



October 7, 2013

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Submitted electronically via www.regulations.gov

Re: The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD programs, Docket No.FR 5720-N-01

We respectfully submit the following comments regarding the Department of Housing and Urban Development (HUD) Notice on the Violence Against Women Reauthorization Act of 2013. Additionally, the American Civil Liberties Union (ACLU) is part of a working group of housing experts and national domestic violence and sexual violence advocates –including Greater Boston Legal Services, the National Alliance to End Sexual Violence, National Housing Law Project, National Law Center on Homelessness and Poverty, National Sexual Violence Resource Center, National Network to End Domestic Violence, Mid-Minnesota Legal Aid, and Shriver Center on Poverty Law – who worked together to develop certain aspects of these comments.

The ACLU is a national, nonpartisan public interest organization of more than half a million members, countless additional activists and supporters, and 53 affiliates nationwide, dedicated to protecting the principles of freedom and equality set forth in the Constitution. We have long been a leader in the legal battles to ensure women’s full equality through litigation and policy advocacy. In recent years, we have taken an active role at the local, state, and national levels in advancing the housing rights of survivors of domestic violence, sexual assault, and stalking, including advocating for the housing protections enacted in the 2005 Violence Against Women Act (VAWA)¹ and the 2013 reauthorization.²

¹ The Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, §§601-07, 119 Stat. 2960, 3030-51 (2006).

² The Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, §§201-04, 127 Stat. 54, 80-84 (2013).

The ACLU has represented a number of survivors who faced eviction because of the abuse perpetrated by their batterers and thus has direct experience with the importance of VAWA in ensuring access to safe housing. In the years following VAWA 2005, the ACLU used VAWA's protections and HUD's guidance to help our clients maintain housing without time-consuming, costly litigation. For example:

- In 2009, the ACLU represented Ms. E, a Michigan resident, who received a notice to quit her project-based Section 8 apartment after the father of her child broke into her home and assaulted her. Through advocacy with the management company and HUD, the ACLU successfully invoked VAWA's protections to preserve Ms. E's right to remain in her home.
- In 2012, the ACLU represented "Ms. Doe," a mother of five who was evicted from her Pennsylvania home following domestic abuse that resulted in property damage and physical injury. The local housing authority then terminated her Section 8 voucher. After negotiations that relied on VAWA and HUD guidance, the housing authority reinstated Ms. Doe's housing voucher.

With reauthorization of VAWA in 2013, Congress expanded these vital protections. The improvements in VAWA 2013 respond to needs that the ACLU has identified in our work with victims of domestic violence, stalking, and sexual assault. The expansion of VAWA protections into new housing programs will have a real impact on the many survivors who would otherwise risk losing their housing due to the violence perpetrated against them. For instance, in 2007, the ACLU represented Tanica Lewis, a Michigan tenant whose landlord sought to evict her after her ex-boyfriend broke into her apartment in violation of a protection order. Ms. Lewis resided in housing funded by the federal Low-Income Housing Tax Credit ("LIHTC"), which was not covered by VAWA at the time, so the ACLU's avenue of recourse was to sue in federal court on her behalf. Yet now, with the broadened scope of VAWA 2013 which now covers LIHTC properties, individuals in Ms. Lewis' position will have increased access to essential housing protections.

The VAWA 2013 housing provisions have the potential to provide life-saving protections and will do much to eliminate outdated modes of thinking that punish victims for the abuse they suffer. Until the promise of the law is put into practice, however, victims of violence will continue to face discrimination, fear, and danger as they seek to obtain and maintain secure and stable housing. Therefore, effective implementation of VAWA 2013 is absolutely critical in order to fulfill its promise and address ongoing threats to the housing security of victims of violence.

We commend HUD for issuing this Notice on the Violence Against Women Act of 2013 (VAWA 2013) housing protections. This is an important first step toward full implementation of

the law. We look forward to our continued work with the Administration to provide clear and effective guidance to housing providers.

I. VAWA 2013 Is Currently In Effect.

The Notice appears to state that the law is not self-executing, causing confusion about whether VAWA 2013 is now in effect. Certainly, those who are responsible for implementing the laws and those obligated to follow the law will benefit from additional regulations, guidance and training. However, there should be no question that the law's protections currently apply to protect the housing rights of survivors. The Notice should make this clarification for housing providers so that survivors in newly-covered programs are not denied housing to which they are entitled.

