defense, and to clarify what the charges are.]

Assuming for argument only that ██████████ was terminated on the basis of missing the September 25, 2007 meeting, a termination based on such a minor "violation" would be considered an abuse of discretion.

██████████ Requests a Reasonable Accommodation.

██████████ suffered from a disability at the time of the November hearing. As a result ██████████ attempt to kill her, she had a head injury and was suffering emotional trauma.

³ ██████████ states in her letter dated December 6, 2007 (Exhibit C) that ██████████ failed to keep two office appointments: on September 25th and August 7, 2007 and a meeting with ██████████ on June 1, 2007. However as is clear from SMHA correspondence, ██████████ called ██████████ to reschedule that appointment until August 14, 2007, for one week, and she attended the appointment on the rescheduled date. (See Letter dated July 27, 2007 from ██████████ Exhibit L.) ██████████ also went to see Ms. ██████████ on June 1, 2007, but ██████████ recalls that ██████████ was unavailable that day, and asked her to call back at 2:00 p.m. ██████████ called at that time and left her a message.

⁴ On September 10, 2007, ██████████ gave ██████████ a completed recertification packet, including financial verifications from her bank and other documentation.

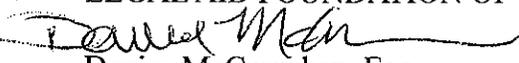
██████████ diagnosis was "subdural hematoma secondary to an assault with a hammer." Because of her disability, she could not adequately present a defense at the hearing.

The SMHA has ample authority to implement this request to set a *de novo* hearing: Section 504 of the Rehabilitation act of 1973 requires that recipients of federal financial assistance, such as the Section 8 voucher program, must operate the federal program so that it is usable by disabled individuals. 29 U.S.C.A. § 794; 24 C.F.R. § 8.24(a); 24 C.F.R. § 8.24(b). The Federal Fair Housing Act of 1988 (FHAA) and the Americans with Disabilities Act (ADA) also impose an affirmative duty upon the SMHA to reasonably accommodate the needs of disabled persons. This obligation includes an accommodation with respect to administrative policies. See *Giebeler v. M&B Assocs*, 343 F.3d 1143, 1147 (9th Cir. 2003).

Although the SMHA may not have a specific procedure in place for permitting a new hearing, the SMHA may be required to waive or change any rule or regulation to accommodate ██████████ "unless so doing would result in a fundamental alteration in the nature of its program or an undue financial burden." See HUD Notice PIH 2003-31 (HA).⁵ Granting this request surely would not create such an alteration or financial burden.

I look forward to your response and hope that we are able to work this matter out informally. Please feel free to contact me, if you have any questions or need additional information from ██████████. I appreciate your time and effort in resolving this case, and in making the safety of victims of violence a priority in the Section 8 program.

Sincerely,
LEGAL AID FOUNDATION OF LOS ANGELES


Denise McGranahan, Esq.

Cc: Bob Montcrief
Julie Lansing
Jody Gilbert
Ivan Campbell, Esq.
Gary Rhoades, Esq.

Encl.

⁵ The SMHA is well aware of its Section 504 and FHA obligations and has adopted a Five Year Goal to "[u]ndertake affirmative measures to provide a suitable living environment for families living in assisted housing, regardless of . . . disability" and annually certifies that it will comply with Section 504 and the FHA. See SMHA Five Year and Annual Plan, <http://www.hud.gov/offices/pih/pha/approved/index.cfm> and HUD Form 50077, PHA Certification of Compliance with the Plan Plans and Related Regulations (04/30/2003) ¶ 5.

Department of Housing & Urban Development Guidance

Dated: November 20, 2008.

Todd A. Stevenson,

Secretary, Consumer Product Safety
Commission.

[FR Doc. E8-28200 Filed 11-26-08; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**24 CFR Parts 5, 91, 880, 882, 883, 884,
886, 891, 903, 960, 982, and 983**

[Docket No. FR-5056-I-01]

RIN 2577-AC65

HUD Programs: Violence Against Women Act Conforming Amendments

AGENCY: Office of the Secretary.

ACTION: Interim rule.

SUMMARY: This interim rule conforms HUD's regulations to the self-implementing provisions of the statutory protections for victims of domestic violence, dating violence, sexual assault, and stalking provided by the Violence Against Women Act (VAWA), as recently amended. These new protections apply to families applying for or receiving rental assistance under HUD's public housing and tenant-based and project-based Section 8 programs. The primary objectives of VAWA are to reduce violence against women and to protect the safety and confidentiality of victims of domestic violence and abuse.

DATES: *Effective Date:* December 29, 2008.

Comments Due Date: January 27, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule. There are two methods for comments to be submitted as public comments and to be included in the public comment docket for this rule. Additionally, all submissions must refer to the above docket number and title.

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

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare

and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on the site to submit comments electronically.

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

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

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

FOR FURTHER INFORMATION CONTACT: For information about HUD's Public Housing program, please contact Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Room 4226, telephone number 202-708-0744. For information about the Office of Public and Indian Housing's Section 8 Tenant-Based program, please contact Danielle Bastarache, Director, Housing Voucher Management and Operations, Office of Public and Indian Housing, Room 4210, telephone number 202-402-5264. For information about the Office of Housing's Section 8 Project-Based program, please contact Gail Williamson, Director, Housing Assistance Policy Division, Office of Housing, Room 6138, telephone number 202-402-2473. The address for all of the above offices is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. The above-listed telephone numbers are not toll-free numbers. Persons with hearing or speech impairments may access the numbers through TTY by calling the toll-free

Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Violence Against Women Act of 1994 (VAWA 1994) was enacted as Title IV of the Violent Crime Control and Enforcement Act of 1994 (Pub. L. 103-322, approved September 13, 1994), codified at 42 U.S.C. 13931 *et seq.* VAWA 1994 was not applicable to HUD programs. VAWA 1994 was applicable to other federal agencies and authorized grants to prevent crime in public transportation and assist victims of sexual assault, and included provisions to maintain the confidentiality of domestic violence shelters and addresses of abused persons.

On January 5, 2006, President Bush signed into law the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162), and, on August 28, 2006, the President signed into law technical corrections to the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-271) (collectively, "VAWA 2005"). Except as provided in Section 4 of the technical corrections law, VAWA 2005 became effective upon enactment of the law on January 5, 2006. Section 4 of the technical corrections law delayed the effectiveness of certain provisions to the commencement of Fiscal Year (FY) 2007, none of which are directly applicable to this rule.

VAWA 2005 reauthorizes and substantially amends VAWA 1994 for FYs 2007 through 2011, and, among other things, consolidates major law enforcement grant programs, makes amendments to criminal and immigration laws, and makes amendments to other statutes, including certain HUD statutes, to support and strengthen efforts to combat domestic violence and other forms of violence against women. The provisions of VAWA 2005, as amended in 2006, that are applicable to HUD programs are found in Title VI entitled "Housing Opportunities and Safety for Battered Women and Children." Section 601 of VAWA 2005 amends VAWA 1994 to add a new Subtitle N to VAWA 1994 entitled "Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking."

The VAWA 2005 amendments that are applicable to HUD public housing and tenant-based and project-based Section 8 programs are self-implementing. Accordingly, this rule makes conforming amendments to those programs to keep HUD's regulations

current, create consistency, and avoid confusion.

Following enactment of the new law, HUD's Office of Public and Indian Housing (PIH) issued, on June 23, 2006, a direct notice on VAWA 2005, PIH 2006-23. In that notice, PIH advised public housing agencies (PHAs) that the statutory provisions of VAWA 2005 were effective the date the law was enacted (January 5, 2006). This notice can be found at <http://www.hud.gov/offices/pih/publications/notices/06/pih2006-23.pdf>. In addition, PIH Notice 2007-5 explains the VAWA provisions that are incorporated into the Housing Choice Voucher Housing Assistance Payments contract and tenancy addendum. This notice can be found at <http://www.hud.gov/offices/adm/hudclips/notices/pih/07pihnotices.cfm>. PIH Notice 2006-42 transmits the certification form for use by tenants claiming protection under VAWA and can be found at <http://www.hud.gov/offices/adm/hudclips/notices/pih/06pihnotices.cfm>.

The Department followed the PIH direct notice with a **Federal Register** notice that addressed the applicability of VAWA 2005 to all HUD programs. This notice, published on March 16, 2007 (72 FR 12696), provided an overview of the key VAWA provisions that affect HUD programs, and advised program participants concerning compliance with VAWA. The notice described those provisions of VAWA that are self-implementing and their effect on HUD programs. This notice also advised that HUD would be amending its regulations to conform existing regulations to the VAWA requirements. This interim rule presents those conforming amendments.

II. This Interim Rule

For the convenience of the reader and for better understanding of conforming changes to HUD's regulations, this preamble provides an overview of VAWA provisions applicable to HUD and identifies where this interim rule makes conforming amendments to HUD's codified regulations.

Consolidated Plan Amendments

Section 604 of VAWA 2005 amends section 105(b)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(1)) by including "victims of domestic violence, dating violence, sexual assault, and stalking" among the jurisdiction's estimated housing needs. Accordingly, this interim rule amends 24 CFR 91.205(b) and 91.305(b) to conform the regulations to this statutory amendment.

Public Housing Agency Plan Amendments

Section 603 of VAWA 2005 amends section 5A of the U.S. Housing Act of 1937, which requires the submission of annual and 5-year plans by PHAs. This amendment requires PHAs to begin including in their 5-year plans a statement about goals, activities, objectives, policies, or programs that will enable a PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.

The statutory amendment requires the annual plan to include 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; and any activities, services, or programs provided or offered that help child and adult victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing; and any activities, services, or programs provided or offered to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.

This interim rule includes a conforming amendment to HUD's PHA plan regulations at 24 CFR 903.6 and 903.7 to include the additional information required by VAWA 2005 in the annual and 5-year PHA plans.

Section 8 and Public Housing Program Amendments

Sections 606 and 607 of VAWA 2005, respectively, amend HUD's Section 8 program (codified at section 8 of the 1937 Act, 42 U.S.C. 1437f) (Section 8) and section 6 of the U.S. Housing Act of 1937 (codified at section 6 of the 1937 Act, 42 U.S.C. 1437d), governing HUD's public housing program requirements.

Admission, Occupancy, and Termination of Assistance Policies. With respect to admission, occupancy, and termination of assistance policies, sections 606 and 607 of VAWA 2005 provide that being a victim of domestic violence, dating violence, or stalking, as these terms are defined in the law, is not a basis for denial of assistance or admission to public or Section 8 assisted housing, if the applicant otherwise qualifies for assistance or admission.

