

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

No. SJC-12623

BOSTON HOUSING AUTHORITY,
PLAINTIFF-APPELLEE,

v.

Y.A.,
DEFENDANT-APPELLANT.

ON APPEAL FROM
A FINAL JUDGMENT OF THE HOUSING COURT DEPARTMENT OF THE TRIAL COURT

**BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION,
AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS,
COMMUNITY LEGAL SERVICES OF PHILADELPHIA, MID-
MINNESOTA LEGAL AID, NATIONAL HOUSING LAW PROJECT,
NATIONAL NETWORK TO END DOMESTIC VIOLENCE, AND THE
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 1:21, amici curiae American Civil Liberties Union, American Civil Liberties Union of Massachusetts, Community Legal Services of Philadelphia, Mid-Minnesota Legal Aid, National Housing Law Project, National Network to End Domestic Violence, and the Sargent Shriver National Center on Poverty Law make the following disclosures: They are nonprofit corporations with no parent corporations, with no stock, and therefore no publicly held company owning 10% or more of their stock.

STATEMENT OF INTEREST

Amici curiae are state and national advocates who work at the intersection of housing and economic insecurity experienced by survivors of domestic violence and sexual assault. Amici specialize in or projects devoted to advocating on behalf of survivors, and have specific knowledge of how domestic violence can impact all aspects of a person's life. Specifically, many of the amici have drafted, in support of, and assisted in the implementation of laws to protect the housing rights of survivors, including the Violence Against Women Act ("VAWA") provisions at issue in this case. They have many years of experience enforcing VAWA's housing protections across the country and have a vested interest in its correct application by the courts.

The American Civil Liberties Union ("ACLU") is a nationwide, non-partisan organization of over two million members dedicated to preserving the Constitution and civil and human rights. The ACLU Women's Rights Project, co-founded in 1972 by Ruth Bader Ginsburg, has been a leader in efforts to eliminate barriers to women's full equality in American society. These efforts include challenging discrimination against domestic violence victims, with a particular focus on advancing survivors' rights to obtain and maintain safe and secure housing. The ACLU has litigated cases on behalf of survivors and advocated for policies at the federal, state, and local levels, including the housing protections of VAWA, first enacted in 2005. The ACLU of Massachusetts is the Massachusetts affiliate of the ACLU.

Community Legal Services of Philadelphia ("CLS") was founded in 1966 by the Philadelphia Bar and has provided free civil legal assistance to more than one million low-income Philadelphians. CLS attorneys and other staff provide a full range of services, from individual representation to administrative advocacy to class action litigation, as well as community education and social work. CLS' Housing Unit provides free legal advice and representation to survivors of sexual assault, dating violence, stalking, and domestic violence on their

housing rights under federal, state, and local law, including helping survivors end their leases early or obtaining transfers to escape further violence. CLS represents dozens of survivors a year who are denied admission to subsidized housing based on their status, or who are facing adverse housing decisions as a result of domestic violence and sexual assault. CLS also engages in policy advocacy at the local, state, and national levels, advocating for increased housing protections and rights for survivors, and for changes to housing policies and regulations that are harmful survivors.

Mid-Minnesota Legal Aid ("MMLA") is a nonprofit organization providing legal representation and advice to people with low incomes in 20 central Minnesota counties, including the City of Minneapolis. MMLA's mission is to advocate for the legal rights of disadvantaged people to have safe, healthy, and independent lives. In 2017, MMLA provided representation and advice to more than 10,000 low-income households, 34% of those housing cases, and reached tens of thousands more through its online information services. Many of the households served in all legal issues involved clients seeking safety from domestic abuse, sexual assault, and stalking. MMLA has received funding from U.S. Department of Justice VAWA grants since 2005 to support its holistic legal

representation work with survivors. To fulfill its as a voice for clients seeking safety from gender violence, MMLA joins in this brief because the legal issues have significant impact on the vast number of their clients who rely on full implementation of VAWA for their safety and the security of their tenure in public housing.

The National Housing Law Project ("NHLP") is a private, non-profit, national housing and legal advocacy center established in 1968. NHLP's mission is to advance housing justice for poor people. NHLP has worked with thousands of advocates, attorneys, and housing providers throughout the country on ensuring that domestic and sexual violence survivors are able to access and maintain safe, decent, and affordable housing. The case at bar addresses the critical issue of economic abuse perpetrated against survivors of domestic violence and how such abuse threatens the housing security of survivors. This case has vital implications for survivors across the country who seek to utilize the housing protections under VAWA that they do not lose their housing because of violence committed against them.

The National Network to End Domestic Violence ("NNEDV") is a not-for-profit organization in the District of Columbia in 1994 to end domestic violence. As a network of the 56 state and territorial

domestic violence and dual domestic violence sexual assault Coalitions and their over 2,000 member programs, NNEDV serves as the national voice of millions of women, children and men victimized by domestic violence. NNEDV was instrumental in promoting Congressional enactment and eventual implementation of the Violence Against Women Acts of 1994, 2000, 2005 2013 and, working with federal, state and local policy makers and domestic violence advocates throughout the nation, NNEDV helps identify and promote policies and best practices to advance victim safety. Victims and their advocates identify housing as one of the most crucial elements to safety and well-being. NNEDV is deeply concerned about the ability of all individuals, and domestic violence victims in particular, to live safely in their homes.

The Sargent Shriver National Center on Poverty ("Shriver Center") is a national nonprofit legal and policy advocacy organization based in Chicago. The Shriver Center's housing unit operates the Safe Homes Initiative, which provides legal representation and policy advocacy to advance and protect the housing rights of survivors of violence. The Shriver Center housing unit drafted sections of the 2013 Reauthorization of VAWA and provides trainings to housing providers, lawyers, and domestic violence advocates on the laws that can protect survivors in

housing, and regularly consults with advocates around the country about the housing rights of survivors of violence. The Shriver Center's Women's Law and Policy Initiative also provides a broad array of legal and policy support to survivors of violence in all other aspects of their lives, including employment, education, public benefits, and access to the courts.

STATEMENT OF THE CASE AND THE FACTS

Amici adopt the statement of the case and the facts set forth in the briefs of Defendant-Appellant, Y.A.

SUMMARY OF ARGUMENT

In the prior proceedings, the Boston Housing Authority ("BHA") erroneously pursued and the Housing Court wrongly ordered eviction, despite Y.A.'s claim of VAWA's protections. Amici explain why Y.A. is entitled to relief from eviction under VAWA.

First, VAWA provides a defense to eviction by covered housing providers for nonpayment of rent, the failure to pay rent directly results from emotional, and economic abuse. Second, covered housing providers, like the BHA, are not permitted to require that a victim of domestic violence submit a order, or any one form of documentation, in order to claim protection under VAWA. Third, in recognition of the chronic and cyclical nature of domestic violence,

VAWA authorizes survivors¹ of abuse to invoke its protection multiple times if the abuse continues, including in circumstances where a survivor misses multiple payments as a result of ongoing violence. Finally, to the extent that Massachusetts state law provides fewer protections to victims of domestic violence whose housing is covered by VAWA, VAWA preempts state law and allows a victim of domestic violence to raise an affirmative defense to eviction the motion to issue execution hearing.

ARGUMENT

I. VAWA PROVIDES A DEFENSE TO EVICTION FROM PUBLIC HOUSING FOR NONPAYMENT OF RENT WHERE THE FAILURE TO PAY RENT AND ARREARAGES WAS THE DIRECT RESULT OF PHYSICAL, EMOTIONAL, AND ECONOMIC ABUSE.

A. Economic abuse is part of a broad pattern of domestic violence defined by an abuser's assertion of coercive power and control.

Domestic violence is not comprised of discrete or isolated acts of physical violence, but rather is part of a broad pattern of power and control perpetrated by the abuser. As scholars have explained:

¹ For the purpose of this brief, amici uses both "victim" and "survivor" interchangeably when referring to the abused. Moreover, although this brief uses "she," "her," and "hers" pronouns for the survivor and assumes a male perpetrator, domestic violence and other forms of abuse can happen to people of any gender in any type of relationship.

The broader description of battering relationships is 'premised on an understanding of coercive behavior and of power and control – including a continuum of sexual and verbal abuse, threats, economic coercion, stalking, and social isolation – rather than 'number of hits.'

E.M. Schneider, *Battered Women and Feminist Lawmaking* 65 (2000); see also Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 Hofstra L. Rev. 1191, 1206 (1993).

Abusers frequently couple physical violence with psychological, emotional, and economic abuse in their attempts to gain control over their partners. Johnston & Subrahmanyam, CAMBA Legal Services, Inc., Denied! Economic Abuse Perpetuates Homelessness for Domestic Violence Survivors 1 (2018). Economic abuse includes behaviors, implemented by one intimate partner against the other, that are designed to limit a partner's access to financial resources so as to control the abused partner and foster dependence on the abuser. Barzilay, *Power in the Age of In/Equality: Economic Abuse, Masculinities, and the Long Road to Marriage Equality*, 51 Akron L. Rev. 323, 329 (2017). Therefore, economic abuse compromises a survivor's financial sufficiency, erodes her ability to leave, and her vulnerability for future abuse. Johnston & Subrahmanyam, supra, at 10. Although economic abuse

occur without being accompanied by other forms of abuse, studies have shown that economic abuse is present in 78% to 99% of all abusive relationships. Johnston & Subrahmanyam, supra, at 1; Adams, Bybee, Greeson, & Sullivan, Development of the Scale of Economic Abuse, 14 Violence Against Women 563, 580 (2008).

Here, Y.A. experienced significant economic abuse at the hands of her partner. Joint R. App., at App. 82-84. Y.A.'s partner frequently restricted her access to financial resources by taking away her bank card, providing an "allowance" to purchase basic needs, and monitoring the use of her money. Id. Her partner exploited and stole Y.A.'s financial resources by draining her bank account and demanding money from her. Id. The abuser frequently achieved these actions by using actual or threatened physical force when Y.A. refused to comply with his demands. Id. This ongoing violence reinforced Y.A.'s dependence on her partner, despite her multiple attempts to assert financial independence from him.

Upon leaving abusive relationships, survivors often discover that their abusers had taken out loans in their names, ruining their credit. Like Y.A., most find that they cannot afford to pay their bills upon leaving an abusive relationship, further damaging credit. Sussman & Wee, Ctr. for Survivor Agency &

Justice, Accounting for Survivors' Economic Security: An Atlas for Direct Service Providers 13-20 (2016). Given the critical role that credit scores play in securing necessities such as housing and employment, the aftermath of economic abuse can deal a devastating blow to a survivor's financial self-sufficiency. The financial fallout from economic abuse presents particular difficulties for survivors living in poverty, given the costs of relocating, finding new housing, and lost time at work. *Id.* at 9; see also Adams, Bybee, Greeson, & Sullivan, *supra*, at 1361 (noting that intimate partner violence reduces the amount worked by a survivor by three months a year, three years after the abuse ended). Unsurprisingly, domestic violence is a leading cause of homelessness among women. Johnston & Subrahmanyam, *supra*, at 10.

B. Domestic violence forces the victim to engage in a pattern of strategic behavior to survive, minimize the abuse, and manage the abuser.

Domestic violence survivors frequently engage in strategic behaviors that appease the abuser in order minimize and manage the abuse they experience. Often, these strategies enable survivors to endure and until they can fully disengage from their abusers. e.g., Davis, "The Strongest Women": Exploration of the Inner Resources of Abused Women, 12 Qual. Health. Res.

1248, 1255 (2002); Cavanagh, Understanding Women's Responses to Domestic Violence, 2 Qualitative Soc. 229, 231 (2003); Goodman, Dutton, Weinfurt, & Cook, Intimate Partner Violence Strategies Index: and Application, 9 Violence Against Women, 163, 184 (2003). Survivors commonly use the tactics of appeasement and accommodation to cope with and manage the abuse. Dutton, supra, at 1202; see also H. Bowker, Beating Wife-Beating 63-73 (1983); Cavanagh, supra, at 231; Goodman, Dutton, Weinfurt, & Cook, supra, at 163.

Complying with the abuser's demands are a key means of "keep[ing] the peace," thereby avoiding a possible violent or abusive episode. Dutton, supra, at 1227-1228. This description is consistent with Y.A.'s experience. Y.A.'s partner exercised coercive control by abusing her physically, verbally, emotionally, and financially. In addition to extreme physical abuse, partner called her names and repeatedly told her that if she were allowed to manage money, she would lose B.H.A. v. Y.A., Joint R. App., at App. 82-84. Y.A. feared reporting the abuse because her partner had threatened to contact the Department of Children and Services and get her children taken away. Id. The partner financially abused Y.A. by taking her money, emptying her bank account, and giving her an "allowance." Id. This continuum of violence ensured

that Y.A. would comply with her partner's ongoing demands.

C. The legal system has been slow to recognize the significant and long-term impact of economic abuse on survivors of domestic violence.

Despite the overwhelming prevalence of economic abuse, the U.S. legal system has not been sufficiently responsive in assisting survivors of economic and financial abuse. Conner, Financial Freedom: Women, Money, and Domestic Abuse, 20 Wm. & Mary J. Women & L. 339, 363 (2014). In Y.A.'s case, the Housing Court's failure to examine the alleged domestic violence in opinion underscores this point. B.H.A. v. Y.A., Appellant Br., at Add. 1, Apr. 25, 2018. Economic is "rarely recognized as domestic violence by state criminal and civil laws because of the focus on physical assaults, and seldom falls neatly into the enumerated categories of abuse that provide legal protection." Barzilay, supra, at 355 (internal footnotes omitted). It is, therefore, not surprising, although unacceptable, that the Housing Court failed appropriately consider the role that economic abuse played in Y.A.'s rental arrears. At least one guide judges and court staff suggests that the judicial system should view domestic violence survivors' "economic insecurity as a direct threat to their

safety," and that judges "should view these financial issues as significant obstacles to a victim's ability to participate in the criminal justice system." Wider Opportunities for Women, The Court's Guide to Safety and Economic Security for Victims of Violence Against Women 5 (2014), <https://iwpr.org/wp-content/uploads/2017/01/WOW-ESS-Courts-Sector-Guide.pdf>. Similarly, the BHA and the court below should have recognized the inextricable link between the economic abuse experienced by Y.A. and the resulting threat to her housing security.

D. VAWA protects survivors of economic abuse, acknowledging it as a form of domestic violence.

In 2005, Congress enacted VAWA's housing protections to ensure "that [] victims have meaningful access to the criminal justice system without jeopardizing [] housing." Pub. L. No. 109-162, § 41,402, 119 Stat. 2960, 3031 (2006). Congress also sought to ensure that "the status of being a victim of such a crime is not a reason for the denial of loss of housing." Id. § 41405, 119 Stat. 2960, 3035.

VAWA's reauthorization in 2013 ("VAWA 2013") upon VAWA 2005's recognition that survivors cannot be denied or evicted from housing due to the acts of abusers. In light of this recognition, VAWA 2013

created additional housing protections for survivors, such as providing for emergency transfers and covering sexual assault survivors. See, generally, 34 U.S.C. § 12491 (2018). VAWA 2013 also expanded its coverage to more federal housing assistance programs. Id. § 12491(a)(3).

VAWA 2013 protects domestic violence survivors who have experienced economic abuse, as evidenced by the many references to the effects of economic abuse within the legislative history. Senator Patrick Leahy, one of the co-sponsors of VAWA 2013, stated:

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

The Increased Importance of the Violence Against Women Act in a Time of Economic Crisis: Hearing Before the Comm. on the Judiciary, 111th Cong. 62 (2010) (statement of Sen. Patrick Leahy, Chairman, S. Comm. the Judiciary). The congressional record includes the testimonies of several domestic violence experts, one of which described economic abuse as "a central part domestic violence," which can create "a massive to a victim's ability to flee and eventually develop

economic self-sufficiency." Id. at 16 (statement of Auburn L. Watersong, Economic Justice Specialist, Vermont Network Against Domestic and Sexual Violence).

In implementing VAWA 2013, the U.S. Department of Housing and Urban Development ("HUD") clarified that VAWA's anti-discrimination provision protects against non-physical forms of domestic violence. HUD regulations prohibit housing providers from discriminating against survivors "on the basis or as a direct result of" domestic violence. 24 C.F.R. § 5.2005(b)(1) (2018). These protections consider circumstances where domestic violence includes an attack on the victim's financial well-being:

HUD interprets VAWA to prohibit covered housing providers from...terminating a tenant from participation in, or evicting a tenant from housing as a result of factors directly resulting from the domestic violence... Where an individual faces adverse economic factors, such as a poor credit or rental history, that result from being a victim of domestic violence... the individual cannot be denied assistance under a HUD program

Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80,724, 80,729 (Nov. 16, 2016) (codified at 24 C.F.R. Part 5). VAWA's safeguards also include protecting against eviction on the basis of "adverse factors"

are directly related to domestic violence. Id. at 80,728. An adverse factor "may be due to an underlying experience of domestic violence" and "may be present during much of an abusive relationship, or it may present itself only when a victim is attempting to leave, or has left, the abusive relationship." Dep't Housing and Urban Dev., Violence Against Women Reauthorization Act of 2013 Guidance, Notice PIH-2017-08 (HA), at 7. HUD lists "failure to pay rent" as an adverse factor, explaining that, "[d]epending on the circumstances, temporary failure to pay rent may be direct result of domestic violence" when the abuse leads to "forcing the victim to turn their earnings over to the abuser." Id. at 8.

In sum, HUD, the agency charged with implementing VAWA, recognized that VAWA specifically protects survivors from being denied assistance or evicted on the basis of a variety of downstream effects of abuse beyond physical and emotional injury.

E. VAWA aims to preserve a survivor's housing assistance whenever possible, especially domestic violence leads to an eviction.

VAWA 2013's housing protections and HUD's implementing regulations clearly indicate a strong policy preference against taking housing assistance away from, or evicting, survivors because of

circumstances arising out of the abuse committed against them. For example, in instances where the perpetrator is removed from the lease of a covered housing program, and the abuser is also the only eligible for the housing program, housing providers must provide "any remaining tenant or resident an opportunity to establish eligibility for the covered housing program." 34 U.S.C. § 12491(b)(3)(B)(ii). This provision is designed so that, if possible, a survivor and her family can maintain housing assistance despite the violence. Additionally, in instances of a (family) break-up in the Section 8 Housing Choice Voucher program, HUD regulations require the housing authority to "ensure that the victim retains assistance." 24 C.F.R. § 982.315(a)(2) (2018). Furthermore, in instances where the presence of the domestic violence survivor creates an "actual and imminent threat" to others, HUD dictates that eviction or termination should be utilized "only when there are no other actions that could be taken to reduce or eliminate the threat." 24 C.F.R. § 5.2005(d)(3)-

Given VAWA's strong policy preference against evicting survivors because of circumstances related to the abuse committed against them, this Court should carefully scrutinize the BHA's decision to evict Y.A. for nonpayment. Y.A.'s inability to afford rent payments is a direct result of the physical,

and financial abuse perpetrated against her. Accordingly, she is entitled to protections under

II. UNDER VAWA, COVERED HOUSING PROVIDERS MAY NOT REQUIRE THAT DOMESTIC VIOLENCE VICTIMS SUBMIT ANY ONE FORM OF DOCUMENTATION - SUCH AS A RESTRAINING ORDER - TO DEMONSTRATE THAT THEY ARE ENTITLED TO PROTECTION.

A. The BHA violated VAWA by requiring Y.A. to obtain a restraining order before allowing her to remain in the apartment.

To allow survivors of domestic violence to claim protections under its provisions, VAWA provides with broad discretion to submit any of several types of documentation to show that they are entitled to protection. The BHA's requirement for Y.A. to obtain a restraining order before allowing her to remain in the apartment violates VAWA for four reasons. First, Y.A. had the discretion to submit any one of several forms of documentation to show that she was entitled to protection under VAWA. Second, the BHA's requirement a restraining order imposed a more demanding standard on Y.A., as a victim of domestic violence, than other tenants. Third, the BHA failed to take reasonable to avoid eviction by requiring Y.A. to obtain a restraining order. Finally, the requirement of a restraining order significantly increases the risk of

imminent harm for survivors in conflict with the purposes of VAWA.

- 1. Y.A.'s verbal statements to the BHA, testimony before the Housing Court, VAWA self-certification form, and police report domestic abuse clearly met the documentation requirements demonstrating that she was entitled to VAWA protections.**

Contrary to the BHA's request, a covered housing provider cannot require that a tenant obtain a restraining order to show that she is entitled to protection. Rather, the statute explicitly states that a tenant may satisfy a housing provider's request by submitting any one of several types of documentation. housing provider is not required to ask a survivor for documentation before granting VAWA protections. However, if the provider does request documentation, the provider must do so in writing, and the tenant has the discretion to submit this verification through a variety of forms. 34 U.S.C. §§ 12491(c)(1), 12491(c)(3); see also 24 C.F.R. § 5.2007(b)(1)(2018). The housing provider may apply VAWA protections based solely on the tenant's statement or other evidence. 34 U.S.C. § 12491(c)(3)(D); see also 24 C.F.R. § 5.2007(b)(1)(iv). Alternatively, the tenant may choose which one of the other specified forms of set forth in the law that she will submit. 34 U.S.C.

12491(c)(1), 12491(c)(3)(A)-(C); see also 24 C.F.R. § 5.2007(b)(1)(i)-(iii). Acceptable forms of documentation include: (1) a self-certification form; (2) a record of a law enforcement agency, court, or administrative agency; or (3) a third-party statement, signed by both the third party and domestic violence victim under penalty of perjury. 24 C.F.R. § 5.2007(b)(1)(i)-(iii). Importantly, "it is at the discretion of the tenant or applicant which one of the [] forms of documentation to submit." 24 C.F.R. § 5.2007(b)(1) (emphasis added); see also 81 Fed. Reg. 80,724, at 80,761, 80,763.