To clarify, we recommend that the Notice reflect the following message sent by the HUD SNAPS office in an email on August 30, 2013:

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

II. Notice of VAWA Rights

1. Provision of VAWA Housing Rights Notice

We commend Congress for requiring housing authorities, owners and managers (housing providers) to provide a uniform notice regarding VAWA housing rights for applicants and tenants at three critical junctures.³ Given the importance of ensuring that victims are aware of their VAWA housing rights at any point during the tenancy (not only at the beginning and end of the tenancy), we recommend that housing providers be required to give tenants this VAWA Housing Rights Notice on an annual basis. The notice, along with a copy of the housing provider's emergency transfer plan, should also be given when there is a request for an emergency transfer under VAWA 2013.

³ 42 U.S.C. § 14043e-11(d)(2) (2013).

In addition, this VAWA Housing Rights Notice must be provided to all household members when a family breaks up due to violence. Under 24 C.F.R. § 982.315(a)(2), when a family with a Section 8 Housing Choice Voucher breaks up due to domestic violence, dating violence or stalking, housing authorities must ensure that the victim maintains housing assistance. However, despite this requirement, when the victim is not listed as the head of household, many Section 8 participants, household members and even housing authorities do not know that the victim can still retain the voucher. Requiring housing authorities to provide this notice at the time of family break-up would give the victim an opportunity to request the voucher under the housing authority's family break-up rules and policies. Finally, it would be optimal for housing providers to post the VAWA Housing Rights Notice in an area that would be frequented by applicants and tenants of the covered housing, such as in a common area on the residential property and the property management office.

2. Contents of VAWA Housing Rights Notice

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

3. Language Access

VAWA 2013 requires that the VAWA Housing Rights Notice be available in multiple languages and be consistent with guidance issued by HUD in accordance with Executive Order 13166.⁴ Executive Order 13166 arises from obligations under Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of national origin in federally administered or assisted programs⁵

The language access provision of VAWA 2013 is silent on who bears the responsibility of translating the VAWA Housing Rights Notice. However, given HUD's obligations under Executive Order 13166 to ensure meaningful access by LEP persons to agency programs, we believe that this obligation lies with HUD itself. In addition, by centralizing the translation requirements within HUD, the agency could ensure that the VAWA Housing Rights Notice is translated consistently and uniformly across languages. We urge HUD to develop and issue translated versions of the VAWA Housing Rights Notice at the same time that the Notice is released. We note that translated versions of HUD's self-certification forms promulgated under VAWA 2005 were translated years later, creating another obstacle for LEP victims accessing and maintaining safe and affordable housing. At minimum, HUD should translate the VAWA

⁴ 42 U.S.C. § 14043e-11(d)(2)(D).

⁵ 42 U.S.C. §§ 2000d-2000d-7.

Housing Rights Notice into the non-English languages the agency has previously used in translating documents provided to applicants and tenants.⁶

III. Creating Administrative Mechanisms to Enforce VAWA Rights

In some instances, housing authorities, owners, managers and housing providers have failed to adhere to VAWA's housing protections and have proceeded to evict or terminate leases of victims of domestic violence, dating violence, sexual assault and stalking, despite evidence that those evictions and terminations were based on acts of violence committed against the victim. Additionally, many covered entities have not complied with VAWA's requirement to address violence in their planning documents, permit survivors to move with their vouchers to new jurisdiction for safety reasons, and provide notice to subsidized tenants regarding their VAWA rights.

Currently, victims who have been denied, terminated, or evicted from housing do not have a federal administrative remedy for VAWA violations. There is no designated person or office within HUD that victims can contact in order to file complaints regarding VAWA violations. While HUD's Fair Housing and Equal Opportunity (FHEO) Office has the most direct contact with the public in its role of accepting and investigating fair housing complaints, FHEO regional offices will only investigate VAWA violations that sufficiently present an allegation of discrimination under the Fair Housing Act.⁷ In a few specific cases, advocates have contacted HUD staff in Washington, DC who work with the specific covered program regarding VAWA violations and such contact has been very helpful. However, there is no publicly available information regarding which staff at HUD, either in headquarters or the regional offices, will handle such requests and thus survivors are completely unaware of this option.