These provisions also provide that incidents or threats of abuse will not be construed as serious or repeated violations of the lease or as other "good cause" for termination of the assistance, tenancy, or occupancy rights of a victim of abuse.

Additionally, the provisions state that criminal activity directly relating to abuse, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that abuse.

Rights and Responsibilities of PHAs, Owners, and Management Agents. With respect to the rights and responsibilities of PHAs, owners, and management agents, VAWA 2005 provides that these protective policies are not to interfere with certain rights and responsibilities of PHAs, owners, and management agents regarding criminal activity or acts of violence against family members or others. Specifically, VAWA 2005 provides that:

(1) The provision protecting victims of domestic violence, dating violence, or stalking engaged in by a member of the household, may not be construed to limit a PHA, owner, or management agent, when notified, from honoring various court orders issued to either protect the victim or address the distribution of property in case a family breaks up;

(2) The provision in VAWA 2005 protecting victims of domestic violence, dating violence, or stalking engaged in by a member of the household, may not be construed to limit the authority of a PHA, owner, or management agent to terminate assistance to individuals who engage in criminal acts of physical violence against family members or others, or if the PHA, owner, or management agent so chooses, to bifurcate a lease (that is, divide into separate leases by operation of law) in order to: Evict, remove, or terminate a household member from the lease, without regard to whether a household member is a signatory to the lease; evict, remove, terminate occupancy rights; or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without penalizing the victim of such violence who is also a tenant or lawful occupant;

(3) The provision in VAWA 2005 protecting victims of domestic violence, dating violence, or stalking engaged in by a member of the household does not limit any otherwise available authority of an owner or management agent to evict or of the PHA to terminate the assistance to a tenant for any lease violation not premised on the act of violence in question against the tenant or member of the tenant's household, provided that the PHA, owner, or

management agent does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants, in determining whether to evict or terminate assistance;

(4) The provision in VAWA 2005 protecting victims of domestic violence, dating violence, or stalking engaged in by a member of the household, may not be construed to limit the authority of a PHA, owner, or management agent to terminate the assistance of, or evict, any occupant who can be demonstrated to pose an actual or imminent threat to other tenants or the property's employees; and

(5) The statute shall not be construed to supersede any provisions of federal, state, or local laws that provide greater protection for victims of abuse.

With respect to these rights and responsibilities, under the housing choice voucher program, PHAs may be able to use their existing authority under § 982.552(c)(2)(ii) to terminate voucher assistance for certain family members for criminal activity while permitting other members of a participant family to continue receiving assistance (provided that the culpable family member will no longer reside in the unit). A PHA's right to exercise this administrative discretion under § 982.552(c)(2)(ii) is not dependent on a bifurcated lease or other eviction action by the owner against an individual family member.

VAWA 2005 also provides that such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by federal, state, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.

This interim rule conforms HUD's existing regulations to these effective legal requirements. Since these are cross-cutting requirements affecting HUD's tenant-based and project-based Section 8 and public housing programs, this rule organizes these items in a new subpart L of 24 CFR part 5. Also, because section 604 of VAWA applies to Consolidated Plan requirements, conforming amendments are made to 24 CFR part 91. For clarification purposes only, cross-references are included at 24 CFR parts 880, 882, 883, 884, 886, 891, 960, 982, and 983. However, as provided in the March 16, 2007, **Federal Register** notice, VAWA 2005 is effective and applicable to HUD's Public Housing and tenant-based and project-based Section 8 programs, regardless of whether a specific reference is included. It should be noted that with respect to

part 891, VAWA applies to projects for the elderly or handicapped with Section 8 assistance under §§ 891.520 through 891.650.

Certification of Abuse. Sections 606 and 607 of VAWA 2005 add certification and confidentiality provisions. Under these provisions, owners, management agents, and PHAs may request an individual claiming VAWA protection to certify, by means of a HUD-approved certification form, that the individual is a victim of abuse and that the incidences of abuse are bona fide. The certification must include the name of the perpetrator. The victim has 14 business days after the request to provide the certification. (See 42 U.S.C. 1437f(ee)(1)(A); 42 U.S.C. 1437d(u)(1)(A).) The owner, management agent, or PHA may extend this time period at its discretion. (See 42 U.S.C. 1437f(ee)(1)(B); 42 U.S.C. 1437d(u)(1)(B).)

The statute allows, but does not require, the victim to self-certify, in order to be afforded protection under VAWA 2005. Forms HUD-50066, for use by PHAs, and HUD-90066, for use by owners and management agents, have been developed for the purpose of the optional certification. They are standard forms and collect limited, relevant information from the victim. It is not mandatory that the victim provide the HUD form, and the PHA, owner, or management agent may not require the victim to provide the form. A victim may also provide documentation from a third-party source. PHAs, owners, and management agents may, at their discretion, provide benefits under VAWA 2005 based solely on the statement of the individual.

Form HUD-50066 is currently available on HUD's Web site at <http://www.hud.gov/offices/adm/hudclips/forms/files/50066.doc>. Form HUD-90066 is available on HUD's HUDCLIPS Web site upon receipt of OMB approval. These forms are designed as uniform tenant declaration forms to be completed by the victim or by a family member on behalf of the victim. The forms are not intended as third-party verification forms.

The certification provision may be satisfied with third-party documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking or the effects of the abuse in which the professional attests, under penalty of perjury (28 U.S.C. 1746), to the professional's belief that the incident or incidents in question are

bona fide incidents of abuse, and that the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation. (See 42 U.S.C. 1437f(ee)(1)(C)(i); 42 U.S.C. 1437d(u)(1)(C)(i).) The statute also allows for the certification requirement to be satisfied by producing a federal, state, tribal, territorial, or local police or court record. (See 42 U.S.C. 1437f(ee)(1)(C)(ii); 42 U.S.C. 1437d(u)(1)(C)(ii).) If the individual does not provide the certification within 14 days as required, the PHA, owner, or management agent has the authority to evict the individual if the individual has committed violations of the lease. The PHA, owner, or management agent may extend the 14-day deadline at their discretion. (See 42 U.S.C. 1437f(ee)(1)(B); 42 U.S.C. 1437d(u)(1)(B).)

All information provided in the certification of abuse is confidential, by statute (42 U.S.C. 1437f(ee)(2)(A); 42 U.S.C. 1437d(u)(2)(A)). The statute makes three exceptions: (1) Disclosure is consented to or requested by the individual in writing; (2) disclosure is required for an eviction proceeding; or (3) disclosure is otherwise required by applicable law. The interim rule codifies the certification and confidentiality requirements at 24 CFR 5.2007. PHAs must provide notice of VAWA rights, including the right to confidentiality, to tenants. (See 42 U.S.C. 1437f(ee)(2)(B); 42 U.S.C. 1437d(u)(2)(B).)

Portability in the Housing Choice Voucher Program. VAWA 2005 amended section 8(r) of the U.S. Housing Act (42 U.S.C. 1437f(r)), by providing an exception to the prohibition against a family moving under the portability provisions in violation of the lease. VAWA 2005 provides that the family may receive a voucher and move in violation of the lease under the portability procedures, if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

This special portability provision for victims of domestic violence, dating violence, and stalking is found at 24 CFR 982.353(b) of this interim rule.

PHA Notification to Section 8 Program Participants and Public Housing Residents. VAWA 2005 further requires that PHAs must provide notice

to tenants assisted under Section 8 of the U.S. Housing Act of 1937 of their rights, and notice to owners and management agents of their rights and obligations, under section 8 as amended by VAWA 2005. Specifically, the notice must cover rights and obligations under sections 42 U.S.C. 1437f(c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), (r)(5), and (ee) (these sections reference the basic VAWA protections for Section 8 program applicants and participants, the special portability provision, and the certification provision). VAWA 2005 also requires that a PHA must provide notice to public housing residents of their rights under section 6 of the U.S. Housing Act of 1937, as amended by VAWA 2005. Specifically, the notice must cover rights under sections 42 U.S.C. 1437d(l)(5), (6)(l)(6), and (6)(u) (the VAWA protections and certification provision for the public housing program), including their rights to confidentiality and the limits thereof. This interim rule provides for PHA notification to public housing tenants, Section 8 tenants, owners, and management agents of these rights and obligations at 24 CFR 5.2007(a)(3).

While the statute at 42 U.S.C. 1437f(ee)(2)(B) only requires PHAs to provide notification to tenants of their rights and protections under VAWA, those owners and management agents administering an Office of Housing project-based Section 8 program will also be required to provide tenant notification. The Office of Housing will be issuing a notice that provides administrative guidance for implementation of the notification requirements.

Definitions. VAWA 2005 adds a number of new definitions to the U.S. Housing Act of 1937. Sections 606 and 607 of VAWA 2005 add 42 U.S.C. 1437d(u)(3) and 1437f(f)(8), (9), (10), and (11), respectively, to add definitions of “domestic violence,” “dating violence,” “stalking,” and “immediate family member.” Specifically, VAWA 2005 inserted definitions of the terms “stalking” and “immediate family member” into Section 8(f) of the U.S. Housing Act of 1937, along with references to the definitions of “domestic violence” and “dating violence,” as stated in the new section 40002 of VAWA, which was added to VAWA 1994.

Conforming definitions are added to 24 CFR 5.2003 where HUD believes they will be useful to the public in understanding new VAWA-related material added to those parts. In addition, the interim rule at 24 CFR part 5 defines additional terms that are used

in the rule and for which HUD believes clarification is helpful. The term “bifurcate,” which is used in the rule in the context of leases, is defined.

III. Findings and Certifications

Justification for Interim Rulemaking

As required by its regulations on rulemaking at 24 CFR part 10, HUD ordinarily publishes its rules for advance public comment. Notice and public procedure are omitted, however, if HUD determines that, in a particular case or class of cases, notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” (See 24 CFR 10.1.) In this case, HUD is simply conforming its existing regulations to statutory provisions that are legally effective. In doing so, HUD is not exercising agency discretion, but rather merely following the statutory mandate. Because this is a conforming regulation, advance public notice and comment is unnecessary. However, while HUD found the statutory language to be clear as to meaning and intent and has incorporated the language without change, PHAs, owners, management agents, tenants, or interested members of the public may not find the language as helpful as is, and may need further clarification. HUD specifically welcomes comments on the clarity of the conforming amendments, as well as on any other aspect of the rule. HUD will consider all comments submitted by the public in the final rule that follows this interim rule.

Paperwork Reduction Act

The information collection requirements contained in 24 CFR part 5, subpart L that are applicable to PHAs have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0249. The information collection requirements contained in 24 CFR part 5, subpart L, that are applicable to owners and management agents have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0204. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid control number.

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory

flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule applies primarily to PHAs, owners, and management agents and is limited to amending HUD’s regulations to incorporate statutory requirements that are already applicable to PHAs, owners, and management agents, because they are self-implementing statutory provisions.