Here, Y.A. demonstrated that she was entitled to protection through her statements to the BHA, before the Housing Court, VAWA self-certification and police report documenting abuse. In November 2017, Y.A. informed the BHA management that she "had finally ended an abusive relationship and asked for more time on [her] payment plan," prompting management to that she obtain a restraining order to avoid losing apartment. B.H.A. v. Y.A., Joint R. App., at App. 83. Subsequently, during her hearing at the Housing Court, Y.A. testified under oath that she "was in an abuse [sic] relationship" and that her abuser "would take everything from me."² Id. at App. 92. Moreover, Y.A.

² Ms. Y.A., whose native language is Spanish, waived her right to an interpreter such that the hearing

has since submitted to the BHA a VAWA self-certification form and police report verifying past physical abuse.

Notably, it is unclear from the record whether the BHA ever submitted a written request to prompt Y.A. to submit documentation, as required by VAWA. See 34 U.S.C. §§ 12491(c)(1), 12491(c)(3); see also 24 C.F.R.

proceeded without the previously requested language assistance. Survivors of domestic violence who are limited English proficient (LEP) face the added language barrier to accessing safety. In a 2013 survey of service providers who work with immigrant survivors of domestic violence, sexual assault, and human trafficking, respondents reported “[h]indered access to public resources, such as housing, education and medical access due to lack of information in their [clients’] language.” Lee, Quinones, Ammar, & Orloff, *National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access*, 30 (Nat’l Immigrant Women’s Advocacy Project 2013). Qualified interpreters “ensure that limited English proficient ... individuals are able to access the same level of service as ... English speakers,” such that in order to ensure meaningful access to services, LEP survivors “must have access to trained and competent spoken ... interpreters.” Asian Pac. Inst. on Gender-Based Violence, *Resource Guide for Advocates & Attorneys on Interpretation Services for Domestic Violence, Sexual Assault, and Trafficking Victims*, 5 (2016), <https://s3.amazonaws.com/gbv-wp-uploads/wp-content/uploads/2017/07/19165514/InterpretationResourceGuide-API-GBV-2016.pdf>. Ms. Y.A. faced her hearing without an interpreter. We include this discussion in order for the Court to understand Ms. Y.A.’s overall circumstances, and the range of barriers faced by survivors like Ms. Y.A.

§ 5.2007(b)(1). Moreover, HUD VAWA regulations provide Y.A. with the discretion to submit any of the acceptable forms of documentation, and certainly did not require her to meet the BHA's burdensome demand to obtain a restraining order. See 24 C.F.R. § 5.2007(b)(1); see also U.S. Dep't Housing and Urban Violence Against Women Reauthorization Act of 2013 Notice PIH-2017-08 (HA), at 12 ("The [public housing agency] or owner is prohibited from requiring third-party documentation of victim status, except as outlined in Section 8.2(e) of this Notice.").

In any case, Y.A.'s verbal statements alone were more than sufficient to show that she was entitled to VAWA protections as a victim of domestic violence. See 34 U.S.C. § 12491(c)(3)(D); 24 C.F.R. § 5.2007(b)(1)(iv); see also Johnson v. Palumbo, 154 A.D.3d 231, 244 (N.Y. App. Div. 2017) (holding that "the [tenant]'s testimony at the informal hearing was sufficient to establish that she was entitled to the protections of the VAWA"). The BHA's mandate that she obtain a restraining order, therefore, violated the statutory and regulatory provisions of VAWA.

2. By requiring Y.A. to obtain a restraining to avoid eviction, the BHA subjected Y.A. to a more demanding standard than other tenants in violation of VAWA.

In exercising its authority to evict a tenant for any breach of a lease not premised on an act of violence, a covered housing provider may not "subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate." 34 U.S.C. § 12491(b)(3)(C)(ii). Amici recognize that the BHA appropriately provided Y.A. with multiple to repay past-due rent and arrears. The BHA's additional mandate that Y.A. seek and obtain a restraining order, however, imposed a separate and far more burdensome standard on Y.A. than other tenants — standard that would not have been imposed but for Y.A.'s status as a domestic violence victim.

In an effort to address the devastating and far-reaching impact of domestic violence in its Commonwealth, Massachusetts enacted, and has continued to reform, Chapter 209A of its General Laws, which provides eligible domestic violence victims with the civil remedy of obtaining a restraining order against their abusers. G.L. c. 209A; see also Commonwealth v. Gordon, 407 Mass. 340, 346 (1990) (noting that restraining orders issued pursuant to Chapter 209A may "afford abused individuals the opportunity to avoid further abuse and . . . provide them with assistance structuring some of the basic aspects of their lives,

such as economic support and custody of minor in accordance with their right not to be abused."). Chapter 209A reflects the Commonwealth's commitment to protecting the safety and well-being of domestic violence survivors and preventing future harm to its residents.

Like all civil remedies, however, Chapter 209A restraining orders require those seeking relief to complete the necessary judicial procedures and to meet the relevant legal standards set forth in the statute. See G.L. c. 209A, §§ 3, 4, 7. In accordance with Chapter 209A, a petitioner seeking a restraining order must first file a complaint with the court and appear before a judge to demonstrate that she faces a "substantial likelihood of immediate danger of abuse" in order to obtain a temporary order. *Id.* § 4. To obtain a one-year restraining order, the petitioner must return to the court for another hearing, where again bears the burden of proof. *Id.* §§ 3, 4, 7. Ultimately, the court has the sole discretion to award or deny a restraining order to the petitioner.

By requiring a tenant to obtain a restraining order to avoid eviction, a housing provider imposes a significant and unreasonable burden on a tenant due to her status as a victim of domestic violence and, therefore, violates the provisions of VAWA. VAWA's provisions make clear that a victim need only provide

some form of documentation of her abuse, when the provider has made a written request; however, the requirement would have mandated that Y.A. pursue and obtain a civil legal remedy left at the discretion of the trial court — an additional burden imposed specifically because of Y.A.'s status as a domestic violence survivor. The requirement of a restraining order, therefore, subjected Y.A. to a more demanding standard than other tenants and violates VAWA.

3. The BHA failed to take reasonable steps to avoid eviction by requiring a restraining order.

To effectuate VAWA's purpose in promoting housing stability for domestic violence victims, housing providers "are encouraged to undertake whatever permissible and feasible under their respective programs to assist individuals residing in their units who are victims of domestic violence . . . to remain their units . . . and for the covered housing provider to bear the costs of any transfer, where permissible." 24 C.F.R. § 5.2009(c)(2018). As such, a housing provider may evict a tenant otherwise protected by only if it "can demonstrate that an actual and threat to other tenants or individuals employed at or providing service to the property would be present if . . . the tenant is not evicted." 34 U.S.C. §

12491(b)(3)(C)(iii); see also 24 C.F.R. § 5.2003 (2018). An "actual and imminent threat" consists of "a danger that is real, would occur within an immediate time frame, and could result in death or serious harm." 24 C.F.R. § 5.2003 (2018).

VAWA regulations make clear that eviction of otherwise protected by VAWA must come as a last resort. Any eviction, pursued through the "actual and imminent threat" exception, "should be utilized by a covered housing provider only when there are no other actions that could be taken to reduce or eliminate the threat. . . ." 24 C.F.R. § 5.2005(d)(4). Prior to evicting a tenant protected by VAWA, a housing provider carries the burden of pursuing all other alternatives, "including, but not limited to, transferring the tenant 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." *Id.* Importantly, such actions "predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents." *Id.* (emphasis added).

As an initial matter, it is unclear whether the BHA's requirement for a restraining order was related to any concern with a potential threat to others.

Assuming that it was, however, the BHA nonetheless failed to take reasonable steps before evicting Y.A. from her apartment. The BHA carried the burden of barring the perpetrator from the property through its own measures, such as a No Trespass Order, and improperly shifted its burden to Y.A. when it mandated that Y.A. obtain a restraining order. Moreover, the failed to consider the particularized concerns of as required by VAWA, and, instead, relied on a blanket assumption that "all women should turn to the legal system for assistance in leaving." Goodmark, *The Legal Response to Domestic Violence: Problems and Possibilities: Law is the Answer? Do We Know that for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 St. Louis U. Pub. L. Rev. 7, 21 (2004). The BHA's failure to take reasonable steps before evicting Y.A. constitutes a clear violation of VAWA's provisions.

4. Requiring a restraining order to avoid places victims of domestic violence at increased risk of harm by failing to account for their individual safety considerations.

While restraining orders serve as an effective safety measure for some domestic violence victims, restraining orders are hardly a guarantee against future harm. In assessing whether a restraining order

is appropriate for a domestic violence survivor, it is necessary to take into consideration the particular concerns and needs of the individual. See P. Quirion, *Massachusetts Divorce Law Practice Manual: Victims of Domestic Violence*, MDLPM MA-CLE 25-1, § (3d ed. 2016) (“[I]t is advisable for attorneys for both the plaintiff and defendant to explore the circumstances related to entry of a restraining order as part of an initial case evaluation and to take seriously the potential for future violence and harassment.”). Requiring a tenant to obtain a restraining order to avoid eviction disregards the reality that each and every victim of domestic faces unique concerns related to her safety and well-being.

Moreover, many victims may actually face an increased risk of imminent harm as a direct result of obtaining or seeking enforcement of restraining. Indeed, victims of domestic violence face the greatest risk of serious injury or death when they leave or attempt to leave an abusive relationship, particularly during moments of legal intervention. Goodmark, supra, 24 (“The very act of seeking legal assistance in a restraining order or other type of case can endanger the battered women.”); see also Champagne v. 429 Mass. 324, 327 n.2 (1999) (“In fact, authorities domestic violence suggest there is an increased risk

harm on separation or divorce of the parties."). Indeed, Y.A. reported that she "ha[d] known someone had a restraining order and still was killed by her abuser" B.H.A. v. Y.A., Joint R. App., at App. 84. By requiring a restraining order for a tenant to avoid eviction, housing providers may inadvertently place victims of domestic violence at greater risk of imminent harm.

Accordingly, in light of the unreasonable burden and increased risk of harm imposed by requiring a restraining order, this Court should find that the BHA violated VAWA by requiring Y.A. to obtain a restraining order to avoid eviction.

III. IN RECOGNITION OF THE CHRONIC AND CYCLICAL NATURE OF DOMESTIC VIOLENCE, VAWA AUTHORIZES A VICTIM TO INVOKE ITS PROTECTIONS ON MULTIPLE OCCASIONS AS LONG AS THE NEGATIVE IMPACTS OF THE ABUSE CONTINUE.

The chronic and complex nature of domestic violence requires that VAWA protections apply in accordance with an individual survivor's circumstances — particularly in cases of repeated or ongoing abuse. In the preamble to its VAWA 2013 regulations, HUD acknowledged the chronic nature of abuse and confirmed that survivors can invoke VAWA protections on multiple occasions:

HUD agrees that a tenant or family may invoke VAWA protections on more than one occasion and cannot be subjected to additional conditions that adversely affect their tenancy because they have invoked VAWA protections. Individuals and families may be subject to abuse or violence on multiple occasions and it would be contrary to the intent of VAWA to say that the protections no longer apply after a certain point, even if violence or abuse continues, or the victim and the victim's family members are still in danger.

81 Fed. Reg. 80,724, at 80,731 (emphasis added). Accordingly, to fulfill VAWA's intent, a housing provider must allow a survivor to continue to receive VAWA protections as long as the survivor is still experiencing violence. VAWA's protections, therefore, apply in circumstances such as Y.A.'s case, where a victim misses more than one rental payment due to ongoing abuse.

HUD's instruction directly responds to a profound misunderstanding of domestic violence by people who often wonder why a victim wouldn't just leave their abuser. In addition to the risk of enhanced violence, victims often face severe financial or legal consequences for attempting to leave abusive relationships. As such, many survivors are forced to continue to stay with or return to their abusive partners, or else face homelessness and other serious risks. Nat'l Coal. Against Domestic Violence, Facts

About Domestic Violence and Economic Abuse (2015), https://www.speakcdn.com/assets/2497/domestic_violence_and_economic_abuse_ncadv.pdf. Studies have shown that victim's lack of financial resources is one of the major reasons why women in abusive relationships with or return to their abusers, risking their lives and possibly their children's lives. Reif & Krisher, Subsidized Housing and the Unique Needs of Domestic Violence Victims, 34 Clearinghouse Rev. 20, 21-22 (2002).

Like many victims, Y.A.'s abuser took complete economic control, using violence and coercion to capture possession of Y.A.'s bank account and resources. When Y.A. would ask for her bank card, her abuser would become so abusive that she would fear for her safety. B.H.A. v. Y.A., Appellant Br., at 3-4. The severe economic and physical abuse she faced was also coupled with threats to contact child welfare to her children. Id. at 4.

Y.A.'s experiences are well-known features of domestic violence, captured by such tools as the Power and Control Wheel, which demonstrates common abuse tactics such as intimidation, coercion, and threats; using male privilege; economic abuse; using children; minimizing; and emotional abuse. Domestic Abuse Intervention Programs, Power and Control Wheel, <https://www.theduluthmodel.org/wheels/>. Furthermore,

when a victim attempts to leave the abuser, the abuse often escalates. Women are nearly four times more likely to be killed shortly after leaving their partners, making it the most dangerous time period for victims. Campbell, et al., Risk Factors for Femicide Abusive Relationships: Results from a Multisite Case Control Study, 93 Am. J. Pub. Health 1089, 1091 Faced with the real possibility of being killed, many choose to stay as a survival tactic while they figure out a way to leave safely. In order to leave safely, a victim needs to have a place to go, to have money to support herself independently, and to be able to cut all ties with the abuser. Otherwise, she will continue to be under the control of the abuser and is at risk being killed. All of these considerations also contribute to why domestic violence often goes unreported. While it is estimated that over 10 million people experience domestic violence each year, most cases of domestic violence are never reported to the police. Nat'l Coal. Against Domestic Violence, Domestic Violence Fact Sheet, https://www.speakcdn.com/assets/2497/domestic_violence.pdf; I.H. Frieze & A. Browne, *Violence in Marriage, Family Violence* (L. Ohlin & M. Tonry eds., 1989).

Y.A.'s testimony recounting her relationship a pattern of escalating violence whenever she to take back control of her finances or leave her

partner. B.H.A. v. Y.A., Appellant Br., at 3-4. When Y.A. tried to leave the house in October of 2017, her abuser "started punching her to prevent her from leaving and choking her." Id. at 5. In December of 2017, when Y.A. refused to allow her abuser back into the home, "he grabbed her and hit her." Id. at 6-7. Finally, Y.A. reported that in January of 2018, when she refused to reconcile with her abuser, another violent incident ensued, and her abuser "pulled her by her arm into the other room, grabbed her by the neck and broke her phone." Id. at 9.

The reality that abuse is cyclical and even continues or escalates after a victim attempts to leave means that housing issues related to the domestic violence can persist over time. If domestic violence victims like Y.A. are unable to invoke VAWA on more than one occasion, housing authorities like BHA could issue eviction notices based on repeated domestic violence, thereby limiting VAWA's protections simply because the abuser chose to continue to commit violence.

Research also shows that abusers commonly a victim's economic stability and isolate them from their family and friends. Reif & Krisher, supra, at 22. For example, many victims face the loss of their housing due to the calculated acts of their abusers whose intent is to render their victims homeless and

dependent and forced to return to them. See, e.g., Levin, McKean, & Raphael, Ctr. For Impact Research, Pathways to and From Homelessness: Women and Children in Chicago Shelters 15 (2004), (finding that for a substantial portion of women surveyed in Chicago shelters, housing arrangements were destroyed due to intimate partner violence).

As in Y.A.'s case, amici often see abusers who know that their conduct, including control of income, prevents the victim from paying rent and household bills and jeopardizes a victim's housing. In amici's experience, abusers are equally aware of the of affordable housing for their victims and the consequences if it is lost. They then use the threat loss of housing assistance to manipulate their See, e.g., Floyd v. Haus. Auth. of Cook Cnty., No. 12 CH 14563, 2013 WL 753240 (Ill. Cir. Ct. Feb. 27, 2013) (reversing the hearing officer's decision terminating the victim's Housing Choice Voucher after finding, inter alia, that abuser voluntarily and purposefully provided information to the housing authority supporting his claim that he lived with her, seemingly with the intention of getting the victim terminated from the program). In January of 2018, Y.A.'s abuser acknowledged his culpability in placing her housing at risk when he returned to her home to apologize and

her he would help her keep her apartment. B.H.A. v. Y.A., Appellant Br., at 9.

For these reasons, the BHA cannot limit the protections and remedies available under VAWA based on the number of times that Y.A. sought relief. HUD has made clear in its comments in the Final Rule that there is no numerical limit to how many times VAWA may apply to protect the housing of a tenant or household.

From amici's experience, survivors too often face frustration, hostility, or dismissive attitudes if they need to invoke VAWA protection more than once, as Y.A. experienced with the BHA. Yet, VAWA provides no such limitation. HUD expressly recognized the critical need to ensure survivors can invoke VAWA multiple times because to do otherwise would be contrary to VAWA's intent to keep victims safe from harm.

IV. THIS COURT MUST FIND THAT EITHER MASSACHUSETTS STATE LAW IS CONSISTENT WITH VAWA AND PROTECTS HOUSING OF DOMESTIC VIOLENCE SURVIVORS, OR THAT VAWA PREEMPTS ANY STATE LAW THAT PROVIDES FEWER PROTECTIONS TO DOMESTIC VIOLENCE VICTIMS LIVING FEDERALLY ASSISTED HOUSING.

Through VAWA, Congress expressly prohibited federally assisted housing providers from evicting domestic violence survivors due to the actions of abusers. See 34 U.S.C. § 12491 (2018) (b); 24 C.F.R. § 5.2005 (b). Massachusetts law, therefore, must allow

for victims of domestic violence to assert a defense
eviction in accordance with VAWA. To the extent that
Massachusetts law bars survivors from presenting an
affirmative defense to eviction under VAWA, VAWA
preempts state law.

As an initial matter, G.L. c. 239, § 10 provides
that:

[W]here there is an agreement for judgment
that grants the tenant a right to reinstate
the tenancy, no execution shall issue prior
to the expiration of the period of such stay
or stays or such reinstate period
unless . . . the court after a hearing shall
determine that the tenant or occupant is in
substantial violation of a material term or
condition of the stay or a material term of
the agreement for judgment.

Massachusetts state law, however, does not foreclose
the possibility that tenants may raise an affirmative
defense to eviction under VAWA.

If this Court finds that G.L. c. 239, § 10 does
not allow Y.A. to bring such a defense, however, VAWA
preempts Massachusetts state law. The Supremacy Clause
of the U.S. Constitution prohibits enforcement of
and local laws that are inconsistent with federal law.
U.S. Const. art. VI, cl. 2. Where a state or local
such as G.L. c. 239, § 10, "stands as an obstacle to
the accomplishment and execution of the full purposes
and objectives of Congress," it will be preempted by

federal law. Michigan Canners & Freezers Ass'n v. Ag. Marketing & Bargaining Bd., 467 U.S. 461, 478 (1984)) (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)). As a federally funded housing provider, the BHA is governed by extensive federal statutes and HUD regulations. This governance includes what steps a housing authority, like the BHA, takes when seeking to terminate a tenant's housing assistance, including those provisions of VAWA that prohibit the eviction of domestic violence victims for the actions of their abusers.

In 2005, in response to the growing national crisis of housing providers evicting and revictimizing domestic violence victims for the acts of their abusers, Congress amended VAWA to specifically prevent such evictions. Pub. L. No. 109-162, § 41402, 119 Stat. 2960, 3041-49 (2006). In testimony before Congress regarding the VAWA 2005 Reauthorization and the need for housing protections for survivors, then-executive director of the National Network to End Domestic Violence Lynn Rosenthal explained that "[m]any victims of domestic violence have been evicted or denied housing due to the crimes committed against them or because of their abusers' actions." Testimony before the S. Committee on the Judiciary on the Violence against Women Act of 2005, 109th Cong. 14

(2005) (statement of Lynn Rosenthal, Executive Director, National Network to End Domestic Violence).

Congress addressed these concerns by incorporating many findings on the subject in VAWA 2005, including identifying: "a strong link between domestic violence and homelessness," and the fact that women "are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence." Pub. L. No. 109-162, § 41401(1), §41401(3). Based on these findings, Title VI of VAWA 2005 expressly intended to ensure that "victims have meaningful access to the criminal justice system without jeopardizing . . . [their] housing" and further ensure that "the status of being a victim of such a crime is not a reason for the denial or loss of housing. Id. §§ 41405(a), 41402. The 2013 Reauthorization of VAWA built upon this recognition that victims should not be evicted from housing due to the acts of their abusers and provided additional housing protections for victims of domestic violence, such as an opportunity to receive emergency transfers to safe housing and applying VAWA's coverage to more federal housing programs. See, generally, 34 U.S.C. § 12491, et seq.

To achieve this goal of ensuring survivors of domestic violence do not lose their housing, VAWA

makes expressly clear that other laws providing less protections to survivors will be preempted by VAWA:

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

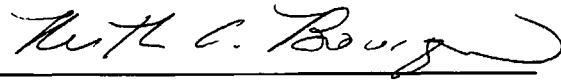
34 U.S.C. § 12491(c)(8) (emphasis added).

Thus, Congress made clear that VAWA provides protections for survivors of domestic violence that cannot be ignored in the face of state laws that provide fewer or no protection for survivors. This Court, therefore, must find either that G.L. c. 239, § 10 permits survivors to bring an affirmative defense to eviction under VAWA, or that G.L. c. 239, § 10 is preempted by VAWA.

CONCLUSION

Amici respectfully submit that this Court vacate the ruling of the Housing Court and deny the BHA's Motion to Issue Execution, and allow Y.A. an opportunity to cure the rental arrears and continue to remain in her home.