Without mechanisms for oversight and accountability for implementing VAWA, many victims will have no recourse in cases where they have been improperly denied their housing rights under VAWA. Currently, there is no procedure for seeking corrective action in cases where a housing authority has failed to amend its plans, to provide adequate notice, to grant an emergency transfer, or to provide the required level of confidentiality to survivors. Furthermore, there are instances where local HUD employees misapply VAWA. For example, an advocate recently faced a situation where a staff person within the Office of Public and Indian Housing created barriers to porting a voucher (moving to a different location with a voucher) under VAWA that violated the law.

⁶ HUD has translated documents into numerous languages, including, among others, Amharic, Arabic, Armenian, Cambodian, Chinese, Farsi, French, Korean, Portuguese, Russian, Spanish, Tagalog, and Vietnamese. *See Limited English Proficiency*, U.S. DEP'T OF HOUS. & URBAN DEV., available at <http://www.hud.gov/offices/fheo/lep.xml>.

⁷ *See* HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66,246, 66,256 (Oct. 27, 2010).

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

While this Notice does not address the issue specifically, we recommend several potential mechanisms for administrative enforcement of VAWA rights, including:

- **Establishing a system for oversight and coordination within HUD headquarters.**
We recommend that a special assistant or advisor within the Office of the Secretary be named who would oversee coordination of VAWA implementation, including with programs not covered by HUD, and resolution of complaints of VAWA violations. In addition, a staff person within each program covered by VAWA (e.g., HUD Public and Indian Housing, USDA Rural Development) should be designated to respond to problems with VAWA implementation (including emergency transfer issues) and to investigate and resolve complaints of VAWA violations, in conjunction with regional offices.
- **Coordinating investigation of VAWA violations with Fair Housing Act violations.**
We recommend that HUD create a mechanism to ensure that complaints regarding a VAWA violation or a Fair Housing Act violation based on domestic violence, sexual assault, dating violence, or stalking are screened for violations of the other law in order to ensure that survivors receive all of the legal relief to which they are entitled. For example, if the Office of Fair Housing and Equal Opportunity (FHEO) receives a complaint alleging a FHA violation based on forms of violence covered by VAWA, FHEO should ensure that the complaint is appropriately screened or referred for potential VAWA violations. Likewise, if HUD or other agencies administering other covered programs receive complaints alleging a VAWA violation, the complaint should also be reviewed by FHEO for compliance with the FHA. A potential model would be the joint review process established by FHEO and the Office of Public and Indian Housing in cases relating to public housing demolition and disposition.⁸ Because members of the public who experience violation of federal housing law most often pursue their grievances through the fair housing process, we recommend that all FHEO investigators receive training on the intersection of VAWA 2013 and the Fair Housing Act as it applies to cases alleging discrimination based on violence.

⁸ See Joint Agreement of Office of Fair Housing and Equal Opportunity & Office of Public and Indian Housing – Special Application Center, Demolition-Disposition Review Protocol (Apr. 2011).

Moreover, as HUD continues to develop additional guidance and regulations, we suggest inclusion of the following explicit guidelines for the enforcement of VAWA protections.

First, PHAs must provide informal review, hearing or grievance procedures for persons who have been denied assistance, refused a rental unit, had their assistance terminated or been evicted because of factors that may have been the result of domestic violence, dating violence, sexual assault, or stalking. For example, an applicant's or tenant's negative credit or rental history may be due in whole or in part to his or her need to flee a previous rental because of abuse. Without an established procedure allowing an applicant or tenant to demonstrate such facts, certain protections afforded by VAWA may be overlooked. Other covered programs that provide such review or grievance procedures for other tenants whose assistance is terminated or who have been evicted should similarly extend such review to complaints of VAWA violations. For example, the Rural Housing Service has a tenant grievance and appeals process that is comparable to PHA processes and should be extended to tenants invoking their VAWA rights.⁹

Second, HUD must provide an informal hearing, prior to eviction or termination of assistance, whenever the PHA, Section 8 owner, management agent, or housing provider determines that the tenant's continued presence presents an actual and imminent threat to other tenants or to those employed at or providing service to the property. In such a hearing, the burden of proof would be on the PHA, Section 8 owner, management agent or housing provider to demonstrate by clear and convincing evidence that an actual and imminent threat exists. If such a showing were made, the burden would shift to the challenging party to demonstrate that the showing does not sufficiently justify eviction or termination of assistance.