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

Environmental Impact

This interim rule involves a policy document that, with the exception of the amendments to 24 CFR part 903, sets out nondiscrimination standards. The amendments to 24 CFR part 903 do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(3) and (1), respectively, this interim rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Section 6(c) of Executive Order 13132 (entitled “Federalism”) requires an agency that is publishing a regulation that has federalism implications and that preempts state law to follow certain procedures. Regulations that have federalism implications, according to section 1(a) of the Order, are those that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This interim rule incorporates the statutory language that provides for bifurcation of leases to protect victims of domestic violence, notwithstanding state law. In addition, the rule, consistent with statute, provides that incidents of, or criminal acts connected

to domestic violence cannot be the basis for termination of assistance or tenancy.

HUD finds that this statutory provision has only minor effects on the states and therefore, this rule, by incorporating this provision in HUD's regulation, does not meet the definition of rules with "federalism implications." First, any preemptive effect of this provision is limited to Section 8 and public housing, which together are only a small portion of the total housing market. Second, the possible effect appears limited to only those eviction actions where the tenant to be evicted has a valid claim of protection as a victim of domestic violence, or where lease bifurcation is sought because of domestic violence. The rule does not, for example, involve the preemption of a whole field of state law as is the case in other situations in which preemption occurs, but rather merely requires a small adjustment to any existing laws that do not already offer greater protection to victims of domestic violence. Therefore, HUD has determined that this rule, by directly incorporating the statutory provision on bifurcation of lease, will not have substantial direct effects on states or their political subdivisions, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government, and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This interim rule does not impose any federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.195, 14.850, 14.856, and 14.871.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development,

Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 91

Grant programs—housing and community development, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Loan programs—housing and community development, Low- and moderate-income housing, Rent subsidies.

24 CFR Part 882

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

24 CFR Part 883

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

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, rural areas.

24 CFR Part 886

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

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 903

Grant programs, Civil rights, Public housing agency plans, Public housing.

24 CFR Part 960

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

24 CFR Part 982

Grant programs—housing and community development, Housing,

Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 5, 91, 880, 882, 883, 884, 886, 891, 903, 960, 982, and 983, as follows.

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

■ 2. Add subpart L to read as follows:

Subpart L—Protection for Victims of Domestic Violence in Public and Section 8 Housing

Sec.

5.2001 Applicability.

5.2003 Definitions.

5.2005 Protection of victims of domestic violence, dating violence, and stalking in public and Section 8 housing.

5.2007 Certification of status and confidentiality.

5.2009 Effect on other laws.

Subpart L—Protection for Victims of Domestic Violence in Public and Section 8 Housing

§ 5.2001 Applicability.

This subpart addresses the protections for victims of domestic violence residing in public and Section 8 housing, as provided in the 1937 Act, as amended by the Violence Against Women Act (VAWA) (42 U.S.C. 1437f and 42 U.S.C. 1437d). This subpart applies to the Housing Choice Voucher program under 24 CFR part 982; the project-based voucher and certificate programs under 24 CFR part 983, the public housing admission and occupancy requirements under 24 CFR part 960, and renewed funding or leases under 24 CFR parts 880, 882, 883, 884, 886, and 891.

§ 5.2003 Definitions.

The definitions of *1937 Act*, *PHA*, *HUD*, *household*, *responsible entity*, and *other person under the tenant's control* are defined in subpart A of this part. As used in this subpart L:

Bifurcate means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such

that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

Dating violence means violence committed by a person: Who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and 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 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, 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.

Immediate family member means, with respect to a person: A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or any other person living in the household of that person and related to that person by blood or marriage.

Stalking means: To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to that person, a member of the immediate family of that person, or the spouse or intimate partner of that person.

§ 5.2005 Protection of victims of domestic violence, dating violence, and stalking in public and Section 8 housing.

(a) *Domestic violence, dating violence, or stalking.* An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated lease violation by the victim or threatened victim of the domestic violence, dating violence, or stalking, or as good cause to terminate the tenancy, occupancy rights, or assistance of the victim. Admission to

the program shall not be denied on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking, if the applicant otherwise qualifies for assistance or admission;

(b) *Criminal activity related to domestic violence, dating violence, or stalking.* Criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of tenancy, occupancy rights of, or assistance to the victim, if the tenant or immediate family member of the tenant is the victim. Nothing in this paragraph limits the authority of the PHA, owner, or management agent to evict a tenant for a lease violation unrelated to domestic violence, provided that the PHA, owner, or management agent does not subject such a tenant to a more demanding standard than other tenants, in making the determination whether to evict or terminate tenancy or occupancy rights;

(c) *Lease bifurcation.* Notwithstanding paragraph (a) of this section or any federal, state, or local law to the contrary, a PHA, owner, or management agent may bifurcate a lease, or remove a household member from a lease without regard to whether the household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by federal, state, or local law for termination of assistance or leases under the relevant public or Section 8 housing assistance program;

(d) *Court orders.* Nothing in paragraph (a) of this section may be construed to limit the authority of a PHA, owner, or management agent, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and to address the distribution of property among household members in a case where a family breaks up;

(e) *Threat to others.* Nothing in paragraph (a) of this section may be construed to limit the authority of a PHA, owner, or management agent to evict or terminate assistance to any

tenant or lawful occupant if the PHA, owner, or management agent can demonstrate an actual or imminent threat to other tenants or those employed at or providing service to the public housing or Section 8 assisted property if that tenant or lawful occupant is not terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an "imminent threat" if a reasonable person, considering all of the relevant circumstances, would have a well-grounded fear of death or bodily harm as a result.

§ 5.2007 Certification of status and confidentiality.

(a)(1) A PHA, owner, or management agent presented with a claim for continued tenancy based on status as a victim of domestic violence or criminal activity related to domestic violence may request that the tenant making the claim certify in a form approved by HUD that the tenant is a victim of domestic violence, dating violence, or stalking, within 14 business days after the date that the tenant receives the request or such longer time as the PHA, owner, or management agent may at its discretion allow. The certification:

(i) May be based solely on the personal signed attestation of the victim under penalties for perjury, as provided in section 1746 of title 28, Judiciary and Judicial Procedure, of the United States Code (28 U.S.C. 1746); or

(ii) May be based on or supported by a federal, state, tribal, territorial, or local police or court record; or

(iii) May be based on or supported by documentation signed by an employee, agent, volunteer of a victim service provider, an attorney, or medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or in addressing the effects of abuse, in which the professional attests under penalty of perjury under 28 U.S.C. 1746 to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; and

(iv) Shall include the name of the perpetrator or alleged perpetrator, if known.

(v) Shall be kept confidential by the PHA, owner, or management agent. The PHA, owner, or management agent shall not enter the information contained in the certification into any shared database or provide it to any other

entity, except to the extent that disclosure is:

(A) Requested or consented to by the tenant making the certification, in writing;

(B) Required for use in an eviction proceeding, or

(C) Otherwise required by applicable law.

(2) If the tenant does not provide the certification under paragraph (a)(1) of this section within 14 business days from the date of receipt of the PHA, owner, or management agent's request, or such longer time as the PHA, owner, or management agent at their discretion may allow, the PHA, owner, or management agent may evict the tenant or a family member that commits lease violations that otherwise would constitute good cause to evict;

(3) PHAs must provide notice:

(i) To public housing and Section 8 tenants of their rights under VAWA and this regulation, including the right to confidentiality and the exceptions; and

(ii) To owners and management agents of assisted housing, of their rights and obligations under VAWA and this regulation.

(b) A PHA's, owner's, or management agent's compliance with this section, whether based solely on the tenant's statement or on other corroborating evidence, shall not alone be sufficient to constitute evidence of an unreasonable act or omission by a PHA, PHA employee, owner, or employee or agent of the owner.

§ 5.2009 Effect on other laws.

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

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 3A. Amend § 91.205 to revise the first sentence of paragraph (b)(1) to read as follows:

§ 91.205 Housing and homeless needs assessment.

* * * * *

(b) * * *

(1) The plan shall estimate the number and type of families in need of housing assistance for extremely low-

income, low-income, moderate-income, and middle-income families, for renters and owners, for elderly persons, for single persons, for large families, for public housing residents, for families on the public housing and section 8 tenant-based waiting list, for persons with HIV/AIDS and their families, for victims of domestic violence, dating violence, sexual assault, and stalking, and for persons with disabilities. * * *

* * * * *

■ 4. Amend § 91.305 to revise the first sentence of paragraph (b)(1) to read as follows:

§ 91.305 Housing and homeless needs assessment.

* * * * *

(b) * * *

(1) The plan shall estimate the number and type of families in need of housing assistance for extremely low-income, low-income, moderate-income, and middle-income families, for renters and owners, for elderly persons, for single persons, for large families, for persons with HIV/AIDS and their families, for victims of domestic violence, dating violence, sexual assault, and stalking, and for persons with disabilities. * * *

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM FOR NEW CONSTRUCTION

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

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

■ 6. Amend § 880.504 to add paragraph (f) to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

■ 7. Amend § 880.607 to add paragraph (c)(5) to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(c) * * *

(5) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence,

dating violence, or stalking is involved or claimed to be involved.

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

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

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

■ 9. Revise § 882.407 to read as follows:

§ 882.407 Other federal requirements.

The moderate rehabilitation program is subject to applicable federal requirements in 24 CFR 5.105 and to the requirements for protection for victims of domestic violence, dating violence, and stalking in 24 CFR part 5, subpart L.

■ 10. Amend § 882.511 to add paragraph (g) to read as follows:

§ 882.511 Lease and termination of tenancy.

* * * * *

(g) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, or stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

■ 11. Amend § 882.514 to revise the second sentence of paragraph (c) to read as follows:

§ 882.514 Family participation.

* * * * *

(c) *Owner selection of families.* * * *

Since the Owner is responsible for tenant selection, the Owner may refuse any family, provided that the Owner does not unlawfully discriminate, except that the fact that an applicant is or has been a victim of dating violence, domestic violence, or stalking is not an appropriate basis for denial of program assistance or admission if the applicant otherwise qualifies for assistance or admission. * * *

* * * * *

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

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

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

■ 13. Revise § 883.605 to read as follows:

§ 883.605 Leasing to eligible families.

The provisions of 24 CFR 880.504, including subpart L of 24 CFR part 5 pertaining to the selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking apply, subject to the requirements of § 883.105.

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

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

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

- 15. Amend § 884.216 to add paragraph (c) to read as follows:

§ 884.216 Termination of tenancy.

* * * * *

(c) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

- 16. Amend § 884.223 to add paragraph (f) to read as follows:

§ 884.223 Leasing to eligible families.