Respectfully submitted,



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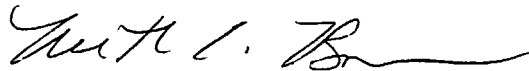
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**Pro Hac Vice Motion*
Pending

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Mass. R. A. P. 16(k) Certification

I, Ruth a. Bourquin, hereby certify that the foregoing brief complies with the rules of court that apply to the filing of appellate briefs, including Rules 16 and 20.



Ruth A. Bourquin, BBO #552985

Certificate of Service

I, Ruth A. Bourquin, hereby certify that on this 21st day of December, 2018, I caused to be served by U.S. mail, first-class postage prepaid copies of this Brief of Amici Curiae the American Civil Liberties Union et al on:

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ADDENDUM

Housing Court Order Add.1

United States Constitution

U.S. Const. art. VI, cl. 2 Add.3

Federal Statutes

34 U.S.C. § 12941 Add.4

Federal Regulations

24 C.F.R. § 5.2003 Add.12

24 C.F.R. § 5.2005 Add.15

24 C.F.R. § 5.2007 Add.21

24 C.F.R. § 5.2009 Add.24

24 C.F.R. § 982.315 Add.26

Violence Against Women Reauthorization Act of 2013:
Implementation in HUD Housing Programs,
81 Fed. Reg. 80724-01, 80724-31 (Nov. 16, 2016)
(excerpted) Add.28

Massachusetts Statutes

M.G.L. c. 209A, § 4 Add.36

M.G.L. c. 209A, § 7 Add.37

M.G.L. c. 239, § 10 Add.40

Other Authorities

Violence Against Women and Department
of Justice Reauthorization Act of 2005, Pub. L. No.
109-162, § 41402, 119 Stat. 2960, 3041-49 (2006)
(prior to 2013 reauthorization) (excerpted)... Add.41

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing, *Violence Against
Women Reauthorization Act of 2013 Guidance*, Notice
PIH-2017-08 (HA) (May 19, 2017) (excerpted)... Add.45

Hearing Before the S. Comm. on the Judiciary on the Violence against Women Act of 2005, 109th Cong. 14
(2005)(statement of Lynn Rosenthal, Executive Director, National Network to End Domestic Violence)
(excerpted) Add.52

The Increased Importance of the Violence Against Women Act In a Time of Economic Crisis: Hearing Before the S. Comm. on the Judiciary, 111th Cong. 62
(2010)(statement of Sen. Patrick Leahy, Chairman, S. Comm. on the Judiciary) (excerpted) Add.56

The Increased Importance of the Violence Against Women Act In a Time of Economic Crisis: Hearing Before the S. Comm. on the Judiciary, 111th Cong. 62
(2010)(statement of Auburn L. Watersong, Economic Justice Specialist, Vermont Network Against Domestic and Sexual Violence) (excerpted) Add.58

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

HOUSING COURT DEPARTMENT
EASTERN DIVISION
SUMMARY PROCESS
NO. 14H84SP002240

BOSTON HOUSING AUTHORITY,

Plaintiff

v.

██████████ A ██████████

Defendant

ORDER

This matter came before the Court for a hearing on the plaintiff's Motion for Issuance of Execution.


Under the terms the 4th Final Amended Agreement for Judgment the parties executed on May 3, 2017, the judgment for possession remained unchanged and the judgment amount was amended to \$1,924.00. Execution would not issue if the defendant paid her monthly rent by the 5th day of each month and paid an additional \$25.00 each month that would be applied to the judgment amount until the rent arrearage was paid in full.

The defendant has again failed to comply with the terms of the agreement for judgment. Since May 3, 2017 the defendant has made only one payment to the BHA in the amount of \$100.00. As of January 10, 2017 the defendant's rent arrearage has increased to \$7,436.00. The defendant's failure to make the required rent payments constitutes a violation of a material term of the agreement.

The May 3, 2017 agreement was the fifth agreement the BHA entered into with the defendant. The first agreement for judgment was entered on June 25, 2014. Over the next three years the BHA filed four motions for execution based upon the defendant's failure to comply with the numerous agreements. Each time the BHA made an effort to work with the defendant in an effort to preserve her tenancy. The BHA has acted reasonably and cannot be expected to do any more.

Accordingly, the BHA's Motion to Issue Execution is **ALLOWED**. Execution for possession and damages of \$7,436.00 shall issue forthwith; however the BHA shall not levy on the execution until on or after February 15, 2018.

SO ORDERED.


JEFFREY M. WINIK
FIRST JUSTICE

January 12, 2018

cc: Michael J. Louis, Esq. _____
[REDACTED] A [REDACTED]

United States Code Annotated
Constitution of the United States
Annotated
Article VI. Debts Validated--Supreme Law of Land--Oath of Office (Refs & Annos)

U.S.C.A. Const. Art. VI cl. 2

Clause 2. Supreme Law of Land

Currentness

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Notes of Decisions (2080)

U.S.C.A. Const. Art. VI cl. 2, USCA CONST Art. VI cl. 2

Current through P.L. 115-231. Also includes P.L. 115-233 to 115-281. Title 26 current through P.L. 115-309.

End of Document

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United States Code Annotated

Title 34. Crime Control and Law Enforcement (Refs & Annos)

Subtitle I. Comprehensive Acts

Chapter 121. Violent Crime Control and Law Enforcement

Subchapter III. Violence Against Women

Part L. Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

Subpart 2. Housing Rights

34 U.S.C.A. § 12491

Formerly cited as 42 USCA § 14043e-11

§ 12491. Housing protections for victims of domestic violence, dating violence, sexual assault, and stalking

Effective: September 1, 2017

Currentness

(a) Definitions

In this subpart:

(1) Affiliated individual

The term “affiliated individual” means, with respect to an individual--

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

(B) any individual, tenant, or lawful occupant living in the household of that individual.

(2) Appropriate agency

The term “appropriate agency” means, with respect to a covered housing program, the Executive department (as defined in section 101 of Title 5) that carries out the covered housing program.

(3) Covered housing program

The term “covered housing program” means--

(A) the program under section 1701q of Title 12;

(B) the program under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013);

(C) the program under subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12901 et seq.);

(D) the program under subtitle A of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.);

(E) the program under subtitle A of title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12741 et seq.);

(F) the program under paragraph (3) of section 1715/(d) of Title 12 that bears interest at a rate determined under the proviso under paragraph (5) of such section 1715/(d);

(G) the program under section 1715z-1 of Title 12;

(H) the programs under sections 1437d and 1437f of Title 42;

(I) rural housing assistance provided under sections 1484, 1485, 1486, 1490m, and 1490p-2 of Title 42; and

(J) the low income housing tax credit program under section 42 of Title 26.

(b) Prohibited basis for denial or termination of assistance or eviction

(1) In general

An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

(2) Construction of lease terms

An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as--

(A) a serious or repeated violation of a lease for housing assisted under a covered housing program by the victim or threatened victim of such incident; or

(B) good cause for terminating the assistance, tenancy, or occupancy rights to housing assisted under a covered housing program of the victim or threatened victim of such incident.

(3) Termination on the basis of criminal activity

(A) Denial of assistance, tenancy, and occupancy rights prohibited

No person may deny assistance, tenancy, or occupancy rights to housing assisted under a covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.

(B) Bifurcation

(i) In general

Notwithstanding subparagraph (A), a public housing agency or owner or manager of housing assisted under a covered housing program may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.

(ii) Effect of eviction on other tenants

If public housing agency or owner or manager of housing assisted under a covered housing program evicts, removes, or terminates assistance to an individual under clause (i), and the individual is the sole tenant eligible to receive assistance under a covered housing program, the public housing agency or owner or manager of housing assisted under the covered housing program shall provide any remaining tenant or resident an opportunity to establish eligibility for the covered housing program. If a tenant or resident described in the preceding sentence cannot establish eligibility, the public housing agency or owner or manager of the housing shall provide the tenant or resident a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program.

(C) Rules of construction

Nothing in subparagraph (A) shall be construed--

(i) to limit the authority of a public housing agency or owner or manager of housing assisted under a covered housing program, when notified of a court order, to comply with a court order with respect to--

(I) the rights of access to or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

(II) the distribution or possession of property among members of a household in a case;

(ii) to limit any otherwise available authority of a public housing agency or owner or manager of housing assisted under a covered housing program to evict or terminate assistance to a tenant for any violation of a lease not premised on the act of violence in question against the tenant or an affiliated person of the tenant, if the public housing agency or owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate;

(iii) to limit the authority to terminate assistance to a tenant or evict a tenant from housing assisted under a covered housing program if a public housing agency or owner or manager of the housing can demonstrate that an actual and imminent threat to other tenants or individuals employed at or providing service to the property would be present if the assistance is not terminated or the tenant is not evicted; or

(iv) 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, sexual assault, or stalking.

(c) Documentation

(1) Request for documentation

If an applicant for, or tenant of, housing assisted under a covered housing program represents to a public housing agency or owner or manager of the housing that the individual is entitled to protection under subsection (b), the public housing agency or owner or manager may request, in writing, that the applicant or tenant submit to the public housing agency or owner or manager a form of documentation described in paragraph (3).

(2) Failure to provide certification

(A) In general

If an applicant or tenant does not provide the documentation requested under paragraph (1) within 14 business days after the tenant receives a request in writing for such certification from a public housing agency or owner or manager of housing assisted under a covered housing program, nothing in this subpart may be construed to limit the authority of the public housing agency or owner or manager to--

(i) deny admission by the applicant or tenant to the covered program;

(ii) deny assistance under the covered program to the applicant or tenant;

(iii) terminate the participation of the applicant or tenant in the covered program; or

(iv) evict the applicant, the tenant, or a lawful occupant that commits violations of a lease.

(B) Extension

A public housing agency or owner or manager of housing may extend the 14-day deadline under subparagraph (A) at its discretion.

(3) Form of documentation

A form of documentation described in this paragraph is--

(A) a certification form approved by the appropriate agency that--

(i) states that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;

(ii) states that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under subsection (b) meets the requirements under subsection (b); and

(iii) includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide;

(B) a document that--

(i) is signed by--

(I) an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional from whom an applicant or tenant has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse; and

(II) the applicant or tenant; and

(ii) states under penalty of perjury that the individual described in clause (i)(I) believes that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under subsection (b) meets the requirements under subsection (b);

(C) a record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency; or

(D) at the discretion of a public housing agency or owner or manager of housing assisted under a covered housing program, a statement or other evidence provided by an applicant or tenant.

(4) Confidentiality

Any information submitted to a public housing agency or owner or manager under this subsection, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in confidence by the public housing agency or owner or manager and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is--

(A) requested or consented to by the individual in writing;

(B) required for use in an eviction proceeding under subsection (b); or

(C) otherwise required by applicable law.

(5) Documentation not required

Nothing in this subsection shall be construed to require a public housing agency or owner or manager of housing assisted under a covered housing program to request that an individual submit documentation of the status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking.

(6) Compliance not sufficient to constitute evidence of unreasonable act

Compliance with subsection (b) by a public housing agency or owner or manager of housing assisted under a covered housing program based on documentation received under this subsection, shall not be sufficient to constitute evidence of an unreasonable act or omission by the public housing agency or owner or manager or an employee or agent of the public housing agency or owner or manager. Nothing in this paragraph shall be construed to limit the liability of a public housing agency or owner or manager of housing assisted under a covered housing program for failure to comply with subsection (b).

(7) Response to conflicting certification

If a public housing agency or owner or manager of housing assisted under a covered housing program receives documentation under this subsection that contains conflicting information, the public housing agency or owner or manager may require an applicant or tenant to submit third-party documentation, as described in subparagraph (B), (C), or (D) of paragraph (3).

(8) Preemption

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

(d) Notification

(1) Development

The Secretary of Housing and Urban Development shall develop a notice of the rights of individuals under this section, including the right to confidentiality and the limits thereof.

(2) Provision

Each public housing agency or owner or manager of housing assisted under a covered housing program shall provide the notice developed under paragraph (1), together with the form described in subsection (c)(3)(A), to an applicant for or tenants of housing assisted under a covered housing program--

(A) at the time the applicant is denied residency in a dwelling unit assisted under the covered housing program;

(B) at the time the individual is admitted to a dwelling unit assisted under the covered housing program;

(C) with any notification of eviction or notification of termination of assistance; and

(D) in multiple languages, consistent with guidance issued by the Secretary of Housing and Urban Development in accordance with Executive Order 13166 (42 U.S.C. 2000d-1 note; relating to access to services for persons with limited English proficiency).

(e) Emergency transfers

Each appropriate agency shall adopt a model emergency transfer plan for use by public housing agencies and owners or managers of housing assisted under covered housing programs that--

(1) allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit assisted under a covered housing program if--

(A) the tenant expressly requests the transfer; and

(B)(i) the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same dwelling unit assisted under a covered housing program; or

(ii) in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90 day period preceding the request for transfer; and

(2) incorporates reasonable confidentiality measures to ensure that the public housing agency or owner or manager does not disclose the location of the dwelling unit of a tenant to a person that commits an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

(f) Policies and procedures for emergency transfer

The Secretary of Housing and Urban Development shall establish policies and procedures under which a victim requesting an emergency transfer under subsection (e) may receive, subject to the availability of tenant protection vouchers, assistance under section 1437f(o) of Title 42.

(g) Implementation

The appropriate agency with respect to each covered housing program shall implement this section, as this section applies to the covered housing program.

CREDIT(S)

(Pub.L. 103-322, Title IV, § 41411, as added Pub.L. 113-4, Title VI, § 601(a)(4), Mar. 7, 2013, 127 Stat. 102; amended Pub.L. 114-324, § 6, Dec. 16, 2016, 130 Stat. 1951.)

Notes of Decisions (1)

34 U.S.C.A. § 12491, 34 USCA § 12491

Current through P.L. 115-231. Also includes P.L. 115-233 to 115-281. Title 26 current through P.L. 115-309.

Code of Federal Regulations

Title 24. Housing and Urban Development

Subtitle A. Office of the Secretary, Department of Housing and Urban Development

Part 5. General HUD Program Requirements; Waivers (Refs & Annos)

Subpart L. Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
(Refs & Annos)

24 C.F.R. § 5.2003

§ 5.2003 Definitions.

Effective: December 16, 2016

Currentness

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

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

Affiliated individual, with respect to an individual, means:

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

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

Covered housing program consists of the following HUD programs:

- (1) Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.
- (2) Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.
- (3) Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 et seq.), with implementing regulations at 24 CFR part 574.
- (4) HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 et seq.), with implementing regulations at 24 CFR part 92.

(5) Homeless programs under title IV of the McKinney–Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.), including the Emergency Solutions Grants program (with implementing regulations at 24 CFR part 576), the Continuum of Care program (with implementing regulations at 24 CFR part 578), and the Rural Housing Stability Assistance program (with regulations forthcoming).

(6) Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221.

(7) Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z–1), with implementing regulations at 24 CFR part 236.

(8) HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d) (with regulations at 24 CFR Chapter IX), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f) (with regulations at 24 CFR chapters VIII and IX), and the Section 8 Moderate Rehabilitation Single Room Occupancy (with implementing regulations at 24 CFR part 882, subpart H).

(9) The Housing Trust Fund (12 U.S.C. 4568) (with implementing regulations at 24 CFR part 93).

Covered housing provider refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities. The program-specific regulations for the covered housing programs identify the individual or entity that carries out the duties and responsibilities of the covered housing provider as set forth in part 5, subpart L. For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be the same individual or entity.

Dating violence means violence committed by a person:

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

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

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

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

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

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

AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub.L. 109–115, 119 Stat. 2936; Sec. 607, Pub.L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

Current through Dec. 13, 2018; 83 FR 64222.

End of Document

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Code of Federal Regulations

Title 24. Housing and Urban Development

Subtitle A. Office of the Secretary, Department of Housing and Urban Development

Part 5. General HUD Program Requirements; Waivers (Refs & Annos)

Subpart L. Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
(Refs & Annos)

24 C.F.R. § 5.2005

§ 5.2005 VAWA protections.

Effective: December 16, 2016
Currentness

(a) Notification of occupancy rights under VAWA, and certification form.

(1) A covered housing provider must provide to each of its applicants and to each of its tenants the notice of occupancy rights and the certification form as described in this section:

(i) A “Notice of Occupancy Rights under the Violence Against Women Act,” as prescribed and in accordance with directions provided by HUD, that explains the VAWA protections under this subpart, including the right to confidentiality, and any limitations on those protections; and

(ii) A certification form, in a form approved by HUD, to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault or stalking, and that:

(A) States that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;

(B) States that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under this subpart meets the applicable definition for such incident under § 5.2003; and

(C) Includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide.

(2) The notice required by paragraph (a)(1)(i) of this section and certification form required by paragraph (a)(1)(ii) of this section must be provided to an applicant or tenant no later than at each of the following times:

(i) At the time the applicant is denied assistance or admission under a covered housing program;

(ii) At the time the individual is provided assistance or admission under the covered housing program;

(iii) With any notification of eviction or notification of termination of assistance; and

(iv) During the 12-month period following December 16, 2016, either during the annual recertification or lease renewal process, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.

(3) The notice required by paragraph (a)(1)(i) of this section and the certification form required by paragraph (a)(1)(ii) of this section must be made available in multiple languages, consistent with guidance issued by HUD in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency, signed August 11, 2000, and published in the Federal Register on August 16, 2000 (at 65 FR 50121)).

(4) For the Housing Choice Voucher program under 24 CFR part 982, the project-based voucher program 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, as well as project-based section 8 provided in connection with housing under part 891, 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, sexual assault, or stalking, as provided in this subpart.

(b) Prohibited basis for denial or termination of assistance or eviction—

(1) General. An applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

(2) Termination on the basis of criminal activity. A tenant in a covered housing program may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if:

(i) The criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and

(ii) The tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking.

(c) Construction of lease terms and terms of assistance. An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

(1) A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or

(2) Good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of the victim or threatened victim of such incident.

(d) Limitations of VAWA protections.

(1) Nothing in this section limits the authority of a covered housing provider, when notified of a court order, to comply with a court order with respect to:

(i) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

(ii) The distribution or possession of property among members of a household.

(2) Nothing in this section limits any available authority of a covered housing provider to evict or terminate assistance to a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. However, the covered housing provider must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.

(3) Nothing in this section limits the authority of a covered housing provider to terminate assistance to or evict a tenant under a covered housing program if the covered housing provider can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to property of the covered housing provider would be present if that tenant or lawful occupant is not evicted or terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the standards provided in the definition of “actual and imminent threat” in § 5.2003.

(4) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section should be utilized by a covered housing provider 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) Emergency transfer plan. Each covered housing provider, as identified in the program-specific regulations for the covered housing program, shall adopt an emergency transfer plan, no later than June 14, 2017 based on HUD's model emergency transfer plan, in accordance with the following:

(1) For purposes of this section, the following definitions apply:

(i) Internal emergency transfer refers to an emergency relocation of a tenant to another unit where the tenant would not be categorized as a new applicant; that is, the tenant may reside in the new unit without having to undergo an application process.

(ii) External emergency transfer refers to an emergency relocation of a tenant to another unit where the tenant would be categorized as a new applicant; that is the tenant must undergo an application process in order to reside in the new unit.

(iii) Safe unit refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe.

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

(i) The tenant expressly requests the transfer; and

(ii)(A) The tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying; or

(B) In the case of a tenant who is a victim of sexual assault, either the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premises during the 90–calendar-day period preceding the date of the request for transfer.

(3) The emergency transfer plan must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of tenants seeking transfers and individuals seeking placement on waiting lists.

(4) The emergency transfer plan must incorporate strict confidentiality measures to ensure that the covered housing provider does not disclose the location of the dwelling unit of the tenant to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

(5) The emergency transfer plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.

(6) The emergency transfer plan must describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available, and these policies must ensure that requests for internal

emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.

(7) The emergency transfer plan must describe reasonable efforts the covered housing provider will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available. The plan must include policies for assisting a tenant who is seeking an external emergency transfer under VAWA out of the covered housing provider's program or project, and a tenant who is seeking an external emergency transfer under VAWA into the covered housing provider's program or project. These policies may include:

(i) Arrangements, including memoranda of understanding, with other covered housing providers to facilitate moves; and

(ii) Outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking.

(8) Nothing may preclude a tenant from seeking an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available.

(9) Where applicable, the emergency transfer plan must describe policies for a tenant who has tenant-based rental assistance and who meets the requirements of paragraph (e)(2) of this section to move quickly with that assistance.

(10) The emergency transfer plan may require documentation from a tenant seeking an emergency transfer, provided that:

(i) The tenant's submission of a written request to the covered housing provider, where the tenant certifies that they meet the criteria in paragraph (e)(2)(ii) of this section, shall be sufficient documentation of the requirements in paragraph (e)(2) of this section;

(ii) The covered housing provider may, at its discretion, ask an individual seeking an emergency transfer to document the occurrence of domestic violence, dating violence, sexual assault, or stalking, in accordance with § 5.2007, for which the individual is seeking the emergency transfer, if the individual has not already provided documentation of that occurrence; and

(iii) No other documentation is required to qualify the tenant for an emergency transfer.

(11) The covered housing provider must make its emergency transfer plan available upon request and, when feasible, must make its plan publicly available.

(12) The covered housing provider must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period

of time as specified in program regulations. Requests and outcomes of such requests must be reported to HUD annually.

(13) Nothing in this paragraph (e) may be construed to supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub.L. 109–115, 119 Stat. 2936; Sec. 607, Pub.L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

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Code of Federal Regulations

Title 24. Housing and Urban Development

Subtitle A. Office of the Secretary, Department of Housing and Urban Development

Part 5. General HUD Program Requirements; Waivers (Refs & Annos)

Subpart L. Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
(Refs & Annos)

24 C.F.R. § 5.2007

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

Effective: December 16, 2016

Currentness

(a) Request for documentation.