Third, future guidance should specifically provide that: (1) failure to exhaust any available administrative remedies does not preclude the use of VAWA as an affirmative defense in an eviction or other court proceeding; and (2) FHEO jurisdiction does not preclude any other right under the law to seek redress where VAWA rights have not been afforded to a victim.

IV. Implementation of VAWA through the Affirmatively Furthering Fair Housing Obligation

In addition to the discussion above regarding enforcement of VAWA rights, VAWA and the Fair Housing Act (FHA) intersect in other ways. We commend HUD on its work in promoting and strengthening the affirmatively furthering fair housing (AFFH) obligation.¹⁰ As HUD issues its final rule and other guidance on AFFH, we urge HUD to use the AFFH process to bolster VAWA implementation.

⁹ See 7 C.F.R. § 3560.160; 7 C.F.R. § 3565.361.

¹⁰ On September 17, 2013, the ACLU submitted comments on HUD's proposed rule on Affirmatively Furthering Fair Housing [Docket No. FR-5173-P-01, RIN No. 2501-AD33]. 78 Fed. Reg. 43710 (proposed on July 19, 2013) (to be codified at 24 C.F.R. pts. 5, 91, 570, 574, 576, 903).

A current example where coordination of AFFH and VAWA implementation would be useful is the issue of nuisance ordinances. Across the country, there are municipal ordinances that impose penalties based on a tenant's alleged misconduct or repeated calls to the police. These ordinances, often known as chronic nuisance, "crime-free," or disorderly behavior ordinances, generally provide for a fine or other penalty against a landlord after a rental unit exceeds the threshold number of calls to the police specified by the local ordinance. In order to avoid these penalties, many landlords seek to eliminate the "nuisance" by evicting the unit's tenants. In practice, chronic nuisance ordinances may violate the rights of protected groups, including women who make up the vast majority of domestic violence victims and who may need to reach out to police repeatedly due to the conduct of their abusers.¹¹

In addition to raising serious fair housing problems, these ordinances clearly conflict with VAWA when they are enforced to evict a survivor in a covered program. That was the situation faced by a domestic violence survivor in Pennsylvania, who faced eviction when the city forced her landlord to file a case against her based on repeated calls to police even though she held a Section 8 voucher and was thus protected by VAWA.¹² Unfortunately, when faced with an eviction notice, many domestic violence victims, unaware of their rights, are more likely to just move out, showing the ongoing need to meaningfully implement VAWA. HUD should make clear that the AFFH obligation is violated when grantees enforce laws or practices to penalize survivors of domestic violence, sexual assault, stalking, and dating violence in housing covered by VAWA.

HUD can further strengthen VAWA implementation through the Assessment of Fair Housing (AFH) proposed to be part of the AFFH process. The AFH can be a powerful tool for ensuring that jurisdictions and program participants consider goals for mitigating the housing issues faced by survivors. Domestic and sexual violence is a primary cause of homelessness for women and children and, as HUD has recognized, survivors often face housing problems related to experiencing violence.¹³ To ensure that jurisdictions and program participants consider their obligation to affirmatively further fair housing with respect to survivors, the AFH should describe programs to help victims, prevent violence, and enhance safety. Such an assessment relates closely to what is required by VAWA,¹⁴ and could be used to coordinate the requirements

¹¹ Memorandum from Sara K. Pratt, Deputy Sec'y for Enforcement and Programs, Office of Fair Hous. & Equal Opportunity, U.S. Dep't of Hous. & Urban Dev. to FHEO Office Directors and FHEO Regional Directors: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act (Feb. 9, 2011) [hereinafter HUD Memorandum] (explaining that, "even when consistently applied, women may be disproportionately affected by [zero-tolerance] policies because, as the overwhelming majority of domestic violence victims, women are often evicted as a result of the violence of their abusers.").

¹² Erik Eckholm, *Victims' Dilemma: 911 Calls Can Bring Eviction*, N.Y. TIMES, Aug. 16, 2013, at A1. See also Complaint in *Briggs v. Norristown*, available at <https://www.aclu.org/womens-rights/briggs-v-borough-norristown-et-al>.

