

Protecting the Housing Rights of Domestic Violence Survivors



This outline covers:

- The housing provisions of the **Violence Against Women Act**
- Protections available for domestic violence survivors under **fair housing laws**

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);
- The Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f(o));
- Section 8 Project-Based housing (42 U.S.C. §§ 1437f(c), (d));
- Supportive housing for the elderly or disabled (73 Fed. Reg. 72,338).

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, such 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 elderly or disabled.

See 42 U.S.C. § 1437d(u)(3)(D); 42 U.S.C. § 1437f(f)(11); 72 Fed. Reg. 12,696.

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 information on these laws, see <http://nhlp.org/node/1436>

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 and 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. *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(l)(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(l)(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(1)(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(1)(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

- **75 Fed. Reg. 66,246 (Oct. 27, 2010):** Sets forth the regulations published by HUD to implement the Violence Against Women Act. Addresses a variety of issues, including documentation of domestic violence, confidentiality, and break-up of an assisted family due to domestic violence.
- **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 09-15:** 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, 870 N.Y.S.2d 768 (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.

12. What rights do survivors have under fair housing laws?

Domestic violence survivors who do not live in subsidized housing and therefore are not covered by VAWA may still be protected by fair housing laws. This portion of the outline describes the fair housing theories available to individuals who have experienced housing discrimination based on acts of domestic violence committed against them.

A. Disparate impact claims

- Disparate impact theory has been used to challenge policies that have the effect of treating women more harshly. Some cases have challenged “zero tolerance for violence” policies that mandate eviction for entire households when a violent act is committed at the unit. It has been argued that such policies have a disparate impact on women, who constitute the majority of domestic violence victims.
- Statistical data are crucial to these cases:
 - 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 (Feb. 2003).
 - Although women are less likely than men to be victims of violent crimes overall, women are five to eight times more likely than men to be victimized by an intimate partner. Additionally, more than 70% of those murdered by their intimate partners are women. Greenfield, L.A., et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends*, U.S. Dept. of Justice, Bureau of Justice Statistics, NCJ-167237 (March 1998).
 - Women 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).

B. Have Any Actions Been Filed on Behalf of Survivors Asserting Disparate Impact Theory?

- **Lewis v. N. End Vill. et al., 07 cv 10757 (E.D. Mich. 2008):** Plaintiff’s ex-boyfriend kicked in door at her apartment, a low-income housing tax credit property. Although Plaintiff had a restraining order, she was evicted for violating the lease, which stated that she was liable for damage resulting from “lack of proper supervision” of her “guests.” Plaintiff argued that the policy of interpreting the word “guest” to include those who enter a property in violation of a restraining order had a disparate impact on women. Case settled. Settlement and pleadings are available at www.aclu.org/fairhousingforwomen
- **Warren v. Ypsilanti Housing Commission, 02cv40034 (E.D. Mich. 2002):** Plaintiff’s ex-boyfriend assaulted her at her public housing unit. The PHA sought to evict the Plaintiff, citing a “one-strike” rule in its lease permitting it to evict a tenant if there was any violence in the tenant’s apartment. Plaintiff argued that because the majority of domestic violence victims are women, the policy of evicting victims based on violence against them constituted sex discrimination in violation of state and federal fair housing laws. The case settled, and the PHA agreed to end its application of the one-strike rule to domestic violence victims. For pleadings, *see* www.aclu.org/fairhousingforwomen
- **Alvera v. Creekside Village Apartments, HUD ALJ No. 10-99-0538-8 (2001) (Oregon):** Management company sought to evict a tenant under a “zero tolerance for violence” policy because her husband had assaulted her. HUD found that policy of evicting innocent victims of

domestic violence because of that violence has a disproportionate impact on women, and found reasonable cause to believe that plaintiff had been discriminated against because of her sex. Case documents are available at www.aclu.org/fairhousingforwomen

C. Disparate treatment claims

- Claims of intentional sex discrimination (also called disparate treatment) have been raised in cases where housing providers treat female tenants differently from similarly situated male tenants. This theory has also been used to challenge actions that were taken based on gender-based stereotypes about battered women.

D. Have Any Actions Been Filed on Behalf of Survivors Asserting Disparate Treatment Theory?

- **Robinson v. Cincinnati Hous. Auth., 2008 WL 1924255 (S.D. Ohio 2008):** Plaintiff requested a transfer to another public housing unit after she was attacked in her home. The PHA denied her request, stating that its policy did not provide for domestic violence transfers. Plaintiff alleged that by refusing to grant her occupancy rights granted to other tenants based on the acts of her abuser, the PHA intentionally discriminated against her on the basis of sex. The court denied her motion for a temporary restraining order and preliminary injunction, and the case is pending.
- **Blackwell v. H.A. Housing LP, 05cv1255 (D. Colo. 2005):** Project-based Section 8 complex denied Plaintiff's request to transfer to another unit after she was attacked in her apartment by her ex-boyfriend. Plaintiff alleged intentional and disparate impact discrimination on the basis of sex in violation of state and federal fair housing laws. Case settled, with the defendant agreeing to implement a domestic violence policy. Case documents available at www.legalmomentum.org.
- **Bouley v. Young-Sabourin, 394 F. Supp. 2d 675 (D. Vt. 2005):** Plaintiff was evicted after her husband assaulted her. The landlord stated that plaintiff did not act like a "real" domestic violence victim, and that plaintiff was likely responsible for the violence. Plaintiff alleged that the landlord evicted her because she was a victim of domestic violence, and that this constituted sex discrimination in violation of the Fair Housing Act. The landlord's motion for summary judgment was denied, and the case settled. Case documents are available at www.aclu.org/fairhousingforwomen.

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Federal Register

**Wednesday,
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Part IV

**Department of
Housing and Urban
Development**

24 CFR Parts 5, 91, 880, et al.

**HUD Programs: Violence Against Women
Act Conforming Amendments; Final Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 5, 91, 880, 882, 883, 884, 886, 891, 903, 960, 966, 982, and 983**

[Docket No. FR-5056-F-02]

RIN 2577-AC65

HUD Programs: Violence Against Women Act Conforming Amendments**AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

SUMMARY: This final rule follows a November 28, 2008, interim rule that conformed HUD's regulations to those provisions of the Violence Against Women Act (VAWA), as enacted in January 2006, and subsequently amended in August 2006, that were determined to be self-implementing. VAWA provides statutory protections for victims of domestic violence, dating violence, sexual assault, and stalking. Such protections apply to families receiving rental assistance under HUD's public housing and tenant-based and project-based Section 8 programs. This rule adopts as final the regulations in the November 28, 2008, interim rule, along with certain clarifying changes made in response to public comment, and with some restructuring of the regulations to improve organization within the Code of Federal Regulations.

DATES: *Effective Date:* November 26, 2010.

FOR FURTHER INFORMATION CONTACT: For information about HUD's Public Housing program, please contact the Director of the Public Housing Management and Occupancy Division, 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 Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4210, telephone number 202-402-2425. For information about the Office of Housing's Section 8 Project-Based program, please contact Catherine Brennan, Director, Housing Assistance Policy Division, Office of Housing, Room 6138, telephone number 202-402-3000. The address for all of the above offices is the Department of Housing and Urban Development, 451 7th 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, but it was applicable to other Federal agencies and authorized those agencies to award grants to 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, the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162) was signed into law, and, on August 28, 2006, a bill that made technical corrections to the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-271) was signed into law. (Those two public laws are collectively referred to as "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 rulemaking, which commenced with the November 28, 2008, interim rule.

VAWA 2005 reauthorized and substantially amended VAWA 1994 for FYs 2007 through 2011, and, among other things, consolidated major law enforcement grant programs, made amendments to criminal and immigration laws, and made 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 amended 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's public housing and tenant-based and project-based Section 8 programs (covered programs) were determined to be self-

implementing. To ensure that housing providers participating in the covered programs were aware that the majority of VAWA 2005 is self-implementing, HUD's Office of Public and Indian Housing (PIH) issued, on June 23, 2006, a notice (PIH 2006-23) on the subject of VAWA 2005. In that notice, PIH advised public housing agencies (PHAs) of the VAWA 2005 provisions that were effective, and implementable, on the date of enactment—January 5, 2006. This notice can be found at <http://www.hud.gov/offices/pih/publications/notices/06/pih2006-23.pdf>. PIH Notice 2006-23 was followed by PIH Notice 2006-42, which transmitted the certification form for use by tenants claiming protection under VAWA. That notice can be found at <http://www.hud.gov/offices/adm/hudclips/notices/pih/06pihnotices.cfm>. In addition, PIH notice 2007-5 addressed the VAWA provisions that were incorporated into the Housing Choice Voucher Housing Assistance Payments (HAP) contract and tenancy addendum. That notice can be found at <http://www.hud.gov/offices/adm/hudclips/notices/pih/07pihnotices.cfm>.

HUD's Office of Housing also has provided guidance on the implementation of VAWA 2005. On September 30, 2008, it issued Notice H 08-07, which advised owners and management agents on VAWA provisions related to the administration of project-based Section 8 properties. That notice transmitted both the certification form for victims' use and a lease addendum for owners and management agents to use toward integrating VAWA's statutory provisions into the HUD model lease for project-based Section 8 properties. That notice, which was extended and reissued as Notice H 09-15 on October 1, 2009, can be found at <http://www.hud.gov/offices/adm/hudclips/notices/hsg/09hsgnotices.cfm>.

In addition to these direct notices, HUD issued a **Federal Register** notice that addressed the applicability of VAWA 2005 to all HUD programs. That notice, which was 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 determined to be self-implementing and their effect on HUD programs. That notice also advised that HUD would be amending its regulations to conform existing regulations to the VAWA requirements. The November 28, 2008, interim rule, found at 73 FR 72336,

presented those conforming amendments.

II. The November 28, 2008, Interim Rule

The November 28, 2008, interim rule (73 FR 72336) amended those regulations that HUD's covered programs that required changes to conform to the VAWA amendments made to the authorizing statutes for these programs.

The November 2008 interim rule also amended HUD's Consolidated Plan regulations at 24 CFR 91.205(b) and 91.305(b) to reflect the VAWA amendment made to section 105(b)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(1)). The amendments made by the November 2008 interim rule require jurisdictions' consolidated plans to include, as a planning data, estimated housing needs for victims of domestic violence, dating violence, sexual assault, and stalking.