(1) Under a covered housing program, if an applicant or tenant represents to the covered housing provider that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking entitled to the protections under § 5.2005, or remedies under § 5.2009, the covered housing provider may request, in writing, that the applicant or tenant submit to the covered housing provider the documentation specified in paragraph (b)(1) of this section.

(2)(i) If an applicant or tenant does not provide the documentation requested under paragraph (a)(1) of this section within 14 business days after the date that the tenant receives a request in writing for such documentation from the covered housing provider, nothing in § 5.2005 or § 5.2009, which addresses the protections of VAWA, may be construed to limit the authority of the covered housing provider to:

(A) Deny admission by the applicant or tenant to the covered housing program;

(B) Deny assistance under the covered housing program to the applicant or tenant;

(C) Terminate the participation of the tenant in the covered housing program; or

(D) Evict the tenant, or a lawful occupant that commits a violation of a lease.

(ii) A covered housing provider may, at its discretion, extend the 14-business-day deadline under paragraph (a)(2)(i) of this section.

(b) Permissible documentation and submission requirements.

(1) In response to a written request to the applicant or tenant from the covered housing provider, as provided in paragraph (a) of this section, the applicant or tenant may submit, as documentation of the occurrence of domestic

violence, dating violence, sexual assault, or stalking, any one of the following forms of documentation, where it is at the discretion of the tenant or applicant which one of the following forms of documentation to submit:

(i) The certification form described in § 5.2005(a)(1)(ii); or

(ii) A document:

(A) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;

(B) Signed by the applicant or tenant; and

(C) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under this subpart, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under § 5.2003; or

(iii) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

(iv) At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

(2) If a covered housing provider receives documentation under paragraph (b)(1) of this section that contains conflicting information (including certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator), the covered housing provider may require an applicant or tenant to submit third-party documentation, as described in paragraphs (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section, within 30 calendar days of the date of the request for the third-party documentation.

(3) Nothing in this paragraph (b) shall be construed to require a covered housing provider to request that an individual submit documentation of the status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Confidentiality. Any information submitted to a covered housing provider under this section, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking (confidential information), shall be maintained in strict confidence by the covered housing provider.

(1) The covered housing provider shall not allow any individual administering assistance on behalf of the covered housing provider or any persons within their employ (e.g., contractors) or in the employ of the covered housing

provider to have access to confidential information unless explicitly authorized by the covered housing provider for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

(2) The covered housing provider shall not enter confidential information described in paragraph (c) of this section into any shared database or disclose such information to any other entity or individual, except to the extent that the disclosure is:

(i) Requested or consented to in writing by the individual in a time-limited release

(ii) Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or

(iii) Otherwise required by applicable law.

(d) A covered housing provider's compliance with the protections of §§ 5.2005 and 5.2009, based on documentation received under this section shall not be sufficient to constitute evidence of an unreasonable act or omission by the covered housing provider. However, nothing in this paragraph (d) of this section shall be construed to limit the liability of a covered housing provider for failure to comply with §§ 5.2005 and 5.2009.

AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub.L. 109–115, 119 Stat. 2936; Sec. 607, Pub.L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

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Title 24. Housing and Urban Development

Subtitle A. Office of the Secretary, Department of Housing and Urban Development

Part 5. General HUD Program Requirements; Waivers (Refs & Annos)

Subpart L. Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
(Refs & Annos)

24 C.F.R. § 5.2009

§ 5.2009 Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking.

Effective: December 16, 2016

Currentness

(a) Lease bifurcation.

(1) A covered housing provider may in accordance with paragraph (a)(2) of this section, bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual:

(i) Without regard to whether the household member is a signatory to the lease; and

(ii) Without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.

(2) A lease bifurcation, as provided in paragraph (a)(1) of this section, shall be carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law for termination of assistance or leases and in accordance with any requirements under the relevant covered housing program.

(b) Reasonable time to establish eligibility for assistance or find alternative housing following bifurcation of a lease—

(1) Applicability. The reasonable time to establish eligibility under a covered housing program or find alternative housing is specified in paragraph (b) of this section, or alternatively in the program-specific regulations governing the applicable covered housing program. Some covered housing programs may provide different time frames than are specified in this paragraph (b), and in such cases, the program-specific regulations govern.

(2) Reasonable time to establish eligibility assistance or find alternative housing.

(i) If a covered housing provider exercises the option to bifurcate a lease as provided in paragraph (a) of this section, and the individual who was evicted or for whom assistance was terminated was the eligible tenant under the covered

housing program, the covered housing provider shall provide to any remaining tenant or tenants that were not already eligible a period of 90 calendar days from the date of bifurcation of the lease to:

(A) Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease; or

(B) Establish eligibility under another covered housing program; or

(C) Find alternative housing.

(ii) The 90–calendar-day period provided by paragraph (b)(2) of this section will not be available to a remaining household member if the statutory requirements for the covered housing program prohibit it. The 90–day calendar period also will not apply beyond the expiration of a lease, unless this is permitted by program regulations. The 90–calendar-day period is the total period provided to a remaining tenant to establish eligibility under the three options provided in paragraphs (b)(2)(i)(A), (B), and (C) of this section.

(iii) The covered housing provider may extend the 90–calendar-day period in paragraph (b)(2) of this section up to an additional 60 calendar days, unless prohibited from doing so by statutory requirements of the covered program or unless the time period would extend beyond expiration of the lease.

(c) Efforts to promote housing stability for victims of domestic violence, dating violence, sexual assault, or stalking. Covered housing providers are encouraged to undertake whatever actions permissible and feasible under their respective programs to assist individuals residing in their units who are victims of domestic violence, dating violence, sexual assault, or stalking to remain in their units or other units under the covered housing program or other covered housing providers, and for the covered housing provider to bear the costs of any transfer, where permissible.

AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub.L. 109–115, 119 Stat. 2936; Sec. 607, Pub.L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

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Title 24. Housing and Urban Development

Subtitle B. Regulations Relating to Housing and Urban Development

Chapter IX. Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Refs & Annos)

Part 982. Section 8 Tenant–Based Assistance: Housing Choice Voucher Program (Refs & Annos)

Subpart G. Leasing a Unit (Refs & Annos)

24 C.F.R. § 982.315

§ 982.315 Family break-up.

Effective: December 16, 2016

Currentness

(a)(1) The PHA has discretion to determine which members of an assisted family continue to receive assistance in the program if the family breaks up. The PHA administrative plan must state PHA policies on how to decide who remains in the program if the family breaks up.

(2) If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), 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 of actual or threatened domestic violence, dating violence, sexual assault, or stalking.

(4) Whether any of the family members are receiving protection as victims of domestic violence, dating violence, sexual assault, 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.

(c) If a court determines the disposition of property between members of the assisted family in a divorce or separation under a settlement or judicial decree, the PHA is bound by the court's determination of which family members continue to receive assistance in the program.

Credits

[75 FR 66264, Oct. 27, 2010; 80 FR 8246, Feb. 17, 2015; 81 FR 80816, Nov. 16, 2016; 81 FR 87812, Dec. 6, 2016]

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

Current through Dec. 13, 2018; 83 FR 64222.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 91, 92, 93, 200, 247, 574, 576, 578, 880, 882, 883, 884, 886, 891, 905, 960, 966, 982, and 983

[Docket No. FR-5720-F-03]

RIN 2501-AD71

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

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements in HUD's regulations the requirements of the 2013 reauthorization of the Violence Against Women Act (VAWA), which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements. The 2013 reauthorization (VAWA 2013) expands housing protections to HUD programs beyond HUD's public housing program and HUD's tenant-based and project-based Section 8 programs (collectively, the Section 8 programs) that were covered by the 2005 reauthorization of the Violence Against Women Act (VAWA 2005). Additionally, the 2013 law provides enhanced protections and options for victims of domestic violence, dating violence, sexual assault, and stalking. Specifically, this rule amends HUD's generally applicable regulations, HUD's regulations for the public housing and Section 8 programs that already pertain to VAWA, and the regulations of programs newly covered by VAWA 2013.

In addition to this final rule, HUD is publishing a notice titled the Notice of Occupancy Rights under the Violence Against Women Act (Notice of Occupancy Rights) that certain housing providers must give to tenants and applicants to ensure they are aware of their rights under VAWA and these implementing regulations, a model emergency transfer plan that may be used by housing providers to develop their own emergency transfer plans, a model emergency transfer request form that housing providers could provide to tenants requesting an emergency transfer under these regulations, and a new certification form for documenting incidents of domestic violence, dating violence, sexual assault, and stalking that must be used by housing providers.

This rule reflects the statutory changes made by VAWA 2013, as well

as HUD's recognition of the importance of providing housing protections and rights to victims of domestic violence, dating violence, sexual assault, and stalking. By increasing opportunities for all individuals to live in safe housing, this will reduce the risk of homelessness and further HUD's mission of utilizing housing to improve quality of life.

DATES: *Effective Date:* These regulations are effective on December 16, 2016.

Compliance Date: Compliance with the rule with respect to completing an emergency transfer plan and providing emergency transfers, and associated recordkeeping and reporting requirements, is required no later than May 15, 2017.

FOR FURTHER INFORMATION CONTACT: For information about: HUD's Public Housing program, contact Monica Shepherd, Director Public Housing Management and Occupancy Division, Office of Public and Indian Housing, Room 4204, telephone number 202-402-5687; HUD's Housing Choice Voucher program and Project-Based Voucher, contact Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4216, telephone number 202-402-6050; HUD's Multifamily Housing programs, contact Yvette M. Viviani, Director, Housing Assistance Policy Division, Office of Housing, Room 6138, telephone number 202-708-3000; HUD's HOME Investment Partnerships program, contact Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Room 7164, telephone number 202-708-2684; HUD's Housing Opportunities for Persons With AIDS (HOPWA) program, contact Rita Flegel, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, Room 7248, telephone number 202-402-5374; and HUD's Homeless programs, contact Norman Suchar, Director, Office of Special Needs Assistance, Office of Community Planning and Development, telephone number 202-708-4300. The address for all offices is the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. The telephone numbers listed above are not toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Relay Service, toll-free, at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action

This rule implements the HUD housing provisions in VAWA 2013, which are found in Title VI of the statute. (See Pub. L. 113-4, 127 Stat. 54, approved March 7, 2013, at 127 Stat. 101). VAWA 2005 (Pub. L. 109-162, 119 Stat. 2959, approved January 5, 2006) applied VAWA protections to certain HUD programs by amending the authorizing statutes for HUD's public housing and section 8 programs to provide protections for victims of domestic violence, dating violence, and stalking. VAWA 2013 removes these amendments from the public housing and section 8 authorizing statutes, and in its place provides stand-alone VAWA protections that apply to these programs, as well as additional HUD programs, and also to victims of sexual assault. In addition, VAWA 2013 expands protections for victims of domestic violence, dating violence, sexual assault, and stalking by amending the definition of domestic violence to include violence committed by intimate partners of victims, and by providing that tenants cannot be denied assistance because an affiliated individual of theirs is or was a victim of domestic violence, dating violence, sexual assault, or stalking (collectively VAWA crimes). The new law also expands remedies for victims of domestic violence, dating violence, sexual assault, and stalking by requiring covered housing providers to have emergency transfer plans, and providing that if housing providers allow for bifurcation of a lease, then tenants should have a reasonable time to establish eligibility for assistance under a VAWA-covered program or to find new housing when an assisted household has to be divided as a result of the violence or abuse covered by VAWA.

VAWA 2013 provides protections for both applicants for and tenants of assistance under a VAWA-covered housing program. VAWA 2013 covers applicants, as well as tenants, in the statute's nondiscrimination and notification provisions. However, the emergency transfer and bifurcation provisions of the rule are applicable solely to tenants. The statutory provisions of VAWA that require a notice of occupancy rights, an emergency transfer plan, and allow for the possibility of bifurcation of a lease, support that it is a rental housing situation that is the focus of the VAWA protections. However, as described in this final rule, the core statutory protections of VAWA that prohibit

denial or termination of assistance or eviction solely on the basis that an individual is a victim of domestic violence, dating violence, stalking or sexual assault apply to certain housing programs subsidized by HUD even where there is no lease. HUD funds many shelters, temporary housing, short-term supported housing, and safe havens, and no person is to be denied access to such facility or required to leave such facility solely on the basis that the person is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. It is equally important to note, as was noted in HUD's proposed rule, that the core statutory protections of VAWA 2013 that apply to applicants and tenants, were applicable upon enactment of VAWA 2013. As was discussed in HUD's proposed rule and reiterated in this final rule, regulations were not necessary to mandate adherence to this nondiscrimination requirement. That is, if an individual meets all eligibility requirements and complies with all occupancy requirements, the individual cannot be denied assistance or have assistance terminated solely on the basis that the individual is a victim of domestic violence, dating violence, stalking, or sexual assault.

This rule better enables housing providers to comply with the mandates of VAWA 2013, and it reflects Federal policies that recognize that all individuals should be able to live in their homes without fear of violence. The implementation of VAWA protections in HUD programs increases opportunities for all individuals to live in safe housing and reduces the risk of homelessness for individuals who might otherwise be evicted, be denied housing assistance, or flee their homes.

Summary of the Major Provisions of This Regulatory Action

Major provisions of this rule include:

- Specifying "sexual assault" as a crime covered by VAWA in HUD-covered programs.
- Establishing a definition for "affiliated individual" based on the statutory definition and that is usable and workable for HUD-covered programs.
- Applying VAWA protections to all covered HUD programs as well as the Housing Trust Fund, which was not statutorily listed as a covered program.
- Ensuring that existing tenants, as well as new tenants, of all HUD-covered programs receive notification of their rights under VAWA and HUD's VAWA regulations.
- Establishing reasonable time periods during which a tenant who is a

victim of domestic violence, dating violence, sexual assault, or stalking may establish eligibility to remain in housing, where the tenant's household is divided due to a VAWA crime, and where the tenant was not the member of the household that previously established eligibility for assistance.

- Establishing that housing providers may, but are not required to, request certain documentation from tenants seeking emergency transfers under VAWA.
- Providing for a six-month transition period to complete an emergency transfer plan and provide emergency transfers, when requested, under the plan.
- Revising and establishing new program-specific regulations for implementing VAWA protections in a manner that is workable for each HUD-covered program.

Please refer to section II of this preamble, entitled "This Final Rule" for a more detailed discussion of all the changes made to HUD's existing regulations by this rule. In developing this rule, HUD identified outdated terminology in its regulations (for example, the use of the term "alcohol abuser" in part 982). HUD will be issuing a future rule to update and correct such terms.

Costs and Benefits

The benefits of HUD's rule include codifying in regulation the protections that VAWA 2013 provides applicants to and tenants of HUD programs covered by VAWA; strengthening the rights of victims of domestic violence, dating violence, sexual assault, or stalking in HUD-covered programs, including notification and confidentiality rights; and possibly minimizing the loss of housing by such victims through the bifurcation of lease provision and emergency transfer provisions. With respect to rental housing, VAWA was enacted to bring housing stability to victims of domestic violence, dating violence, sexual assault or stalking. It was determined that legislation was needed to require protections for such victims because housing providers often responded to VAWA crimes occurring in one of their rental units or on their property by evicting the tenant regardless of whether the tenant was a victim of domestic violence, dating violence, sexual assault, or stalking, and refusing to rent to such victims on the basis that violence would erupt in the victim's unit or on a housing provider's property if the individual was accepted as a tenant. To ensure that housing providers administering HUD assistance did not respond to domestic violence,

dating violence, or stalking by denying or terminating assistance, VAWA 2005 brought HUD's public housing and Section 8 programs under the statute's purview, and VAWA 2013 covered the overwhelming majority of HUD programs providing rental assistance.

The costs of the regulations are primarily paperwork costs. These are the costs of providing notice to applicants and tenants of their occupancy rights under VAWA, the preparation of an emergency transfer plan, and documenting an incident or incidents of domestic violence, dating violence, sexual assault, and stalking. The costs, however, are minimized by the fact that VAWA 2013 requires HUD to prepare the notice of occupancy rights to be distributed to applicants and tenants; to prepare the certification form that serves as a means of documenting the incident or incidents of domestic violence, dating violence, sexual assault, and stalking; and to prepare a model emergency transfer plan that guides the entities and individuals administering the rental assistance provided by HUD in developing their own plans. In addition, costs to covered housing providers will be minimized because HUD will translate the notice of occupancy rights and certification form into the most popularly spoken languages in the United States, and HUD has prepared a model transfer request form that housing providers and tenants requesting emergency transfer may use. There may also be costs with respect to a tenant claiming the protections of VAWA and a covered housing provider responding to such incident, although these costs will vary depending on the incidence of claims in a given year and the nature and complexity of the situation.

I. Background

On March 7, 2013, President Obama signed into law VAWA 2013 (Pub. L. 113–4, 127 Stat. 54). VAWA 2013 reauthorizes and amends VAWA 1994 (Title IV, sec. 40001–40703 of Pub. L. 103–322), which was previously reauthorized by VAWA 2000 (Pub. L. 106–386) and VAWA 2005 (Pub. L. 109–162, approved January 5, 2006, with technical corrections made by Pub. L. 109–271, approved August 12, 2006).

The VAWA 2005 reauthorization brought HUD's public housing program and HUD's Section 8 programs under coverage of VAWA by amending the authorizing statutes for those programs, sections 6 and 8 of the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437 *et seq.*). VAWA 2005 established that being a victim of domestic violence, dating violence, or

stalking cannot be the basis for denial of assistance or admission to public or Section 8 housing, and provided other protections for victims. VAWA 2005 also contained requirements for notification to tenants of the rights and protections provided under VAWA, provisions on the rights and responsibilities of public housing agencies (PHAs) and owners and managers of assisted housing, and provisions pertaining to acceptable documentation of incidents of VAWA crimes and maintaining the confidentiality of the victim. HUD regulations pertaining to VAWA 2005 protections, rights, and responsibilities are codified in 24 CFR part 5, subpart L.

Title VI of VAWA 2013, “Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking,” contains the provisions that are applicable to HUD programs. Specifically, section 601 of VAWA 2013 removes VAWA protections from the 1937 Act and adds a new chapter to Subtitle N of VAWA 1994 (42 U.S.C. 14043e *et seq.*) entitled “Housing Rights.” As applicable to HUD, this chapter provides additional protections for tenants beyond those provided in VAWA 2005, and expands VAWA protections to other HUD programs.

On August 6, 2013, at 78 FR 47717, HUD published a **Federal Register** notice that provided an overview of the applicability of VAWA 2013 to HUD programs. This notice listed the new HUD housing programs covered by VAWA 2013, described the changes that VAWA 2013 made to existing VAWA protections, and identified certain issues for which HUD specifically sought public comment. HUD solicited public comment for a period of 60 days, and the public comment period closed on October 7, 2013. HUD appreciates the public comments submitted in response to the August 6, 2013, notice, and these public comments were taken into consideration in the development of this rule. The public comments on the August 6, 2013, notice can be found at the www.regulations.gov government-wide portal, under docket number FR-5720-N-01, at <http://www.regulations.gov/#!docketDetail;D=HUD-2013-0074>.

Many of the comments submitted in response to the August 6, 2013, notice asked HUD to advise program participants that certain VAWA protections are in effect without the necessity of rulemaking. In response to these comments, HUD offices administering HUD-covered programs reached out to participants in their programs to advise them that the core

statutory protections of VAWA—not denying or terminating assistance to, or evicting an individual solely on the basis that an individual is or has been a victim of domestic violence, dating violence, stalking, or sexual assault—were effective upon enactment and do not require notice and comment rulemaking for implementing these protections and that they should proceed to provide the basic VAWA protections.¹

On April 1, 2015, HUD published its proposed rule that provided the amendments to HUD’s existing regulations that HUD determined necessary to fully implement VAWA 2013. The public comment period on the April 1, 2015, rule closed on June 1, 2015. HUD received 94 comments, including duplicate mass mailings, resulting in 68 distinct comments. The comments were submitted by housing authorities, other housing providers, organizations that represent or provide services to specific groups of housing providers, organizations that advocate for victims and survivors of domestic and sexual violence, state coalitions against domestic violence, other advocacy and not-for-profit organizations and associations, state and local government agencies, a tribal organization, and numerous unaffiliated individuals. All public comments can be viewed at: <http://www.regulations.gov/#!docketDetail;D=HUD-2015-0028>.

Most commenters expressed support for the rule, with different questions and comments about specific provisions. There were many comments regarding emergency transfers, lease bifurcation, and documentation requirements, as well as comments on eligibility for and limitations on VAWA protections, the roles and responsibilities of different housing providers under different HUD programs, the notice of occupancy rights, implementation and enforcement of the rule, confidentiality, and other issues. In addition, there were a number of program-specific comments. HUD responds to issues raised by the public comments in Section II.B. of this preamble.

¹ See, for example, the letter to Executive Directors of public housing agencies from the Assistant Secretary for Public and Indian Housing, issued September 30, 2013, at <http://portal.hud.gov/hudportal/documents/huddoc?id=sept2013vawaltrphas.pdf>, as well as communications from HUD’s HOME Investment Partnerships Programs (HOME) at <https://www.onecpd.info/resources/documents/HOMEfires-Vol11-No1-Violence-Against-Women-Reauthorization-Act-2013.pdf>, and from HUD’s Office of Special Needs Assistance Programs at <https://www.onecpd.info/news/reauthorization-of-the-violence-against-women-act-vawa/>.

This final rule reflects the Federal government’s recognition that all people have a right to live their lives safely. On September 9, 2014, in Presidential Proclamation 9164—Twentieth Anniversary of the Violence Against Women Act, and on September 30, 2014, in Presidential Proclamation 9181—National Domestic Violence Awareness Month, 2014, President Obama discussed the “basic human right to be free from violence and abuse.” The implementation of the policies laid out in this rule will help to enforce this basic human right.