* * * * *

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

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

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

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

- 18. Revise § 886.128 to read as follows:

§ 886.128 Termination of tenancy.

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR parts 247 and 5 shall apply. For cases where domestic

violence, dating violence, stalking, or criminal activity directly relating to domestic violence, dating violence, or stalking is involved or claimed to be involved, the provisions of 24 CFR part 5, subpart L, apply. The provisions of 24 CFR part 5, subpart E, of this title concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

- 19. Revise § 886.132 to read as follows:

§ 886.132 Tenant selection.

Subpart F of 24 CFR part 5 governs selection of tenants and occupancy requirements applicable under this subpart A of part 886. Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

- 20. Revise § 886.328 to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR part 247 and 24 CFR part 5 shall apply. For cases where domestic violence, dating violence, stalking, or criminal activity directly relating to domestic violence, dating violence, or stalking is involved or claimed to be involved, the provisions of 24 CFR part 5, subpart L, apply. The provisions of 24 CFR part 5, subpart E, concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance, also shall apply.

- 21. Amend § 886.329 to add paragraph (f) to read as follows:

§ 886.329 Leasing to eligible families.

* * * * *

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

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

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

- 23. Amend § 891.575 to add paragraph (f) to read as follows:

§ 891.575 Leasing to eligible families.

* * * * *

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

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

§ 891.610 Selection and admission of tenants.

* * * * *

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

* * * * *

- 25. Amend § 891.630 to add a new paragraph (c) to read as follows:

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

* * * * *

(c) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

PART 903—PUBLIC HOUSING AGENCY PLANS

■ 26. The authority citation for part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

■ 27. Amend § 903.6 to add paragraph (a)(3) to read as follows:

§ 903.6 What information must a PHA provide in the 5-Year Plan?

(a) * * *

(3) A statement about goals, activities, objectives, policies, or programs that will enable a PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.

* * * * *

■ 28. Amend § 903.7 to add a new paragraph (m)(5) to read as follows:

§ 903.7 What information must a PHA provide in an annual plan?

* * * * *

(m) * * *

(5) A statement of any domestic violence, dating violence, sexual assault, and stalking prevention programs:

(i) 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;

(ii) Any activities, services, or programs provided or offered that help child and adult victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing; and

(iii) Any activities, services, or programs provided or offered to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.

* * * * *

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

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

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

■ 30. Amend § 960.103 to revise the section heading and add paragraph (d) to read as follows:

§ 960.103 Equal opportunity requirements and protection for victims of domestic violence.

* * * * *

(d) *Protection for victims of domestic violence, dating violence, and stalking.* The PHA must apply 24 CFR part 5, subpart L in all applicable cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, and stalking.

■ 31. Amend § 960.200 to add paragraph (b)(8) to read as follows:

§ 960.200 Purpose.

* * * * *

(b) * * *

(8) Protection for victims of domestic violence, dating violence, and stalking, 24 CFR part 5, subpart L.

■ 32. Amend § 960.203 to add paragraph (c)(4) to read as follows:

§ 960.203 Standards for PHA tenant selection criteria.

* * * * *

(c) * * *

(4) PHA tenant selection criteria are subject to 24 CFR part 5, subpart L, protections for victims of domestic violence, dating violence, and stalking.

* * * * *

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

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

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

■ 34. Amend § 982.53 to revise the section heading and add paragraph (e) to read as follows:

§ 982.53 Equal opportunity requirements and protection for victims of domestic violence.

* * * * *

(e) *Protection for victims of domestic violence, dating violence, and stalking.* The PHA must apply 24 CFR part 5, subpart L, in all applicable cases where there is involved incidents of, or criminal activity related to, domestic violence, dating violence, and stalking.

■ 35. Amend § 982.201 to revise paragraph (a), to read as follows:

§ 982.201 Eligibility and targeting.

(a) When applicant is eligible: General. The PHA may admit only eligible families to the program. To be eligible, an applicant must be a “family;” must be income-eligible in accordance with paragraph (b) of this section and 24 CFR part 5, subpart F; and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5, subpart E. If the applicant is a victim of domestic violence, dating

violence, or stalking, 24 CFR part 5, subpart L, applies.

* * * * *

■ 36. Revise § 982.202(d) to read as follows:

§ 982.202 How applicants are selected: General requirements.

* * * * *

(d) *Admission policy.* The PHA must admit applicants for participation in accordance with HUD regulations and other requirements, including but not limited to 24 CFR part 5, subpart L, protection for victims of domestic violence, dating violence, and stalking, and with PHA policies stated in the PHA administrative plan and the PHA plan. The PHA admission policy must state the system of admission preferences that the PHA uses to select applicants from the waiting list, including any residency preference or other local preference.

* * * * *

■ 37. Amend § 982.307 to add paragraph (b)(4) to read as follows:

§ 982.307 Tenant screening.

* * * * *

(b) * * *

(4) In cases involving a victim of domestic violence, dating violence, and stalking, 24 CFR part 5, subpart L, applies.

■ 38. Revise § 982.310(h)(4) to read as follows:

§ 982.310 Owner termination of tenancy.

* * * * *

(h) * * *

(4) *Nondiscrimination limitation and protection for victims of domestic violence.* The owner’s termination of tenancy actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105, and with the provisions for protection of victims of domestic violence, dating violence, and stalking in 24 CFR part 5, subpart L.

■ 39. Revise the last sentence of § 982.353(b) to read as follows:

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

* * * * *

(b) * * * The initial PHA must not provide such portable assistance for a participant if the family has moved out of the assisted unit in violation of the lease, except that if the family moves out in violation of the lease in order to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by

harm from further violence if he or she remained in the dwelling unit, and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the PHA and move to another jurisdiction under the housing choice voucher program.

* * * * *

■ 40. Amend § 982.452(b)(1) to add a second sentence to read as follows:

§ 982.452 Owner responsibilities.

* * * * *

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

* * * * *

■ 41. Revise §§ 982.551(e) and 982.551(l) to read as follows:

§ 982.551 Obligations of participant.

* * * * *

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

* * * * *

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

* * * * *

■ 42. Revise § 982.552(c)(2)(v) to read as follows:

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

* * * * *

(c) * * *
(2) * * *

(v) *Nondiscrimination limitation and protection for victims of domestic*

violence. The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title, and with the requirements of 24 CFR part 5, subpart L, protection for victims of domestic violence, dating violence, and stalking.

* * * * *

■ 43. Amend § 982.553 to add a new paragraph (e), to read as follows:

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

* * * * *

(e) In cases of criminal activity related to domestic violence, dating violence, or stalking, the victim protections of 24 CFR part 5, subpart L, apply.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

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

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

■ 44A. Amend § 983.4 to add a new proviso in alphabetical order as follows:

§ 983.4 Cross-reference to other federal requirements.

* * * * *

Protection for victims of domestic violence, dating violence, and stalking. See 24 CFR part 5, subpart L.

* * * * *

■ 45. Amend § 983.251 to add paragraph (a)(3) to read as follows:

§ 983.251 How participants are selected.

(a) * * *

(3) The protections for victims of domestic violence, dating violence, and stalking in 25 CFR part 5, subpart L, apply to admission to the project-based program.

* * * * *

■ 46. Amend § 983.255 to add paragraph (d) to read as follows:

§ 983.255 Tenant screening.

* * * * *

(d) The protections for victims of domestic violence, dating violence, and stalking in 25 CFR part 5, subpart L, apply to tenant screening.

■ 47. Amend § 983.257 to add a new sentence at the end of paragraph (a) to read as follows:

§ 983.257 Owner termination of tenancy and eviction.

(a) * * * 24 CFR part 5, subpart L, on protection for victims of domestic violence, dating violence, and stalking applies to this part.

* * * * *

Dated: October 30, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8–28235 Filed 11–26–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9433]

RIN 1545–BH23

Classification of Certain Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes. The regulations are needed to make the Federal tax classification of the Bulgarian public limited liability company (aktsionerno druzhestvo) consistent with the Federal tax classification of public limited liability companies organized in other countries of the European Economic Area. The regulations will affect persons owning an interest in a Bulgarian aktsionerno druzhestvo on or after January 1, 2007.

DATES: *Effective Date:* These regulations are effective on November 28, 2008.

Applicability Date: For the dates of applicability of these regulations, see § 301.7701–2(e)(7).

FOR FURTHER INFORMATION CONTACT: S. James Hawes, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 21, 2008, the IRS and Treasury Department published in the **Federal Register** temporary regulations (TD 9388, 2008–17 IRB 832, 73 FR 15064) and a notice of proposed rulemaking (REG–143468–07, 2008–17 IRB 848, 73 FR 15107) under section 7701 of the Internal Revenue Code (Code). The regulations added the Bulgarian aktsionerno druzhestvo to the list of entities in § 301.7701–2(b)(8) (the per se corporation list). For further background, see TD 9388 and Notice 2007–10 (2007–4 IRB 354).

On October 8, 2001, the Council of the European Union adopted Council Regulation 2157/2001 (2001 Official

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

OFFICE OF HOUSING

Special Attention of:

NOTICE: H 08-07

Multifamily Hub Directors
Multifamily Program Center Directors
Supervisory Housing Project Managers
Project Managers
Contract Administrators
Owners and Management Agents Administering
the Project-Based Section 8 Assistance Program

Issued: September 30, 2008

Expires: September 30, 2009

SUBJECT: Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005 for the Multifamily Project-Based Section 8 Housing Assistance Payments Program

I. PURPOSE

The purpose of this Notice is to provide guidance to owners and management agents (O/As) administering one of Multifamily Housing's project-based Section 8 programs on the implementation of the Violence Against Women Act and Department of Justice Reauthorization Act of 2005, Public Law 109-162, hereafter referred to as VAWA.

In summary, the VAWA provides legal protections to victims of domestic violence, dating violence or stalking. These protections prohibit O/As from evicting or terminating assistance from individuals being assisted under a project-based Section 8 program if the asserted grounds for such action is an instance of domestic violence, dating violence or stalking.

This Notice transmits the Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-91066 (Attachment 1), as required by the provisions of Section 606 of the VAWA. The VAWA provides that O/As may request a tenant to certify that he/she is a victim of domestic violence, dating violence or stalking and that the incidence(s) of threatened or actual abuse are bona fide in determining whether the protections afforded under the VAWA are applicable.

This Notice also transmits the HUD-approved Lease Addendum (Form HUD-91067) (Attachment 2) for use with the applicable HUD model lease for the covered project-based Section 8 program. This addendum revises the lease to reflect the statutory requirements of the VAWA that are related to the project-based Section 8 assistance programs.