The November 2008 interim rule also amended 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. VAWA 2005 amended section 5A of the U.S. Housing Act of 1937, which requires the submission of annual and 5-year plans by PHAs. VAWA amended section 5A to require PHAs to include, 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. VAWA also amended section 5A to require PHAs to include, in their annual plans, a statement about any domestic violence, dating violence, sexual assault, and stalking prevention programs they make available.

The November 2008 interim rule amended HUD's regulations in 24 CFR part 5. The regulations in 24 CFR part 5 contain the requirements applicable to one or more HUD programs (cross-cutting requirements). VAWA 2005 amended the U.S. Housing Act of 1937 (1937 Act), specifically, section 6 (applicable to public housing) and section 8 (applicable to voucher and project-based programs) (42 U.S.C. 1437d and 1437f, respectively), by making changes to admission, occupancy, and termination of assistance provisions of these statutory sections to incorporate the VAWA protections. The cross-cutting admission, occupancy, and termination/eviction requirements are codified in 24 CFR part 5. The November 2008 interim rule codified the VAWA protections in

a new subpart in 24 CFR part 5, which is subpart L.

The November 2008 interim rule provided, consistent with the VAWA 2005 amendments to the 1937 Act, that being a victim of domestic violence, dating violence, or stalking, as these terms are defined in VAWA 2005, 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. The statutory amendments 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. The VAWA 2005 amendments also set forth the rights and obligations of PHAs, owners, and management agents regarding criminal activity or acts of violence against family members or others. The regulations in new subpart L of part 5 contain the VAWA protections as applicable to admission, occupancy, termination, and eviction.

The November 2008 interim rule also conformed HUD's regulations to reflect the VAWA 2005 certification and confidentiality provisions. VAWA 2005 provides that owners, management agents, and PHAs may request an individual claiming VAWA protection to document, 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. VAWA 2005 provides that the individual's certification must include the name of the perpetrator. Forms HUD-50066, for use by PHAs, and HUD-91066, for use by owners and management agents, were developed for the purpose of this optional certification.¹ 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. Documentation from a third-party source may also satisfy the request of an individual claiming VAWA protections to document the abuse. With respect to the third-party source, the third-party may be 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.

¹ Forms HUD-50066 and HUD-91066 are available on HUD's Web site, respectively, at: <http://www.hud.gov/offices/adm/hudclips/forms/files/50066.doc>, and <http://www.hud.gov/offices/adm/hudclips/forms/files/91066.pdf>.

Pursuant to VAWA, other acceptable forms of documentation from a third-party source include a Federal, state, tribal, territorial, or local police or court record.

The November 2008 interim rule also amended 24 CFR 982.353(b) to reflect VAWA 2005's amendment to section 8(r) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(r)), which provides an exception to the prohibition against a family moving under the portability provisions in violation of the lease.² 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.

The November 2008 interim rule also amended 24 CFR 5.2007(a)(3), by incorporating the VAWA 2005 requirement imposed on PHAs to provide notice to public housing residents and tenants assisted under section 8 of their rights, including their rights to confidentiality, and notice to owners and management agents of their rights and obligations under VAWA 2005. In addition to the notice required by PHAs, the November 2008 interim rule also required owners and management agents administering an Office of Housing project-based Section 8 program to provide their tenants with the notification as per the VAWA 2005 requirement.

The November 2008 interim rule also added several new definitions to its new regulations in 24 CFR part 5, subpart L, to reflect terminology defined by VAWA 2005, including "domestic violence," "dating violence," "stalking," and "immediate family member."

The amendments made by the November 2008 interim rule are discussed in more detail in the November 28, 2008, **Federal Register** notice at 73 FR 72337 through 723339.

III. This Final Rule

As the preamble to the November 2008 interim rule explained and as

² Portability refers to the right of voucher-holding families to move outside the jurisdiction of a PHA that issues the voucher into the jurisdiction of another PHA that administers a tenant-based rental assistance program. Section 8(r) of the U.S. Housing Act of 1937 establishes the right to portability, and HUD's implementing amendments of this right are found at 24 CFR 982.353.

reiterated in the preamble to this final rule, HUD's initial rulemaking for VAWA 2005, as commenced in November 2008, and the notices that preceded the November 2008 interim rule, were issued to ensure that PHAs, owners, and management agents participating in HUD's covered programs were aware of the self-implementing provisions of VAWA 2005, and of the need to immediately implement the protections provided by VAWA 2005 in situations covered by VAWA 2005. That is, PHAs, owners, and management agents were not to delay their updating of policies pertaining to admission, occupancy or termination while waiting for HUD to issue regulations on those subjects. Because the regulations in HUD's November 2008 interim rule were conforming regulations, generally incorporating, almost verbatim, the VAWA 2005 statutory language, HUD anticipated no significant changes would be made at this final rule stage, and that is in fact the case. However, commenters did identify certain areas where the regulatory language would increase comprehensibility if HUD provided further explanation or elaboration; this rule does provide that. HUD also determined that the organization of the regulations in 24 CFR part 5, subpart L, would be enhanced by some reorganization, and this rule reflects that reorganization.

Therefore, with respect to reorganization, and in response to public comments, the following changes are made at this final rule stage:

A. Reorganization Changes

Section 5.2005, formerly entitled "Protection of victims of domestic violence, dating violence, and stalking in public and Section 8 housing," is now entitled "VAWA protections," and now addresses only VAWA 2005 protections. The provisions of § 5.2005 of the interim rule that addressed lease bifurcation and court orders are now in a new § 5.2009, entitled "Remedies available to victims of domestic violence, dating violence, or stalking in HUD-assisted housing." Section 5.2009 of the interim rule entitled "Effect on other laws" has been redesignated as § 5.2011.

B. Clarification Changes

In § 5.2003 (Definitions), HUD has added a definition of VAWA.

In § 5.2005 (VAWA protections), paragraph (a) that pertains to notice of VAWA protections is amended to include a new paragraph (a)(4), which provides that the HUD required lease, lease addendum, or tenancy addendum, as used in programs covered by this

rule, must include a description of specific protections afforded to the victims of domestic violence, dating violence, or stalking.

In § 5.2005, paragraph (d)(1) of this section, which addresses the limitation of VAWA protections, and the authority of PHAs, owners, and management agents, now includes reference to termination of assistance to clarify that Section 8 vouchers are covered by VAWA 2005 protections. The interim rule merely addressed eviction, termination of tenancy, and occupancy rights.

In § 5.2005, HUD clarifies in paragraph (d)(2) that the standard for eviction, termination of tenancy, or termination of assistance is both the actual *and* imminent threat of violence, not an actual *or* imminent threat of violence. (*Please see* also HUD's response to the first comment under Section IV.A.)

In § 5.2005, HUD adds a new paragraph (d)(3), which addresses the VAWA statutory language's emphasis that nothing in VAWA interferes with the right 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 and 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. New paragraph (d)(3) provides that any eviction or termination of assistance undertaken on this basis should be utilized only by a PHA, owner, or management agent when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence, developing other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

Further, in § 5.2005, HUD adds a new paragraph (e) to address the meaning of actual and imminent threat to better guide what constitutes an "actual and imminent threat" and how to determine when one exists.

In § 5.2007 (Documenting the occurrence of domestic violence, dating violence, or stalking), HUD has revised the title of this regulatory section to be more clear regarding the issue to which

this section is directed, which is simply that the victim is required to submit written evidence, if requested by a PHA, owner, or management agent, that verifies that the domestic violence, dating violence, or stalking occurred. This revision also clarifies that the claim presented to the PHA, owner, or management agent, as provided in this regulatory section, may be a claim for continued occupancy or initial tenancy or assistance. The interim rule merely referenced continued occupancy. Commenters pointed out that reference to continued occupancy would make the documentation request applicable only to terminations of public housing tenants. Inclusion of "initial tenancy" and "assistance" clarifies that terminations are also applicable to Section 8 participants, and to denying assistance to public housing and Section 8 applicants.

As will be seen by the discussion of public comments, there appeared to be confusion as to what was meant by certification; that is, whether certification referred to the use of a HUD-approved form or whether it referred to the process of verifying, in writing, the occurrence of domestic violence, dating violence, or stalking. What the statute contemplates, and what this regulation puts into place, is that upon request, the victim will provide evidence, which could be in the form of the victim's written statement on a HUD-approved certification form. The evidence could also consist of a police or court record, or the written statement of 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 in addressing the effects of abuse, in which the professional attests under the penalty of perjury to the professional's belief that the incident or incidents in question are bona fide incidents of abuse. In brief, a written document that verifies that the violence occurred could be requested by the PHA, owner, or management agent. Therefore, HUD will use "documentation" and "document" to refer to the process of providing written verification. HUD will apply the terms "certification" and "certify" to refer to the HUD-approved form and its use by the victim.

In addition, in § 5.2007, HUD includes the phrase "dating violence or stalking" along with "domestic violence." This section clarifies that if a PHA, owner, or management agent requests a tenant, alleging domestic violence, dating violence, or stalking, to document his or her claim of such

violence, the request must be made in writing. This section also clarifies that at its discretion, a PHA, owner, or management agent may provide benefits to an individual based solely on the individual's verbal statement or other corroborating evidence.

In § 5.2007(b)(4), HUD expands on the responsibility of the PHA, owner, and management agent to maintain the confidentiality of information provided by a victim of domestic violence, dating violence, or stalking.

Finally, in § 5.2007, a new paragraph (e) is added to clarify the way in which the PHA, owner, or management agent may determine the true victim of domestic violence in a situation of conflicting certifications.

In § 5.2009 (Remedies available to victims of domestic violence, dating violence, or stalking in HUD-assisted housing), HUD clarifies in paragraph (a), which pertains to lease bifurcation, that the programs covered by this provision are the public housing, Section 8 Housing Choice Voucher (HCV), and Section 8 project-based programs.

HUD has included an amendment to 24 CFR 966.4 (Lease requirements) to include the VAWA 2005 protections as a required provision of the public housing lease, and to require the PHA to consider lease bifurcation if appropriate in a domestic violence situation.

HUD has included amendments to 24 CFR 982.314 (move with continued tenant-based assistance) to clarify that PHA policies restricting timing and number of moves do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, or stalking, and the move is needed to protect the health or safety of the family or family member. New amendments to 24 CFR 982.314 also clarify that a PHA may not terminate assistance if the family, with or without prior notification to the PHA, already moved out of a unit in violation of the lease, if such move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was threatened with imminent harm if he or she remained in the dwelling unit. HUD has included an amendment to 24 CFR 982.315 (Family break-up) to address the same concerns as provided in the amendment to 24 CFR 982.314.