HUD notes that, in addition to utilizing housing protections in VAWA, victims of domestic violence, dating violence, sexual assault, and stalking, and those assisting them, may wish to consider other available protections and assistance. On the Federal level, for example, the U.S. Department of Justice (DOJ) administers programs that provide funding for victims of crime, including victims covered by VAWA. The Office for Victims of Crime (OVC), part of DOJ, administers the Crime Victims Fund, which provides direct reimbursement to crime victims for financial losses from crimes including medical costs, mental health counseling, and lost wages or loss of support. This provides reimbursement for victims during a time when they may be facing financial constraints. The Crime Victims Fund may also be used to fund transitional housing and shelter for victims of domestic violence, dating violence, sexual assault, or stalking who need the transitional housing or shelter because they were a victim of one of these crimes, and to fund relocation expenses for those who need to move because they were a victims of domestic violence, dating violence, sexual assault, or stalking. OVC also provides grants to public and non-profit organizations for essential services to victims of crime, including emergency shelter, and the Office of Violence Against Women (OVW), also part of DOJ, administers 24 grant programs where funds are provided to states, territories, local government, non-profit organizations, and community organizations for various targeted persons. Information about the Crime Victims Fund is available at: <http://www.ovc.gov/pubs/crimevictimsfundfs/intro.html#VictimAssist> and information about OVW grants is available at <http://www.justice.gov/ovw/grant-programs>. Victims of domestic violence, dating violence, sexual assault, and stalking may consult with local victim services providers and state and local social service agencies to

determine whether funding and other forms of help and support may be available.

Further, victims of domestic violence, dating violence, sexual assault, and stalking should be aware that State and local laws may provide greater protections than Federal law, and local victim service providers and social service agencies may have further information regarding this.

II. This Final Rule

A. Overview of Changes Made at the Final Rule Stage

After review and consideration of the public comments and upon HUD's further consideration of VAWA 2013 and the issues raised in the proposed rule, HUD has made certain changes in this final rule. The following highlights the substantive changes made by HUD in this final rule from the proposed rule.

The final rule:

- Clarifies that, consistent with HUD's nondiscrimination and equal opportunity requirements, victims of domestic violence, dating violence, sexual assault, and stalking cannot be discriminated against on the basis of any protected characteristics (including race, color, religion, sex, disability, familial status, national origin, or age), and HUD programs must also be operated consistently with HUD's Equal Access Rule (HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals and families without regard to actual or perceived sexual orientation, gender identity or marital status). (See § 5.2001(a).)
- Provides that in regulations governing short-term supported housing, emergency shelters, and safe havens, these forms of shelter are subject to the core protections of VAWA that prohibit denial of admission or eviction or termination to an individual solely on the basis that the individual is a victim of domestic violence, dating violence, or stalking, or sexual assault. (See §§ 574.604(a)(2), 576.409(f), and 578.99(j)(9).)
- Revises the definition of "affiliated individual" to incorporate situations where an individual has guardianship over another individual who is not a child. (See § 5.2003.)
- Revises the definition of "domestic violence" to incorporate a definition of "spouse or intimate partner" rather than cross-reference to another definition of the term, and to eliminate the cross-reference to "crime of violence," a more restricting term. (See § 5.2003.)
- Provides that existing tenants in HUD-covered programs receive HUD's

Notice of Occupancy Rights and accompanying certification form no later than one year after this rule takes effect, during the annual recertification or lease renewal process, if applicable, or through other means if there will be no annual recertification or lease renewal process for a tenant. (See § 5.2005(a)(2)(iv).)

- Retains the provision of HUD's regulations implementing VAWA 2005, for those HUD programs covered by VAWA 2005, which states that the HUD-required lease, lease addendum, or tenancy addendum must include a description of the specific protections afforded to the victims of VAWA crimes. (See § 5.2005(a)(4).)
- Clarifies that applicants may not be denied assistance and tenants may not have assistance terminated under a covered housing program for factors resulting from the fact that the applicant or tenant is or has been a victim of a VAWA crime. (See § 5.2005(b)(1).)
- Emphasizes that victims of sexual assault may qualify for an emergency transfer if they either reasonably believe there is a threat of imminent harm from further violence if they remain in their dwelling unit, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer. (See § 5.2005(e)(2)(ii).)
- Provides that emergency transfer plans must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of individuals seeking transfers or placement on waiting lists. (See § 5.2005(e)(3).)
- Provides that emergency transfer plans must allow for a tenant to transfer to a new unit when a safe unit is immediately available and the tenant would not have to apply in order to occupy the new unit (§ 5.2005(e)(5)).
- Provides that emergency transfer plans must describe policies for assisting tenants to make emergency transfers when a safe unit is not immediately available, both for situations where a tenant would not have to apply in order to occupy the new unit, and where the tenant would have to apply in order to occupy the new unit. (See § 5.2005(e)(6), § 5.2005(e)(7), and § 5.2005(e)(8)).
- Provides that the emergency transfer plans must describe policies for assisting tenants who have tenant-based rental assistance to make emergency moves with that assistance. (§ 5.2005(e)(9)).
- Adds a provision that emergency transfer plans may require documentation, as long as tenants can

establish eligibility for an emergency transfer by submitting a written certification to their housing provider, and no other documentation is required for tenants who have established that they are victims of domestic violence, dating violence, sexual assault, or stalking to verify eligibility for a transfer. (See § 5.2005(e)(10).)

- Requires housing providers to make emergency transfer plans available upon request, and to make them publicly available whenever feasible. (See § 5.2005(e)(11).)
- Provides for a six-month transition period to complete an emergency transfer plan and provide emergency transfers, when requested, under such plan. (See § 5.2005(e) or applicable program regulations)
- Emphasizes that tenants and applicants may choose which of the forms of documentation listed in the rule to give to housing providers to document the occurrence of a VAWA crime. (See § 5.2007(b)(1).)
- Provides that in cases of conflicting evidence, tenants and applicants who may need to submit third-party documentation to document occurrence of a VAWA crime have 30 calendar days to submit the third-party documentation. (See § 5.2007(b)(2).)
- Provides that if a covered housing provider bifurcates a lease under VAWA, any remaining tenants who had not already established eligibility for assistance must be given either the maximum time permitted by statute, or, if there are no statutory prohibitions, at least 90 calendar days from the date of bifurcation of the lease or until expiration of the lease, depending on the covered housing program, to establish eligibility for a covered housing program, or find alternative housing (See § 5.2009(b)(2).)
- Provides that if a family in a HOME-assisted rental unit separates under § 5.2009(a), the remaining tenant(s) will retain the unit. (See § 92.359(d)(1).)
- Provides that if a family receiving HOME tenant-based rental assistance separates under § 5.2009(a), the tenant(s) who are not removed will retain the HOME tenant-based rental assistance, and the participating jurisdiction must determine whether a tenant who was removed from the unit will receive HOME tenant-based rental assistance. (See § 92.359(d)(2).)
- Establishes VAWA regulations for the Housing Trust Fund, based on the regulations for the HOME program. (See 24 CFR part 93.)
- Emphasizes that VAWA protections apply to eviction actions for tenants in

housing under a HUD-covered housing program. (See 24 CFR 247.1(b).)

- Clarifies in the HOPWA regulations that the grantee or project sponsor is responsible for ensuring that the owner or manager of a facility assisted under HOPWA develops and uses a VAWA lease addendum. (See part 574.)

- Clarifies who is the covered housing provider for HUD's multifamily Section 8 project-based programs and the Section 202 and Section 811 programs, by providing that the covered housing provider is the owner for the Section 8 Housing Assistance Payments Programs for New Construction (part 880), for Section 515 Rural Rental Housing Projects (part 884), and for Special Allocations (part 886), as well as for the Section 202 and Section 811 programs (part 891) and that PHAs and owners each have certain responsibilities as covered housing providers for the Section 8 Moderate Rehabilitation Program (part 882), and the Section 8 State Housing Agencies Program for State Housing Agencies (part 883).

- Updates various section 8 and public housing VAWA 2005 regulations to broadly state that VAWA protections apply, so that all tenants and applicants, and not only those determined to be victims of VAWA crimes, receive statutorily required notification of their VAWA rights. (See parts 880, 882, 883, 884, 886, 891, 960, 966, and 982.)

- Clarifies that VAWA protections and requirements apply to mixed finance developments. (See § 905.100(g).)

- Clarifies that public housing agencies (PHAs), like other covered providers, may establish preferences for victims of dating violence, sexual assault, and stalking, in addition to domestic violence, consistent with their statutory authority. (See §§ 960.206(b)(4), 982.207(b)(4).)

- Clarifies that for the Section 8 Housing Choice Voucher and Project-Based Voucher programs, the PHA is the housing provider responsible for complying with VAWA emergency transfer provisions. (See §§ 982.53(e), 983.3(b).)

B. Summary of Public Comments and HUD Responses

As noted earlier in this preamble, the majority of the commenters expressed support for the rule, but they also presented questions and comments about specific provisions of the rule. The primary provisions of the rule on which commenters posted comments pertained to emergency transfers, lease bifurcation, documentation requirements, eligibility for and

limitations on VAWA protections, the roles and responsibilities of different housing providers under different HUD programs, the notice of occupancy rights, implementation and enforcement of the rule, and confidentiality requirements. The following presents the significant issues raised by the commenters and HUD's response to the comments.

1. Applicability

a. Eligibility for VAWA Protections

Comment: Ensure proper evaluation of individuals who are or have been victims of domestic violence, dating violence, sexual assault, or stalking. Commenters stated that HUD's final rule should ensure applicants are not denied assistance or housing for independent bases that result from their status as a victim of domestic violence, dating violence, sexual assault, or stalking. Commenters said that HUD's currently codified regulations do not address how to evaluate when an applicant who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking can show that denial of assistance or housing is on that basis. Commenters stated that survivors may have negative credit, housing, or criminal records based on the violence committed against them that then disqualifies them in the housing application process. Commenters said that HUD acknowledged this barrier in its 2003 Public Housing Occupancy Guidebook,² which encouraged staff to exercise discretion and inquire about the circumstances that may have contributed to the negative reporting to determine whether domestic violence was a factor. Commenters recommended that the final rule contain similar guidance and asked HUD to include language in § 5.2005 that applicants be provided with an opportunity to show that domestic violence, dating violence, sexual assault, or stalking was a factor in any negative rental, tenancy, or criminal records that would result in denial of admission or assistance; and, if it is determined such is the case, and the applicant otherwise qualifies, the covered housing provider must grant the application.

A commenter stated that HUD's final rule's definitions of domestic violence, dating violence, sexual assault or stalking must be sufficiently clear so as not to cause survivors to be punished for ancillary crimes as a result of the abuse they have suffered or cause survivors to be blamed for the abuse. Commenters said some survivors have

been evicted because they "invited" the perpetrator into the home and subsequently received an eviction notice under Crime Free Drug Free policies³ or a Crime Free Lease Addendum.⁴ Commenters said victims of VAWA crimes are disadvantaged because landlords typically do not mention domestic violence, sexual violence or stalking in the eviction notice.

Some commenters asked that HUD revise § 5.2005(b) to state that an applicant may not be denied assistance, or a tenant have assistance terminated or be evicted "on the basis or as a result of the fact that the applicant or tenant is or has been a victim of domestic violence . . ." in order to clarify that victims are protected from the results of economic abuse, such as poor credit.

HUD Response: HUD interprets the term "on the basis" in VAWA 2013's statutory prohibitions against denying admission to, denying assistance under, terminating a tenant from participation in, or evicting a tenant from housing "on the basis" that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, to include factors directly resulting from the domestic violence, dating violence, sexual assault, or stalking. For example, if an individual has a poor rental or credit history, or a criminal record, or other adverse factors that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, the individual cannot be denied assistance under a HUD program if the individual otherwise qualifies for the program. To

³ Crime Free Drug Free policies generally refer to policies set forth in lease addendum in which a renter agrees to maintain their rental residence crime free or face eviction. See, for example, the following lease addendum. http://www.cityofkasson.com/vertical/sites/%7BC3C7597A-7E80-4164-9E1A-84A37B5D7AAF%7D/uploads/Crime_Free_Lease_Addendum.pdf. A provision pertaining to domestic violence may be worded as follows: Any resident, or member of the resident's household, who is or has been a victim of domestic violence, is encouraged to take reasonable action to safeguard themselves, other members of the community, and property from future injury or damage. This may include obtaining a protection order against potential abusers, filing a copy of said protection order and a picture of the respondent with management, report any violation of the protection order to the police and management, and prepare and file a personal safety plan with management. and that a violation of this provision shall be cause for termination of the tenancy. See http://www.cityofportorchard.us/docs/police/Crime_Free_Addendum.pdf.

⁴ A Crime Free Lease Addendum is a lease addendum that puts potential tenants on notice that they are liable for any criminal activity within their units, and if criminal activity does occur, the lease can be terminated and eviction action initiated.

² See <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>.

clarify this understanding, HUD accepts the commenters' suggestion to amend proposed § 5.2005(b), and the section now states that an applicant or tenant may not be denied admission to, denied assistance under, terminated from participation in, or evicted from housing or a housing program on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

In addition to revising § 5.2005(b), HUD will provide guidance for covered housing providers to aid how they may determine whether factors that might otherwise serve as a basis for denial or termination of assistance or eviction have directly resulted from the fact that an applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. As commenters noted, HUD has already provided in its Public Housing Occupancy Guidebook that PHAs should inquire about the circumstances that may have contributed to negative reporting to determine whether that negative reporting was a consequence of domestic violence.

Rule Change: HUD revises § 5.2005(b) to state that an applicant or tenant may not be denied admission to, denied assistance under, terminated from participation in, or evicted from housing or a housing program on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

Comment: *Include victims of "economic abuse" as covered by VAWA protections.* Commenters stated that VAWA 2013 was meant to protect victims of economic abuse, the legislative history of the statute contains many references to the effects of economic abuse, and the final rule should clarify that VAWA protections apply to victims of economic abuse. Commenters said economic abuse includes a broad range of conduct, including but not limited to, interfering with the victim's employment, controlling how money is spent, forcing the victim to write bad checks, incurring significant debt in the victim's name, or otherwise harming the victim's financial security. Commenters stated that persons who have poor credit, no credit or an inability to access money can be denied housing, which often results in homelessness. Commenters said the

proposed definition of "stalking" eliminates the harassment and intimidation considerations that arguably make economic abuse a form of stalking under current regulations, and the consequence is removing protections available to current tenants, and this runs counter to VAWA 2013, which is intended to increase not reduce protections.

Commenters suggested that HUD add economic abuse to the scope of VAWA protections in § 5.2001 and to the list of protected victims throughout § 5.2005. A commenter said that, should HUD determine not to revise the text of the regulations to address economic abuse, HUD should nevertheless clarify that VAWA covers economic abuse.

Commenters also suggested that HUD establish a notification and certification process to ensure that victims of economic abuse receive VAWA protections. Commenters said a victim of economic abuse could supply a certification regarding such abuse when applying for a HUD program. Commenters said that whenever an individual's ability to participate in a HUD program is compromised due to economic factors, the individual must be notified that VAWA protections may apply.

HUD Response: As previously discussed, HUD interprets VAWA to prohibit covered housing providers from denying admission to, denying assistance under, terminating a tenant from participation in, or evicting a tenant from housing as a result of factors directly resulting from the domestic violence, dating violence, sexual assault, or stalking. Where an individual faces adverse economic factors, such as a poor credit or rental history, that result from being a victim of domestic violence, dating violence, sexual assault, or stalking, the individual cannot be denied assistance under a HUD program if the individual otherwise qualifies for the program. HUD declines, however, to explicitly state in regulation that victims of economic abuse receive the protections of VAWA. Such expansion would be beyond the scope of HUD's VAWA rulemaking, which is intended to implement the housing protections in VAWA 2013, as enacted. VAWA 2013 does not independently provide protections for victims of economic abuse who are not also victims of domestic violence, dating violence, sexual assault, or stalking. HUD also declines to implement a process in this rule where applicants who are denied admission to or assistance under a HUD program specifically due to their economic situations will then receive

notice that they may be protected under VAWA and be provided an opportunity to show that their economic situation is a result of economic abuse. Both VAWA 2013 and this final rule provide that applicants will be provided with notice when they are denied assistance or admission under a covered housing program for any reason. Applicants would then have the opportunity to assert that they are or were victims of domestic violence, dating violence, sexual assault, or stalking, and that they are eligible for VAWA protections.

As described in the proposed rule, VAWA 2013 removed the statutory definition of stalking that HUD incorporated into the rule implementing VAWA 2005, but maintained a universal definition of stalking that applies throughout VAWA, as codified in 42 U.S.C. 13925(a)(30). As a result, this rule replaces the statutorily removed definition of stalking with the universal definition of stalking in VAWA. HUD disagrees with the commenters' assertion that this change reduces VAWA protections by eliminating harassment and intimidation considerations. The previous definition of "stalking" included specific actions (including harassment and intimidation) that either placed a person in reasonable fear of death or serious bodily injury or caused substantial emotional harm. The universal definition of "stalking," provided in this final rule, involves any course of conduct directed at a specific person that would cause a reasonable person to fear for their own safety or the safety of others, or suffer substantial emotional distress.

Comment: *Clarify which individuals are entitled to VAWA protections:* Commenters stated that the rule and related documents provided to tenants and applicants must be clear about which individuals are entitled to VAWA protections. A commenter stated that the final rule should clarify that VAWA protections do not apply to guests, unauthorized residents, or service providers hired by the resident, such as live-in aides. In contrast to these commenters, other commenters stated that live-in aides should be covered by VAWA protections under certain circumstances. Commenters stated that, although live-in aides are not parties to the lease they are listed as household members on tenant certifications and subject to the covered property's "house rules," and HUD requires that the covered property be their sole residence. The commenters concluded that under these circumstances live-in aides are similar to tenants. Commenters further said that in the case where a tenant is abusing the live-in aide, the aide can

leave the tenant's employ and VAWA protections would not apply, but in the case where the live-in aide is a victim of abuse by someone living outside the unit and the tenant continues to require the aide's services, the housing provider should be required to offer the household all VAWA protections and the entire household (including the aide) should qualify for an emergency transfer.

Another commenter stated that the proposed rule advised that if an unreported member of the household is the victim of domestic violence, dating violence, sexual assault, or stalking, the tenant may not be evicted because of such action as long as the tenant was not the perpetrator. The commenter stated that, in the proposed rule, HUD agreed with comments that VAWA protections should not extend to individuals violating program regulations, such as housing unauthorized occupants. The commenter stated that HUD's statement seems contradictory because HUD is in effect extending VAWA protections to a tenant who violates program regulations by allowing a person who is not authorized to reside in the unit. The commenter asked HUD to advise how to respond if a housing provider learns of the existence of an unreported member of the household in violation of program regulations, based solely on a tenant's reporting of a VAWA incident against the unreported member. The commenter said HUD's rule does not establish a clear nexus for the prohibition against denial or termination of assistance "on the basis" that an applicant or tenant is or has been a domestic violence victim.

Other commenters stated that the preamble to the proposed rule created confusion when it stated that affiliated individuals do not receive VAWA protections if they are not on the lease and that the protections of VAWA are directed to tenants. Commenters stated that specific protections, however, may extend to affiliated individuals or be limited to tenants or lawful occupants. In support of this statement, the commenters stated that no individual may be denied housing in a covered program based on the individual's status as a survivor, but the right to bifurcate the lease and preserve the subsidy is limited to tenants or lawful occupants. Commenters asked HUD to correct language in the preamble to the proposed rule that they stated incorrectly construed the protections of VAWA as applying only to those named on the lease, and added that whether an individual is a "tenant" or a "lawful occupant" is a question of State law on which HUD should not take a position,

as this could conflict with State law. Commenters further stated that, as part of the dynamics of an abusive relationship, a survivor will often not be listed as a tenant on the lease but may be a lawful occupant. Commenters concluded their comments stating that, to limit protections to "tenants" or to individuals specifically named on the lease, without regard for how a lawful occupant might be characterized under State or local laws, undermines the very purpose of VAWA.

HUD Response: Only tenants who are assisted by a covered housing program can invoke the VAWA protections that apply solely to tenants. Several provisions in VAWA 2013, including the prohibited basis for denial or termination of assistance or eviction and the emergency transfer protection, apply to "tenants," a term that VAWA 2013 does not define. The term "tenant" refers to an assisted family and the members of the household on their lease, but does not include guests or unreported members of a household. In addition, a live-in aide or caregiver is not a tenant, unless otherwise provided by program regulations, and cannot invoke VAWA protections. However, as is the case for anyone, a live-in aide or other service provider is entitled to VAWA protections if the person becomes an applicant for HUD assistance; that is, one does not have to have been a tenant in HUD subsidized housing to invoke VAWA protections in later applying to become a tenant in HUD subsidized housing.

A live-in aide or a guest could be an affiliated individual of a tenant, and if that aide or guest is a victim of domestic violence, dating violence, sexual assault, or stalking, the tenant with whom the affiliated individual is associated cannot be evicted or have assistance terminated on the basis that the affiliated individual was a victim of a VAWA crime. Moreover, where a live-in aide is a victim of domestic violence, dating violence, sexual assault, or stalking, and the tenant seeks to maintain the services of the live-in aide, the housing provider cannot require that the live-in aide be removed from the household on the grounds of being a victim of abuse covered by VAWA. The live-in aide resides in the unit as a reasonable accommodation for the tenant with a disability. Indeed, to require removal of the live-in aide solely because the aide is a victim of abuse covered by VAWA likely would violate Section 504 of the Rehabilitation Act, the Fair Housing Act, and the Americans with Disabilities Act, as applicable, which require housing providers to permit such reasonable

accommodations. In addition, if a tenant requests and qualifies for an emergency transfer on the grounds that the live-in aide is a victim of domestic violence, dating violence, sexual assault, or stalking, the tenant's entire household, which includes the live-in aide, can be transferred.