II. APPLICABILITY

This notice is applicable to all O/As participating in the following project-based Section 8 programs under the United States Housing Act of 1937 (42 U.S.C. 1437):

- New Construction
- State Agency Financed
- Substantial Rehabilitation
- Loan Management Set-Aside (LMSA)
- Property Disposition Set-Aside (PDSA)
- Section 202 Projects With Section 8 Assistance (Section 202/8)
- Rural Housing Section 515 Projects With Section 8 Assistance (RHS Section 515/8)

III. BACKGROUND

On January 5, 2006, President Bush signed into law the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109-162) and on August 12, 2006, signed into law technical corrections to the VAWA (Public Law 109-271).

The VAWA protections apply to families applying for or receiving rental assistance payments under the project-based Section 8 program. The law protects victims of domestic violence, dating violence or stalking, as well as their immediate family members generally, from being evicted or being denied housing assistance if an incident of violence that is reported and confirmed. The VAWA also provides that an incident of actual or threatened domestic violence, dating violence or stalking does not qualify as a serious or repeated violation of the lease nor does it constitute good cause for terminating the assistance, tenancy, or occupancy rights of the victim. Furthermore, criminal activity directly relating to domestic violence, dating violence or stalking is not grounds for terminating the victim's tenancy. O/As may bifurcate a lease in order to evict, remove, or terminate the assistance of the offender while allowing the victim, who is a tenant or lawful occupant, to remain in the unit.

IV. DEFINITIONS

The following definitions are provided as assistance in understanding and implementing the VAWA protections. The definitions for domestic violence, dating violence, stalking and immediate family member have been incorporated into the United States Housing Act.

Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom

the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse, 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.

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: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

Stalking means (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person; (ii) a member of the immediate family of that person; or (iii) the spouse or intimate partner of that person.

Immediate Family Member means, with respect to a person: (a) a spouse, parent, brother or sister, or child of the person, or an individual to whom that person stands in loco parentis (in place of a parent); or (B) any other person living in the household of that person and related to that person by blood or marriage.

Bifurcate means to divide a lease as a matter of law so that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

V. **PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE OR STALKING**

The law offers the following protections against eviction or denial of housing based on domestic violence, dating violence or stalking:

- A. An applicant's or program participant's status as a victim of domestic violence, dating violence or stalking is not a basis for denial of rental assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.
- B. An incident or incidents of actual or threatened domestic violence, dating violence or stalking will not be construed as serious or repeated violations

of the lease or other “good cause” for terminating the assistance, tenancy, or occupancy rights of a victim of abuse.

- C. Criminal activity directly related to domestic violence, dating violence or stalking, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, shall not be cause for termination of assistance, tenancy, or occupancy rights of the victim of the criminal acts.
- D. Assistance may be terminated or a lease “bifurcated” in order to remove an offending household member from the home. Whether or not the individual is a signatory to the lease and lawful tenant, if he/she engages in a criminal act of physical violence against family members or others, he/she stands to be evicted, removed, or have his/her occupancy rights terminated. This action is taken while allowing the victim, who is a tenant or a lawful occupant, to remain.
- E. The provisions protecting victims of domestic violence, dating violence or stalking engaged in by a member of the household, may not be construed to limit the O/A, when notified, from honoring various court orders issued to either protect the victim or address the distribution of property in case a family breaks up.
- F. The authority to evict or terminate assistance is not limited with respect to a victim that commits unrelated criminal activity. Furthermore, if an O/A can show an actual and imminent threat to other tenants or those employed at or providing service to the property if an unlawful tenant’s residency is not terminated, then evicting a victim is an option, the VAWA notwithstanding. Ultimately, O/As may not subject victims to more demanding standards than other tenants.
- G. The VAWA protections shall not supersede any provision of any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence or stalking. The laws offering greater protection are applied in instances of domestic violence, dating violence or stalking.

VI. RIGHTS AND RESPONSIBILITIES OF OWNERS/AGENTS AND TENANTS

A. Owners/Agents (O/As) Rights and Responsibilities

1. Tenant Selection Plans and Policies and Procedures

O/As should update their Tenant Selection Plans and/or House Rules, as applicable, to incorporate the VAWA policies and protections.

Amending these documents will ensure uniformity in spreading awareness of the VAWA and avoid improper evictions.

O/As are encouraged to establish policies that support or assist victims of domestic violence, dating violence or stalking and that will protect victims, as well as members of their family, from losing their HUD-assisted housing as a consequence of domestic violence, dating violence or stalking.

O/As must provide tenants the option to complete the Certification form discussed in 3, below. The certification form may be made available to all eligible families at the time of admission or, in the event of a termination or start of an eviction for cause proceeding, the certification may be enclosed with the appropriate notice, directing the family to complete, sign and return the form within fourteen (14) business days.

2. Certification and Confidentiality

O/As responding to an incident of actual or threatened domestic violence, dating violence or stalking that could potentially have an impact on a tenant's participation in the housing program may request in writing that an individual complete, sign, and submit within 14 business days of the request, the HUD-approved certification form (HUD-91066). The O/A may extend this time period at his/her discretion.

Alternatively, in lieu of the certification form or in addition to it, O/As may accept a) a federal, state, tribal, territorial, or local police record or court record or b) documentation signed and attested to by a professional (employee, agent or volunteer of a victim service provider, an attorney, medical personnel, etc.) from whom the victim has sought assistance in addressing domestic violence, dating violence or stalking or the effects of the abuse. The signatory attests under penalty of perjury (28 U.S.C. §1746) to his/her belief that the incident in question represents bona fide abuse, and the victim of domestic violence, dating violence or stalking has signed or attested to the documentation.

O/As are not required to demand that an individual produce official documentation or physical proof of an individual's status as a victim of domestic violence, dating violence or stalking in order to receive the protections of the VAWA. O/As, at their discretion, may provide assistance to an individual based solely upon the individual's statement or other corroborating evidence. O/As are encouraged to

carefully evaluate abuse claims as to avoid conducting an eviction based on false or unsubstantiated accusations.

O/As should be mindful that the delivery of the certification form to the tenant via mail may place the victim at risk, e.g., the abuser may monitor the mail. Therefore, in order to mitigate risks, O/As are encouraged to work with the tenant in making acceptable delivery arrangements, such as inviting them into the office to pick up the certification form or making other discreet arrangements.

The identity of the victim and all information provided to O/As relating to the incident(s) of domestic violence must be retained in confidence by the O/A and must neither be entered into any shared database nor provided to a related entity, except to the extent that the disclosure is a) requested or consented to by the individual in writing; b) required for use in an eviction proceeding or termination of assistance; or c) otherwise required by applicable law. The HUD-approved certification form provides notice to the tenant of the confidentiality of the form and the limits thereof.

O/As must retain all documentation relating to an individual's domestic violence, dating violence or stalking in a separate file that is kept in a separate secure location from other tenant files.

3. Lease

a. Lease Addendum

O/As are required to attach the HUD-approved Lease Addendum, Form HUD-91067, (Attachment 2), which includes the VAWA provisions, to each existing or new lease.

1) New admissions. O/As must provide the tenant with the applicable HUD model lease along with the Lease Addendum.

2) Existing tenants. O/As must expeditiously begin to notify existing tenants of the modification to the lease. Notification is accomplished by forwarding to each tenant a copy of the addendum that revises the existing lease agreement. O/As must also include a letter clearly stating that the tenant can either accept the modification or move but that a response is due within 30 days. For additional information on lease modifications, refer to HUD Handbook 4350.3, REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapter Six.

b. Lease Bifurcation

Should it be determined that physical abuse caused by a tenant is clear and present, the law provides O/As the authority to bifurcate a lease i.e., remove, evict, or terminate housing assistance to that individual, while allowing the victim, who lawfully occupies the home, to maintain tenancy. O/As must keep in mind that the eviction of or the termination action against the individual must be in accordance with the procedures prescribed by federal, state, and local law.

In the event that one household member is removed from the unit because of engaging in acts of domestic violence, dating violence or stalking against another household member, an interim recertification should be processed reflecting the change in household composition. See Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapter 7, Section 2 for processing interim recertifications.

B. Tenants Rights and Responsibilities

Tenants and family members of tenants who are victims of domestic violence, dating violence or stalking are protected by the VAWA from being evicted or from housing assistance being terminated because of the acts of violence against them.

If requested, tenants are required to submit to the O/A a completed Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-91066, or other supporting documentation as described in VI.A.2, above, within 14 business days of the O/A's request, or any extension of that date provided by the O/A. If the certification or other supporting documentation is not provided within the specified timeframe, the landlord may begin eviction proceedings.

If the tenant has sought assistance in addressing domestic violence, dating violence or stalking from a federal, state, tribal, territorial jurisdiction, local police or court, the tenant may submit written proof of this outreach.

It is possible for someone lawfully occupying the unit, who is also a victim, to be evicted or removed from the home. If the victim commits separate criminal activity, a landlord may evict them for engaging in crime. Furthermore, if a victim poses "an actual and imminent threat to other tenants or those employed at or providing service to the property," they could be evicted, despite the VAWA. Of paramount

consideration within the VAWA is that the landlord may not hold the victim to a more demanding standard than other tenants.

VII. ADDITIONAL INFORMATION

O/As are encouraged to access the complete version of the VAWA (Public Law 109-162; 119 Stat. 2960) via the internet at the following address: <http://thomas.loc.gov> (the Library of Congress website). The VAWA technical corrections bill (Public Law 109-271) was signed into law on August 12, 2006, and may also be viewed via the Library of Congress website using the above noted address.

VIII. PAPERWORK REDUCTION

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB Control Number 2502-0204. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Any questions related to this Notice should be addressed to the Multifamily Housing Assistance Policy Division at (202) 708-3000.

Brian D. Montgomery
Assistant Secretary for Housing -
Federal Housing Commissioner

Attachments (2)

CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE OR STALKING

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

Attachment 1
OMB Approval No. 2502-0204

Public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. Information provided is to be used by owners and management agents administering Section 8 project-based assistance under the United States Housing Act of 1937 (42 U.S.C. 1437) to request a tenant to certify that the individual is a victim of domestic violence, dating violence or stalking. The information is subject to the confidentiality requirements of the HUD Reform Legislation. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Purpose of Form: The Violence Against Women and Justice Department Reauthorization Act of 2005 protects qualified tenants and family members of tenants who are victims of domestic violence, dating violence or stalking (collectively "domestic violence") from being evicted or terminated from housing assistance based on acts of such violence against them.

Use of Form: If you have been a victim of domestic violence, you or a family member on your behalf, must complete and submit this certification form, or submit the information described below under "Alternate Documentation," which may be provided in lieu of the certification form, within 14 business days of receiving the written request for this certification form from the owner or management agent. The certification form or alternate documentation must be returned to the person and the address specified in the written request for the certification form. If the requested certification form or the information that may be provided in lieu of the certification form is not received by the 14th business day or any extension of the date provided by the owner or management agent, none of the protections afforded to victims of domestic violence under the Section 8 project-based assistance program will apply. Distribution or issuance of this form does not serve as a written request for certification.

Alternate Documentation: In lieu of this certification form (or in addition to it), the following documentation may be provided:

- (1) A federal, state, tribal, territorial, or local police or court record; or
- (2) Documentation signed by an employee, agent or volunteer of a victim service provider, an attorney or medical professional, from whom the victim has sought assistance in addressing the domestic violence, dating violence or stalking, or the effects of abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident(s) in question are bona fide incidents of abuse, and the victim has signed or attested to the documentation.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE:

- 1. **Date written request is received from owner or management agent:** _____
- 2. **Name of victim:** _____
- 3. **Your name (if different)** _____
- 4. **Name(s) of other family members listed on the lease:** _____

- 5. **Name of the abuser:** _____
- 6. **Relationship of the abuser to the victim:** _____
- 7. **Date of incident:** _____
- 8. **Time of incident:** _____
- 9. **Location of incident:** _____

{Page two must be completed and attached to this form.}

LEASE ADDENDUM
VIOLENCE AGAINST WOMEN AND JUSTICE DEPARTMENT REAUTHORIZATION ACT OF 2005

TENANT	LANDLORD	UNIT NO. & ADDRESS
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This lease addendum adds the following paragraphs to the Lease between the above referenced Tenant and Landlord.

Purpose of the Addendum

The lease for the above referenced unit is being amended to include the provisions of the Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA).

Conflicts with Other Provisions of the Lease

In case of any conflict between the provisions of this Addendum and other sections of the Lease, the provisions of this Addendum shall prevail.

Term of the Lease Addendum

The effective date of this Lease Addendum is _____. This Lease Addendum shall continue to be in effect until the Lease is terminated.

VAWA Protections

1. The Landlord may not consider incidents of domestic violence, dating violence or stalking as serious or repeated violations of the lease or other "good cause" for termination of assistance, tenancy or occupancy rights of the victim of abuse.
2. The Landlord may not consider criminal activity directly relating to abuse, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that abuse.
3. The Landlord may request in writing that the victim, or a family member on the victim's behalf, certify that the individual is a victim of abuse and that the Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-91066, or other documentation as noted on the certification form, be completed and submitted within 14 business days, or an agreed upon extension date, to receive protection under the VAWA. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction.

Tenant

Date

Landlord

Date



Federal Register

**Friday,
March 16, 2007**

Part III

Department of Housing and Urban Development

**The Violence Against Women and
Department of Justice Reauthorization Act
of 2005: Applicability to HUD Programs;
Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-5056-N-01]

**The Violence Against Women and
Department of Justice Reauthorization
Act of 2005: Applicability to HUD
Programs**

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice addresses inquiries to HUD about: (1) The applicability to HUD programs of certain provisions of the Violence Against Women and Department of Justice Reauthorization Act of 2005, as amended by a technical corrections bill signed into law in August 2006, and (2) HUD's plans to issue rules or guidance on this new law. The Violence Against Women and Department of Justice Reauthorization Act of 2005 and the technical corrections described in this notice became effective upon enactment.

This notice presents information from HUD's Offices of Community Planning and Development, General Counsel, Housing, and Public and Indian Housing, and provides an overview of key provisions that affect HUD programs, identifies those provisions that require program participants to take action to be in compliance, and advises of efforts underway within HUD to further facilitate compliance with this new law, including rules and guidance that are under consideration or development.

FOR FURTHER INFORMATION CONTACT: For general information about the Violence Against Women and Department of Justice Reauthorization Act of 2005, please contact Aaron Santa Anna, Assistant General Counsel for Regulations, Office of Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10282, Washington, DC 20410-0500; telephone (202) 708-3055 (this is not a toll-free number). For information about HUD's Public Housing program and Housing Choice Voucher program, please contact the Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Room 4240, telephone (202) 708-1380. For information about HUD's Homeless Management Information Systems, please contact the Office of Program Coordination and Analysis Division, Office of Special Needs Programs, Office of Community Planning and Development, telephone (202) 402-4496. For information about HUD's Section 8 Project-Based program,

please contact the Office of Housing Assistance Policy Division, Office of Housing, Room 6138, telephone (202) 708-3000. The address for all offices is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The above-listed telephone numbers are not toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Overview

On January 5, 2006, President Bush signed into law the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162) (VAWA 2005), and, on August 28, 2006, signed into law technical corrections to the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-271). Except as provided in Section 4 of the technical corrections law, VAWA 2005 became effective upon enactment; no provisions of VAWA 2005 that affect the changes described in this notice have a delayed effective date. VAWA 2005 reauthorizes and amends the Violence Against Women Act of 1994 (42 U.S.C. 13701 *et seq.*) (VAWA 1994) for Fiscal Years 2007 through 2011, and, among other things, consolidates major law enforcement grant programs; makes amendments to criminal and immigration laws; and makes amendments to other statutes, including certain HUD statutes, to support and strengthen efforts to combat domestic violence and other forms of violence against women.

The provisions of VAWA 2005 applicable to HUD programs are found in Title VI entitled "Housing Opportunities and Safety for Battered Women and Children." Section 601 of VAWA 2005 amends VAWA 1994 to add a new Subtitle N to VAWA 1994 entitled "Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking."

HUD Statutes Amended by VAWA 2005. With regard to HUD programs, VAWA 2005 addresses various housing needs for victims of domestic violence, and amends the following HUD statutes: the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 13704 *et seq.*), and the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*).

HUD Programs Affected by VAWA 2005. The amendments made by VAWA 2005 apply to HUD's Public Housing program, HUD's Supportive Housing

program, and HUD's programs assisted by section 8 of the U.S. Housing Act of 1937. The VAWA 2005 provisions applicable to HUD do not cover HUD's Indian housing programs. The VAWA 2005 provisions applicable to HUD do not cover programs other than the Supportive Housing program for the Homeless and housing that is assisted by HUD under sections 6 and 8 of the U.S. Housing Act of 1937.

Immediate Applicability of VAWA 2005. The primary objectives of VAWA 2005 are to reduce violence against women and to protect, or increase the protection of, the safety and confidentiality of women who are victims of abuse. These new protections for families participating in HUD programs became effective upon enactment of the law on January 5, 2006, and for the majority of the VAWA 2005 amendments that are applicable to HUD programs, prior action by HUD is not necessary in order for implementation to begin. Following enactment of the new law, HUD's Office of Public and Indian Housing issued a direct notice on VAWA 2005, PIH 2006-23, in which it advised public housing agencies (PHAs) that these statutory provisions [of VAWA 2005] were effective the date the law was enacted (January 5, 2006). That notice can be found at <http://www.hud.gov/offices/pih/publications/notices/06/pih2006-23.pdf>. HUD's Office of Public and Indian Housing also issued PIH notice PIH 2006-42 on the VAWA form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking. That notice can be found at <http://www.hud.gov/offices/pih/publications/notices/06/pih2006-42.pdf>. HUD's Office of Public and Indian Housing also issued PIH notice PIH 2007-5, which describes revised form HUD 52641, the Housing Assistance Payments Contract, and revised form HUD 52641A, the Tenancy Addendum. Both forms were revised to reflect statutory requirements of VAWA. That notice can be found at <http://www.hud.gov/offices/pih/publications/notices/07/pih2007-5.pdf>.

Sections II, III, and IV of this notice provide an overview of the key amendments made by VAWA 2005 that are applicable to HUD programs, and identify provisions for which rules or guidance may be issued by HUD's program offices.

II. VAWA 2005 Amendments to the U.S. Housing Act of 1937

Under the U.S. Housing Act of 1937, HUD promotes the goal of providing decent and affordable housing for all citizens by providing funds for housing assistance.

A. Public Housing Agency Plans. Section 603 of VAWA 2005 amends section 5A of the U.S. Housing Act of 1937. This amendment requires the 5-year plans of PHAs to begin including a statement about goals, activities, objectives, policies, or programs that will enable a PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.

The amendment requires the annual plan of PHAs to include a description of: (1) 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; (2) any activities, services, or programs provided or offered that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing; and (3) any activities, services, or programs provided or offered to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.

Note: PHAs must include the statement required by VAWA 2005 in their next regularly scheduled plan submission. PHAs are encouraged to amend or modify their plans before the next regular submission as provided in 24 CFR 903.21.

B. Section 8 and Public Housing Identical Amendments. Sections 606 and 607 amend section 8 (42 U.S.C. 1437f) and section 6 (42 U.S.C. 1437d) of the U.S. Housing Act of 1937, governing HUD's section 8 assisted programs and HUD's public housing program, respectively, as noted below.

1. *Admission, Occupancy, and Termination of Assistance Policies.* Sections 606 and 607 of the VAWA 2005 amendments provide that:

- Being a victim of domestic violence, dating violence, or stalking, as these terms are defined in the law (hereafter collectively referred to as "abuse"), is not a basis for denial of assistance or admission to public or assisted housing if the applicant otherwise qualifies for assistance or admission;

- Incidents or threats of abuse will not be construed as serious or repeated violations of the lease or other "good cause" for termination of the assistance, tenancy, or occupancy rights of a victim of abuse; and

- Criminal activity directly relating to abuse, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of assistance, tenancy, or occupancy rights

if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that abuse.

Note: PHAs and owners administering or participating in section 8 programs and public housing programs must ensure that, upon the date of enactment of VAWA 2005, any denial of admission to the programs and any termination of assistance, tenancy, or occupancy rights under the programs complies with the provisions of VAWA 2005, and any future denial or termination action will comply with the provisions of VAWA 2005.

VAWA 2005 provides that these new policies governing admission, occupancy, and termination of assistance are not to interfere with certain rights and responsibilities of PHAs, owners, or managers¹ regarding criminal activity or acts of violence against family members or others, as discussed in paragraph 2, which follows.

2. *Rights and Responsibilities of PHAs, Owners, and Managers.* The VAWA 2005 amendments, as recently amended by the technical corrections statute, and as applicable to section 8 contracts for assistance payments and public housing leases, provide that:

Notwithstanding the restrictions that VAWA 2005 places on admission, occupancy, and terminations of occupancy or assistance, as discussed in paragraph 1, or any federal, state, or local law to the contrary, a PHA, owner or manager may "bifurcate" a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant, and such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by federal, state, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.

Note: The authority provided to PHAs, owners, and managers under VAWA 2005 to bifurcate a lease or otherwise remove an individual is applicable to all existing leases for families participating in either the public housing or section 8 programs, and specific

¹ Please note that in HUD's Housing programs, the term "manager" as used in VAWA is synonymous with the phrase "management agent."

lease language to that effect is not necessary for the PHA, owner, or manager to exercise such authority. Neither the authority nor the procedures under any other law is necessary to bifurcate or otherwise remove an individual from the lease. Furthermore, this federal statutory authority to bifurcate a lease or otherwise remove an individual takes precedence over any federal, state, or local law to the contrary. However, PHAs, managers, and owners must keep in mind that the eviction of or the termination action against the individual must be effected in accordance with the procedures prescribed by federal, state, and local law. This means that the same procedures prescribed by federal, state, and local law that the PHA, owner, or manager must follow to evict, remove, terminate occupancy rights, or terminate assistance for the family as a whole must also be followed when exercising such action against an individual household member.

It is further noted that under the Housing Choice Voucher (HCV) program, PHAs have authority under the existing § 982.552(c)(2) to terminate voucher assistance for certain family members while permitting other members of a participant family to continue receiving assistance (provided the culpable family member will no longer reside in the unit). A PHA's right to exercise this administrative discretion under § 982.552(c)(2) is not dependent on a bifurcated lease or other eviction action by the owner against an individual family member.

VAWA 2005 also provides that the restrictions the law places on admission, occupancy, and termination of occupancy or assistance, as discussed in paragraph 1:

- May not be construed to limit a PHA, owner, or manager from honoring various court orders issued to either protect the victim or address the distribution of property in case a family breaks up;

- Does not limit any otherwise available authority of a PHA, owner, or manager to terminate assistance or evict due to any lease violation not premised on the act of violence in question against the tenant or member of the tenant's household, provided that the owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate assistance;

- May not be construed to limit the authority of a PHA, owner, or manager to terminate the assistance of, or evict, any occupant who can be demonstrated to pose an actual or imminent threat to other tenants or the property's employees; and

- Shall not be construed to supersede any provisions of federal, state, or local

laws that provide greater protection for victims of abuse.

3. *Certification of Abuse and Confidentiality.* Sections 606 and 607 of VAWA 2005, and as recently amended by the technical corrections statute, add certification and confidentiality provisions that allow for a PHA, owner, or manager to request an individual to certify that the individual is a victim of abuse and that the incidences of abuse are bona fide. The certification must include the name of the perpetrator, and any other statutorily required information, and the victim must provide the certification within 14 business days after the individual receives a request for such certification from the PHA, owner, or manager.

Without the certification, a PHA, owner, or manager may terminate assistance. All information provided to a PHA, owner, or manager is confidential. Notice of these rights must be given to tenants. The statute allows for the victim to self-certify and also allows for the certification requirement to be satisfied with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking or the effects of the abuse in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation. The statute also allows for the certification requirement to be satisfied by producing a federal, state, tribal, territorial, or local police or court record.

Note: HUD-Approved Certification. Sections 606 and 607 require the issuance of a "HUD-approved certification form" for victims of abuse to use. The HUD-approved certification form for PIH-covered programs is form HUD-50066, which may be found at: http://www.hudclips.org/sub_nonhud/html/forms.htm. On February 7, 2007 (72 FR 5733), HUD published a 60-day notice in the **Federal Register** informing the public that HUD will be submitting the Office of Housing's certification form for its programs (Form HUD-90066) to OMB for review.

4. *Portability in the Housing Choice Voucher Program.* VAWA 2005 amended section 8(r) of the United States Housing Act to provide an exception to the prohibition against a family moving under the portability provisions in violation of the lease. VAWA 2005 provides that the family may receive a voucher and move in

violation of the lease under the portability procedures if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

5. *PHA Notification to Tenants and Owners Participating in Section 8 Programs.* VAWA 2005 further requires that PHAs must provide notice to tenants assisted under section 8 of the United States Housing Act of 1937 of their rights, and notice to owners and managers of their rights and obligations, under section 8 as amended by VAWA 2005. Specifically, such notice must cover rights and obligations under subsections (8)(c)(9), (8)(d)(1)(B)(ii), (8)(d)(1)(B)(iii), (8)(o)(7)(C), (8)(o)(7)(D), (8)(o)(20), (8)(r)(5), and (8)(ee).

Note: PHAs must provide notice to all families and owners participating under any section 8 program administered by the PHA, including the HCV tenant-based and project-based program, the project-based certificate program, and the section 8 moderate rehabilitation program (excluding the Single Room Occupancy Moderate Rehabilitation program authorized under the McKinney-Vento Act).

6. *PHA Notification to Public Housing Residents.* VAWA 2005 also requires that PHAs must provide notice to public housing residents of their rights under section 6 of the United States Housing Act of 1937 as amended by VAWA 2005. Specifically, the notice must cover rights under subsections (6)(l)(5), (6)(l)(6), and (6)(u), including their rights to confidentiality and the limits thereof.

7. *Definitions Added to U.S. Housing Act of 1937.* Section 606(3) and section 607(5) of VAWA 2005, and as recently amended by the technical corrections statute, also amend section 8(f) and section 6(d) of the U.S. Housing Act of 1937 to provide important definitions of terms, most notably:

(1) A definition of "domestic violence" (42 U.S.C. 1437f(f)(8) and 42 U.S.C. 1436d(u)(3)(A)), which is given the same meaning as this term is defined in section 40002 of the Violence Against Women Act of 1994 (VAWA 1994) as added by VAWA 2005. VAWA 2005 defines "domestic violence" to include "felony or misdemeanor crimes of violence committed by a current or former spouse 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, 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";

(2) A definition of "dating violence" (42 U.S.C. 1437f(f)(9) and 42 U.S.C. 1436d(u)(3)(B)), which is given the same meaning as this term as defined in section 40002 of VAWA 1994, as added by VAWA 2005. VAWA 2005 defines "dating violence" to mean "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: (i) The length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship."

(3) A definition of "stalking" (42 U.S.C. 1437f(f)(10) and 42 U.S.C. 1436d(u)(3)(C)), that differs from the meaning of this term as defined in section 40002 of VAWA 1994, as added by VAWA 2005. The definition that is applicable to HUD's public housing and section 8 assisted programs is a more detailed definition than that provided in section 40002 of VAWA 1994, as amended by VAWA 2005. For HUD covered programs, the definition of "stalking" is defined as follows. "Stalking means (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person; (ii) a member of the immediate family of that person; or (iii) the spouse or intimate partner of that person"; and

(4) A definition of "immediate family member" (42 U.S.C. 1437f(f)(11) and 1437d(u)(3)(D)). "Immediate family member" is defined to mean, "with respect to a person (A) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or (B) any other person living in the household of that person and related to that person by blood or marriage."

III. VAWA 2005 Amendments to the McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act (42 U.S.C. 11383) authorizes programs that provide grants for homeless assistance. Section 605 of VAWA 2005 amends section 423 of the McKinney-Vento Homeless Assistance Act. Section 423 is part of Subtitle C of the McKinney-Vento Homeless Assistance Act, which establishes HUD's Supportive Housing Program. Section 423 of that subtitle describes the eligible activities of the Supportive Housing assistance program, and section 605 of VAWA 2005 adds a new subsection (a)(8) entitled "Confidentiality."

Homeless Management Information Systems. Homeless Management Information Systems (HMIS) are computerized data collection applications that facilitate the collection of information on homeless individuals and families using residential or other homeless assistance services and stores that data in an electronic format. The new Confidentiality provision directs victim service providers not to disclose, for purposes of HMIS, personally identifying information about any client. In accordance with this statutory requirement, victim service providers must maintain the confidentiality of personally identifying information of the providers' clients. The Office of Community Planning and Development is also planning to issue guidance that may be helpful to participants.

It is important to note, however, that the VAWA 2005 amendment does not affect current aggregate reporting under the Annual Progress Reporting (APR) process covering the Supportive Housing, Shelter Plus Care, and Section 8 SRO programs. In addition, current aggregate reporting for the Emergency Shelter Grant program under the Integrated Disbursement and Information System (IDIS) reporting is not covered.

Notice and Comment Requirement. Section 605 allows HUD, through a public notice and comment process, to require recipients or subrecipients to disclose for purposes of HMIS, non-personally identifying data that has been de-identified, encrypted or otherwise encoded. HUD's Office of Community Planning and Development is considering how technology may ensure the proper protection of personally identifying data. For purposes of HMIS, any requirement to disclose non-personally identifying information will be issued through a notice and comment process as directed

by statute. It is important to reiterate that existing paper record keeping requirements and aggregate reporting under the APR and IDIS systems are not covered by this section since they preceded the HMIS initiative and are currently separate from HMIS; also, the APR and IDIS systems do not require personal identifiers being entered into a central database.

Section 605 also defines the terms "personally identifying information" and "victim service provider." The term "personally identifying information" is defined to mean "individually identifying information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including (I) a first and last name; (II) a home or other physical address; (III) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number); (IV) a social security number; and (V) any other information including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information would serve to identify any individual."

The term "victim service provider" is defined to mean "a nonprofit, nongovernmental organization, including rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking."

IV. VAWA 2005 Amendments to the Cranston-Gonzalez National Affordable Housing Act

Under the Cranston-Gonzalez National Affordable Housing Act, HUD may provide assistance to certain jurisdictions that, in turn, will create comprehensive affordable housing strategies. Section 604 of VAWA 2005 amends section 105(b)(1) of the Cranston-Gonzalez National Affordable Housing Act to now require that comprehensive housing affordability strategies (more familiarly known as the Consolidated Plan) submitted to the Secretary shall contain estimated housing needs for victims of domestic violence, dating violence, sexual assault, and stalking.

V. Additional Information

As a result of the amendments to the HUD statutes discussed in this notice, HUD's Office of Community Planning and Development and HUD's Office of Public and Indian Housing have already begun outreach to program participants

and to organizations representative of victims of abuse on those provisions for which additional compliance guidance from HUD may be beneficial to program participants.

HUD will be amending the regulations of the programs covered by VAWA 2005 to conform the existing regulations to the new statutory language and requirements. Again, however, the absence of the statutory language in the regulations does not mean the statutory provisions are not effective and applicable. The protections provided by the statute are immediately available to covered families.

In HUD's Semiannual Agenda of Regulations, published on April 24, 2006 (71 FR 22734), HUD's Office of Public and Indian Housing announced that it would revise HUD's regulations for its public and assisted housing programs to conform the regulations to the statutory amendments made by VAWA 2005 (*see* 71 FR 22757). This office reiterated this statement about forthcoming rules in Notice PIH 2006-23.

HUD's Office of Housing has already engaged in outreach activities, engaging affected program participants in discussions about the nature and scope of VAWA 2005 provisions and how they might best be implemented. Housing also plans to issue, in the near future, a **Federal Register** notice that addresses VAWA 2005 requirements applicable to participants in Housing programs. Housing will also be issuing, by separate publication, guidance and a HUD-approved certification form that can be provided by an owner or management agent to a tenant to help ascertain whether the tenant is a victim of abuse.

HUD's Office of Community Planning and Development is examining new technology to determine whether such technology can provide the protection for non-personally identifying data, which the statute directs be provided and which HUD seeks to provide.

In addition to rules that conform regulatory language to the recently enacted statutory language, offices may issue guidance to assist program participants in compliance with the new amendments, depending upon questions raised by their respective constituents. Additionally, HUD may determine that for certain areas of the new law, binding requirements established through proposed and final rulemaking, as opposed to guidance, serve as the better approach for achieving compliance.

VAWA 2005, in its entirety, is available at the following Web site addresses:

- For plain text version: <http://frwebgate.access.gpo.gov/cgi-bin/>

*useftp.cgi?IPaddress=162.140.64.21&
filename=publ162.109&directory=
diskb/wais/data/109_cong_public_laws*

• For PDF version: *http://
frwebgate.access.gpo.gov/cgi-bin/
getdoc.cgi?dbname=109_cong_public_
laws&docid=f:publ162.109.pdf*

VAWA 2005's technical correction, in its entirety, is available at the following Web site addresses:

• For plain text version: *http://
frwebgate.access.gpo.gov/cgi-bin/
getdoc.cgi?dbname=109_cong_public_
laws&docid=f:publ271.109*
• For PDF version: *http://
frwebgate.access.gpo.gov/cgi-bin/*

*getdoc.cgi?dbname=109_cong_public_
laws&docid=f:publ271.109.pdf.*

Dated: February 26, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7-4795 Filed 3-15-07; 8:45 am]

BILLING CODE 4210-67-P



**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; Section 8 Financial Management
Centers; Public Housing Agencies; Regional
Directors; State and Area Coordinators

Notice: PIH 2006-42
Issued: December 27, 2006
Expires: December 31, 2007

SUBJECT: Violence Against Women and Justice Department Reauthorization Act 2005
Form HUD-50066 Certification of Domestic Violence, Dating Violence, or
Stalking

- PURPOSE:** This notice transmits form HUD - 50066, Certification of Domestic Violence, Dating Violence, or Stalking for use in the Public Housing Program, Housing Choice Voucher Program (including project-based vouchers), Section 8 Project-Based Certificate Program, and Section 8 Moderate Rehabilitation Program (excluding Mod Rehab SRO), as required by the provisions of Sections 606 and 607 of the Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA), Public Law 109-162. VAWA provides that Public Housing Agencies (PHAs) and Section 8 owners or managers may request a tenant to certify that the individual is a victim of domestic violence, dating violence or stalking and that the incidence(s) of threatened or actual abuse are bona fide in determining whether the protections afforded to such individuals under VAWA are applicable.
- APPLICABILITY:** This form HUD - 50066 is for use by PHAs administering the Public Housing, Housing Choice Voucher (including project-based vouchers), Section 8 Project-based Certificate, and Section 8 Moderate Rehabilitation Programs (excluding the McKinney Act Mod Rehab SROs), as well as owners and managers participating in the aforementioned programs. A certification form for use in Section 8 programs administered by the Office of Housing will be issued under separate guidance.
- BACKGROUND:** The Violence Against Women and Justice Department Reauthorization Act of 2005 protects tenants and family members of tenants who are victims of domestic violence, dating violence, or stalking from being evicted or terminated from housing assistance based on acts of such violence against them. These provisions apply both to public housing agencies administering public housing and Section 8 programs and to owners renting to families under Section 8 rental assistance programs.

In general, the law provides in part that criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that abuse. The law also provides that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as serious or repeated violations of the lease by the victim or threatened victim of that violence and will not be "good cause" for termination of the assistance, tenancy, or occupancy rights of a victim of such violence.

- 4. CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE OR STALKING:** Among other requirements, Sections 606 and 607 of VAWA add certification and confidentiality provisions that allow for PHAs, owners or managers responding to an incident or incidents of actual or threatened domestic violence, dating violence or stalking that may affect a tenant's participation in the housing program to request in writing that an individual complete, sign and submit, within 14 business days of the request, a HUD-approved certification form. On the form, the individual certifies that he/she is a victim of domestic violence, dating violence, or stalking, and that the incident or incidences in question are bona fide incidences of such actual or threatened abuse. On the certification form, the individual shall provide the name of the perpetrator.

In lieu of a certification form, or in addition to the certification form, a tenant may provide to PHAs, managers or owners, (1) a Federal, State, tribal, territorial, or local police record or court record; (2) documentation signed and attested to by an employee, agent or volunteer of a victim service provider, an attorney or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence or stalking, or the effects of abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, or stalking has signed or attested to the documentation.

An owner or PHA is not required to demand that an individual produce official documentation or physical proof of an individual's status as a victim of domestic violence, dating violence, sexual assault, or stalking in order to receive the protections of VAWA. Note that, a PHA, owner or manager, at their discretion, may provide assistance to an individual based solely upon the individual's statement or other corroborating evidence.

The PHA, owner or manager should be mindful that the delivery of the certification form to the tenant in response to an incident via mail may place the victim at risk, e.g., the abuser may monitor the mail. Therefore, PHAs, owners and managers may require that the tenant 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 tenant at risk.

If the individual does not provide the form HUD - 50066 or the information that may be provided in lieu of the certification by the 14th business day or any extension of that date provided by the PHA, owner or manager, none of the protections afforded to the victim of domestic violence, dating violence or stalking by sections 606 or 607 will apply. The PHA, owner or manager would therefore be free to evict, or to terminate assistance, in the circumstances authorized by otherwise applicable law and lease provisions, without regard to the amendments made by Sections 606 and 607.

5. DEFINITIONS: The following definitions were incorporated into the United States Housing Act and apply to this notice.

Domestic Violence: Includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim share a child in common, by a person who is cohabitated with or has cohabited with the victim as a spouse, 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.

Dating Violence: 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: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

Stalking: to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person; (ii) a member of the immediate family of that person; or (iii) the spouse or intimate partner of that person.

Immediate Family Member: a spouse, parent, brother or sister, or child of the person, or an individual to whom that person stands in loco parentis (in place of a parent); or any other person living in the household of that person and related to that person by blood or marriage.

- 6. NOTICE AND CONFIDENTIALITY:** VAWA requires that PHAs, must notify tenants of their rights under VAWA, which includes the existence of the attached HUD form and the right to confidentiality and limits thereof. In doing so, PHAs may make the certification form available to all eligible families at the time of admission. Also, in the event of a termination or start of an eviction proceeding, PHAs may enclose the form with the appropriate notice and direct the family to complete, sign and return the form (if applicable) by a specified date. PHAs could also include language discussing the VAWA protections in the termination/eviction notice and request that a tenant come into the office to pick up the form if the tenant believes the VAWA protections apply.

All information provided to a PHA, manager or an owner relating to the incident(s) of domestic violence, including the fact that an individual is a victim of domestic violence, dating violence, or stalking, must be retained in confidence by the PHA or owner, and must neither be entered into any shared database nor provided to a related entity, except to the extent that the disclosure is (i) requested or consented by the individual in writing; (ii) required for use in an eviction proceeding or termination of assistance; or, (iii) otherwise required by applicable law. The HUD-approved certification form provides notice to the tenant of the confidentiality of the form and the limits thereof.

PHAs must also notify owners and managers of their rights and obligation under VAWA. PHAs, owners and managers are encouraged to access VAWA via the Internet at the following Website addresses:
<http://www.gpoaccess.gov/plaws/index.html> or
<http://thomas.loc.gov/bss/d1099/d109laws.html> and search for Public Law 109-162 to access the text of the final law. The VAWA technical corrections bill (Public Law 109-271), was signed into law on August 12, 2006, and may be reviewed via an Internet link on Thomas (the Library of Congress Website, located at <http://thomas.loc.gov/>).

7. PAPERWORK REDUCTION

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB control number 2577-0249. 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.

_____/s/_____
Orlando J. Cabrera, Assistant Secretary
for Public and Indian Housing

CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING

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

OMB Approval No. 2577-0249

Exp. (07/31/2007)

Public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. Information provided is to be used by PHAs and Section 8 owners or managers to request a tenant to certify that the individual is a victim of domestic violence, dating violence or stalking. The information is subject to the confidentiality requirements of the HUD Reform Legislation. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Purpose of Form: The Violence Against Women and Justice Department Reauthorization Act of 2005 protects qualified tenants and family members of tenants who are victims of domestic violence, dating violence, or stalking from being evicted or terminated from housing assistance based on acts of such violence against them.

Use of Form: A family member must complete and submit this certification, or the information that may be provided in lieu of the certification, within 14 business days of receiving the written request for this certification by the PHA, owner or manager. The certification or alternate documentation must be returned to the person and address specified in the written request for the certification. If the family member has not provided the requested certification or the information that may be provided in lieu of the certification by the 14th business day or any extension of the date provided by the PHA, manager and owner, none of the protections afforded to victims of domestic violence, dating violence or stalking (collectively "domestic violence") under the Section 8 or public housing programs apply.

Note that a family member may provide, in lieu of this certification (or in addition to it):

(1) A Federal, State, tribal, territorial, or local police or court record; or

(2) Documentation signed by an employee, agent or volunteer of a victim service provider, an attorney or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence or stalking, or the effects of abuse, in which the professional attest under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation.

TO BE COMPLETED BY THE VICTIM OF DOMESTIC VIOLENCE:

Date Written Request Received By Family Member: _____

Name of the Victim of Domestic Violence: _____

Name(s) of other family members listed on the lease _____

Name of the abuser: _____

Relationship to Victim: _____

Date the incident of domestic violence occurred: _____

Time: _____

Location of Incident: _____

Name of victim:

Description of Incident:

[INSERT TEXT LINES HERE]

I hereby certify that the information that I have provided is true and correct and I believe that, based on the information I have provided, that I am a victim of domestic violence, dating violence or stalking and that the incident(s) in question are bona fide incidents of such actual or threatened abuse. I acknowledge that submission of false information relating to program eligibility is a basis for termination of assistance or eviction.

Signature _____ Executed on (Date) _____

All information provided to a PHA, owner or manager relating to the incident(s) of domestic violence, including the fact that an individual is a victim of domestic violence shall be retained in confidence by an owner and shall neither be entered into any shared database nor provided to any related entity, except to the extent that such disclosure is (i) requested or consented to by the individual in writing; (ii) required for use in an eviction proceeding or termination of assistance; or (iii) otherwise required by applicable law.