IV. Public Comments and HUD's Responses

The public comment period on the November 2008 interim rule closed on January 27, 2009, and HUD received 13

public comments. Commenters included legal aid organizations, domestic violence advocacy groups, housing advocacy groups, and public housing agencies.

Overall, commenters appeared pleased to see the VAWA 2005 protections codified in regulations, but some commenters said the November 2008 interim rule was more than a conforming rule, while others said HUD had failed to fully conform its regulations to certain VAWA 2005 statutory provisions. Other commenters stated that they understood that regulations were not the appropriate place for comprehensive guidance on the VAWA 2005 protections, but encouraged HUD to provide additional guidance on the VAWA 2005 protections and provide examples on the various situations in which the need for such protections may occur. The following presents key issues raised by the commenters and HUD's responses to these issues.

A. Scope and Definition Issues

Comment: Interim rule's language on "actual or imminent threat" departs from the statutory language. Several commenters stated that HUD's interpretation of "actual and imminent threat" departs from the statutory language in VAWA 2005. A commenter stated that the statutory language of VAWA 2005 refers to an actual and imminent threat, and HUD's interim rule, by contrast, refers to actual or imminent threat.

HUD Response: The interim rule deviated from the statutory language of VAWA 2005 by indicating that an owner, management agent, or public housing agency may evict or terminate from assistance any tenant or lawful occupant if the owner, management agent, or public housing agency can demonstrate an actual or 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. VAWA 2005 states that an owner, management agent, or public housing agency may evict or terminate from assistance any tenant or lawful occupant if the owner, management agent, 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. This deviation from the statutory language resulted from the use of two similar, but contextually distinct, phrases within the statute. Both the phrase "actual and imminent threat" and "actual or threatened domestic violence"

appear in VAWA 2005, and are used to refine proscribed protection and prohibited activity in different potential situations.

The phrase "actual or threatened domestic violence" appears in section 606 and section 607 of VAWA 2005 in the amendments made to section 8(c)(9)(B) and section 6(l)(5) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(c) and 42 U.S.C. 1437d(l)). The revision to section 6(1)(5) of the U.S. Housing Act states 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, and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of such victim.

In contrast, section 606 of VAWA 2005 (section 8(c)(9)(C) of the 1937 Act) and section 607 of VAWA 2005 (section 6(l)(6) of the 1937 Act) provide 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 is not cause for termination of assistance, tenancy, or occupancy rights if the tenant or a member of the tenant's immediate family is the victim of the corresponding violence. This protection, however, is limited by sections 8(c)(9)(C)(v) and 6(l)(6)(E), which provide that a tenant, or other lawful occupant, who is a victim of such domestic violence, dating violence, or stalking may be evicted or terminated from assistance if the owner, management agent, or public housing agency can demonstrate that such an action is required due to an actual and imminent threat posed to other tenants or to employees or service providers of the property that will result if that tenant or lawful occupant is not evicted or terminated from assistance. In this context, the phrase "actual and imminent threat," rather than "actual or imminent threat," narrows the use of this limitation by the owner, management agent, or public housing agency, thereby, providing greater protection for the victim. Accordingly, HUD has clarified this distinction in 24 CFR 5.2005(d)(2).

Comment: Definition of "imminent threat" requires revisions. Two commenters questioned the interim rule's definition of "imminent threat" on the basis that they found that it failed to include the imminence of the threat; that is, the likelihood that the threat would become reality. Other commenters recommended using the standard of "serious bodily harm" to

give meaning to “violent criminal activity,” which is the term used in VAWA 2005. Commenters stated that the term “bodily harm” was too vague and general.

HUD Response: Section 5.2005(e) of HUD’s interim rule provides that words, gestures, actions, or other indicators are 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.” HUD based its definition of “imminent threat” in the interim rule, in part, on the definition of “stalking” in VAWA 2005. VAWA 2005 defines “stalking” to include acts of pursuit or surveillance or repeatedly committed acts that “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, or the spouse or intimate partner of that person. The definition of “stalking” described the types of actions that were actual and imminently threatening in a domestic violence situation.

However, in response to public comments, HUD has reexamined the interim rule guidance on actual and imminent threat, and also reviewed case law, as suggested by commenters in the following comment. The case law recommended by the commenters was helpful in developing standards that would better guide what actions constitute actual and imminent threat. Section 5.2005 of this final rule includes a new paragraph (e) to help PHAs, owners, and management agents determine when actual and imminent threat exists. This new paragraph (e) is discussed more fully in HUD’s response to the following comment.

Comment: Clarify standards for determining actual and imminent threat. Commenters stated that HUD’s final rule needed to elaborate on the meaning of “actual and imminent” threat in order to be more helpful to housing providers in understanding when they may be confronting an actual and imminent threat situation. Two commenters suggested that the legislative history of, and similar exceptions in, the Fair Housing Act and the Americans with Disabilities Act should be used as standards to elaborate on the proper application of actual and imminent threat to specific circumstances encountered by PHAs, owners, or management agents under VAWA 2005. One commenter recommended that HUD’s final rule follow the Fair Housing Act and base any specific determination of an actual and imminent threat based on the

consideration of four factors: (1) The nature of the risk, (2) the duration of the risk, (3) the severity of the risk or potential harm to third parties, and (4) the probability of harm. The commenter claimed that the Fair Housing Act codifies the factors of *School Board of Nassau County, Florida v. Arline*, 480 U.S. 273, 107 S.Ct. 1123 (1987) in 42 U.S.C. 3604(f)(9). The commenter added that HUD’s final rule should describe the analysis of actual and imminent threat with more specificity so that PHAs, owners, or management agents know they must have objective evidence in order to find an exception to VAWA 2005. The commenter stated that otherwise an exception may be based on fear or conjecture rather than on an objectively proven imminent threat.

The commenter recommended that the factors be listed in HUD’s final rule, as is done in two similar regulations describing the direct threat exception for the Americans with Disabilities Act (ADA): The Department of Justice’s ADA regulations and the Department of Labor’s ADA regulations at 28 CFR 36.208 and 29 CFR 1630.2(r), respectively. The commenter stated that, as HUD’s interim rule reads, it fails to emphasize the need for objectivity, evidence, and the examination of particular circumstances needed to understand and implement this exception.

HUD Response: HUD understands that the need for elaboration on this important terminology—actual and imminent threat—as used in the statute, and appreciates the commenters’ suggestions on standards or factors to consider in determining whether there is a situation of actual and imminent threat. Although there appears to be an absence of case law interpreting “actual and imminent” threat, the commenters are correct that cases involving housing discrimination or violence in a direct threat situation are instructive on standards that should be considered. More importantly, the commenters are correct that any interpretation of these terms should emphasize the need for objective evidence that the actual and imminent threat of physical danger is real, not hypothetical or presumed; would occur within an immediate time frame, and thus not be remote or speculative; could result in death or serious bodily harm; and could not be reduced or eliminated by reasonable actions. Accordingly, HUD’s final rule provides, in a new paragraph (e) to § 5.2005, that an actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm.

Additionally, this paragraph provides that in determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. In addition to including this language in the regulatory text, HUD intends to issue further guidance that may be helpful in determining and dealing with actual and imminent threat.

Comment: Commenters stated that the rule omits reference to crimes of dating violence and stalking. According to commenters, HUD’s interim rule, in several places, addresses domestic violence, but fails to include the crimes of dating violence and stalking. The commenters recommended that the provisions be amended to more closely track VAWA 2005.

HUD Response: HUD’s interim rule (in § 5.2003, as well as in § 5.2005 (the title of § 5.2005, includes the phrase dating violence and stalking), and § 5.2009) already includes reference to the crimes of dating violence and stalking. The final rule includes dating violence or stalking in addition to domestic violence at section 5.2007(d) and section 5.2007(a). HUD has not identified any other key provision of the interim rule where such terminology was omitted.

Comment: Clarify criminal activity directly related to domestic violence, dating violence, or stalking. A commenter stated that the statute and interim rule contain detailed definitions of the terms “domestic violence,” “dating violence,” and “stalking,” but does not clarify the meaning of “directly related” in the context of protecting a victim from eviction due to such criminal activity. The commenter stated that Congress intended to limit the reach of the provision so that activities distantly related to domestic violence, dating violence, or stalking would not bring into play the statutory scheme.

HUD Response: As the commenter notes, the interim rule mirrors the statutory language, which provides that 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, or of occupancy rights of, or assistance to the victim, if the tenant or immediate family member of the tenant is the victim. HUD finds that in this context, the meaning of “directly related” is clear and does not require further elaboration.

Comment: VAWA 2005 should apply to men, Project Rental Assistance Contracts (PRACs), and Section 8 properties. One commenter stated that VAWA 2005 should protect men from domestic violence and not only women. The commenter added that VAWA 2005 should cover housing under PRACs, as well as other Section 8 properties.

HUD Response: VAWA 2005 does protect men. Although the name of the statute references only women, the substance of the statute makes it clear that its protections are not exclusively applicable to women. With respect to broader coverage of VAWA 2005, HUD notes that the scope of VAWA 2005 protections is limited to the 1937 Act.

Comment: Rule must address battered immigrants' eligibility. Commenters stated that HUD's interim rule omits housing eligibility for battered immigrant-qualified aliens. Battered immigrant-qualified aliens are statutorily eligible to receive public and assisted housing as part of the Illegal Immigration Reform and Immigration Responsibility Act of 1996. In 2003, according to the commenters, Congress directed HUD and the Department of Justice to interpret housing statutes consistently with immigration and public benefits statutes so that qualified alien-battered immigrants would be eligible for federally subsidized housing. (See H. Rep. No. 108-10 at 1495). According to the commenters, qualified alien-battered immigrants continue to be denied housing benefits they both need and are eligible to receive, and HUD should revise its VAWA rule, at the final rule stage, to make it clear that battered alien immigrants are eligible to receive housing benefits.

HUD Response: The November 2008 interim rule and this final rule are directed only to addressing the provisions of the Violence Against Women Act of 2005. This rule does not address the categories of legal immigrants eligible for housing under Section 214 of the Housing and Community Development Act of 1980. However, VAWA 2005 protects victims of domestic violence, dating violence, or stalking residing in HUD public and assisted housing covered by VAWA 2005, regardless of whether they are citizens or eligible immigrants.