Section 5.2005(d)(2) of this final rule states that covered housing providers can evict or terminate assistance to a tenant for any violation not premised on an act of domestic violence. However, if an individual, who is a victim of domestic violence, has an unreported member residing in the individual's household and the individual is afraid of asking the unreported member to leave because of the individual's domestic violence experience, then terminating the individual's tenancy because of the unreported household member would be "premised on an act of domestic violence." Therefore, depending on the situation, a tenant who violates program regulations by housing a person not authorized to reside in the unit could be covered by VAWA's anti-discrimination provisions, and eligible for remedies provided under VAWA.

As discussed above, HUD interprets the term "on the basis" in VAWA 2013's prohibitions against denying admission to, denying assistance under, terminating a tenant from participation in, or evicting a tenant from housing "on the basis" that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, to include factors directly resulting from the domestic violence, dating violence, sexual assault, or stalking.

With respect to the comments about applying the VAWA protections to survivors of domestic violence, dating violence, sexual assault, and stalking whether they are named on the lease or not, HUD notes that the term "lawful occupant" is not defined in VAWA 2013 and appears in the statute four times in the following contexts: (i) In the definition of "affiliated individual" as a type of "affiliated individual"; (ii) in the documentation section of the statute as those who could be evicted if they commit violations of the lease if the applicant or tenant does not provide requested documentation; (iii) in the bifurcation section, as those who could be evicted for engaging in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking; and (iv) as those who might not be negatively affected if a lease is bifurcated. Other than stating that a housing provider may, at the provider's discretion, bifurcate a lease

without penalizing a lawful occupant, VAWA 2013 does not provide protections or benefits for lawful occupants.

Comment: Clarify whether housing providers who have a mixed portfolio of projects and units will be required to offer protection for some tenants but will not be required to offer them to others. Commenters asked whether housing providers that have both covered and non-covered projects will be faced with offering protections for tenants in only some of their properties. Other commenters stated that certain HUD-assisted properties have some units that must abide by HUD regulations, while others are not subject to HUD regulations. Commenter asked HUD to confirm whether, in such a complex, some tenants would be eligible for VAWA protections while others would not be.

HUD Response: VAWA 2013 and HUD's rule apply only to HUD-covered housing programs. Therefore, covered housing providers will be required to provide VAWA protections to tenants and applicants under the covered housing programs, but will not be required to provide such protections to other tenants and applicants. Although this rule only applies to tenants in and applicants to HUD-covered housing programs, housing providers may choose to offer VAWA protections and remedies to all tenants and applicants, where applicable. HUD encourages housing providers to provide VAWA's core protections—not denying or terminating assistance to victims of domestic violence, dating violence, sexual assault, and stalking—to all tenants and applicants. HUD also encourages housing providers to offer all VAWA protections, such as emergency transfer and bifurcation provisions, to all tenants where possible.

All housing providers should be aware of other Federal, State and local laws that may provide similar or more extensive rights to victims of domestic violence, dating violence, sexual assault, and stalking. For example, properties funded with Low-Income Housing Credits (LIHTCs) are also subject to VAWA requirements, and housing providers should look to the regulatory agency responsible for LIHTCs—the Department of Treasury—for how to implement VAWA protections in those properties.

Housing providers should also be aware more generally of other Federal fair housing and civil rights laws that may be applicable, including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act, the

Americans with Disabilities Act, and Title VI of the Civil Rights Act. For example, housing providers might violate the Fair Housing Act under a discriminatory effects theory if they have an unjustified policy of evicting victims of domestic violence, as such a policy might disproportionately harm females or individuals that have another protected characteristic.

Comment: Clarify whether VAWA protections can be invoked on multiple occasions and whether other limits to protections could apply. Commenters asked whether there is a limit to the number of times covered housing providers must provide VAWA protections when the victim continues to allow the perpetrator access to the property. Another commenter said that one of the recurring issues for housing providers is that victims may evoke VAWA protections repeatedly but then invite or allow the perpetrator into their unit, often leading to repeated instances of abuse and danger or disturbance for other households at the property. Commenter asked whether, in order to continue to invoke VAWA protections, VAWA allows covered housing providers to require that a victim obtain a restraining order against the perpetrator, notify local law enforcement if a restraining order is being violated, or refuse to invite or allow the perpetrator onto the property.

In contrast to this comment, another commenter stated that HUD's final rule should make clear that a tenant or family can be entitled to VAWA protection on more than one occasion and cannot be subjected to additional conditions that adversely affect their tenancy because they have invoked VAWA protections. The commenter said it has dealt with covered housing providers that decided to impose additional requirements on tenants who sought VAWA protections, such as requiring tenants to obtain protective orders or call the police, conditions they do not impose on other tenants, including those who are victims of other crimes (non-VAWA crimes), and this violates VAWA.⁵ The commenter said these requirements conflict with recognized best practices that affirm that the most effective way to ensure a survivor's safety is to respect the survivor's autonomy in deciding whether to obtain a protective order or to call the police.

HUD Response: HUD agrees that a tenant or family may invoke VAWA protections on more than one occasion and cannot be subjected to additional

⁵ See footnotes 2 and 3, which provide examples of these types of lease provisions.

conditions that adversely affect their tenancy because they have invoked VAWA protections. Individuals and families may be subject to abuse or violence on multiple occasions and it would be contrary to the intent of VAWA to say that the protections no longer apply after a certain point, even if violence or abuse continues, or the victim and the victim's family members are still in danger. In cases where the presence of the perpetrator on the property will endanger others, not solely the unit in which the perpetrator resides, this final rule maintains the provision that a housing provider may evict or terminate assistance to a tenant if the housing provider can demonstrate an actual and imminent threat to other tenants, or those employed at or providing services to the property, if the tenant is not evicted or assistance is not terminated. However, as discussed elsewhere in this rule, housing providers should only take such actions when there are no other actions that could be taken to reduce or eliminate the threat.

Allowing housing providers to apply a different occupancy standard to survivors of domestic violence, dating violence, sexual assault, and stalking than that applied to victims of other crimes violates the intent of VAWA, which provides that housing providers cannot discriminate against survivors and victims of a VAWA crime. HUD also agrees that survivors do not have to contact authorities, such as police, or initiate legal proceedings against an abuser or perpetrator in order to qualify for VAWA protections. The statute has no such requirements and instead allows survivors to provide self-certification about the VAWA incident(s).

Comment: Eliminate or better explain the provision that eviction or termination of assistance should only be used as a last resort. A commenter stated that HUD retains paragraph (d)(3) of currently codified § 5.2005, which encourages a covered housing provider to evict or terminate assistance only when there are no other actions that could be taken to reduce or eliminate the threat of domestic violence. The commenter said the ability of housing providers to avoid eviction or termination will vary widely depending on factors that are generally out of the control of the provider, and that HUD inserted paragraph (d)(3) of § 5.2005 during a prior rulemaking. The commenter stated that this language is not in the VAWA statute, and should be stricken. With respect to this provision, another commenter asked how far a landlord is expected to go to keep the

Massachusetts General Laws Annotated
Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
Title III. Domestic Relations (Ch. 207-210)
Chapter 209A. Abuse Prevention (Refs & Annos)

M.G.L.A. 209A § 4

§ 4. Temporary orders; notice; hearing

Currentness

Upon the filing of a complaint under this chapter, the court may enter such temporary orders as it deems necessary to protect a plaintiff from abuse, including relief as provided in section three. Such relief shall not be contingent upon the filing of a complaint for divorce, separate support, or paternity action.

If the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, the court may enter such temporary relief orders without notice as it deems necessary to protect the plaintiff from abuse and shall immediately thereafter notify the defendant that the temporary orders have been issued. The court shall give the defendant an opportunity to be heard on the question of continuing the temporary order and of granting other relief as requested by the plaintiff no later than ten court business days after such orders are entered.

Notice shall be made by the appropriate law enforcement agency as provided in section seven.

If the defendant does not appear at such subsequent hearing, the temporary orders shall continue in effect without further order of the court.

Credits

Added by St.1978, c. 447, § 2. Amended by St.1983, c. 678, § 4; St.1984, c. 189, § 152; St.1990, c. 403, § 4.

Notes of Decisions (32)

M.G.L.A. 209A § 4, MA ST 209A § 4

Current through Chapter 315 of the 2018 2nd Annual Session

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Massachusetts General Laws Annotated
Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
Title III. Domestic Relations (Ch. 207-210)
Chapter 209A. Abuse Prevention (Refs & Annos)

M.G.L.A. 209A § 7

§ 7. Abuse prevention orders; domestic violence record search; service of order; enforcement; violations

Effective: August 8, 2014
Currentness

When considering a complaint filed under this chapter, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

Whenever the court orders under sections eighteen, thirty-four B, and thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four and five of this chapter, or sections fifteen and twenty of chapter two hundred and nine C, the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order and one copy of the complaint and summons forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant, together with a copy of the complaint, order and summons and notice of any suspension or surrender ordered pursuant to section three B of this chapter. Law enforcement agencies shall establish adequate procedures to ensure that, when effecting service upon a defendant pursuant to this paragraph, a law enforcement officer shall, to the extent practicable: (i) fully inform the defendant of the contents of the order and the available penalties for any violation of an order or terms thereof and (ii) provide the defendant with informational resources, including, but not limited to, a list of certified batterer intervention programs, substance abuse counseling, alcohol abuse counseling and financial counseling programs located within or near the court's jurisdiction. The law enforcement agency shall promptly make its return of service to the court.

Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order. The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated and shall direct the agency to destroy all record of such vacated order and such agency shall comply with that directive.

Each abuse prevention order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any violation of such order or a protection order issued by another jurisdiction shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment. In addition to, but not in lieu of, the forgoing penalties and any other sentence, fee or assessment, including the victim witness assessment in section 8 of chapter 258B, the court shall order persons convicted of a crime under this statute to pay a fine of \$25 that shall be transmitted to the treasurer for deposit into the General Fund. For any violation of such order, or as a condition of a continuance without a finding, the court shall order the defendant to complete a certified batterer's intervention program unless, upon good cause shown, the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention. The court shall not order substance abuse or anger management treatment or any other form of treatment as a substitute for certified batterer's intervention. If a defendant ordered to undergo treatment has received a suspended sentence, the original sentence shall be reimposed if the defendant fails to participate in said program as required by the terms of his probation. If the court determines that the violation was in retaliation for the defendant being reported by the plaintiff to the department of revenue for failure to pay child support payments or for the establishment of paternity, the defendant shall be punished by a fine of not less than one thousand dollars and not more than ten thousand dollars and by imprisonment for not less than sixty days; provided, however, that the sentence shall not be suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served sixty days of such sentence.

When a defendant has been ordered to participate in a treatment program pursuant to this section, the defendant shall be required to regularly attend a certified or provisionally certified batterer's treatment program. To the extent permitted by professional requirements of confidentiality, said program shall communicate with local battered women's programs for the purpose of protecting the victim's safety. Additionally, it shall specify the defendant's attendance requirements and keep the probation department informed of whether the defendant is in compliance.

In addition to, but not in lieu of, such orders for treatment, if the defendant has a substance abuse problem, the court may order appropriate treatment for such problem. All ordered treatment shall last until the end of the probationary period or until the treatment program decides to discharge the defendant, whichever comes first. When the defendant is not in compliance with the terms of probation, the court shall hold a revocation of probation hearing. To the extent possible, the defendant shall be responsible for paying all costs for court ordered treatment.

Where a defendant has been found in violation of an abuse prevention order under this chapter or a protection order issued by another jurisdiction, the court may, in addition to the penalties provided for in this section after conviction, as an alternative to incarceration and, as a condition of probation, prohibit contact with the victim through the establishment of court defined geographic exclusion zones including, but not limited to, the areas in and around the complainant's residence, place of employment, and the complainant's child's school, and order that the defendant to wear a global positioning satellite tracking device designed to transmit and record the defendant's location data. If the defendant enters a court defined exclusion zone, the defendant's location data shall be immediately transmitted to the complainant, and to the police, through an appropriate means including, but not limited to, the telephone, an electronic beeper or a paging device. The global positioning satellite device and its tracking shall be administered by the department of probation. If a court finds that the defendant has entered a geographic exclusion zone, it shall revoke his probation and the defendant shall be fined, imprisoned or both as provided in this section. Based on the defendant's ability to pay, the court may also order him to pay the monthly costs or portion thereof for monitoring through the global positioning satellite tracking system.

In each instance where there is a violation of an abuse prevention order or a protection order issued by another jurisdiction, the court may order the defendant to pay the plaintiff for all damages including, but not limited to, cost for shelter or emergency housing, loss of earnings or support, out-of-pocket losses for injuries sustained or property

damaged, medical expenses, moving expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's fees.

Any such violation may be enforced in the superior, the district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

The provisions of section eight of chapter one hundred and thirty-six shall not apply to any order, complaint or summons issued pursuant to this section.

Credits

Added by St.1983, c. 678, § 5. Amended by St.1987, c. 213; St.1990, c. 403, § 8; St.1992, c. 188, § 4; St.1994, c. 24, § 7; St.1995, c. 5, § 81; St.1996, c. 298, § 8; St.2002, c. 184, § 114; St.2003, c. 26, § 448, eff. July 1, 2003; St.2006, c. 418, § 1, eff. April 3, 2007; St.2014, c. 260, §§ 14, 15, eff. Aug. 8, 2014.

Notes of Decisions (185)

M.G.L.A. 209A § 7, MA ST 209A § 7

Current through Chapter 315 of the 2018 2nd Annual Session

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Massachusetts General Laws Annotated

Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)

Title III. Remedies Relating to Real Property (Ch. 237-245)

Chapter 239. Summary Process for Possession of Land (Refs & Annos)

M.G.L.A. 239 § 10

§ 10. Stay of proceedings; hearings

Currentness

Upon application for such a stay of proceedings, the court shall hear the parties, and if upon the hearing it appears that the premises of which possession is sought to be recovered are used for dwelling purposes; that the applicant cannot secure suitable premises for himself and his family elsewhere within the city or town in a neighborhood similar to that in which the premises occupied by him are situated; that he has used due and reasonable effort to secure such other premises; that his application is made in good faith and that he will abide by and comply with such terms and provisions as the court may prescribe; or that by reason of other facts such action will be warranted, the court may grant a stay as provided in the preceding section, on condition that the terms upon which such stay is granted be complied with.

In any action to recover possession of premises occupied for dwelling purposes brought pursuant to this chapter in which a stay or stays of execution have been granted, by the court or by agreement of the parties, or in any such action where there is an agreement for judgment that grants the tenant a right to reinstate the tenancy, no execution shall issue prior to the expiration of the period of such stay or stays or such reinstatement period unless the plaintiff shall first bring a motion for the issuance of the execution and the court after a hearing shall determine that the tenant or occupant is in substantial violation of a material term or condition of the stay or a material term of the agreement for judgment.

Credits

Amended by St.1987, c. 357, § 3.

Notes of Decisions (3)

M.G.L.A. 239 § 10, MA ST 239 § 10

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[109th Congress Public Law 162]
[From the U.S. Government Printing Office]

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[[Page 2959]]

VIOLENCE AGAINST WOMEN AND DEPARTMENT OF JUSTICE REAUTHORIZATION ACT OF
2005

[[Page 119 STAT. 2960]]

Public Law 109-162
109th Congress

An Act

To authorize appropriations for the Department of Justice for fiscal
years 2006 through 2009, and for other purposes. <<NOTE: Jan. 5,
2006 - [H.R. 3402]>>

Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled, <<NOTE: Violence Against
Women and Department of Justice Reauthorization Act of 2005.>>

SECTION 1. <<NOTE: 42 USC 13701 note.>> SHORT TITLE.

This Act may be cited as the ``Violence Against Women and Department
of Justice Reauthorization Act of 2005''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Universal definitions and grant provisions.

TITLE I--ENHANCING JUDICIAL AND LAW ENFORCEMENT TOOLS TO COMBAT VIOLENCE
AGAINST WOMEN

Sec. 101. Stop grants improvements.
Sec. 102. Grants to encourage arrest and enforce protection orders
improvements.
Sec. 103. Legal Assistance for Victims improvements.
Sec. 104. Ensuring crime victim access to legal services.
Sec. 105. The Violence Against Women Act court training and
improvements.
Sec. 106. Full faith and credit improvements.
Sec. 107. Privacy protections for victims of domestic violence, dating
violence, sexual violence, and stalking.
Sec. 108. Sex offender management.
Sec. 109. Stalker database.
Sec. 110. Federal victim assistants reauthorization.
Sec. 111. Grants for law enforcement training programs.
Sec. 112. Reauthorization of the court-appointed special advocate
program.
Sec. 113. Preventing cyberstalking.
Sec. 114. Criminal provision relating to stalking.
Sec. 115. Repeat offender provision.
Sec. 116. Prohibiting dating violence.

- Sec. 117. Prohibiting violence in special maritime and territorial jurisdiction.
- Sec. 118. Updating protection order definition.
- Sec. 119. GAO study and report.
- Sec. 120. Grants for outreach to underserved populations.
- Sec. 121. Enhancing culturally and linguistically specific services for victims of domestic violence, dating violence, sexual assault, and stalking.

TITLE II--IMPROVING SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

- Sec. 201. Findings.
- Sec. 202. Sexual assault services program.
- Sec. 203. Amendments to the Rural Domestic Violence and Child Abuse Enforcement Assistance Program.
- Sec. 204. Training and services to end violence against women with disabilities.
- Sec. 205. Training and services to end violence against women in later life.
- Sec. 206. Strengthening the National Domestic Violence Hotline.

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TITLE III--SERVICES, PROTECTION, AND JUSTICE FOR YOUNG VICTIMS OF VIOLENCE

- Sec. 301. Findings.
- Sec. 302. Rape prevention and education.
- Sec. 303. Services, education, protection, and justice for young victims of violence.
- Sec. 304. Grants to combat violent crimes on campuses.
- Sec. 305. Juvenile justice.
- Sec. 306. Safe havens.

TITLE IV--STRENGTHENING AMERICA'S FAMILIES BY PREVENTING VIOLENCE

- Sec. 401. Preventing violence against women and children.
- Sec. 403. Public Awareness Campaign.
- Sec. 402. Study conducted by the Centers for Disease Control and Prevention.

TITLE V--STRENGTHENING THE HEALTHCARE SYSTEM'S RESPONSE TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

- Sec. 501. Findings.
- Sec. 502. Purpose.
- Sec. 503. Training and education of health professionals in domestic and sexual violence.
- Sec. 504. Grants to foster public health responses to domestic violence, dating violence, sexual assault, and stalking grants.
- Sec. 505. Research on effective interventions in the healthcare setting.

TITLE VI--HOUSING OPPORTUNITIES AND SAFETY FOR BATTERED WOMEN AND CHILDREN

- Sec. 601. Addressing the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking.
- Sec. 602. Transitional housing assistance grants for victims of domestic violence, dating violence, sexual assault, or stalking.
- Sec. 603. Public housing authority plans reporting requirement.
- Sec. 604. Housing strategies.
- Sec. 605. Amendment to the McKinney-Vento Homeless Assistance Act.
- Sec. 606. Amendments to the low-income housing assistance voucher program.

(16), (17), (18), and (19), respectively; and

(3) by inserting after paragraph (12) the following:

“(13) Domestic violence, dating violence, sexual assault, or stalking programs.--A description of--

“(A) any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;

“(B) any activities, services, or programs provided or offered by a public housing agency that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and

“(C) any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.”.

SEC. 604. HOUSING STRATEGIES.

Section 105(b)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(1)) is amended by inserting after “immunodeficiency syndrome,” the following: “victims of domestic violence, dating violence, sexual assault, and stalking”.

[[Page 119 STAT. 3041]]

SEC. 605. AMENDMENT TO THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT.

Section 423 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383) is amended--

(1) by adding at the end of subsection (a) the following:

“(8) Confidentiality.--

“(A) Victim service providers.--In the course of awarding grants or implementing programs under this subsection, the Secretary shall instruct any victim service provider that is a recipient or subgrantee not to disclose for purposes of a Homeless Management Information System personally identifying information about any client. The Secretary may, after public notice and comment, require or ask such recipients and subgrantees to disclose for purposes of a Homeless Management Information System non-personally identifying data that has been de-identified, encrypted, or otherwise encoded. Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this paragraph for victims of domestic violence, dating violence, sexual assault, or stalking.

“(B) Definitions.--

“(i) Personally identifying information or personal information.--The term ‘personally identifying information’ or ‘personal information’ means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including--

“(I) a first and last name;

“(II) a home or other physical address;

“(III) contact information (including a postal, e-mail or Internet

protocol address, or telephone or facsimile number);

``(IV) a social security number; and

``(V) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information would serve to identify any individual.

``(ii) Victim service provider.--The term 'victim service provider' or 'victim service providers' means a nonprofit, nongovernmental organization including rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking.''.

SEC. 606. AMENDMENTS TO THE LOW-INCOME HOUSING ASSISTANCE VOUCHER PROGRAM.

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) is amended--

(1) in subsection (c), by adding at the end the following new paragraph:

``(9)(A) That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is

[[Page 119 STAT. 3042]]

not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.

``(B) An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as 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.

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

``(ii) Notwithstanding clause (i), an owner or manager may bifurcate a lease under this section, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant.

``(iii) Nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.

``(iv) Nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing



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

Special Attention of:

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

Notice PIH-2017-08 (HA)

Issued: May 19, 2017

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

Cross References:

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

Supersedes:

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

Subject: Violence Against Women Reauthorization Act of 2013 Guidance

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1. Purpose

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

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

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

2. Applicability

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

3. Background

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

6.2 Who is Ineligible?

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

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

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

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

7. Determining Eligibility for VAWA Protections

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.4 Notification and Other Considerations

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

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

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

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

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

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

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

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

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

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

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

The form HUD-5382:

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

[Senate Hearing 109-1033]
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S. Hrg. 109-1033

REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT

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HEARING

before the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

JULY 19, 2005

Serial No. J-109-33

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REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT

Ms. Stuart. The Crime Victimization Survey, yes.