¹³ See HUD Memorandum, *supra* note 11 at 1.

¹⁴ 42 U.S.C. §§ 1437c-1(a)(2), (d)(13).

of the low income housing tax credit program, now covered by VAWA, with new fair housing planning efforts.

V. Confidentiality

Confidentiality and privacy are paramount for victims' safety. The National Intimate Partner and Sexual Violence Survey found that 7 million women experienced rape, physical assault or stalking by an intimate partner in the 12 months preceding the study.¹⁵ Unfortunately, leaving an abusive relationship often does not stop the violence. In fact, the most dangerous time for a victim of domestic violence is when she/he takes steps to leave the relationship. Many victims are stalked for years after having escaped from their partners. Abusers who stalk their former partners are the most dangerous and pose the highest lethality risk. Fifty-nine percent of female stalking victims are stalked by current or former intimate partners, and 76% of women killed by their abusers had been stalked prior to their murder. In the U.S., three women are killed each day by a former or current intimate partner. The severity of this "separation violence" often compels women to stay in abusive relationships rather than risk greater injury to themselves or their children. Many of those who succeed in leaving their abuser live in constant fear of being found. For victims of sexual assault, guarding information about this most intimate violation is of paramount concern. Assurances of confidentiality are needed in order for victims to believe they can safely access their rights and supportive options.

Because of this, we strongly recommend that HUD place special emphasis on reiterating VAWA confidentiality standards throughout the regulations and guidance for VAWA 2013. The Notice should reiterate confidentiality requirements when a tenant invokes VAWA rights, including making an emergency transfer request. Under VAWA, housing providers are prohibited from disclosing any information a survivor provides to document incidents of domestic violence, dating violence, stalking or sexual assault with limited, specific exceptions.¹⁶ They may not enter the information into any shared database or provide it to another entity. Employees of a PHA, owner or management agent are prohibited from having access to information relating to a tenant seeking VAWA protection unless they are specifically and explicitly authorized to access this information because it is necessary to their work. As the transfer processes begin to be used, it is extremely important that all owners, managers, landlords, and PHAs understand their confidentiality obligations. The transfer process will require identification of victims and some form of documentation, and it is critical that victims' confidentiality be safeguarded throughout that process. HUD should provide very direct and clear guidance, regulations, and training to help all entities maintain confidentiality within their practices.

¹⁵ See MICHELE C. BLACK ET AL., CTDS FOR DISEASE CONTROL, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 38 (2011), *available at* http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

¹⁶ 42 U.S.C. § 14043e-11 (c)(4).

VI. Model Emergency Transfer Policies

Advocates have witnessed too many victims in unsafe housing who are forced to choose between a home and ongoing abuse. The new transfer policies are critical and, if implemented correctly, have the potential to save lives and prevent homelessness.

Under VAWA 2013, HUD is required to adopt a model emergency transfer plan for use by PHAs, owners, managers, or other housing providers participating in HUD covered programs.¹⁷ The plan must allow tenants who are victims of domestic violence, dating violence, sexual assault and/or stalking to transfer to another available unit under a covered housing program and must incorporate reasonable confidentiality procedures to ensure that the new location is not disclosed. The transfer process is tenant-driven and based upon the tenant asserting a reasonable belief that they are threatened with imminent harm from further violence. For victims of sexual assault, the law provides another ground of eligibility for a transfer in cases where the sexual assault occurred on the premises within 90 days prior to the transfer request. The tenant's transfer request is subject to meeting HUD requirements and the availability of housing. The HUD Secretary is also required to establish policies and procedures under which victims of abuse and/or assault requesting an emergency transfer may receive, subject to the availability of tenant protection vouchers, assistance through the tenant-based voucher program.¹⁸

Advocates have witnessed that housing programs with existing transfer provisions, such as the public housing program, erect additional barriers for victims seeking a transfer. Victims often wait months for transfers, while undergoing lengthy recertification processes and assembling the multiple forms of proof requested. These existing practices should not serve as a template for the VAWA model emergency transfer plan.

HUD's model emergency transfer plan should be focused on several key priorities. There must be Secretary-level designated points of contact within HUD who are responsible for the transfer process and will coordinate and ensure the efficiency of transfers within and among the various HUD covered housing programs. Otherwise, the siloed nature of HUD's various housing programs will lead to vastly different transfer policies and results. It will also help ensure that tenants seeking a VAWA transfer have the ability to potentially transfer across subsidy programs in accordance with VAWA 2013. HUD's model emergency transfer plan must also emphasize and mandate that the transfers should be considered true emergencies, in that it is the objective to identify other housing for a VAWA tenant within a 48 to 72 hour window. As well, tenants seeking VAWA transfers should be able to provide the same level of proof or documentation as tenants seeking other VAWA protections. Covered housing programs should also be encouraged

¹⁷ 42 U.S.C. § 14043e-11(e).

¹⁸ 42 U.S.C. § 14043e-11(f).

to adopt an admissions preference for victims of dating violence, domestic violence, sexual assault, and stalking.

HUD must also take the lead with the other relevant federal agencies, the Treasury Department and the Department of Agriculture, regarding the development of transfer policies and coordination among agencies. This coordination is particularly important where properties may include more than one VAWA covered housing program and thus involve more than one federal agency. For example, in a property that includes Low-Income Housing Tax Credits but where the public housing authority owns or has an interest in the property, HUD transfer policies should apply for the purpose of uniformity. This principle is also important in cases of properties undergoing a Rental Assistance Demonstration (RAD) conversion.

Finally, when a tenant is denied a VAWA transfer or other adverse action is taken (i.e., offered a unit in a covered housing program that is unsafe, the location of the new dwelling unit is disclosed to the person who has committed the act of violence, delay in effectuating the transfer), the tenant seeking the transfer must have the ability to challenge the action irrespective of the particular covered housing program.

With these priorities in mind, HUD has the ability to establish a model emergency transfer policy that will meet the real life circumstances and emergency needs of tenants who are victims of violence and need to move without losing their affordable housing.

1. Determining Eligibility

HUD should clarify that a survivor's eligibility for an emergency transfer should focus on the victim's reasonable belief of the threat he or she faces. Because of their experiences with violence, survivors face escalated risks of harm including the heightened impact of physical or psychological violence on their health, economic stability, employment, relationships, and other significant aspects of daily life and functioning—all of which is well-documented. Eligibility should be determined by whether a person in the victim's shoes, with his or her particular experiences and responses to violence, threats, and trauma, would reasonably believe he or she is threatened with imminent harm from further violence without a transfer.

The language of the statute requires that the analysis of emergency transfer eligibility is based on the survivor's reasonable belief, and this can only be understood in light of his or her experiences with violence.¹⁹ Thus, this is a different analysis from the standard that applies when owners seek to evict or terminate tenancy or assistance to victims whose continued tenancy poses an actual and imminent threat to other tenants or housing employees. The actual and imminent

¹⁹ 42 U.S.C. § 14043e-11(e)(2)(B).

threat standard relies on objective factors as already set out in regulations by HUD that should continue to govern when actual and imminent threat exists to permit eviction or termination.²⁰

HUD should also emphasize that the actual and imminent threat standard cannot be met and cannot lead to eviction or termination of the tenancy or assistance unless the covered program has exhausted all possibilities for alternate housing for the survivor, including emergency transfers, voucher porting, or other housing placement. Current HUD regulations make clear that actual and imminent threat evictions can only take place “where 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 the threat.”²¹ Placing the victim in alternate housing through emergency transfers would address the threat faced by others and carry out the statute's purpose of ensuring safe housing for victims.

2. Proof Requirements for Tenants Seeking a VAWA Transfer

The proof requirements should be the same as they are for all other VAWA protections.²² Therefore, HUD should make clear that PHAs and project owners can accept a tenant’s submission of the agency approved VAWA certification form, third party documentation, or the tenant’s own statement, as part of the transfer request. In deciding whether to allow a transfer, the housing provider can choose to rely solely on the survivor’s statement, or can submit a written request for certification to the survivor.

HUD should create a model transfer request form that would accompany the VAWA certification form or the third party documentation, in cases when a victim seeks a transfer. The transfer form should allow the tenant to elect that they are asserting an imminent threat or a sexual assault on the premises within the last 90 days. The transfer form should reflect the date on which the tenant submitted the transfer request.