B. Certification and Verification (Documentation of Abuse) Issues

Comment: Certification language in interim rule is at odds with the statutory language. One commenter stated that the certification section of the rule is confusing and must be revised to include correct VAWA 2005 statutory

language, which provides that a PHA, owner, or management agent may ask a victim of domestic violence, dating violence, or stalking to document this status in any one of the following forms: a HUD-approved certification form completed by the victim or documentation signed by an employee, agent, or volunteer of a victim service provider; an attorney; or a medical professional, or via a court or police record.

HUD Response: As discussed in Section III.B. of this preamble, HUD has revised § 5.2007 to eliminate any confusion about the "certification/or verification" of abuse. As noted in Section III.B. of this preamble, a PHA, owner, or management agent may request that a victim of domestic violence, dating violence, or stalking document or provide written evidence to demonstrate that the violence occurred. Accepted means of documentation include providing the PHA, owner, or management agent with a completed HUD-approved certification form, or other form of written verification of the abuse, signed by a third party. The PHA, owner or management agent also may accept the victim's verbal statement or other corroborating evidence as sufficient verification of the abuse. Therefore, as long as the victim provides a HUD-approved certification form, third-party documentation, a verbal statement, or other corroborating evidence, the victim is statutorily entitled to VAWA 2005 protections. A tenant's file should document acceptance of an individual's verbal statement.

Comment: Clarify permissibility of self-certification and third-party verification. Some commenters stated that the option to self-certify, despite the request from a PHA, owner, or management agent for certification on the HUD form or another form of certification, is at odds with VAWA 2005. Other commenters stated that the November 2008 interim rule is unclear as to when third-party verification can be required instead of self-certification. A commenter stated that third-party verification should be allowed because such verification provides a PHA, owner, or management agent with a comparatively higher level of protection from potential abuse of VAWA 2005, and would eliminate the need for an independent judgment call.

Other commenters stated that VAWA 2005 indicates that a PHA or owner does not have to require that a person seeking VAWA 2005 protections produce documentation of his or her status as a victim of domestic violence, dating violence, or stalking, and that

VAWA 2005 protections may be provided to individuals based solely on their own statements or other corroborating evidence. Another commenter stated that, if a PHA, owner, or management agent decides to obtain verification of an individual's status as a victim, the tenant may satisfy the requirement to document the abuse by providing documentation signed by an attorney or member of a victim service provider or contained in a police or court record.

HUD Response: With respect to self-certification, VAWA 2005 allows, but does not require, the victim to self-certify, in order to be afforded protection under VAWA 2005. Form HUD-50066, for use by PHAs, and form HUD-91066, 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.

With respect to the issue of third-party verification, HUD has determined that an individual requesting protection cannot be required to provide third-party documentation. If a documentation request is made to an individual seeking protection under VAWA 2005, the PHA, owner, or management agent must accept the standard HUD certification form as a complete request for relief, without insisting on additional documentation. Additionally, third-party documentation must be accepted in lieu of the HUD standard certification form if such documentation is produced by the individual requesting relief.

Comment: Clarify whether a HUD-approved certification is always needed. Certain commenters stated that the certification provision of HUD's interim rule should be revised to clarify that a HUD-approved certification form is not always required. According to one commenter, the interim rule improperly combines the HUD certification form with the option for the victim to submit a police or court record or qualified third-party documentation in lieu of the certification form. Other commenters stated that the regulatory text of the interim rule should follow the statutory language, which references a written request for certification by the PHA or owner.

HUD Response: HUD believes that the changes made to § 5.2007 eliminate confusion about what is required under the statute, as implemented by HUD's regulation. However, in response to the question raised by the commenters, a PHA, owner, or management agent may, but is not required to, request that the individual complete a HUD-approved

certification form documenting the abuse. The victim may satisfy a request to document the domestic violence, dating violence, or stalking by submitting the HUD-approved form. The victim may satisfy the PHA's, owner's, or management agent's request for documentation without providing the HUD-approved form, by submitting third-party documentation of the abuse or other corroborating evidence. The PHA, owner, or management agent must accept the HUD-approved form as a complete request for protection in the absence of third-party documentation. Third-party documentation may include, among other things, court or police records. In addition, the PHA, owner, or management agent may provide benefits based solely on the individual's verbal statement or other corroborating evidence.

With respect to a written request for certification, HUD acknowledges that this language could be clearer, and believes the changes made to § 5.2007 provide greater clarity. In order to deny relief for protection under VAWA, a PHA, owner, or management agent must provide the individual with a written request for documentation. If the individual fails to provide the requested documentation within 14 business days of receiving a written request for information, the relief may be denied. The 14-business day window for submission of documentation does not begin until the individual receives the written request. The PHA, owner, or management agent has discretionary authority to extend the statutory 14-business day period. While HUD's interim rule covered these time frames, the "request" by the PHA, owner, or management agent was not phrased specifically in terms of a "written request." However, the subject of request for documentation is now addressed in § 5.2007(a) of the final rule.

Comment: Content of certification requires clarification. A commenter stated that VAWA 2005 is ambiguous as to whether the content of certification should be left to the victim's discretion or to the discretion of the PHA, owner, or management agent. Commenters suggested that the housing providers be given the discretion to specify the content and types of information that should be provided in the certification.

HUD Response: As noted earlier, although VAWA 2005 speaks in terms of a victim's certification that the violence occurred, HUD's regulation is revised by this final rule to speak in terms of documentation of the violence. Nevertheless, to the commenters' question about the statute, the 1937 Act, at both 42 U.S.C. 1437d(u)(1)(A) and

1437f(ee)(1)(A), states that the PHA, owner, or management agent may request that an individual certify through 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 above-referenced statutory provisions. Under VAWA 2005, the only required content of the certification is that such certification shall include the name of the perpetrator. Certifications are typically very brief documents by which an individual who has provided certain information attests that such information is true. HUD finds that its treatment of certification in its regulations, which mirrors VAWA 2005's treatment, is the correct approach.

Comment: VAWA 2005 does not require victims to sign certifications under penalty of perjury. Commenters stated that the interim rule requires victims to sign certifications under penalty of perjury, which is not required by VAWA 2005 or HUD's published certification form, form-50066. One commenter stated that HUD has the discretionary authority to require victims to certify their status under penalty of perjury, and that HUD's form should provide for self-certification under penalty of perjury, so long as the form is amended to describe the penalties associated with perjury. Other commenters stated that HUD appears to have the discretion to offer a certification process through which program sponsors could also require third-party verification under penalty of perjury, victims' self-certification of their status under penalty of perjury, or "victims" providing of police reports. The commenters stated that these alternatives would help to prevent abuse of VAWA 2005 protections.

HUD Response: Given the possible consequences to both the victim and the alleged perpetrator of domestic violence, dating violence, or stalking, HUD's position is that it is important that any allegations made by one individual against another are made with the understanding that there are consequences if the allegations are false. In this regard, HUD's VAWA forms, HUD-50066 and HUD-91066, advise that the submission of false information may be a basis for termination of assistance or for eviction. HUD maintains that this language is a sufficient deterrence from false reporting and that the inclusion of the language "under penalty of perjury" is unnecessary.

Comment: Additional guidance is necessary to protect victims' confidentiality and safety in the documentation process. One commenter stated that PHAs and owners could benefit from guidance on how to maintain confidentiality when a victim seeks to port a voucher to a different jurisdiction. Other commenters stated that the rule should explicitly state that any release of information for the purpose of enforcing that person's rights under VAWA 2005 is limited in time and scope. One commenter stated that because of the sensitive nature of domestic violence, HUD must include safeguards to ensure that PHAs or landlords do not require any information beyond that required in a HUD-approved form.

HUD Response: The release of confidential information was addressed in § 5.2007(a)(1)(v) of the interim rule [§ 5.2007(b)(4) in the reorganized regulation of this final rule]. This section, which tracks the statutory language in VAWA 2005 (at section 8(ee)(2) of the Housing Act of 1937 (42 U.S.C. 1437f(ee)(2))), has been expanded in the final rule stage. This section now states that information provided by the victim of domestic violence, dating violence, or stalking shall be kept confidential and shall not be entered into any shared database or provided to any other entity except to the extent that disclosure is requested by the tenant, required for use in an eviction proceeding, or required by applicable law. Further, this section prohibits employees of the PHA, owner, or management agent, or individuals within their employ (e.g., contract workers) from having access to such information, unless they are specifically and explicitly authorized by the PHA, owner, or management agent to access this information because it is necessary to their work for the PHA, owner, or management agent. These employees or individuals in the employ of the PHA, owner, or management agent are equally bound to maintain the confidentiality of such information. Maintaining confidentiality is essential to protect victims from further harm. In addition to expanding the confidentiality requirements in § 5.2007(b)(4), HUD will provide additional guidance to PHAs, owners, and management agents on confidentiality protocols that each PHA, owner, and management agent should maintain and enforce.

Further, HUD notes that the situations mentioned by commenters are also covered by the Privacy Act (5 U.S.C. 552a). The Privacy Act controls the purposes for which information may be released, and those purposes are

supposed to be stated when the information is collected.

Comment: Guidance needed for processing VAWA 2005 certifications. Several commenters sought guidance on how to process a VAWA 2005 certification, including cases involving the submission of certifications from household members that are in conflict with one another. In some instances, where the perpetrator of domestic violence is a member of the household and faces eviction, the perpetrator may claim to be a victim of domestic violence and attempt to have the true victim evicted instead.

HUD Response: As noted earlier in this preamble, the process that is at issue is not the processing of certifications, but rather documenting violence that has occurred. As also discussed in this preamble, such documentation may be provided in several ways, including a certification, but also a third-party statement or a court or police record. Individuals seeking protection under VAWA 2005 must notify the PHA, owner, or management agent of their intent to request protection. The PHA, owner, or management agent may, but is not required to request, that the individual provide documentation of the abuse. The individual may satisfy the documentation requirement by submitting the HUD-approved certification form. The individual may also satisfy a request for documentation by submitting third-party documentation of the abuse or other corroborating evidence. Although the victim has discretion as to the means of documentation, the PHA, owner, or management agent may request some additional proof beyond a verbal statement. If the requesting individual is unable to produce documentation or other corroborating evidence and is unwilling to self-certify on the HUD-approved form, the individual may request, and the PHA, owner, or management agent must, in accordance with the procedures established in the applicable program regulations, provide an opportunity for an informal review or informal hearing prior to ultimate denial of protection.

Third-party documentation may include, among other things, court or police records. The PHA, owner, or management agent must accept the certification form as a complete request for protection, in the absence of third-party documentation. A PHA, owner, or management agent also must accept third-party documentation in lieu of the HUD standard certification form if such documentation is produced by the individual requesting relief.

The certification form and/or third-party documentation should be placed in the tenant's file, and the PHA, owner, or management agent should explain to the individual the remedies available. Additional information on processing the certification and/or third-party documentation will be described in HUD administrative guidance.

With respect to conflicting certification from two members of a household, HUD recognizes that PHAs, owners, and management agents may not be in a position to determine the victim from the perpetrator. Trained third parties (such as law enforcement or a victim service provider, attorney, or medical professional, as described in 42 U.S.C. 1437(f)(ee)(C)) are often better equipped to make accurate judgments. The statute also notes that the eviction protections do not limit the authority of a PHA, owner, or management agent, when notified, to honor court orders addressing rights of access to 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. Use of this third-party documentation would enable PHAs, owners, and management agents to make a more accurate decision. It would also discourage perpetrators from attempting to abuse the system and further harm their victims. A victim may well have already sought assistance in addressing the abuse and be able to produce documentation relatively quickly. Should any questions remain, a court or another adjudication process, such as a PHA grievance hearing, informal hearing or informal review, could be an appropriate venue to pursue fact-finding and make a determination.

To assist PHAs, owners, and management agents navigate such conflicts, HUD has added a new paragraph (e) to § 5.2007, to clarify the ways in which the PHA, owner, or management agent may determine the true victim of domestic violence in a situation of conflicting certifications. HUD will also issue additional guidance to assist PHAs, owners, or management agents when confronted with conflicting certifications.

C. Transfer Policies and Portability Issues

Comment: Transfer policies to protect victims. Commenters encouraged HUD to go beyond merely conforming HUD's regulations to the VAWA 2005 provisions, by promulgating regulations that mandate emergency transfers for victims of domestic violence in public housing and project-based Section 8

housing. The commenters stated that VAWA 2005 creates specific transfer rights for victims of domestic violence with HCVs, with one commenter encouraging HUD to exercise its rulemaking authority and create specific rights for victims in public housing and project-based Section 8 housing, in addition to the rights provided for voucher tenants. That commenter stated that while there is no direct guidance on the problems facing victims of domestic violence who need to flee their project-based Section 8 housing without jeopardizing their subsidies, there is general recognition of the problem by HUD, owners, and advocates. One commenter stated that HUD's VAWA 2005 regulations should encourage project-based Section 8 owners to allow transfers to other project-based Section 8 developments they own or to developments where they have cooperative agreements with other owners. Such a policy would not be a violation of waiting list regulations.

HUD Response: HUD's November 2008 interim rule was issued for the purpose of conforming HUD's regulations to the self-implementing provisions of VAWA 2005 and, as stated earlier in this preamble, for the purpose of ensuring there was no confusion on the part of PHAs, owners, and management agents that they should immediately commence compliance with VAWA 2005. With respect to the request to HUD to undertake rulemaking beyond this conforming rulemaking process, for the purpose of establishing specific rights to victims of domestic violence, dating violence, or stalking in HUD-subsidized housing, it is HUD's view that VAWA 2005 well establishes those rights. HUD believes that this view is consistent with the statutory language of VAWA 2005, which was made effective upon enactment, and which did not direct HUD to undertake rulemaking to implement the provisions applicable to HUD programs.

With respect to transfer policies, HUD will continue to encourage, rather than require, PHAs to include protections for victims of domestic violence, dating violence, or stalking, within existing transfer policies. While there are no transfer policies for project-based Section 8 properties, HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, already states that owners may adopt a preference for families that include victims of domestic violence. HUD will be revising the Handbook so that the language also includes victims of dating violence and stalking. HUD believes that the responsibilities of PHAs, multifamily

housing owners, and management agents are clear under VAWA 2005 to protect tenants who are victims of domestic violence, dating violence, or stalking and that PHAs, multifamily housing owners, and management agents also need the flexibility to confront the various domestic violence, dating violence, or stalking situations that may occur.

Comment: Address possible problems with moving and portability policies. Certain commenters expressed concern about moving and portability policies. According to one commenter, HUD's November 2008 interim rule allows a family to receive a voucher and to move out of a unit in violation of the lease if the family believes itself in immediate danger. However, the commenter stated that HUD has not provided guidance on how to handle such situations with HCV landlords. The commenter stated that clarification of such procedures is critical if HUD expects landlords to continue to participate in the HCV program.

A second commenter stated that all parties would benefit from more guidance on the portability issue. A third commenter stated that if the November 2008 interim rule is read in conjunction with PIH Notice 2008-43, it appears that a PHA can continue to deny a victim's request for portability if the PHA has established a policy that prohibits a move by the family during the initial lease term, or more than one move by the family during any one-year period. In order to address this problem, the commenter recommended that an exception be recognized in § 982.314(c) for voucher participants. The commenter stated that PHAs need guidance from HUD on how to handle VAWA 2005-related absence from the unit or the need to vacate the unit.

HUD Response: HUD agrees that denying a request for portability in such a situation would be contrary to the intent of VAWA 2005. Therefore, HUD has revised its regulation at § 982.314(b) to clarify that a PHA may not refuse to issue a voucher to an assisted family due to the family's failure to seek approval prior to moving to a new unit in violation of the original lease, if such move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was threatened with imminent harm if he or she remained in the dwelling unit. This move, however, does not relieve the family of any financial obligations on the original lease. Additionally, HUD has revised its regulation at § 982.314(c) to clarify that PHA policies restricting

the timing and number of moves do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, or stalking, and the move is needed to protect the health or safety of the family or family member.

Comment: Clarification needed for addressing family break-ups due to domestic violence. Three commenters asked HUD to clarify how PHAs should respond when violence leads to family break-up. The commenters suggested that HUD issue guidance stating that family break-up cannot result in an eviction or termination in violation of VAWA and that survivors of violence can be treated as the highest priority in determining continuation of housing assistance. Another commenter requested that HUD's final rule revise the regulatory text on the Section 8 voucher program's approach to family breakup. The commenter suggested that the approach for the Section 8 voucher program should be broadened, by a cross reference, to include all types of violence encompassed by VAWA, including survivors of domestic violence, dating violence, or stalking.

HUD Response: HUD is committed to developing and providing guidance on family break-up and lease bifurcation. The guidance will include information on how to add victims currently residing with an abuser to the lease or voucher. HUD agrees that its voucher regulations in 24 CFR part 982 should include domestic violence, dating violence, or stalking as defined by VAWA as an additional factor to consider in determining which members of an assisted family should continue receiving assistance if the family breaks up. This final rule has been revised at § 982.315 accordingly.

D. Lease Issues

Comment: Bifurcation of leases. One commenter stated that the interim rule's definition of "bifurcate" is not lifted directly from the statute. The commenter stated that while the regulatory definition goes beyond a merely conforming amendment, that doing so is in fact useful for implementation of VAWA 2005 protections. The commenter stated that the proposed definition makes it clear to housing providers and Section 8 owners that leases can be revised to permit domestic violence survivors to retain their housing assistance, while tenancy rights of their abusers can be extinguished.

Other commenters expressed concern about the efficacy of bifurcation of leases, because bifurcation is new and yet to be tested at the state level.

However, a commenter added that the interim rule implements the relevant statutory provision properly and without adding any additional constraints on lease enforcement. Other commenters requested guidance on bifurcation that is specifically addressed to the voucher program. A commenter asked whether two vouchers will be issued when a lease is bifurcated and other families need the voucher.

One commenter stated that because Federal preemption is implicit in the VAWA 2005 provisions on lease bifurcation, HUD's final rule should articulate a Federal preemption to the extent necessary to carry out VAWA 2005. Because bifurcation of leases is a new concept, the commenter recommended that the subject be described in more detail in nonregulatory guidance, to inform state courts in eviction proceedings when bifurcation is requested. The commenter suggested that the rule include conforming amendments reflecting the bifurcation concept, in 24 CFR part 966, which covers public housing leases and grievance, as well as 24 CFR part 982, governing the voucher program and other regulations where appropriate.

HUD Response: HUD appreciates the concerns raised about lease bifurcation and preemption. With respect to articulation of a justification of Federal preemption doctrine, the preamble to the interim rule specifically cites the VAWA 2005 statutory language on this issue, and states that VAWA 2005 does not preempt an entire field of state law and shall not be construed to supersede any provisions of Federal, State, or local laws that provide greater protection for victims of abuse (section 8(c)(9)(C)(vi) of the Housing Act of 1937). In the "Findings and Certifications" section of the interim rule, there is a discussion of Executive Order 13132, "Federalism," which states that the November 2008 interim rule, in so far as it incorporates the statutory language that provides for bifurcation of leases to protect victims of domestic violence, has only minor effects on the states and does not meet the definition of rules with "federalism implications." Any preemptive effect of the bifurcation provision is limited to Section 8 and public housing. Moreover, the possible effect of the provision is limited to only those eviction actions where the tenant to be evicted has a valid claim of protection as a victim of domestic violence, dating violence, or stalking or where lease bifurcation is sought because of domestic violence, dating violence, or stalking. HUD's November 2008 interim rule makes solely minor adjustments to any existing laws that do not offer greater protection

to victims of domestic violence, dating violence, or stalking and does not preempt an entire field of state law as is the case in circumstances in which preemption occurs. For those reasons, HUD does not believe this rule has a preemptive effect, as defined by the Executive Order on Federalism.

With respect to issuing nonregulatory guidance on bifurcation of leases in state courts, the PHA, owner, or management agent bears the responsibility to advise the court on the PHA's, owner's, or management agent's obligations as a housing provider under VAWA 2005 and HUD regulations. HUD accepts the commenter's suggestion about cross-referencing 24 CFR parts 966 and 982 to part 5. HUD agrees that lease bifurcation should work the same way in HUD's public housing and voucher programs.

With respect to the issue of whether two vouchers will be issued when a lease is bifurcated, one voucher will be issued to the victim. The perpetrator will be removed from the original voucher and will not receive a new voucher.

Comment: VAWA protection provisions are needed in public housing leases. Commenters stated that VAWA 2005 requires that public housing leases include VAWA protections regarding evictions. The commenters stated that HUD's final rule needs to take account of this requirement. One commenter added that confidentiality language should be added to public housing leases. Commenters suggested that 24 CFR 966.4 of HUD's regulations, which pertains to lease requirements, incorporates the public housing lease requirements of VAWA 2005.

HUD Response: HUD currently requires that lease provisions be construed to contain these protections. The absence of reference, in regulation or in leases, to the VAWA 2005 protections does not render these protections inapplicable. However, since this rulemaking is a conforming rulemaking, HUD has conformed the regulations in 24 CFR part 5 and 24 CFR part 966 that govern lease and tenancy addendum provisions to reference the VAWA 2005 protections.

Comment: Incorporate VAWA protections in grievance procedures. According to commenters, HUD's final rule should incorporate amendments to 24 CFR 966.51 that allow PHAs to exclude a termination action from its administrative grievance procedure if violent criminal activity arising from an incident of domestic violence, dating violence, or stalking can be excluded from the grievance process. The commenter added that the final rule

should ensure that PHAs properly handle terminations involving VAWA 2005 through a PHA's grievance procedure, including proper cross-references.

HUD Response: The grievance procedures in 24 CFR 966.54 and 966.55 address the grievance process. These regulations do not list or prescribe all items or actions that can be grieved under the lease. The absence of a prescriptive list is to provide the tenants with leeway as to what they choose to grieve. Victims of domestic violence, dating violence, or stalking have the same access that other public housing tenants have to the grievance process. Accordingly, it is not necessary to incorporate the VAWA 2005 protections in these regulatory sections.

Comment: VAWA protections need to be applicable to admissions and voucher terminations. Commenters stated that the portion of HUD's interim rule that prohibits, consistent with VAWA, a PHA, owner, or management agent from applying a "more demanding standard" to evict or terminate tenancy of a victim of domestic violence, than that to which other tenants are subjected, should be revised to cover Section 8 voucher terminations. Other commenters stated HUD's rule addresses VAWA protections regarding termination of tenancy and evictions but omits VAWA protections regarding admissions and voucher terminations. The commenters urged that 24 CFR 5.2005(b) be revised to include VAWA protections regarding admissions and voucher terminations. Commenters also urged HUD to amend 24 CFR 5.2005(c), because it fails to reflect that vouchers can be bifurcated.

HUD Response: HUD has considered the comments and agrees to revise 24 CFR 5.2005(b) [§ 5.2005(d) in the reorganized regulation of this final rule] to clarify the prohibition regarding the use of a "more demanding standard" with respect to Section 8 voucher terminations. To that end, § 5.2005(d) has been revised to include the phrase "terminate assistance" after the phrase "evict a tenant," in order to clarify coverage of tenants with Section 8 vouchers. HUD has also revised 24 CFR 5.2005(c) [§ 5.2009(a) in the reorganized regulation of this final rule], pertaining to lease bifurcation, to clarify that the range of HUD programs covered by the VAWA 2005 protections are the public housing, Section 8 HCV, and Section 8 project-based programs.

Comment: Permit termination of a household member who commits criminal acts of violence, while continuing Section 8 assistance to the victim. One commenter stated that

HUD's rule does not include the language of VAWA 2005 that allows for termination of a household member who commits criminal acts of violence, while the victim of the violence continues to receive Section 8 assistance. According to the commenter, the preamble to HUD's interim rule was clear on the issue, but the regulatory text is not clear. Another commenter stated that HUD's rule omits VAWA 2005 provisions regarding termination of voucher assistance for household members who commit criminal acts of violence.

HUD Response: HUD believes its rule satisfactorily addresses the issues raised by the commenters pertaining to VAWA protection in the case of family break-up due to violence. Specifically, in § 982.553, the rule dictates that the victim protections under 24 CFR part 5, subpart L apply to cases of criminal activity related to domestic violence, dating violence, or stalking. In the reorganized regulation, 24 CFR 5.2005(c)(2) provides that victims of domestic violence, dating violence, or stalking shall not be terminated from assistance due to criminal activity directly related to domestic violence, dating violence, or stalking engaged in by a member of the victim's household, guest, or other person under the victim's control. Section 982.315 has also been amended to explicitly reflect the protections available under VAWA pertaining to retention of assistance by the victim in cases of family break-up resulting from domestic violence, dating violence, or stalking. In such a family break-up, the victim protected under VAWA must retain voucher assistance.

Comment: Denial of assistance for criminal activity. According to a commenter, HUD's final rule must include the amendment to 24 CFR 982.553 that addresses denial of assistance for criminal activity. According to the commenter, applicants who have survived domestic violence, dating violence, or stalking should not be denied assistance in cases of criminal history where that history is related to self-defense or coercion or mutual arrests that are common in domestic violence situations.

HUD Response: HUD agrees that victims of domestic violence, dating violence, or stalking must not be denied assistance or terminated from programs based solely on a criminal history related to domestic violence, dating violence, or stalking, and believes its regulation is clear on this issue. HUD's interim rule provides in paragraph (e) of § 982.553, which pertains to denial of admission and termination of assistance for criminals and alcohol abusers, that

the protections for victims covered by the regulations in 24 CFR part 5, subpart L apply in cases of criminal activity related to domestic violence, dating violence, or stalking.

Comment: Guidance is needed on termination of assistance in HCV program. One commenter stated that PHAs should have the authority to terminate assistance to abusers, while protecting victims. The commenter urged HUD to provide more guidance on how to administer such terminations. The commenter raised several questions seeking HUD's input through guidance, including whether HUD will expect PHAs to complete a household recertification if the family loses one of its members; procedures a PHA should follow if, as a result of termination, a family becomes over-housed; and whether a PHA may wait until the next recertification to determine a new standard payment amount if the family loses one of its members due to a termination under VAWA 2005. The commenter encouraged HUD to issue guidance on how to handle the loss of a family member under the VAWA 2005 provisions.

HUD Response: HUD is developing guidance on this and other issues. Until such guidance is issued, PHAs should continue to follow existing regulations and the written PHA policies in place for managing moves, terminations, and changes in family size due to implementation of VAWA 2005.

E. Enforcement and Oversight

Comment: Guidelines needed for VAWA enforcement and oversight. Two commenters offered guidelines for the enforcement of VAWA 2005 protections, including delegations of authority to HUD's Office of Fair Housing and Equal Opportunity (FHEO) to receive and investigate complaints, and the holding of informal hearings. Another commenter stated that explicit guidelines for enforcement of VAWA 2005 provisions should be established.

HUD Response: HUD appreciates the interest in ensuring the effective enforcement of VAWA 2005, but HUD has the requisite authority to enforce the VAWA 2005 protections.

Comment: Guidelines needed for the content of notices pertaining to VAWA rights and obligations. Commenters stated that HUD's interim rule, like VAWA 2005, requires that housing providers give notice to tenants of rights under VAWA 2005, but that HUD's rule fails to instruct PHAs, owners, or management agents on compliance with the notice requirement. The commenters stated that victims of domestic violence cannot ask for protections they do not

know about. The commenters stated that HUD's final rule must not only require notice, but must explain how to give notice. Commenters asked HUD, in elaborating on this statutory requirement, to clarify the frequency of notifications and specify how often residents and landlords be notified of their rights and obligations. One commenter stated that any guidance HUD provides on this issue should include guidelines for making notices accessible to tenants with disabilities and to those with limited English proficiency. Another commenter added that consistency is important and that HUD should provide a standard notification to be sent to all parties rather than ask PHAs, owners, or management agents to interpret the requirements. In contrast to these comments, one commenter stated that HUD's restraint in elaborating on this statutory requirement is appropriate because PHAs and other housing providers have procedures in place to notify applicants and residents of regulatory changes.

HUD Response: HUD agrees with the commenters that consistency is important on this issue. While HUD does not want to limit any flexibility that housing providers have with respect to this issue, HUD believes this is an area in which further guidance from HUD, outlining the core content of the notice, among other things, would be helpful to housing providers and ensure their compliance with this notification requirement. Providers must also ensure that various notices and other communications comply with the applicable requirements of 24 CFR 8.6 with regard to persons with disabilities, and provide meaningful access to persons with limited English Proficiency; see Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency (LEP)" and HUD's *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (72 FR 2732).

HUD notes that PIH Notice 2006-42 suggested that PHAs 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, or

request another means to receive the form if needed as a reasonable accommodation for a person with a disability, if the tenant believes the VAWA protections apply.

In addition, Notice H 08-07, which has been extended by Notice H 09-15, suggests that owners and management agents of project-based Section 8 properties integrate VAWA policies and protections into their Tenant Selection Plans and/or House Rules. This notice also encourages owners and management agents to establish policies that support or assist affected families and prevent the loss of HUD-assisted housing as a consequence of domestic violence, dating violence, or stalking. This notice suggests that owners and management agents make the certification form available to all eligible families at the time of admission, and/or they may enclose the certification in the appropriate notice to the family in the event of a termination or start of an eviction. Finally, this notice requires owners and management agents to attach the HUD-approved Lease Addendum, form HUD-91067, which includes the VAWA provisions, to each existing or new lease.

Comment: Compliance with VAWA should be included in the annual, 5-year, and consolidated plan. One commenter asked if PHAs are required to offer the activities, services, or programs described in the new annual plan requirements for PHAs. Another commenter asked if PHAs have any affirmative obligations to victims of domestic violence under VAWA 2005. One commenter stated support for how HUD's rule appears to bring the PHA annual and 5-year plan requirements into conformance with VAWA 2005, while not imposing any additional requirements. Two commenters stated that the provision for inclusion of VAWA 2005 implementation and all related activities in the annual, 5-year, and consolidated plans should be explicit.

HUD Response: HUD is currently reviewing PHA planning requirements and will take these issues into consideration in the context of that review.

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). A determination was made that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the

Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276 Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulation Division at 202-402-3055 (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 800-877-8339.

Paperwork Reduction Act

The information collection requirements contained in 24 CFR part 5, subpart L that are applicable to PHAs 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 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 final rule, which reaffirms and makes minor changes to the November 28, 2008, interim rule, applies to PHAs, owners, and management agents. This VAWA rulemaking has been limited to amending HUD's regulations, by incorporating statutory requirements that are already applicable to PHAs, owners, and management agents, due to their being self-implementing statutory provisions. Accordingly, this rule will not have a significant economic effect on a substantial number of small entities.

Environmental Impact

This 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 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 final rule, which reaffirms the November 28, 2008, interim rule and makes only minor changes to the interim rule, incorporates the statutory language that provides for bifurcation of leases to protect victims of domestic violence, dating violence, or stalking, notwithstanding state law. In addition, the final rule, consistent with statute, provides that incidents of, or criminal acts connected to domestic violence, dating violence, or stalking cannot be the basis for termination of assistance or tenancy.

As stated in the interim rule, HUD finds that this statutory provision has only minor effects on the states and, therefore, this rule, by incorporating this provision in HUD's regulations, 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 represent 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, dating violence, or stalking, or where lease bifurcation is

sought because of domestic violence, dating violence, or stalking. 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, dating violence, or stalking. 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 966

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

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, 880, 882, 883, 884, 886, 891, 903, 960, 966, 982, and 983, as follows.

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

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

■ 2. Revise subpart L to read as follows:

Subpart L—Protection for Victims of Domestic Violence, Dating Violence, or Stalking in Public and Section 8 Housing

Sec.

5.2001 Applicability.

5.2003 Definitions.

5.2005 VAWA protections.

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

5.2009 Remedies available to victims of domestic violence, dating violence, or stalking in HUD-assisted housing.

5.20011 Effect on other laws.

Subpart L—Protection for Victims of Domestic Violence, Dating Violence, or Stalking in Public and Section 8 Housing

§ 5.2001 Applicability.

This subpart addresses the protections for victims of domestic violence, dating violence, or stalking 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 of the Section 8 project-based program 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 a 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:

(1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

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

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse 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:

(1) A spouse, parent, brother, or sister, or child of that person, or an individual to whom that person stands in loco parentis; or

(2) Any other person living in the household of that person and related to that person by blood or marriage.

Stalking means:

(1)(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

(2) 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.

VAWA means the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162, approved August 28, 2006), as amended by the U.S. Housing Act of 1937 (42 U.S.C. 1437d and 42 U.S. 1437f).

§ 5.2005 VAWA protections.

(a) *Notice of VAWA protections.* (1) PHAs must provide notice to public housing and Section 8 tenants of their rights under VAWA and this subpart,

including the right to confidentiality and the exceptions; and

(2) PHAs must provide notice to owners and management agents of assisted housing, of their rights and obligations under VAWA and this subpart; and

(3) Owners and management agents of assisted housing administering an Office of Housing project-based Section 8 program must provide notice to Section 8 tenants of their rights and obligations under VAWA and this subpart.

(4) The HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, or stalking, as provided in this subpart.

(b) *Applicants.* 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.

(c) *Tenants*—(1) *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 of, occupancy rights of, or assistance to the victim.

(2) *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 of, occupancy rights of, or assistance to the victim, if the tenant or immediate family member of the tenant is the victim.

(d) *Limitations of VAWA protections.*

(1) Nothing in this section limits the authority of the PHA, owner, or management agent to evict a tenant or terminate assistance for a lease violation unrelated to domestic violence, dating violence, or stalking, 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 to terminate assistance or occupancy rights;

(2) Nothing in 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 and 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 "actual imminent threat" if they meet the standards provided in paragraph (e) of this section.

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

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

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

(a) *Request for documentation.* A PHA, owner, or management agent presented with a claim for continued or initial tenancy or assistance based on status as a victim of domestic violence, dating violence, stalking, or criminal activity related to domestic violence, dating violence, or stalking may request that the individual making the claim document the abuse. The request for documentation must be in writing. The PHA, owner, or management agent may require submission of documentation within 14 business days after the date that the individual received the request for documentation. However, the PHA, owner, or management agent may extend this time period at its discretion.

(b) *Forms of documentation.* The documentation required under this section:

(1) May consist of a HUD-approved certification form indicating 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. Such certification must include the name of the perpetrator, and may be based solely on the personal signed attestation of the victim; or

(2) May consist of a Federal, State, tribal, territorial, or local police report or court record; or

(3) May consist of 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 domestic violence, dating violence, or stalking, or 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

(4) Shall be kept confidential by the PHA, owner, or management agent. The PHA, owner, or management agent shall not:

(i) Enter the information contained in the documentation into any shared database;

(ii) Allow employees of the PHA, owner, or management agent, or those within their employ (e.g., contractors) to have access to such information unless explicitly authorized by the PHA, owner, or management agent for reasons that specifically call for these employees or those within their employ to have access to this information; and

(iii) Disclose this information to any other entity or individual, except to the extent that disclosure is:

(A) Requested or consented to by the individual making the documentation, in writing;

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

(C) Otherwise required by applicable law.

(c) *Failure to provide documentation.* In order to deny relief for protection under VAWA, a PHA, owner, or management agent must provide the individual with a written request for documentation of the abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt of the PHA's, owner's, or management agent's written request, or such longer time as the PHA, owner, or management agent at their discretion may allow, VAWA

protections do not limit the authority of the PHA, owner, or management agent to evict or terminate assistance of the tenant or a family member for violations of the lease or family obligations that otherwise would constitute good cause to evict or grounds for termination. The 14-business day window for submission of documentation does not begin until the individual receives the written request. The PHA, owner, or management agency has discretionary authority to extend the statutory 14-day period.

(d) *Discretion to provide relief.* At its discretion, a PHA, owner, or management agent may provide benefits to an individual based solely on the individual's verbal statement or other corroborating evidence. A PHA's, owner's, or management agent's compliance with this section, whether based solely on the individual's verbal statements or 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. Nothing in this subparagraph shall be construed to limit liability for failure to comply with the requirements of 24 CFR part 5.

(e) *Response to conflicting certification.* In cases where the PHA, owner, or management agent receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, a PHA, owner, or management agent may determine which is the true victim by requiring third-party documentation as described in this section and in accordance with any HUD guidance as to how such determinations will be made. A PHA, owner, or management agent shall honor any court orders addressing rights of access 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.

§ 5.2009 Remedies available to victims of domestic violence, dating violence, or stalking in HUD-assisted housing.

(a) *Lease bifurcation.* Notwithstanding 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 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 housing, Section 8 Housing Choice Voucher, and Section 8 project-based programs.

(b) *Court orders.* Nothing in this subpart 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.

§ 5.2011 Effect on other laws.

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

■ 4. 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 lists, for persons with HIV/AIDS and their families, for victims of domestic violence, dating violence, sexual assault, and stalking, and for persons with disabilities. * * *

* * * * *

■ 5. 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

■ 6. 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.

■ 7. Amend § 880.504 to revise 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.

■ 8. Amend § 880.607 to revise 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

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

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

■ 10. 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, or stalking in 24 CFR part 5, subpart L.

- 11. Amend § 882.511 to revise 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.

- 12. Amend § 882.514 by removing the third sentence of paragraph (c) and adding two sentences in its place 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. However, the Owner must not deny program assistance or admission to an applicant based on the fact that the applicant is or has been a victim of domestic violence, dating violence, or stalking, if the applicant otherwise qualifies for assistance or admission.

* * * * *

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

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

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

- 14. 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 PROJECTS

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

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

- 16. Amend § 884.216 to revise 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.

- 17. Amend § 884.223 to revise 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

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

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

- 19. Revise § 886.128 to read as follows:

§ 886.128 Termination of tenancy.

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

- 20. 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.

- 21. Revise § 886.328 to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR part 247 and 24 CFR part 5 shall apply. For cases involving, or allegedly involving, domestic violence, dating violence, stalking, or criminal activity directly relating to such violence, 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.

- 22. Amend § 886.329 to revise 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

- 23. 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.

■ 24. Amend § 891.575 to revise 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.

■ 25. 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, which governs selection of tenants and occupancy requirements. For cases involving, or allegedly involving, domestic violence, dating violence, stalking, or criminal activity directly relating to such violence, the provisions of 24 CFR part 5, subpart L, apply.
* * * * *

■ 26. Amend § 891.630 to revise 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

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

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

■ 28. Amend § 903.6 to revise 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.
* * * * *

■ 29. Amend § 903.7 to revise 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 by a PHA 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 by a PHA to prevent domestic violence, dating violence, sexual assault, or stalking, or to enhance victim safety in assisted families.
* * * * *

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

■ 30. 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).

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

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

(d) *Protection for victims of domestic violence, dating violence, or 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, or stalking.

■ 32. Amend § 960.200 to revise paragraph (b)(8) to read as follows:

§ 960.200 Purpose.
* * * * *

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

■ 33. Amend § 960.203 to revise paragraph (c)(4) to read as follows:

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

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

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

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

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

■ 35. In § 966.4, revise paragraph (a)(1) and paragraph (e) to read as follows:

§ 966.4 Lease requirements.
* * * * *

(a) *Parties, dwelling unit and term.* (1) The lease shall state:
(i) The names of the PHA and the tenant;
(ii) The unit rented (address, apartment number, and any other information needed to identify the dwelling unit);
(iii) The term of the lease (lease term and renewal in accordance with paragraph (a)(2) of this section);
(iv) A statement of what utilities, services, and equipment are to be supplied by the PHA without additional cost, and what utilities and appliances are to be paid for by the tenant;
(v) The composition of the household as approved by the PHA (family members and any PHA-approved live-in aide). The family must promptly inform the PHA of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit;
(vi) HUD's regulations in 24 CFR part 5, subpart L, apply, if a current or future tenant is or becomes a victim of domestic violence, dating violence, or stalking, as provided in 24 CFR part 5, subpart L. * * *
(e) *The PHA's obligations.* The lease shall set forth the PHA's obligations under the lease, which shall include the following:

(1) To maintain the dwelling unit and the project in decent, safe, and sanitary condition;

(2) To comply with requirements of applicable building codes, housing codes, and HUD regulations materially affecting health and safety;

(3) To make necessary repairs to the dwelling unit;

(4) To keep project buildings, facilities, and common areas, not otherwise assigned to the tenant for maintenance and upkeep, in a clean and safe condition;

(5) To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by the PHA;

(6) To provide and maintain appropriate receptacles and facilities (except containers for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish, and other waste removed from the dwelling unit by the tenant in accordance with paragraph (f)(7) of this section;

(7) To supply running water and reasonable amounts of hot water and reasonable amounts of heat at appropriate times of the year (according to local custom and usage), except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection; and

(8)(i) To notify the tenant of the specific grounds for any proposed adverse action by the PHA. (Such adverse action includes, but is not limited to, a proposed lease termination, transfer of the tenant to another unit, or imposition of charges for maintenance and repair, or for excess consumption of utilities.)

(ii) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning a proposed adverse action:

(A) The notice of proposed adverse action shall inform the tenant of the right to request such hearing. In the case of a lease termination, a notice of lease termination, in accordance with paragraph (l)(3) of this section, shall constitute adequate notice of proposed adverse action.

(B) In the case of a proposed adverse action other than a proposed lease termination, the PHA shall not take the proposed action until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely

requested by the tenant) the grievance process has been completed.

(9) To consider lease bifurcation, as provided in 24 CFR 5.2009, in circumstances involving domestic violence, dating violence, or stalking addressed in 24 CFR part 5, subpart L.

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

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

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

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

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

(e) *Protection for victims of domestic violence, dating violence, or 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, or stalking.

■ 38. 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.

■ 39. 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, or stalking, and with PHA policies stated in the PHA administrative plan and the PHA plan. The PHA admission policy must state the system of admission preferences that the PHA uses to select

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

■ 40. Amend § 982.307 to revise paragraph (b)(4) to read as follows:

§ 982.307 Tenant screening.

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

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

§ 982.310 Owner termination of tenancy.

(4) *Nondiscrimination limitation and protection for victims of domestic violence, dating violence, or stalking.* 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, or stalking in 24 CFR part 5, subpart L.

■ 42. In § 982.314, revise paragraphs (b) and (c)(2) to read as follows:

§ 982.314 Move with continued tenant-based assistance.

(b) *When family may move.* A family may move to a new unit if:

(1) The assisted lease for the old unit has terminated. This includes a termination because:

- (i) The PHA has terminated the HAP contract for the owner’s breach; or
- (ii) The lease has terminated by mutual agreement of the owner and the tenant.

(2) The owner has given the tenant a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the tenant.

(3) The tenant has given notice of lease termination (if the tenant has a right to terminate the lease on notice to the owner, for owner breach, or otherwise).

(4) The family or a member of the family is or has been the victim of domestic violence, dating violence, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, already moved out of a unit in violation of the lease, if such move occurred to protect the health or safety of a family

member 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.

(c) * * *

(2) The PHA may establish:

(i) Policies that prohibit any move by the family during the initial lease term; and

(ii) Policies that prohibit more than one move by the family during any one-year period.

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

* * * * *

■ 43. In § 982.315, redesignate paragraph (a) as paragraph (a)(1) and add a new paragraph (a)(2), and revise paragraph (b) to read as follows:

§ 982.315 Family break-up.

* * * * *

(a) * * *

(2) If the family break-up results from an occurrence of domestic violence, dating violence, or stalking as provided in 24 CFR part 5, subpart L, the PHA must ensure that the victim retains assistance.

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

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

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

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

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

(5) Other factors specified by the PHA.

* * * * *

■ 44. 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.

* * * * *

■ 45. Amend § 982.452(b)(1) to revise the second sentence to read as follows:

§ 982.452 Owner responsibilities.

* * * * *

(b) * * *

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

* * * * *

■ 46. 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(c)(1), 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(c)(2), 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.

* * * * *

■ 47. 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, dating violence, or stalking.* 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, or stalking.

* * * * *

■ 48. Amend § 982.553 to revise paragraph (e), to read as follows:

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

* * * * *

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

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

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

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

■ 50. 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, or stalking. See 24 CFR part 5, subpart L.

* * * * *

■ 51. Amend § 983.251 to revise paragraph (a)(3) to read as follows:

§ 983.251 How participants are selected.

(a) * * *

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

* * * * *

■ 52. Amend § 983.255 to revise paragraph (d) to read as follows:

§ 983.255 Tenant screening.

* * * * *

(d) The protections for victims of domestic violence, dating violence, or

stalking in 24 CFR part 5, subpart L, apply to tenant screening.

■ 53. Amend § 983.257 to revise the last sentence of paragraph (a) to read as follows:

§ 983.257 Owner termination of tenancy and eviction.

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

* * * * *

Dated: October 20, 2010.

Shaun Donovan,
Secretary.

[FR Doc. 2010-26914 Filed 10-26-10; 8:45 am]

BILLING CODE 4210-67-P

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. (11/30/2010)

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.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART E
-----X

Metro North Owners LLC,

L&T 79149/08

Petitioner-Landlord

Answer

against-

Sonya Thorpe,

Respondent-Tenant
-----X

SIR OR MADAM:

PLEASE TAKE NOTICE that respondent hereby appears in this proceeding; that the undersigned has been retained as attorney for respondent; and that we demand that you serve all papers upon us at the address stated below.

PLEASE TAKE FURTHER NOTICE that the respondent hereby interposes the following answer to the petition herein:

1. Respondent denies the allegations in paragraph 2, 4,5, 8 and 9 of the petition.
2. Respondent lacks information sufficient to form a belief about the allegations in paragraph 1, 3,6 7, of the petition.

3. Respondent hereby denies the first allegation in the notice of termination.

Respondent did not stab anyone on the date in question, was not charged with a crime on the date in question and was in fact a victim of a crime on that date.

4. Respondent hereby denies the fourth allegation in the notice of termination.

AS AND FOR A FIRST OBJECTION IN POINT OF LAW

5. Ms. Thorpe is a recipient of a section 8 voucher administered by the Department of Housing Preservation and Development (hereafter HPD). HPD pays a portion of Ms. Thorpe' monthly rent and these payments are sent directly to petitioner.

6. Ms. Thorpe is a recipient of public assistance. Each month public assistance pays a shelter allowance directly to petitioner as Ms. Thorpe's portion of the rent.

7. Upon information and belief petitioner has received and accepted rent payments from both HPD and Public Assistance for Ms. Thorpe after petitioner allegedly terminated Ms. Thorpe's tenancy.

8. As a result of this acceptance of rent petitioner has reinstated the tenancy and vitiated the notice of termination.

AND AS FOR A SECOND OBJECTION IN POINT OF LAW

9. Respondent hereby repeats and realleges paragraph 4 above.

10. The grounds contained in the notice of termination are not an acceptable grounds for termination of a section 8 tenancy according to CFR 982.310.

AND AS FOR A FIRST AFFIRMATIVE DEFENSE:

11. Ms. Thorpe is the recipient of a section 8 voucher administered by the Department of Housing Preservation and Development.

12. On November 21, 2006 the police were called to Ms. Thorpe's apartment when she was physically assaulted by John Capers when he did strike her with a closed fist. A police report was filed.

13. On January 10, 2007 Ms. Thorpe again called the police when she was attacked in her apartment building by John Capers. A police report was filed.

14. On February 28, 2007 Ms. Thorpe again called the police when she was assaulted by John Capers and a police report was filed.

15. On March 15, 2007 Ms. Thorpe obtained an order of protection against John Capers due to his repeated physical assaults. The order indicates Mr. Capers is to have no contact with Ms. Thorpe and no contact through third parties. The order of protection was issued through March 20, 2007.

16. Ms Thorpe did provide a copy of this order of protection along with a picture of Mr. Capers to building security and management so that they could prevent him from entering the building. They have failed in this regard.

17. On March 20, 2007 Ms. Thorpe obtained an order of protection against John Capers. This order indicates there is to be no personal contact and no third party contact. The order is valid until March 19, 2012 and was served on Mr. Capers while he was incarcerated.

18. Ms. Thorpe did provide a copy of the March 20, 2007 order of protection to her building security and management along with a picture of Mr. Capers so that they could assist in preventing Mr. Capers from entering the building. They have failed in this regard.

19. On April 1, 2008 Ms. Thorpe was again physically assaulted by Mr. Capers. The police were called and both Ms. Thorpe and Mr. Capers were arrested. All Charges against Ms. Thorpe were dropped and the District Attorney declined to prosecute Ms. Thorpe in any capacity.

20. On April 2, 2008 Ms. Thorpe again obtained a temporary order of protection against Mr. Capers because Mr. Capers was released on bail.

21. Ms. Thorpe provided copies of the April 2, 2008 order of protection to building management and security along with a picture of Mr. Capers.

22. Pursuant to the Violence Against Women Act 205 42 U.S.C. 1437 f. C 9 (B) and (C), it is unlawful for a private landlord to terminate the tenancy of a section 8 tenant based solely on incidents of domestic violence. As this proceeding is based solely on incidents of domestic violence it must be dismissed in it's entirety.

AND AS FOR A SECOND AFFIRMATIVE DEFENSE

23. Respondent hereby reaffirms and realleges the facts in paragraphs (10) through (21) above.

24. The Fair Housing Act makes it unlawful "refuse to sell or rent after the making of a bonafide offer or to otherwise refuse to negotiate for the sale or rental of or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status or national origin". 42 USC 3604(a).

25. Terminating the tenancy of a domestic violence victim because of incidents of domestic violence is sex discrimination under the Fair Housing Act. Bouley v. Young 394 F Supp 2d 675 (D. Vt. 2005).

26. This holdover proceeding is based entirely on incidents of domestic violence.

27. Petitioner's attempt to terminate respondent's tenancy based on incidents of domestic violence is sex discrimination and unlawful pursuant to the Fair Housing Act.

AND AS FOR A THRID AFFIRMATIVE DEFENSE

28. Respondent hereby reaffirms and realleges paragraphs (10) through (21) above.

29. The New York City Human Rights Law makes it unlawful to “deny to or withhold from any person or group of persons such a housing accommodation or an interest therein because of the actual or perceived.... gender”.

30. Petitioner's attempt to terminate respondent's tenancy based on incidents of domestic violence is gender discrimination and unlawful pursuant to the New York City Human Rights Law.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

31. The first, second and third allegations in the notice of termination do not state a cause of action for nuisance as a matter of law and consequently the proceeding should be dismissed.

WHEREFORE, respondent respectfully requests that petitioner take nothing by this proceeding, and that the court issue an order: a) dismissing the petition with prejudice b) granting such other and further relief including but not limited to attorney's fees as this court shall deem just and proper.

Dated: New York, New York
September 11, 2008

Respectfully submitted,



Steven Banks, Esq., Attorney in Charge
Gretchen Gonzalez, Esq. of Counsel
Harlem Community Law Offices

The Legal Aid Society
230 East 106th Street
New York, New York 10029
(212) 426-3044

Attorneys for Respondent

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.