Senator Sessions. --the Crime Victimization Survey, which many say is the best survey rather than just arrests, and we will get at that subject right now. It surveys all over America to ask who has been victimized in the last year. It showed a domestic violence decline rate of 59 percent and a rape and sexual assault decline rate of 68 percent. That is pretty dramatic.

Do you think that this effort that has been ongoing here as part of the Act that Senator Biden and Senator Specter and others have moved and the information that is out there, the safe houses that are out there, the fact that police officers now are not walking away from scenes but actually arresting people, taking them to jail, that this has actually resulted in a real decline in some of these assaults?

Ms. Stuart. Certainly, all of those factors come together, and when they all come together, the end result is that more are reporting and more arrests are being made, more orders of protection are being enforced. It can't be any one thing. Not one person is responsible for making an end to violence against women. It is everybody doing their part, and so it is all of these factors coming in.

Certainly, the Act has been a strong leader, standing up there, showing the Nation that this is the way we need to go and we need to work together to end violence against women. So I think it is many things. But certainly the Act has been the leader.

Senator Sessions. I don't think there is any doubt that the combination of the fact that judges, a lot of them were insensitive in the past. Fewer of them are insensitive today. Most sheriffs and chiefs of police have been trained in how to handle these situations. The situation is much kinder. They have safe houses and places that women can go. I just think the prosecutors are more attuned to it and the laws are better. So I think a lot of these things that have occurred have helped actually make a reduction in some of these terrible crimes and I salute everybody who has been a part of it. It is something that we too often fail to celebrate, the progress that gets made.

Ms. Stuart. I agree.

Chairman Specter. Thank you very much, Senator Sessions.

Thank you, Director Stuart and Sheriff Sexton. We appreciate your being here, and thank you for your testimony.

Chairman Specter. We turn now to our second panel and our first witness is Ms. Lynn Rosenthal, the Executive Director of the National Network to End Domestic Violence, a nationwide organization of State domestic violence coalitions which supports more than 2,500 local service providers. Ms. Rosenthal was recently named President of the National Network to End Domestic Violence, which has enabled her to travel around the country with community leaders, advocates, and survivors. It certainly gives her hands-on experience with this pressing problem.

Ms. Rosenthal, I know we have rushed you to the witness table, but if you are ready to begin, or if you want a moment to collect yourself--

Ms. Rosenthal. I am ready, Senator.

Chairman Specter. Okay. Thank you for being here, and the floor is yours.

STATEMENT OF LYNN ROSENTHAL, EXECUTIVE DIRECTOR, NATIONAL NETWORK TO END DOMESTIC VIOLENCE, WASHINGTON, D.C.

Ms. Rosenthal. Thank you, Mr. Chairman, Senator Biden, and members of the Committee. Thank you for inviting me here today

to talk about the successes and the future of the Violence Against Women Act.

I was a shelter director in 1993, right before VAWA first passed Congress, and I never could have imagined the changes that were about to occur. I never could have imagined the local sheriff who would go from saying there was no domestic violence in his county to asking what he could do to be a leader in the fight to stop it. I never could have imagined that law enforcement officers, prosecutors, victim advocates, and survivors would sit down at the table together to develop model policies to address domestic violence. Yet all this happened and more. But still, our shelters are full, our hotlines are ringing off the hook, and just one day's look at the headlines tells us that this problem is still with us.

From the workplace to the schoolyard, violence against women spills out into our streets and local communities. The tremendous needs uncovered by this Committee more than a decade ago have begun to be addressed, but now is not the time to retreat. The issues that we face at the State and local level have become more, and not less, complex.

So I recommend that you do three things in VAWA reauthorization. First, shore up existing services and programs. The STOP grants are the centerpiece of existing VAWA programs. These formula grants to the States bring together law enforcement, prosecutors, victim advocates, and the courts to develop a coordinated response to the violence.

For example, in Wisconsin, STOP grant funds helped support 50 community response teams, and one advocate in Wisconsin said that because of STOP grants, the doors were literally thrown open so that victim advocates and law enforcement could work together to better serve victims.

But one of the problems I see when I travel around the country is that VAWA really trained this whole generation of leaders--police officers, judges, shelter workers--but those folks are now leaving the system, just normal attrition, but as they leave, we are in real danger that the guiding principles of VAWA, victim safety and offender accountability, will leave with them. So this next round of VAWA really has to be about institutionalizing the best practices that have evolved over the past decade.

Second, we ask that you ensure that the needs of uniquely vulnerable populations are being addressed. In rural communities, a victim might live hundreds of miles from the closest courthouse, shelter, hospital emergency room. VAWA funding has helped address these challenges.

I worked on a VAWA grant in rural north Florida and we started 17 domestic violence task forces in counties that previously had no services at all. In Iowa, Texas, Pennsylvania, Nebraska, and Vermont, VAWA funding has dramatically improved the services available to victims in rural communities. But it is not just rural victims who need help. Older women, disabled individuals, native women, immigrants, these are all individuals who face additional barriers in addressing domestic violence.

Third, we ask that you provide opportunities for victims to rebuild their lives. Although domestic violence is fundamentally a criminal justice system problem, the criminal justice system alone cannot help victims gain long-term security for themselves and their children, and we can't talk about long-term security unless we talk about the dramatic connection between domestic violence and homelessness.

A staggering 92 percent of homeless women have been victims of severe physical or sexual abuse at some time in their lives. The U.S. Conference on Mayors has identified domestic violence as a leading cause of homelessness among women. And women

themselves tell us time and time again that they stay in a dangerous situation because they simply have no place else to go.

And it is not just lack of housing resources, although that is a significant problem. It is also housing policies themselves that put victims in additional danger. Just last month, Dorteia Thomas was shot by her ex-boyfriend in her apartment in Jacksonville, North Carolina. After being shot once, she tried to escape by hurling herself from the second story balcony. Her boyfriend shot her five more times. And she came home from the hospital five days later to a notice from her landlord that she had violated her lease by being too loud.

Women are being evicted or denied housing for calling the police, filing protective orders, or even simply calling for help, and this brings us right back to the criminal justice system. If victims are afraid to reach out for help for fear of losing their housing, our efforts to strengthen the criminal justice protections of VAWA are undermined.

It is VAWA 2005 that can change these dangerous practices and bring justice to victims. Thank you very much.

Chairman Specter. Thank you very much, Ms. Rosenthal.

[The prepared statement of Ms. Rosenthal appears as a submission for the record.]

Chairman Specter. We now turn to Ms. Mary Lou Leary, Director of the National Center for Victims. Her extensive experience in the field has been U.S. Attorney for the District of Columbia, served as Acting Assistant Attorney General of the Office of Justice Programs, and oversaw the U.S. Department of Justice's Office for Victims of Crime and Office of Violence Against Women. She has a law degree from Northeastern University, a Master's from Ohio State, and a Bachelor's degree from Syracuse.

Thank you very much for coming in today, Ms. Leary. We look forward to your testimony.

STATEMENT OF MARY LOU LEARY, EXECUTIVE DIRECTOR, NATIONAL
CENTER FOR VICTIMS OF CRIME, WASHINGTON, D.C.

Ms. Leary. Thank you very much, Senator Specter. Good morning to you, Chairman Specter, and to the other members of the Committee. On behalf of the National Center for Victims of Crime, we really appreciate this opportunity to talk to you about this very important piece of legislation.

The National Center has over 20 years of experience working on violence against women issues. Approximately 50 percent of all the calls that come to our national toll-free help line involve sexual assault, stalking, domestic and dating violence.

Our Stalking Resource Center, which is funded by the Department of Justice Office on Violence Against Women, has trained thousands of criminal justice officials and victim service providers on how best to combat the deadly crime of stalking.

Let me tell you, when you want to understand the impact of VAWA, I think it can best be illustrated through the lives that it has changed, including the life of Donna, an incredibly courageous woman with whom the National Center works. Donna was a victim of stalking, marital rape, and horrific domestic violence for over a decade. Her story, which is detailed in my written testimony, gives a dramatic before and after picture of the impact of VAWA.

Before VAWA, the system simply failed Donna. But VAWA has transformed our country's response to victims and today, as a result of that, Donna is safe, she is strong, and, in fact, she is the founder of the country's first support group for stalking victims, and she also happens to be one of the best

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
May 5, 2010

Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Committee On The Judiciary,
Hearing On "The Increased Importance Of The Violence Against Women Act
In A Time Of Economic Crisis"
May 5, 2010

The Violence Against Women Act (VAWA) was a watershed piece of legislation that is as crucial now as it has ever been. Since its enactment 15 years ago, VAWA has provided critical, sometimes life-saving, assistance to countless survivors of domestic and dating violence, sexual assault, and stalking. This legislation shed light on the national problem of violence against women, and marked a bipartisan commitment to confront and end domestic and sexual violence.

Since that time, we have responded with better laws, social support, and coordinated community responses. I was proud to work on the original VAWA bill, and am pleased with all it has accomplished. Our communities and families are safer today because of this law. As we begin to consider the reauthorization of this vital law, it is important to note that, for all we have accomplished, there is more work to be done. The problem of domestic and sexual violence persists, and in a time of economic crisis, the victims of this violence are even more vulnerable.

The Violence Against Women Act has transformed our criminal justice system, improving the legal and law enforcement response to the complex issues of domestic and dating violence, sexual assault, and stalking. It has evolved to better address the needs of underserved populations and includes critical new programs focusing on prevention and on the needs of young people.

The importance of VAWA could not be clearer than it is today as our country copes with a troubled economy. The safety net VAWA has provided survivors over the years is now a lifeline for many. The economic pressures of a lost job, home, or car can add stress to an already abusive relationship. The loss of these resources can make it harder for victims to escape a violent situation. And just as victims' needs are growing, state budget cuts are resulting in fewer available services, including emergency shelters, transitional housing, counseling, and childcare.

These services can mean the difference between life and death for some victims. I advocated for increased funding of VAWA programs in the American Recovery and Reinvestment Act. I was pleased that the Recovery Act included \$50 million for the Transitional Housing Assistance Grants program, which has helped people across the country find a safe place to live.

As we look toward reauthorization of VAWA we must go further. We must increase access to support services, especially in rural communities and among older Americans. We must prioritize

our response to the high rates of violence experienced by Native American and immigrant women. And we must think of new and innovative ways to improve economic independence for survivors.

Economic insecurity is among the most formidable obstacles for survivors of domestic and sexual violence. Abusers often retain their control through economic dependence, sabotaging a victim's credit history or her ability to work productively. Between 25 and 50 percent of domestic violence victims report that they lost a job at least in part due to their abuse. Similarly, almost 50 percent of sexual assault survivors lose their jobs following a crime. Senator Murray, a longtime supporter of VAWA, has introduced a bill I am proud to cosponsor to provide victims with unpaid leave for legal and medical appointments, eligibility for unemployment insurance, and protection from employment and insurance discrimination based on their history of abuse. These policies make good business sense, and they are the right thing to do. We must take additional steps to ensure the economic independence of victims.

State and local government and community organizations nationwide recognize the power of economic independence for survivors and are implementing innovative programs to help achieve that goal. The Vermont Network Against Domestic and Sexual Violence is at the forefront of this innovative approach. Leveraging private resources with federal, state and local financial support, the Vermont Network is able to help survivors with a variety of needs from budgeting to credit repair to employment counseling.

Today we will hear from Judge Susan Carbon, Director of the Office on Violence Against Women. Judge Carbon has led efforts to combat domestic violence at the state and the national level, and I look forward to hearing her perspective on this vital issue.

We will also hear from Auburn Watersong, an economic justice specialist at the Vermont Network Against Domestic and Sexual Violence who has spearheaded many of the Vermont Network's innovative programs. I am proud to have worked with the Vermont Network and its executive director Karen Tronsgard-Scott for years. Sarah Kenney, also with the Vermont Network, is here in the audience today. We will also hear from Lolita Ulloa of the Victim Services Division at the Hennepin County Attorney's Office, a one-stop service center for victims of domestic violence whose success has now been replicated nationally. Finally, we will hear from Richard Gelles, Dean of the School of Social Policy & Practice at the University of Pennsylvania.

I look forward to working with members of this Committee, the Obama-Biden administration, and experts in the field to ensure that this law remains a vital resource for prosecutors, law enforcement agencies, victim service providers, and, most importantly, the individuals across the country who are coping with violence and abuse.

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Testimony of
Auburn L. Watersong

May 5, 2010

Auburn Watersong, Economic Justice Specialist,
Vermont Network Against Domestic and Sexual Violence
Testimony before the Committee on the Judiciary
United States Senate

Testifying on the increased importance of the Violence Against Women Act in a time of economic crisis

Wednesday, May 5, 2010

Chairman Leahy, Ranking Member Sessions, and distinguished members of the Committee, thank you for the opportunity to discuss the tremendous importance of the Violence Against Women Act (VAWA) - especially in these harsh economic times. My name is Auburn Watersong. I am the Economic Justice Specialist at the Vermont Network Against Domestic and Sexual Violence. In this capacity, I am responsible for providing the Network and its Member Programs with technical assistance and training in areas that relate to economic abuse and empowerment, entitlement programs and significant economic issues such as housing, transportation, credit status and financial literacy. I also advocate for public policies that recognize the unique needs of survivors seeking financial assistance and economic support and I seek and manage funding that increases the capacity of local programs to meet the growing need for economic advocacy work.

The Vermont Network Against Domestic and Sexual Violence is a statewide coalition of domestic and sexual violence programs. Our 15 member programs are located throughout the state and provide lifesaving services to victims and their families. VAWA funded programs are an essential part of our work in Vermont, and across the country. The programs are all the more critical in light of the current economic crisis. I am here today to discuss the importance of VAWA programs that provide support for victims and to share some recent Vermont innovations which are providing economic resources to victims. Most importantly, I am here to address this opportunity to expand VAWA in the upcoming reauthorization to focus on providing long-term, sustainable safety for victims and their families.

In response to the terrible crimes of domestic violence, sexual assault, dating violence and stalking Congress authorized the Violence Against Women Act in 1994 through the leadership of the Judiciary Committee and reauthorized it in 2000 and 2005. VAWA created lifesaving legal protections and a broad array of programs to hold perpetrators accountable and keep victims safe. These programs traditionally focused on responding to the immediate needs of victims and strengthening the criminal justice system's response to domestic and sexual violence, dating violence and stalking. VAWA provides funding for emergency response to victims as well as resources and training for law enforcement agencies, prosecutors, judges, and advocates.

More recent reauthorizations have extended VAWA to focus on the broader needs of victims beyond immediate safety and the criminal justice response. Expanded VAWA grant programs have focused on the particular needs of rural populations, victims with disabilities, older victims, victims in tribal communities, and the need for culturally specific services, as well as the impact of violence on children. Additionally the newer programs have emphasized the impact of violence on children, the need for housing and housing protections for victims, for improved workplace responses to victims, for an improved healthcare response, for comprehensive prevention programs, and the need to engage men and boys in preventing violence. These and other critically important programs have created a more comprehensive approach to the way our nation prevents and responds to domestic and sexual violence. This broader, more holistic focus takes a proactive approach to providing more sustainable safety for victims of domestic and sexual violence, dating violence and stalking.

Many VAWA programs contribute to the overall economic stability of victims and play a crucial part in victims' long-term safety and self-sufficiency. These programs should be maintained, improved and given sufficient resources to respond to victims' needs. The VAWA reauthorization process also presents an opportunity to build upon the best practices in the field and provide support and economic protections for victims to address their complex economic needs. By reducing the barriers to survivors' economic independence, we provide survivors and their children real opportunities to escape the violence and heal. Our nation should ensure that victims of violence have the support they need to remain economically independent, which ultimately benefits not just survivors and their children, but the economy and the nation as a whole.

The Economic Impacts of Domestic and Sexual Violence

Domestic and sexual violence impact victims from all socio-economic backgrounds, yet there are links between economic factors and domestic and sexual violence. We know that "access to independent economic resources. . . is central to abused women's decision-making and safety planning."

Two-thirds of people know someone who is or has been a victim of economic abuse. Economic abuse is a central part of domestic violence - from controlling the finances to actively working against survivors' efforts to become financially independent. This abuse is not only part of the immediate control over a victim's life but a massive barrier to a victim's ability to flee and eventually develop economic self-sufficiency. If victims do not have the economic ability to flee and rebuild their lives, they are more likely to stay. A lack of financial education, limited access to consumer protections, and no economic opportunities are deterrents for victims hoping to escape abusive relationships or to heal from the trauma of sexual violence.

A quote from an advocate in Idaho demonstrates the complex needs survivors have for both safety and financial security.

"A survivor and her daughters spent last night at a local motel after her abuser beat her. She asked me, 'What is worse: a beating every week or not having a roof over my children's head and food in their bellies?' How do I answer that question?"

We need responses and services that meet both safety and economic needs simultaneously, as without economic security, survivors cannot obtain long-term safety.

Economic Status, Abuse and Violence

While victims at all income levels experience domestic violence, poor victims experience it at higher rates than women with higher household incomes. Poorer victims experience violence at higher rates, in part because they have fewer resources to rely upon to escape. Domestic violence is more than three times as likely to occur when couples are experiencing high levels of financial strain as when they are experiencing low levels of financial strain. Victims with household incomes of less than \$7,500 are 7 times as likely as victims with household incomes over \$75,000 to experience domestic violence. Women whose male partners experienced two or more periods of unemployment over a 5-year study were almost three times as likely to be victims of intimate violence as were women whose partners were in stable jobs. Poverty and unemployment are also risk factors for the perpetration of sexual violence. Poverty can increase the risk for sexual victimization and compound the barriers victims experience when coming forward to get help.

Employment

Gainful employment is the most significant way that individuals can become economically self-sufficient. Yet almost 50% of sexual assault survivors either lose their jobs or are forced to quit in the aftermath of the crime and between one-quarter and one-half of domestic violence victims report that they have lost a job due, at least in part, to domestic violence. In her expansive literature review, Eleanor Lyon's points out that domestic violence perpetrators use a number of tactics to jeopardize their victims' ability to obtain or maintain employment, including threatening or harassing the victim at work, interfering with efforts to get to work or school including violent attacks, keeping victims awake all night, and refusing to provide childcare or transportation. Perpetrators also often forbid victims from securing employment. The combination of these active sabotaging tactics, and the poor work performance and absenteeism that result from the crisis and trauma of abuse make it difficult for victims to obtain and maintain employment.

Abuser' tactics, however, are not the only barriers survivors face in maintaining employment. Victims of domestic and sexual violence often face employment discrimination. One domestic violence victim in Vermont reached out for help after being fired from her job. She had been battered to the point that she required hospitalization; she returned to work after three days in the hospital and then needed to take one more day off for a court appearance. Upon returning to her job, she learned that she had been fired for her absence.

The following few examples from Legal Momentum hint at the pervasiveness of employment discrimination against victims of domestic and sexual violence.

Angela was a waitress and bartender at a local bar/café in a small town in Wisconsin. Angela applied for and obtained a temporary domestic abuse injunction against an ex-boyfriend who made threats against her while she was six months pregnant with their child. When Angela informed her employer that she would be seeking a permanent injunction, her employer told her to "drop" the matter or she would be fired, because the injunction would allegedly be detrimental to business. Her ex-boyfriend was a friend of the employer and said he and his friends would stop coming to the bar if Angela kept working there. Angela nevertheless obtained the permanent injunction. Two days later, Angela was fired for obtaining the injunction.

Antoinette, a dishwasher at a restaurant in a small town in Iowa, was dating and living with Donald, a busboy at the same restaurant. One evening during an argument at home, Donald kicked Antoinette. Antoinette called the police, who arrested Donald, and Antoinette was issued a protective order against Donald in short order, which included a stay away provision encompassing the workplace. When Antoinette went to her employer to discuss the protective order, she asked if she and Donald could be scheduled on different shifts. The employer said he would think about it. Two days later, Antoinette was fired. When pressed for an explanation, the employer stated that because of the protective order, he could only keep either Antoinette or Donald, and that he decided to keep Donald because he was the "better" employee.

A survivor "Mary" worked for a California company for fourteen years before being terminated in April 2003. During the last two years of her employment, Mary repeatedly asked her supervisor for thirty days off from work to address her injuries and to make arrangements to leave her husband safely. Even though California law requires that employers permit their employees to take time off to address domestic violence, Mary's requests were denied. Instead, she was put on probation for missing too much work. In March 2003, she was finally granted a ten-day leave. One month later, she was fired. When she asked why, she was told it was because she had been a few days late with completing an internal memorandum and that "if she really cared about her job, she would not have asked for time off."

Another victim of domestic violence, Vasiliki, was fired from her job after she missed two days of work to seek medical attention and meet with a prosecutor after she was attacked by her boyfriend. She was brutally attacked by her boyfriend just days after beginning a new job in New York City. She quickly told her employers what happened, and informed them that that she would need to miss work to obtain medical attention, and to meet with a prosecutor about the case against her boyfriend. While Vasiliki was meeting with the prosecutor two days later, her employer called to tell her she was being fired. He didn't change his mind, even after the prosecutor told him it was illegal to fire a crime victim for missing work to meet with a prosecutor. New York City is one of only a handful of places in the country that prohibit employment discrimination against victims of domestic violence and require an employer to provide a victim with "reasonable accommodations" to help the victim do her job and stay safe.

There are countless stories like this across the nation. Victims of domestic and sexual violence desperately need federal workplace protections. They should never be forced to make the untenable choice between a paycheck and safety for themselves and their children.

Credit and an economic history

Abusers use other controlling tactics that leave victims with limited economic options. Survivors report that abusers accrue large debts, limit victim's access to cash and bank accounts, leave unpaid utility and housing bills and default on shared loans, which can devastate a victim's credit score. In situations where the abuser has the sole control of the finances, victims are susceptible to bankruptcy. It can take years to fix these very real financial problems. Negative credit or lack of credit can greatly impact future opportunities to obtain loans, secure rental housing or even obtain steady employment. Additionally, because many survivors are denied access to family financial matters and bank accounts, they may lack the economic literacy skills to make financial

plans and save for the future. These tactics make it very difficult for survivors to accumulate the resources necessary to flee and remain secure.