3. Treat Transfer Requests as Emergencies

As noted above, HUD must craft a model policy that is focused on addressing the urgent housing and safety needs of the victim. Currently, most PHAs that permit domestic violence-related transfers consider them non-emergency, resulting in tenants waiting several months for a transfer. In the model emergency transfer policy, HUD should emphasize that these transfers are true emergencies, regardless of who initiated the transfer, and should be acted upon like the involuntary transfers resulting from a fire or natural disaster at a property.

²⁰ 24 C.F.R. § 5.2005(d)(3), (e) (2010).

²¹ 24 C.F.R. § 5.2005(d)(3).

²² See 42 U.S.C. § 14043e-11(c); 24 C.F.R. § 5.2007.

VII. Conflicting Certifications

Although it appears to happen infrequently, it is possible that a housing provider may receive documentation in which both parties claim VAWA protections. In VAWA 2013, 42 U.S.C. 14043e-11(c)(7) (2013), housing providers may request third-party documentation to resolve this issue. We recommend that HUD clarify the following issues, either in the regulations or follow-up guidance:

- The types of third-party documentation that will be accepted to resolve conflicting claims should be identical to those used throughout the VAWA process.
- The party providing third-party documentation should not automatically be deemed the victim. Abusers sometimes obtain a restraining order, protective order or file a police reports as forms of continued abuse, control or retaliation. Many survivors are unable to timely access courts or law enforcement (frequent third-party verification sources) due to language barriers, disabilities, cultural norms or safety concerns. Providers should examine all of the relevant circumstances to resolve conflicting claims.
- Rather than terminate the tenancy of the party who fails to provide third-party verification, housing providers should use a grievance hearing or administrative review process to determine which party is the victim to be protected by VAWA.

Furthermore, any guidance on this issue should stress the importance of providing due process to both parties throughout determinations that could result in terminations or alterations of housing benefits, particularly in the case of conflicting verification or VAWA claims. This is essential to ensure both the integrity of the verification process overall and that relevant authorities make the appropriate determinations of housing eligibility.

VIII. Reasonable Time for Establishing Eligibility Under HUD Covered Housing Programs

As the Notice references, it is important to establish parameters around the reasonable time needed to establish eligibility under another HUD covered housing program or to find new housing. It is imperative to recognize that establishing eligibility, however, might be out of the victim's immediate control. For instance, to establish eligibility, a victim will likely have to obtain documentation. Many abusers hold, destroy or control a victim's documents – including identification, social security number and other important documents.

If the victim is not able to establish eligibility because he or she does not meet the criteria to remain in the unit, VAWA 2013 states that he or she should be given an opportunity to secure new housing.²³ Again, there are many factors that are out of victims' control that may hinder or

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

prevent securing new housing. The process can become extremely challenging and lengthy. Barriers include low-wages, lack of income and bad credit scores or rental history, all of which are often a direct consequence of the abuse or assault, as well as the well-documented lack of safe, affordable housing in communities across the country

Because the timelines for establishing tenancy or obtaining new housing are often beyond a victim's control, we recommend establishing a process that is measured in activities and benchmarks rather than time. For instance, the manager, landlord, owner or PHA can work with the victim to determine the barriers to establishing tenancy. The covered program can document that the victim is working toward obtaining documentation as a goal in the process. Therefore, rather than designating a specific time frame under the "reasonable time" guidance, "reasonable time" should instead be understood as a process wherein victims must demonstrate that they are working toward establishing eligibility or securing new housing.

HUD should also consider adding an interim VAWA eligibility category that allows owners, managers and PHAs to document that the individual is indeed allowed to be in the unit in the interim period (during which the victim is working towards establishing eligibility or finding new housing). This would allow the housing provider to remain in compliance with HUD regulations while also housing an individual who is not otherwise eligible for the unit or programs. Additionally, we recommend that victims in these situations be allowed to request an emergency transfer and be moved to another permanent housing unit in a covered program.

If HUD does determine a specific time limit under the "reasonable time" guidance, we strongly recommend that the owners, managers and PHAs have the authority to waive the time requirement if external factors continue to pose barriers to establishing eligibility or finding new housing. Any timeframe less than 60 days would be unreasonable. A process, rather than a set time limit, recognizes pre-existing and external barriers to housing and will result in fewer victims having to face homelessness when their abusive perpetrators are evicted from a housing unit or program. HUD should also encourage entities to maintain current policies that allow participants to establish tenancy, including ACOP Residual Tenancy Policies.

IX. Portability

VAWA 2013 makes no change to victims' protections concerning portability of Section 8 vouchers, as provided by VAWA 2005. Therefore, a PHA may still permit a family with a Section 8 voucher to move to another jurisdiction if the family has complied with all other obligations of the program and is moving to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence or stalking.²⁴ The PHA may permit the family to move even if the family's lease term has not yet expired.

²⁴ 42 U.S.C. § 1437(f)(r)(5).

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

X. Clarifying the Housing Programs Covered by VAWA

In order to provide consistent application of the law, we recommend that HUD refrain from drawing artificial distinctions between properties within programs listed as covered by VAWA (e.g., excluding from VAWA's coverage Section 202 Direct Loan projects when other Section 202 properties are included). We recommend that HUD review the analysis provided by the National Housing Law Project and we support the recommendations in their comments.

Additionally, regulations and policies governing the McKinney-Vento homeless assistance grant programs should be reviewed to determine if they contain practices and/or systems which might be broadly prohibitive for victims. In the spirit of the VAWA law, McKinney-Vento programs should ensure that HEARTH Act implementation reflects the needs of victims so that victims can secure or maintain housing in ways that are confidential and safe. Specific policies must be created to ensure that the safety and confidentiality of victims seeking assistance through VAWA is not compromised by entering their personally identifying information in shared databases. The McKinney-Vento funded program resources should widely be available to victims. Continuums of Care should plan for victims' need to access housing and to transfer to new units and obtain new resources.

XI. Immigrant Eligibility

The regulations that HUD puts forth to implement VAWA must address housing eligibility for battered immigrant-qualified aliens. A failure to affirm their eligibility for housing benefits would have far-reaching consequences for these individuals and their children.

Battered immigrant-qualified aliens were made statutorily eligible to receive public and assisted housing as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996. In 2003, Congress directed HUD and the Justice Department to interpret housing statutes consistently with immigration and public benefits statutes so that battered immigrant-qualified aliens would be eligible for federally subsidized housing. In 2005, the Department of Homeland Security complied with Congress' directive by issuing a letter informing HUD how to process immigration-status verifications of battered immigrant-qualified aliens.

Despite Congress' directive, there has been no further progress on this issue, and battered immigrant-qualified aliens continue to be denied housing benefits they desperately need. Those

who are unable to access public or assisted housing are often forced to return to their abusers or face homelessness. HUD must inform all programs administering federally subsidized housing that battered immigrant-qualified aliens are statutorily eligible to receive housing benefits.

XII. Conclusion

We commend HUD for taking the important step of issuing this Notice and urge you to move forward with the rulemaking necessary to implement these new housing protections. Only robust implementation and enforcement will effectuate VAWA's goal of meeting the housing needs of victims of domestic violence, dating violence, stalking, and sexual assault.

Please don't hesitate to contact Senior Legislative Counsel Vania Leveille at 202-715-0806 or vleveille@dcaclu.org if we can be of any assistance.

Sincerely,



Laura W. Murphy
Director
Washington Legislative Office



Vania Leveille
Senior Legislative Counsel
Washington Legislative Office



Lenora Lapidus
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Staff Attorney
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APPENDIX A

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

To applicants and residents:

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

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

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

AND

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

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

Protections for Victims

If you are eligible for any of the federal housing programs mentioned above, a housing provider cannot refuse to admit you or rent to you based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault

or stalking that are caused by a member of your household or a guest can't be the reason for evicting you or terminating assistance if you were a victim of the abuse.

Reasons You Can Be Evicted

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

Removing the Abuser from the Household

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

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

Moving to Protect Your Safety and Emergency Transfers

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

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

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

The housing provider can ask you in writing to prove or "certify" that you are a victim of domestic violence, dating violence, sexual assault or stalking. The housing provider must request certification in writing and give you at least 14 business days to provide this proof. The housing provider is free to extend the deadline. There are three ways you can prove that you are a victim:

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

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

Conflicting Proof

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

Confidentiality

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

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

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

VAWA and Other Laws

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

For Additional Information

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

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

Definitions

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

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

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

VAWA defines “dating violence” as violence committed by a person:

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

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

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

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