The impossible escape and the downward spiral

When victims of domestic violence gather the means to flee and victims of sexual violence begin to rebuild their lives after traumatic abuse, they may face significant obstacles in finding sustainable safety. Sexual and domestic violence can create a downward spiral for many victims, resulting in loss of housing, employment, education, and childcare. When sexual or domestic violence occur within a context of economic insecurity, getting help and moving forward with life often competes with very real basic life needs such as putting gas in the car, paying bills, or keeping a roof overhead. Often, victims of violence are faced with the gut-wrenching choice of remaining in a life-threatening situation or becoming homeless or impoverished. Victims of domestic and sexual violence are at great risk for homelessness when they flee from unsafe homes and environments. In fact, 92 percent of homeless mothers reported physical or sexual abuse during their lives and 43 percent reported child sexual abuse. Widespread housing discrimination against victims of domestic and sexual violence compound victim's housing instability. Domestic violence victims frequently are evicted and denied housing because of violence committed against them. This discrimination was well-documented in a comprehensive national survey. While lifesaving housing protections were included in VAWA 2005, much work remains to ensure that all victims can remain housed while also accessing the protections of the criminal justice system.

The consequences on victims, their children, society and our economy

Economic security is tied to many other aspects of victims' lives. Use of the criminal justice system, for instance, is a more viable option for victims who have economic security. Domestic violence victims who are dependent upon their abusers for financial stability may be reluctant to engage with the criminal justice system because a custodial sentence for the perpetrator leaves the victim without resources. If victims, however, are able to find economic security and reduce their dependence on batterers, they are more likely to cooperate with prosecution and seek criminal justice remedies. Additionally, if victims are able to flee the perpetrator and have the economic means to remain away from the perpetrator, they are less likely to experience repeat victimization.

The consequences of the economic impacts of domestic and sexual violence are severe. If victims cannot leave life-threatening situations because they face poverty or homelessness, they will continue to face violence and even death. Their children will continue to be exposed to this violence and the cycle of violence will continue. The costs to society and the economy are tremendous as well: domestic violence costs U.S. employers and estimated \$3 to \$13 billion annually. Annual victim costs for rape are estimated at \$127 billion. Sexual and domestic violence also causes extreme economic impact on employers - through health care claims, lost productivity, and workforce turnover. In order to break the cycle of violence and to free individual victims from abuse, economic advocacy is essential.

How the Current Economic Crisis Exacerbates the Economic Impact of Violence

Domestic and sexual violence can have a tremendous economic impact on victims regardless of the state of the global economy. In the current economic crisis, however, the impact

is even more dramatic. Although an economic downturn itself does not cause sexual or domestic violence, it can exacerbate the factors that contribute to violence and reduce victims' ability to achieve safety, healing and long-term stability.

Unfortunately, for victims of domestic violence, in these difficult economies times, barriers to escaping abusive relationships increase and opportunities to attain economic stability and independence decrease. Victims of sexual violence also struggle against steep economic odds as they work to rebuild their lives.

The harsh economic climate has widened the unconscionable gap between desperate need and available resources. In a 2009 survey, domestic violence service providers reported letting go or not replacing almost 2,000 positions because of a lack of funding and cited "not enough funding" as the number one reason they were unable to serve victims on the survey day. In a recent survey, out of 27 states reporting, 13 states indicated that state domestic violence services funding had been cut. According to the National Center for Victims of Crime, 92% of victim service providers have seen an increased demand in the last year, but 84% reported that cutbacks in funding were directly affecting their work. A 2009 survey of rape crisis centers reported that approximately 25% of rape crisis centers had a waiting list for services. Another survey found that nationwide 3 out of 4 domestic violence shelters have reported an increase in victims seeking assistance from abuse since September 2008. According to the National Domestic Violence Counts 2009 report by the National Network to End Domestic Violence, in just one day in 2009, over 65,000 victims were served by domestic violence programs. On the same day, however, over 9,000 requests for services went unmet because programs lacked the resources to meet the requests. A recent survey of rape crisis centers found that 72% of programs experienced funding losses in the past year, including state, local and federal funding and almost 60% of rape crisis centers have been forced to reduce staff in the past year.

The scarce resources have a real impact on the lives of victims. As one Kansas program noted, "Budget cuts to our programs are not just numbers on a spreadsheet, they impact the daily lives of the people we serve. Decreased funding means families are at great risk."

Victim advocates in Vermont, like many nationwide, are experiencing a change in their work. Rather than assisting victims in accessing resources that will eventually be available, advocates are now working to help victims do without. Sadly, they are starting to consider not when the help will come for victim and survivors, but whether it will come at all. The next VAWA reauthorization can help remedy this dire situation.

Empowering Survivors with Economic Tools: The Vermont Response

Victims of domestic and sexual violence and stalking in Vermont face the same economic hurdles as victims across the country. With cuts to our state budget, rising prices, increased unemployment and dwindling benefits, domestic and sexual violence advocates are working harder to provide assistance to victims in greater need with fewer resources. With unemployment rates that peaked above 20 percent in one rural town last quarter, our state unemployment offices, like so many nationwide, are seeking federal funding to fill in the gaps. Homelessness in Vermont has increased by 25 percent in the past two years. The lack of safe, affordable housing

across much of our state exacerbates the challenges faced by so many victims seeking safety. While such challenges weigh heavily on us when children are involved, our domestic and sexual violence shelters also now report an increase in the number of single adults seeking shelter. Public benefit systems for single adults are also struggling with limited resources after state budget cuts. Given the rural nature of our state, lack of transportation and geographic isolation present huge obstacles for many survivors, especially for those who may live hours away from lifesaving services or law enforcement. In today's economy, the cost of gasoline and general car maintenance is also prohibitive for many victims and survivors.

Over the past sixteen years, funding and technical assistance through VAWA has helped Vermont to improve systems' response and create a web of support for victims and survivors. Programs that provide transitional housing, legal help, and specific aid to rural communities have done much to alleviate some of the pressures that victims face. Since VAWA was first enacted, we have been able to build an effective coordinated community response, which began with addressing the most pressing immediate needs facing victims. Over time, our response has evolved to include our current work that addresses the breadth of economic needs survivors have to achieve long-term safety. However, despite our successes in triage and intervention, there remains a tremendous need for the knowledge, skills and resources that help victims of domestic and sexual violence achieve economic self-sufficiency. Shelter and support are critical, yet so much more remains to be done.

Last week, a pregnant woman with a 3 year old child found safety in a Vermont shelter. She arrived after being assaulted, with only the clothes on her back and two outfits for her child. Economic advocates immediately connected her with financial assistance programs and assisted her with applying for food stamps and TANF benefits. While waiting for her TANF benefits to be approved, and after having been six weeks without income, she was able to secure only \$47 in emergency cash assistance for two weeks while in shelter. With these meager resources she will need to cover the cost of diapers, food, clothing and personal necessities.

The Vermont Network Against Domestic and Sexual Violence (VNADSV) has worked in recent years to develop innovative collaborations in an effort to support victims and survivors of domestic and sexual violence to rebuild their lives despite these circumstances. With the assistance of private funding from The Allstate Foundation in collaboration with the National Network to End Domestic Violence (NNEDV), VNADSV addresses the needs of victims that have been historically neglected by federal funding programs. Having received training and technical assistance from the National Network to End Domestic Violence, the Vermont Network has been able to provide program advocates with the supports and resources they need to empower victims toward economic independence. This past year we forged a creative partnership with Opportunities Credit Union, a community development-focused credit union, the Office of Economic Opportunity, and the Economic Development program at a local Community Action Agency in order to develop a matched savings program for domestic violence survivors. This program promotes habitual money management skills development, provides financial literacy training, credit counseling and ultimately a 3 to 1 financial match for participants to use toward expenses such as unpaid medical debt, utility bills, automobile maintenance and repair, and rent. This is just one example of how we have been able to bridge some of the gaps on the way toward sustainable safety for survivors. Although this matched

savings program is in its infancy, the broad supports funded by Allstate's Economic Empowerment Grant program in Vermont have proved incredibly promising. Included in this grant funding is on-call technical assistance and training provided by the Network and our partners in order to assist advocates in their vital work. This private funding has allowed us to provide advocates with training in basic economic advocacy skills, and pre-employment supports for victims including job readiness skills, resume writing and goal setting. All of Vermont's domestic and sexual violence programs have also received training or technical assistance in utilizing the financial literacy curriculum called "Moving Ahead Through Financial Management" created by Allstate and NNEDV specifically for survivors of economic abuse. Participants enrolled in the matched saving program commit to four sessions of financial literacy training using this curriculum. In the past year alone, 62 victims have received education through one or more components of this curriculum. One Vermont shelter includes portions of the financial curriculum in its regular community support groups and shelter groups. The most relevant and requested information at these groups centers is about economic abuse, how to recognize it, how to recover from it, and how to attempt to avoid it in future relationships.

Through the help of The Allstate Foundation, an innovative collaboration facilitated by funded Economic Advocates has provided numerous Vermont survivors with credit counseling services and used car buying instruction from a local economic development program. In the past 6 months, one Vermont domestic and sexual violence program has seen 4 victims purchase affordable, quality used vehicles based upon this work.

The collaborative relationships formed through this private funding have been so successful that our partners have offered our domestic and sexual violence programs even broader supports. In addition to the matched savings program, the community action agency and the credit union also offer their own educational time, skills and resources to all Vermont victims in our 15 member programs, regardless of enrollment in the matched savings program. According to our most recent mid-year report from our Allstate funded Economic Advocates in our domestic and sexual violence programs, of the 490 victims already served by this private funding this year, 76% have increased their long term economic security by improving financial literacy, gaining employment, repairing credit, or establishing a savings plan. This successful statewide collaboration, funded by dedicated partners such as Allstate and NNEDV, is just one example of how we have been able to bridge some of the gaps on the way toward sustainable safety for survivors. Many of the survivor success stories in Vermont stem from the knowledge, skills and resources provided by advocates focused specifically on the economic needs of victims. Once again, such sustained safety would not be possible without private funding sources to support knowledgeable and skilled economic advocacy.

Vermont has numerous examples of the effects of this important work:

A survivor who fled her abusive partner in another state sought safety for herself and her two children in Vermont. Having no local supports, this family was sheltered for nearly 3 months while she worked with economic advocates to gain her safety and independence. The combination of her strength and perseverance coupled with the skills, resources and creative partnerships available through advocates in the shelter enabled her to locate and secure

permanent housing, gain access to financial assistance for housing and food, and enroll her older child in school.

A male victim of sexual assault perpetrated by his male partner sought care from a Vermont shelter. Advocates were able to access economic resources to help this victim with first month's rent and deposits for utilities and furniture.

Another survivor was unemployed when she sought safety at a shelter in Vermont. Despite her Master's degree, this survivor required the skills, knowledge and empowering support of the economic advocates at the domestic violence shelter and community collaborators to assist her in reaching her economic goals. She has developed a business plan, established a base of references for potential clients and formed promising business contacts.

A domestic violence survivor with 5 children sought shelter in Vermont. Unfortunately, at the time shelter was needed, this particular domestic violence shelter was at full capacity. With the assistance of the economic advocate, she and her children were able to find safety in a motel - but the resources provided were only sufficient for a short stay. Unfortunately, due to the lack of affordable housing that could accommodate a family of this size, she returned home to an abusive partner. Despite her return, this survivor maintained her connection with the shelter advocates who were then able to work with her on housing applications, credit repair, and budgeting skills. It is through this continued and sustained support that she was able to locate and secure housing. She moved in two weeks ago. While she has found safe housing, she continues to suffer the effects of economic abuse and is working with the shelter advocates, a local credit union and a neighboring community action agency to improve her credit score and gain financial independence.

Successes like these are seen all over the United States:

In Minnesota, for instance, a survivor who had received economic literacy education remarked that she felt so empowered and excited that she could make a long-term financial plan. Instead of feeling overwhelmed and "drowning", she now felt she had tools to "start today" with small steps that will lead to big leaps.

In Delaware, a woman who suffered domestic violence was assisted by her economic advocates. They helped her open bank account and she was able to save a reasonable amount of money to aid in her gaining independence from the batterer. Today she has a job and a car that she was able to buy with the matched savings plan. She is now thriving with the assistance she received from the program.

Domestic violence programs in every state are using the curriculum and the economic empowerment tools to educate their staff and working to transform victims' lives.

These successes are the result of the strength of victims supported and empowered by creative partnerships, and a handful of dedicated economic advocates who have the breadth of programming, resources and knowledge to support them on their journey.

But these successes are too dependent on private resources in precarious economic times. Through the support of VAWA funding and important financial commitments of partners like The Allstate Foundation and NNEDV, Vermont has been able to build creative relationships which

support survivors' development of habitual money management skills, financial literacy, economic independence and ultimately the empowerment that leads to these success stories. Our model of economic advocacy is successful and could be replicated around the country with adequate resources. Economic advocacy for victims must be well supported by stable and long-term funding in order for creative and committed advocates to foster the open, innovative, and survivor-driven programming that ultimately leads to the goal of sustainable safety.

VAWA 2011 Reauthorization Recommendations

With this VAWA reauthorization, we have the unique opportunity to further broaden the scope of VAWA programs and protections by providing greater economic supports to victims and survivors. First, we must increase resources for core, foundational services that both help victims find safety and help victims to create economic stability. Secondly, we must dedicate resources to address specific economic advocacy to ensure that this vital component to long-term safety is addressed. Finally, we must provide legal employment protections for victims to ensure that victims can obtain and keep employment - a vital part of economic stability for victims.

Reauthorizing current VAWA programs with additional resources

Services for survivors of domestic and sexual violence must be able to meet both their immediate safety and crisis needs and contribute to their sustainable safety and security. A recent multi-state study of survivors in domestic violence shelters reveals that after safety, economic-related services and help were some of the most sought after services by victims.

- o Safety for myself (86 percent)
- o Finding affordable housing (84 percent)
- o Job or job training (57 percent)
- o Budgeting or handling money (54 percent)
- o Education/school for themselves (48 percent)

Current VAWA programs, including Transitional Housing, Civil Legal Assistance for Victims (LAV), the STOP, Sexual Assault Services Program (SASP) and the Rural Grant program provide a foundation for victims of domestic and sexual violence and are an essential component to longer-term safety and self-sufficiency.

The Sexual Assault Services Program (SASP), the Services, Training, Officers, and Prosecutors (STOP) program, and the VAWA Rural Grant program provide victim services funding that helps sustain programs that provide an array of services to victims of domestic and sexual violence. These core, foundational funding streams are vital to helping programs employ knowledgeable staff and provide key services to victims in crisis. By helping victims find safety, these programs lay the foundation for much other VAWA work.

All of these lifesaving and transformative VAWA programs should be maintained in the VAWA reauthorization process and should be given increased funding to meet the increasing demand. We also recommend changes to the STOP Formula Grant Program to direct more funding to victim services in order to provide critically important supports for survivors.

The VAWA Transitional housing program provides an essential continuum between emergency shelter and independent living. The majority of victims in transitional housing programs state that without these programs, they would have returned to their abusers. In just one day in 2009, 4,602 adults and 6,910 children were housed in domestic violence transitional housing programs. On that same day, 1,715 requests for transitional housing were denied due to lack of capacity. The average stay at an emergency homeless shelter is 60 days, while the average length of time it takes a homeless family to secure housing is 6-10 months. Due to a lack of interim housing, victims who leave their abusers frequently lack adequate shelter options or must leave a shelter with nowhere to go.

Transitional housing helps meet the ongoing need victims have for safe and affordable housing after they leave emergency shelter and work towards safety, self-sufficiency and finding permanent housing. Clients in transitional housing programs learn or relearn how to manage a household budget and to plan for the future. This is an absolutely crucial step in gaining long-term, sustainable safety.

One Vermont VAWA funded Transitional Housing Program advocate has paired with the Allstate funded economic empowerment partners to provide credit counseling services and used car buying instruction to more than 50 percent of their service users. This beneficial counseling and instruction resulted in one survivor being able to keep her car from repossession. She needed to keep her car in order to drive to work and was counseled in financial negotiation. Since then, she has been able to purchase a newer used car and remain at her place of employment.

ASHA Family Services in Milwaukee, WI is a VAWA-funded transitional housing program with a micro-enterprise component that is transforming the lives of its residents. They lease a fully equipped café, thrift shop and nail/hair salon that the clients in the transitional housing program call their own. These sites are job and career training grounds that provide structured on-the-job training. This innovative program allows survivors to build positive work histories and gain job experience which many of the clients lack.

VAWA 2005 also includes vital protections for victims in public and assisted housing that prohibit discriminatory evictions or housing denials based on an individual's status as a victim. These protections help victims and their children remained housed and allow them to access the criminal justice system without fear of losing their housing. These protections must be strengthened and expanded in the next reauthorization of VAWA to ensure that victims do not face discrimination and can remain housed.

The Civil Legal Assistance to Victims Program (LAV) helps victims obtain vital civil legal remedies including civil protection orders, child support, child custody, and housing and public benefits assistance. LAV is the only federal funding program designed to meet all of these needs. Despite the great need, almost 70% of victims of domestic violence and sexual assault too are without legal representation. The retainers or hourly fees needed to hire private legal representation are beyond the means of most victims of domestic violence and sexual assault. To obtain these remedies, victims of domestic violence and sexual assault need knowledgeable legal assistance that helps them navigate the civil legal system. Civil legal assistance helps victims with practical matters such as protective orders, custody, and child support and presents victims with real, long-term alternatives to their relationships. The demand for these services is high, and

it is one of the most requested grant programs. The Office on Violence Against Women is only able to fund one-third of the almost 300 applications that it receives per year.

In addition to the general legal services that victims need when they begin to rebuild their lives, many victims have complex economic-focused legal issues. LAV-funded lawyers and advocates can attend to these needs. In relation to housing needs, for instance, LAV-funded programs can represent survivors who have been wrongfully evicted under the VAWA and Fair Housing Act eviction defense provisions, advocate for Public Housing Authorities to implement VAWA protections and other housing protections for survivors residing in public and private housing and advocate for survivors who seek Section 8 and public housing. These programs can assist survivors with credit reporting and credit repair issues and can represent survivors in bankruptcy cases. Finally, they can advocate for survivors who have lost their jobs to access unemployment benefits--both by representing survivors in unemployment compensation hearings and by appealing negative outcomes.

Providing Targeted Resources to Address Victims Economic Needs

The Vermont economic justice program uses its general VAWA funding to leverage private and financial supports. It is a highly effective program that should be replicated and made available to communities across the country. In these harsh economic times, it is more important than ever to ensure that victims receive targeted economic advocacy to help them attain self-sufficiency - through financial literacy education, job training, and targeted savings programs. VAWA funding should also support specific economic advocates at programs to help victims navigate their economic options while they rebuild their lives.

Employment Protections for Victims of Domestic Violence, Sexual Assault and Stalking

There is a need for a set of comprehensive workplace protections to support workers and their families who are confronted by sexual assault, domestic violence, dating violence and stalking. Language included in the pending Security and Financial Empowerment Act (S. 1740), provides a strong blueprint for protections that should be included in this VAWA reauthorization.

Financial assistance, specifically unemployment insurance, for those victims unable to keep their jobs due to violence is a necessity. Unemployment insurance is specifically necessary if the nature of the violence requires that the survivor relocate. Even in Vermont, where we have an unemployment fund created by statute which is available to victims who voluntarily leave employment due to the effects of domestic and sexual violence and stalking, survivors are still vulnerable to unfair termination of employment due to the violence they have experienced. All victims, nationwide, deserve support and protection from discrimination.

Additionally, victims need the protection of an anti-discrimination law so that they are not fired (or not hired) merely because they are victims, because they take leave, or because the employer makes a choice between them and an abusive employee, as when the abuser and the victim work in the same place.

The needs of victims and their families do not vary across state lines, but their access to these significant protections does - as some states have robust protections and others do not. A strong

federal law prohibiting discrimination and allowing access to unemployment insurance is necessary to ensure consistent treatment of victims across our nation.

Conclusion

Over the past sixteen years, VAWA has provided lifesaving services and supports to many thousands of victims of domestic and sexual violence, dating violence and stalking, whether they live in rural or urban areas, whether they are youth or elderly victims, whether they speak English or another language - every victim deserves the chance to escape from violence and to find long-term, sustainable safety. These resources are incredibly important, but are not currently meeting the needs of survivors. Lives quite literally hang in the balance: 52% of all Vermont homicides during the past fourteen years were domestic violence related.

In order to prevent future tragedies and continue the progress that we have made over the past sixteen years, we must strengthen VAWA so that it can work for all victims of domestic and sexual violence and specifically meet their economic needs. Congress has a unique opportunity to make a difference in the lives of so many by reauthorizing VAWA with key and strategic improvements, with a focus on economic resources. This should include financial and housing assistance for victims, including those who lose their jobs due to violence; workplace protections; and changes to the STOP Formula Grant to provide more services directly to victims; as well as full funding for existing VAWA programs that provide lifesaving services and seek to prevent survivors from losing employment, becoming homeless, or suffering the lifelong effects of trauma and its attendant costs. These adjustments will do so much to support victims of domestic and sexual violence and stalking in seeking sustainable, lifelong safety.

No. SJC-12623

BOSTON HOUSING AUTHORITY,
PLAINTIFF-APPELLEE,
v.

Y.A.,
DEFENDANT-APPELLANT.

ON APPEAL FROM
THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

BRIEF OF AMICI CURIAE THE AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES
UNION OF MASSACHUSETTS, COMMUNITY LEGAL SERVICES OF PHILADELPHIA, MID-MINNESOTA LEGAL
AID, NATIONAL HOUSING LAW PROJECT, NATIONAL NETWORK TO END DOMESTIC VIOLENCE, AND THE
SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW
