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**List of Supporting Documents for the Webinar:  
Violence Against Women Reauthorization Act of 2013:  
Housing Protections for Survivors (June 12, 2013)**

1. **Powerpoint:** Violence Against Women Reauthorization Act of 2013: Housing Protections for Survivors
2. **“Federal Housing Programs in Brief” Chart**
3. **Overview of Public Housing, Project-based Section 8 and Vouchers**
4. **Overview of HUD Multifamily Housing**
5. **Overview of LIHTC**
6. **Overview of Rural Development Multifamily Housing**
7. **Additional online resources for identifying the federal housing program:**  
<http://preservationdatabase.org/> (Public Housing, HUD mortgages, project-based rental assistance, LIHTC, RD)
8. **VAWA 2005/2013 Side-by-Side Comparison Chart**
9. **VAWA 2013 Article (for non-legal advocates)**
10. **VAWA 2013 Article (for legal advocates)**

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# Violence Against Women Reauthorization Act of 2013: Housing Protections

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NATIONAL HOUSING LAW PROJECT  
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JUNE 12, 2013

## HOUSING JUSTICE

National Housing Law Project

## GoToWebinar<sub>2</sub> Interface

1. Viewer Window

2. Control Panel

The screenshot displays the GoToWebinar interface. On the left is the 'Viewer Window' showing a presentation slide titled 'Give Online Punch' by Corena Bahr, CEO and Founder of CB Presentations. The slide includes contact information: Dial: (805) 879-4135, Access Code: 105-748-644, and Audio PIN: 74. On the right is the 'Control Panel' with a menu (File, View, Help) and an 'Audio' section. The 'Audio Mode' is set to 'Use Telephone'. The dial number is (805) 879-4135, the access code is 105-748-644, and the audio PIN is 74. A 'Questions' section is also visible, with a 'Questions Log' and a text input field for asking questions. The Windows taskbar at the bottom shows the time as 4:11 PM.

## Housekeeping

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- Materials were emailed to registrants and will be emailed again after the webinar, along with the evaluations.
- Materials and recording will be posted at <http://nhlp.org/OVWgrantees>.
- MCLE certificates will be emailed to California attorneys.

## Goals for Today

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- Review and discussion of the VAWA 2013's new and continuing housing protections for survivors of domestic violence, dating violence, sexual assault and stalking.
- Quick overview of federally assisted housing programs covered by VAWA 2013.

## Other Protections for Survivors

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- In addition to VAWA, DV survivors may have protections under state landlord-tenant laws, state fair housing laws, and the federal Fair Housing Act
  - See HUD Memo: Assessing Claims of Housing Discrimination against Victims of DV under FHA and VAWA (2/9/11)
- NHLP has a 50-state compendium of domestic violence housing laws at <http://nhlp.org/node/1436>

## VAWA Reauthorized in 2013

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**VAWA 2013 CONTINUES PROTECTIONS UNDER  
VAWA 2005 AND PROVIDES NEW PROTECTIONS**



## VAWA Reauthorized in 2013

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- VAWA was enacted in 1994, reauthorized in 2000, 2005, and in March of 2013.
- VAWA 2013 maintains VAWA 2005's housing safeguards, expands the housing programs to which the law applies and adds new protections.
- VAWA 2013's housing protections are effective now. Some of the amendments require changes to the regulations or actions by federal agencies for purposes of implementation, but most of the provisions must be implemented now by landlords and managers of the covered housing programs.

## VAWA Laws and Regulations

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- VAWA 2013 streamlines the housing protections for all the covered housing programs by repealing many of the prior provisions that had been replicated in several program statutes and consolidating them into a new section of VAWA, to be codified at **42 U.S.C. § 14043e-11**.
- HUD's final regulations implementing VAWA 2005 on October 27, 2010. See 75 Fed. Reg. 66,246.
  - The regulations continue to apply to public housing, voucher and project-based Sec. 8 programs
  - Contain helpful language on several issues affecting DV survivors, which we'll discuss.

## Quick Summary of VAWA 2013 Protections

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- VAWA 2013 continues the following:
  - Protections for survivors applying for HUD subsidized housing.
  - Protections against evictions and subsidy terminations.
  - Facilitates safety moves for survivors with Section 8 vouchers.
  - Permits lease bifurcation to remove the perpetrator from the unit.
  - Rules for proving domestic violence, dating violence, or stalking.
  - Obligates PHAs to have plans & goals and describe PHA programs to assist survivors.
- VAWA 2013's new provisions provide for:
  - Coverage of more federal housing programs.
  - Protections to survivors of sexual assault and LGBT survivors.
  - Rights for survivors remaining in housing after lease bifurcation.
  - Expansion of documentation rights to show abuse.
  - What landlords may do when there are conflicting certifications.
  - Development of model plans for use for emergency transfers.
  - Notification concerning VAWA housing rights at three critical junctures in multiple languages.

## Federal Housing Programs Covered by VAWA 2013

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**VAWA 2013 COVERS MANY MORE  
FEDERAL HOUSING PROGRAMS THAN VAWA 2005**



## VAWA 2005 & 2013: Expanded Coverage

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<b>Programs that were covered by VAWA 2005:</b>	<b>Programs added by VAWA 2013:</b>
Public Housing	<b>Other HUD programs</b>
Section 8 vouchers	<ul style="list-style-type: none"> <li>• § 236 Multifamily rental housing</li> </ul>
Project-based Section 8	<ul style="list-style-type: none"> <li>• § 221d3 BMIR (Below Market Interest Rate)</li> </ul>
Section 202 Supportive Housing for the Elderly*	<ul style="list-style-type: none"> <li>• HOME</li> </ul>
Section 811 Supportive Housing for People with Disabilities*	<ul style="list-style-type: none"> <li>• HOPWA (Hous. Opp. for Pple w/AIDS)</li> </ul>
<p><b>*Originally added by HUD regulations. Now provided for in the VAWA 2013 statute.</b></p>	<ul style="list-style-type: none"> <li>• McKinney-Vento (Homelessness Programs)</li> </ul>
	<b>Department of Agriculture</b>
	<ul style="list-style-type: none"> <li>• Rural Development (RD) Multifamily</li> </ul>
	<b>Department of Treasury/IRS</b>
	<ul style="list-style-type: none"> <li>• Low-Income Hous. Tax Credit (LIHTC)</li> </ul>

## Brief Introduction to Federal Housing Programs

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- Common characteristics
- Unique features
- Where is the housing located and how to find it

## Federal Housing Programs: Common Features

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- Owner of the unit may be any type of entity
  - PHA or other state or local government agency
  - Nonprofit
  - For-profit or limited partnership
- Regulator may include
  - A federal department, such as HUD, Department of Agriculture, Rural Development, or IRS
  - A state or local agency may also be involved

## Federal Housing Programs: Common Features

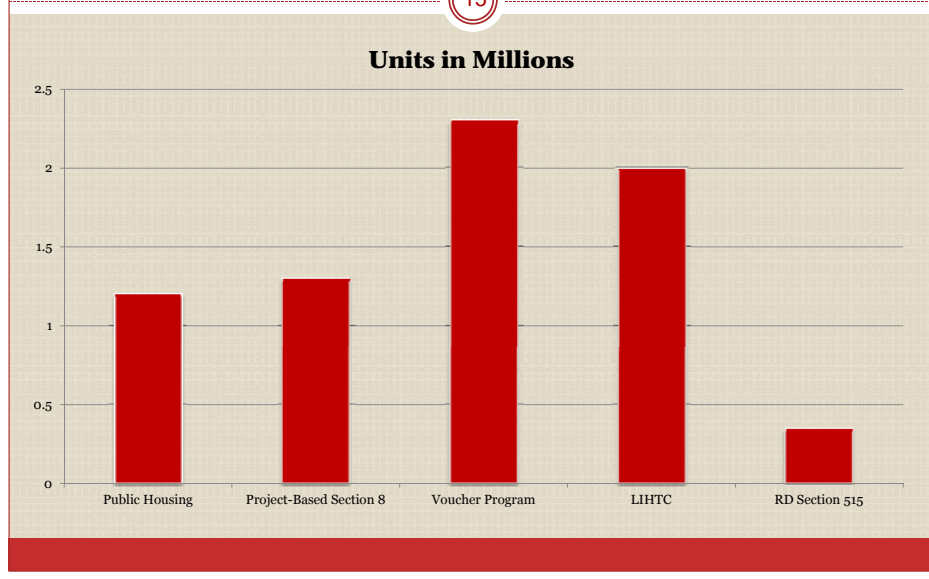
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- Admission is generally restricted to low income (defined as a % of AMI); there may also be targeting to the lowest income families
- Rents overall are below market and for some of the largest programs rents are a % of family income
- Lease or lease addendum is often a required form
- Eviction and/or termination from the program:  
Good cause generally required
  - There are exceptions



## Federal Housing Programs: Comparing Subsidized Housing Programs

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## Federal Housing Programs: Unique Features

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- Rules and regulations for each programs vary
- HUD Programs
  - Public Housing: Owned and managed by PHA
  - Voucher Program: Housing subsidy moves with the family
  - Project-based Section 8: privately owned and subsidy does NOT move with family
  - Section 202: Supportive housing for families whose head is elderly
  - Section 811: Supportive housing for families whose head is disabled
  - Section 236 and 221d3 BMIR: privately owned; rent controlled
  - HOME: state/local gov't allocates federal funds for this housing
  - HOPWA: housing for low-income families living with HIV/AIDS
  - McKinney Vento: Housing for homeless and disabled

## Federal Housing Programs: Unique Features

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- Department of Agriculture
  - RD multifamily: located in towns with  $\leq 20,000$  in population or if within a SMA,  $\leq 10,000$  in population & rural character
- Department of Treasury/IRS
  - Low Income Housing Tax Credit (LIHTC): Restricted rents set at 30% of 50% or 60% of AMI

## Federal Housing Programs: How to Locate or Identify the Housing

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- To help ID type of federal housing program involved, see information packet.
  - Chart entitled “Federal Housing Programs in Brief”
  - Outlines of federal housing programs (Public Housing, Project-based Section 8, Vouchers, Multifamily, RD, LIHTC)
  - Additional website link
    - ✦ <http://preservationdatabase.org/> (Public Housing, HUD mortgages, project-based rental assistance, LIHTC, RD)

## Overview of VAWA 2013's Housing Protections

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**VAWA 2013 INCLUDES  
MANY NEW PROTECTIONS FOR SURVIVORS**



## Coverage

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### **VAWA covers people who are subject to:**

**Domestic violence:** Any felony or misdemeanor crimes of violence committed by a current or former spouse, **intimate partner**, person with whom the victim shares a child, person who is or has cohabitated with the victim

**Dating violence:** Violence committed by a person who is/was in a social relationship of intimate nature with victim as determined by considering three factors

**Sexual assault:** Any nonconsensual sexual act prohibited by law

**Stalking:** Any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress

**“Affiliated individual” of the victim:** Immediate family or any individual living in the household

## Admissions

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- PHAs, landlords and owners shall not deny an applicant housing on the basis that an applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking.



## Ada

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- Ada fled her public housing unit after being attacked repeatedly by her abuser.
- Ada notified the PHA that she had moved out, but the PHA continued to charge her for rent after she left.
- Two years later, Ada's name was at the top of the Section 8 voucher waiting list. The PHA refused to process her application unless she paid the back rent on her public housing unit.
- Poll: Did the PHA's rejection of Ada's application violate VAWA?

## Evictions & Terminations

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- PHAs, landlords and owners may not deny assistance to, terminate assistance for or evict a tenant on the basis that she is or has been a survivor.
- Crimes against a survivor “directly relating to” the abuse are not grounds for evicting the survivor or terminating her rental subsidy.
- An incident of actual or threatened DV does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating her rental subsidy.
  - Review lease: *Note* RD form lease “all perpetrators will be evicted, while the victim may remain” HB 2-3560, Att 6-E.

## Sonya

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- Sonya is a Section 8 voucher tenant:
  - Sonya’s ex-boyfriend, John, cut himself while breaking into her unit. A security guard responded to the incident and made a report to management.
  - Soon after, Sonya received an eviction notice for nuisance due to “several domestic disputes between you and John.”
  - Sonya had several police reports and a restraining order documenting John’s violence against her.
- A court found that the landlord was prohibited from evicting Sonya under VAWA. *Metro N. Owners LLC v. Thorpe*, <http://www.nhlp.org/node/75>

## Limitations

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- PHAs and owners can still evict if they can demonstrate an “actual and imminent threat” to other tenants or employees at the property if the survivor is not evicted.
- “Actual and imminent threat” not defined in VAWA
- Current HUD regulations are important:
  - “Threat” consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.
  - Factors to be considered include the duration of the risk, the nature and severity of the potential harm, the likelihood that the harm will occur, and the length of time before the harm would occur. 24 C.F.R. § 5.2005
  - Eviction should occur only if there is no other action to be taken that would reduce or eliminate threat.

## Removing the Abuser from the Unit

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- PHA or Section 8 landlord may “bifurcate” a lease to evict a tenant who commits DV while preserving the survivor’s tenancy rights.
  - This provision is subject to state and local law. No guidance on how VAWA and state and local law will interrelate.
- **New protection for tenants remaining in housing as a result of lease bifurcation**
  - If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant an opportunity to establish eligibility or a reasonable time to move or establish eligibility for another covered housing program.

## Removing the Abuser from the Voucher

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- Additionally, PHA may terminate Sec 8 assistance to the abuser while preserving assistance to survivor
  - If a family breakup results from DV, “the PHA **must** ensure that the victim retains assistance.” 24 C.F.R. § 982.315.
  - Consider asking for the voucher to be assigned to the survivor during restraining order, divorce, or separation proceedings.

## Voucher Portability

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- If a Section 8 voucher family moves out in violation of a lease, PHA has grounds to terminate their subsidy. VAWA provides an exception for survivors who must move for safety.
- Many PHAs prohibit Sec 8 voucher tenants from moving during the 1<sup>st</sup> year of their lease, or from moving more than once during a 12-month period. However, these policies do **NOT** apply when the move is needed for safety. See 24 C.F.R. § 982.314
- Note re: covering survivors of sexual assault

## Emergency Transfers

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- Survivors living in federally assisted housing often need to move or “transfer” to another subsidized unit to protect their safety.
  - Generally, only Section 8 vouchers are portable.
- VAWA 2013 mandates each federal agency to adopt a model emergency transfer plan to be used by PHAs and owners.
- Transfer plan must allow survivor tenants to transfer to another available and safe unit assisted under covered housing program if
  - (1) tenant expressly requests the transfer and
  - (2) either tenant reasonably believes that she is threatened with imminent harm from further violence if she remains or tenant is a victim of sexual assault that occurred on premises within 90 days of request
- Transfer plan must ensure confidentiality so that PHA or owner does not disclose location of new unit to abuser

## Emergency Transfers (cont'd)

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- HUD must establish policies and procedures under which a survivor requesting emergency transfers may receive a tenant protection voucher
  - Annually, Congress may issue tenant protection vouchers for certain purposes.
- Implementation issues:
  - What can advocates & survivors do during the interim period before federal agencies adopt model emergency transfer plans?
    - ✦ Are PHAs and owners required to use transfer plans?
    - ✦ Is a survivor entitled to receive a transfer voucher if other transfer options are infeasible?
  - What advocacy is needed to influence the federal agencies' implementing regulations/model policies?



## Proving DV: Procedural Requirements

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- Assume that PHA or landlord seeks to evict because of lease violation. Tenant says the violation is related to DV.
- PHA or landlord is free to take tenant at her word, or can ask tenant to prove DV.
- Any request by PHA or owner for proof must be in writing.
- Tenant has 14 business days from PHA or landlord's request to provide proof.
- PHA or landlord is free to grant extension if tenant needs more time.

## Proving DV: 3 Options for Documentation

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### 1. Self-Certification Form

- New law revised certification process outlined under VAWA 2005 and implemented through HUD Form 50066 (public housing or Section 8 vouchers) and HUD Form 91066 (project-based Section 8).
- Permits PHAs and owners to request certification via form *approved* by appropriate federal agency.
- This form must (1) state that the applicant or tenant is victim; (2) state that the incident is ground for protection meeting requirements under VAWA and (3) include perpetrator's name, *if known and safe to provide*.

### 2. Police, Court or Administrative Record

- Record can be from a federal, state, tribal, territorial, or local entity or *administrative record*.

### 3. Statement from Third Party

- Can be from a victim service provider, medical professional, *mental health professional* or attorney.
- Must be signed by both the third party and the survivor under penalty of perjury.

## Proving DV (cont'd)

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- Poll: Can a housing provider *require* a tenant to provide *third-party* proof of domestic violence, dating violence, stalking or sexual assault in order to use VAWA's housing protections?

## Proving DV (cont'd)

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- HUD has stated that “an individual requesting protection cannot be required to provide third-party documentation.” 75 Fed. Reg. 66,251.
- However, in cases where 2 household members claim to be the victim and name the other household member as the perpetrator, the housing provider can require third-party documentation.
  - Included in VAWA statute for the first time in 2013
  - Currently in HUD's implementing regulations for VAWA 2005

## Proving DV (cont'd)

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- Poll: Can a covered housing provider deny a request for VAWA protections if the victim has third party verification from a mental health provider or attorney?
  - Note: Caution about waiving attorney-client privilege

## Notification and Language Access

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- HUD must develop a notice of VAWA housing rights (HUD notice) for applicants and tenants
- PHAs, owners and managers must provide HUD notice along with the agency-approved, self-certification form to applicants and tenants
  - (1) at the time an applicant is denied residency;
  - (2) at the time the individual is admitted; and
  - (3) with any notification of eviction or termination of assistance.
- HUD guidance prohibiting discrimination against LEP persons is applicable, including specifically for the HUD notice.

## Notification and Language Access (cont'd)

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- HUD issued its LEP Guidance in 2007 (72 Fed. Reg. 2732) (Jan. 22, 2007). The Guidance instructs recipients of federal funding to:
  - conduct a four-factor analysis;
  - develop a Language Access Plan (LAP); and
  - provide appropriate language assistance.

## Notification and Language Access (cont'd)

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- Implementation issues:
  - What are PHAs, owners and managers obligated to do before HUD develops the notice?
    - ✦ PHAs and project-based owners and managers must comply with current regulations and use HUD required lease and lease addendum
    - ✦ What about notice to tenants in other covered housing programs?
  - What can advocates and survivor tenants do during the interim period before HUD develops this notice?

## Other Requirements

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- Confidentiality
- Survivors held to same standard as other tenants
- PHA plans
  - Annual plans: PHAs must include a statement of any PHA DV programs.
  - Five-year plans: PHAs must describe goals, objectives, policies or programs they use to serve survivors' housing needs
- No preemption for laws that provide greater protections for survivors
- Impact on existing protections

## Areas Where VAWA's Application Is Unclear

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- VAWA housing protections do not clearly address:
  - Cases where the link between DV and the program violation is indirect, such as the abuser refusing to pay the rent.
  - Cases where survivor signed an agreement to keep the abuser off the premises or to repay damages caused by the abuser.
  - Cases where survivor repeatedly reconciles with abuser.
  - Where to file complaints if a PHA refuses to comply.

## Systemic Advocacy

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- In addition to advocating for individual survivors, consider:
  - Outreach and training PHAs and owners on VAWA 2013 and the dynamics of domestic violence, sexual assault, and stalking.
  - Reviewing the policies of PHAs and owners and suggesting ways that these policies could better serve DV survivors.
  - Forming a local working group composed of organizations such as: transitional housing providers, legal services, DV and homeless advocates, to address survivors' housing needs.

## Resources

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- NHLP's website for OVW grantees:  
<http://nhlp.org/OVWgrantees>
- Webinar information packet:
  - Resources on how to identify federal housing program
  - VAWA 2005/2013 side-by-side comparison chart
  - Articles summarizing key provisions of VAWA 2013

## Contact Information

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## FEDERAL HOUSING PROGRAMS IN BRIEF

FEDERAL PROGRAM	Owner-Landlord	Regulator	Income Eligibility for Admission	Tenant Rent Contribution	Eviction Protection
<b>Public Housing</b>	Public Housing Authority (PHA)	HUD	<80% Area Median Income (AMI) & targeting 40% of new admissions @ <30% AMI	Choice of 30% of Adj. Income or flat rent; sometimes other rent formulas, incl. minimum rent <\$50	Good cause required for any termination (mid- or end-of-term)
<b>Tenant-based Section 8 Housing Choice Vouchers (HCV) and VASH</b>	Private for-profit or non-profit	HUD and PHA	<80% AMI; but targeting 75% of vouchers issued annually @ <30% AMI; for VASH, income <50% of AMI	usually 30% of Adj. Income, plus excess of unit rent over payment std; 40% of income cap for initial occupancy; minimum rent < \$50	Good cause required during lease term only, absent contract term or state/local law
<b>Project-based Vouchers (PBV)</b>	Private for-profit, non-profit or PHA	HUD and PHA administrator, unless PHA-owned	<80% AMI; but targeting 75% of vouchers issued annually @ <30% AMI includes PBVs	30% of Adj. Income; sometimes other rent formulas, incl. minimum rent <\$50	Good cause required, unless O removes unit from program, T fails FSS or is no longer eligible
<b>HUD-Subsidized Mortgage Only (Sections 236 or 221(d)(3)BMIR)</b>	Private for-profit or non-profit	HUD (sometimes state agency lender)	<95% AMI for Sec. 221(d)(3) BMIR, <80% AMI for Sec. 236	usually flat “budget-based” rents regulated by HUD	Good cause required for any termination (mid- or end-of-term)
<b>Project-based Section 8 (some or all units) (including Mod. Rehab)</b>	Private for-profit or non-profit (rarely PHA)	HUD (except PHA for Mod Rehab) or contract administrator	generally <50% AMI; targeting 40% of new admissions @ <30% AMI	30% of Adj. Income for Section 8 units; sometimes other rent formulas, incl. minimum rent of \$25	Good cause required for any termination (mid- or end-of-term)
<b>Project-based Section 8 with HUD-subsidized or Rural Dev/Rural Hsing Serv mortgage</b>	Private for-profit or non-profit (rarely PHA)	HUD or contract administrator	for Section 8 units, generally <50% AMI; targeting 40% of new admissions @ <30% AMI	30% of Adj. Income for Section 8 units; sometimes other rent formulas, incl. minimum rent of \$25	Good cause required for any termination (mid- or end-of-term)
<b>Section 202 or Section 811 with Project-based Section 8 or PAC/PRAC</b>	Generally non-profit	HUD	<50% AMI; head of household elderly or people with disabilities	30% of Adj. Income for Section 8 or PAC/PRAC units; if Section 8, sometimes other rent formulas, incl. minimum rent of \$25	Good cause required for any termination (mid- or end-of-term)
<b>Low-Income Housing Tax Credit (LIHTC) program</b>	Private for-profit or non-profit (rarely PHA), usually limited partnership	Dept. of Treasury/ Internal Revenue Service (IRS) and State Agency	<50%-60% AMI for LIHTC units	Flat rents at 30% of 50% AMI or 30% of 60% AMI for LIHTC units; State Agency may impose lower restrictions	Good cause required for any termination (mid- or end-of-term), per IRS Rev. Rulings and case law
<b>HOME program</b>	Private for-profit or non-profit	HUD; State or local government	Varies, depending upon use of HOME funds	varies, depending on use of HOME funds & other subsidies	Good cause required for any termination (mid- or end-of-term)
<b>Continuum of Care (CoC): incl. Permanent Supportive Housing (PSH), Shelter Plus Care (S+C) and Supportive Hsing Prog (SHP) (see P-B Sec. 8 above re Mod. Rehab. SRO)</b>	State or local gov’t, PHAs or certain non-profits	HUD or subcontracting CoC grantee	No income eligibility; participant must be homeless; for CoC PSH and S+C, participant must also be disabled	usually 30% of adjusted income	PSH: good cause required; S+C: consider all extenuating circumstances before terminating <i>from program</i> for serious violations; SHP: may terminate <i>from program</i> for violations
<b>Rural Development/ Rural Housing Service (RD/RHS)* Section 515 program (may also have RD Rental Assistance or Section 8)</b>	Private for-profit or non-profit (rarely PHA)	Department of Agriculture, RD/ RHS	Varies, usually <80% AMI if no Section 8; if Section 8, <50% AMI & 40% of new admissions @ <30% AMI	Usually flat (cost) “budget-based” rents; 30% of Adj. Income for Section 8 or Rental Assistance units	Good Cause required for any termination, mid-term or end-of-term



# Public Housing Overview



## Key Components of Public Housing

- **Number of Units and Characteristics of Families**

- About 1.2 million units
- 31% of households headed by elderly persons; 36% female-headed households with children
- 45% headed by African Americans
- 24% headed by Hispanics/Latinos
- 55% were reported as extremely low income (ELI) in 2010 but no reliable figures are posted for 2011 and average income is \$13,379
- 53% live in public housing for less than 5 years

Information such as the above is available nationally, by state, Public Housing Agency (PHA) and development at

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/systems/pic/50058/rcr](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/systems/pic/50058/rcr)

- **Ownership**

- Public Housing Authority (PHA) owns Public Housing.
  - Created pursuant to local state enabling legislation.
  - Most are governed by board of commissioners.
    - Exceptions include situations where state law dictates a different result, statewide PHAs if they are a part of the state government. In such situations there may be alternative arrangements.
    - With some exceptions, a tenant or other “program participant” must be on the board. 42 U.S.C.A. § 1437(b); 24 C.F.R. §§ 964.400-964.430.
  - The jurisdiction of the PHA can include entire state, one or more cities, one or more counties, or other geographical area.

- **Who’s Involved and What are Their Roles?**

- HUD (both Headquarters in Washington, D.C. and the local office) and the PHA.
- HUD evaluates the PHA in accordance with the Public Housing Assessment System (PHAS). 24 C.F.R. Part 902, *see also* Part 901; 76 Fed. Reg. 10055 (Feb. 23, 2011) (interim rule).
- PHA is created by local and state enabling legislation
- PHA consults with a Resident Advisory Board (RAB) and develops annual and five-year plans that HUD approves and may review. 42 U.S.C.A. § 1437c-1; 24 C.F.R. Part 903.
- Resident Councils (RC) if they exist must be recognized by the PHA, if the RC complies with 24 C.F.R. §§ 964.105(a), 964.130(b) and 964.135(d)). RCs may be organized by development and/or jurisdiction-wide.

- **How Program Works: Subsidy Mechanism**
  - Subsidies are provided pursuant to an Annual Contributions Contract (ACC) between HUD and a PHA.
  
- **Key Regulatory Features**
  - Federal statute, regulations and forms.
    - Statute: 42 U.S.C.A. §§ 1437 to 1437e, 1437g to 1437z, 1437z–2 to 1437z–6, 1437aaa–2 to 1437aaa–6.
    - Regulations: 24 C.F.R. Part 5, and 900 *et seq.* (especially Parts 960 and 966).
    - PUBLIC HOUSING OCCUPANCY GUIDEBOOK (June 2003), available at <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm>.
    - Annual Contribution Contract, HUD Form 53010 D, E, H, I, etc. (contract between HUD and PHA), available at <http://www.hud.gov/offices/adm/hudclips/>
    - HUD notices and forms, available at <http://www.hud.gov/offices/adm/hudclips/>
  - Locally developed rules, policies and contracts.
    - State enabling statute for PHAs.
    - PHA Plan developed locally and must be available locally. HUD also posts the PHA Plans on the HUD website, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/pha](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha); *see also* 24 C.F.R. Part 903; form HUD 50075; HUD, PHA Plan Desk Guide
    - Admission and Continued Occupancy Plan (ACOP) developed locally and must be available locally for review.
    - Tenant lease and grievance procedure is developed locally, but detailed federal regulations must be followed. 24 C.F.R. Part 966.
  
- **Finding Out Where this Housing is Located in Your Community**
  - For each PHA there is a profile listed on the HUD website which provides basic contact information, the total number of public housing units and the number of developments. See <http://www.hud.gov/offices/pih/systems/pic/haprofiles/>. In the PHA Plan materials (available locally), PHAs may provide a list of the name and address of each PHA development.
  - HUD's Picture of Subsidized Households data set also provides some information for individual public housing sites, <http://www.huduser.org/portal/datasets/assths.html> See also the Resident Characteristics Report, *supra*.
  
- **Tips for Determining What Kind of Housing is Involved**
  - Owned and managed by the PHA, which receives rent. Get the lease.
  - Age of the building, could have been built any time between the 1930s and the present.

- Tenant is aware that there is a grievance procedure.
- Tenant has income verified and rent recertified annually by the PHA.
- Signage at the development.

### **Major Applicant and Tenant Issues**

#### • **ADMISSIONS**

- **Waiting list:** how compiled and maintained.
  - PHA may have site-based waiting lists, a central waiting list, or any combination. 42 U.S.C.A. § 1437d(r); 24 C.F.R. § 903.7(b)(2).
  - PHAs typically advertise when the waiting list is open and adopt a process to provide that getting on the on the list is accessible.
  - Waiting list for Public Housing may be combined with Voucher list.
- **Eligibility:**
  - Income: Low income (80% of Area Median Income) and very low income (50% of AMI).
  - Targeting: at least 40% of all new admissions must be families with Extremely Low Income (ELI) (30% of AMI). 42 U.S.C.A. § 1437n(a).
  - The AMI for every jurisdiction is available at <http://huduser.org/datasets/il.html>.
  - Restrictions on Assistance to Non-Citizens: In general a family must have one member of the household who is a citizen or who has eligible immigration status under one of the categories set forth in 42 U.S.C.A. § 1436a(a). If any members of the household are not citizens or lack eligible immigration status, the assistance (i.e., rent) for the family is prorated. *Id.*; 24 C.F.R. §§ 5.500–5.528. See also HUD Guidebook 7465.7G for an explanation of how prorating works for public housing residents.
  - Some housing is not general occupancy and is limited to elderly/disabled families. 42 U.S.C.A. § 1437e.
  - Social Security Number requirements: see PIH Notice 2010-3, extended by PIH Notice 2011-2.
- **Preferences:**

PHAs may adopt local preferences for applicants. The preferences may include preferences for families whose heads are working (which must also include families whose heads are elderly or with disabilities), residency preferences, and preferences for victims of domestic violence and families who are homeless or threatened with homelessness. 42 U.S.C.A. § 1437d(c)(4); 24 C.F.R. § 960.206. Determination of preferences is available in the PHA Plan process and should be included in the Admissions and Continued Occupancy Policy (ACOP).
- **Screening:**
  - Standards: the information considered for each applicant and the standards adopted by the PHA must be reasonably related to individual attributes of

an applicant. When adverse information is received, the PHA must consider the time, nature, extent and seriousness of the offense. PHA may also consider rehabilitation of an applicant. 24 C.F.R. §§ 960.203(a) and (d).

- Criminal activity: PHAs must screen and reject applicants for certain criminal behavior, including: if any household member has been evicted from federally assisted housing within past 3 years for drug-related criminal activity (except that applicant may demonstrate changed circumstances), if an applicant is currently engaged in illegal use of drugs, if any household member has ever been convicted of methamphetamine production on federally assisted housing premises, and if any member is a registered lifetime sex offender. 24 C.F.R. § 960.204.
- Criminal activity: PHA may also screen for a history of criminal activity involving acts of physical violence to persons or property and for abuse of alcohol which may threaten the health and safety of others. 24 C.F.R. §§ 960.203(c)(3) and 960.204(b).
- Poor tenant history (evictions or termination from housing programs and poor credit history): Local PHA rules controls, provided above standards are followed. Information about past debt to a PHA is accessible to PHAs.
- **Notification and opportunity to contest**  
Applicants must be notified of ineligibility and provided an opportunity to contest the determination in an informal hearing. 42 U.S.C.A. § 1437d(c)(3); 24 C.F.R. § 960.208.
- **Admission policy** must be available locally; admission issues are addressed in the PHA Plan. 42 U.S.C.A. § 1437c-1(d)(3). The Admissions and Continued Occupancy Policy have the PHA's complete admission policy.
- **RENTS**
  - **Generally:**
    - HUD has developed an Enterprise Income Verification (EIV) program which uses computer matching with a number of federal agencies to get government income as well as wage income and new-hire data, which helps to minimize errors in tenant income but can also create problems for tenants.
    - Public Housing residents usually pay rent based upon a percentage of their adjusted income or occasionally gross income, paying the higher of 30% of adjusted income or 10% of gross. In a few jurisdictions there is also a "welfare rent." Tenants may pay a minimum rent, and they may opt to pay a flat rent or ceiling rent. 42 U.S.C.A. § 1437a.
  - **Income-based rents**  
Most residents pay monthly rent based upon one-twelfth of 30% of adjusted annual income.

- **Annual Income and Exclusions**

Annual income includes all income that the family anticipates that it will receive in the coming year. There are many exclusions, deductions and disallowances from anticipated income. Some of these include the Earned Income Disregard/Disallowance (EID), income from full-time students who are not head of household, income for foster care, income of live-in aides, deferred lump sum additions to family income due to the delayed start of SSI or social security payments, etc. 24 C.F.R. § 5.609; *see also* 42 U.S.C.A. § 1437a(d) (Earned Income Disregard).
- **Adjusted Income after Deductions**
  - The standard mandatory deductions include:
    - \$480 for each dependent,
    - \$400 for each elderly or disabled family,
    - For each elderly or disabled family, unreimbursed medical and reasonable attendant care or auxiliary apparatus that exceeds 3% of annual income,
    - Child care expenses (for children under age 13) that allow a family member to work, and any other locally adopted deductions. 42 U.S.C.A. § 1437a(a)(5); 24 C.F.R. § 5.611.
  - If a resident loses welfare due to sanctions due to fraud or failure to comply with an economic self-sufficiency program, tenant rent will *not* be adjusted and the lost welfare income will be imputed. 42 U.S.C.A. § 1437j(d); 24 C.F.R. § 5.615.
- **Minimum Rent and hardship exemptions**

A PHA may decide to charge no minimum rent, or a minimum rent of up to \$50. Any tenant who is charged a minimum rent is eligible for a hardship exemption if the tenant is threatened with eviction for failure to pay the minimum rent, or there is a reduction in income due to a change in family circumstances. If the family qualifies for the hardship exemption, the minimum rent is suspended for 90 days and the tenant may not be evicted for nonpayment of rent. The tenant may have to repay the minimum rent with reasonable repayment agreement. 42 U.S.C.A. § 1437a(a)(3); 24 C.F.R. § 5.630.
- **Utility Allowance**

Residents who pay their own utilities are entitled to an allowance for the consumption of a reasonable level of utilities by an energy conservative household. This allowance is deducted from the tenant portion of the rent. 24 C.F.R. § 5.603 (definition of utility allowance). If tenant income is so low that the allowance exceeds the tenant portion of the rent, the family is entitled to a utility reimbursement, or the PHA may pay the reimbursement directly to the utility company. Residents are only entitled to the utility reimbursement if their rent is income-based. 24 C.F.R. §§ 5.632 and 960.253(c)(3).

- **Other Rents (Flat Rents, Ceiling Rents)**

*Flat rent:* every PHA is required to adopt a flat rent based upon the market rent for the unit, taking into account its location, quality and size. The flat rent should be designed to encourage self-sufficiency. A family paying a flat rent may request a financial hardship to switch to an income-based rent. 42 U.S.C.A. § 1437a(2); 24 C.F.R. § 960.253(f).
- **Recertification**
  - Annual recertification required.
  - PHA may decide when and how to require interim rent recertification when tenant income increases (information in PHA's Admissions and Continued Occupancy Policy).
  - Interim recertification required if family reports decrease in income, except for loss of certain welfare income. See above re loss or reduction of TANF benefits. 24 C.F.R. § 960.257.
- **Ability to challenge rent level**
  - Public Housing grievance procedures.
- **GRIEVANCE PROCEDURES**
  - Public housing residents may request a grievance hearing to dispute PHA action or inaction involving tenant lease or PHA policies. Eviction actions involving criminal activity may be exempt from the grievance process. 42 U.S.C.A. § 1437d(k); 24 C.F.R. §§ 966.51–966.57. State and local law may provide greater protections and HUD generally holds that such procedural protections are not preempted.
- **EVICCTIONS**
  - **Notice: length and content**
    - 14 days for nonpayment of rent.
    - 30 days or a shorter state law period for all other situations.
    - Notice must specify the grounds, inform resident of the right to examine PHA documents, of the right to a grievance hearing or an explanation of why it is not available, etc. 42 U.S.C.A. § 1437d(l); 24 C.F.R. § 966.4(l)(3).
  - **Good cause required** for any termination, both at end of term and midterm.
  - **Good cause defined** as:
    - Serious or repeated violation of material terms, including nonpayment of rent and failure to comply with household obligations under the lease.
    - Drug-related criminal activity that occurs *on or off* the premises.
    - Criminal activity that threatens health, safety or right to peaceful enjoyment of other residents or staff.
    - Other good cause.
    - Cause requirements found in 42 U.S.C.A. § 1437d(l); 24 C.F.R. § 966.4(l).

# Project-Based Section 8 Overview



## Key Components of the Project-Based Section 8 Program

- **Number of Units:**
  - Project-Based Section 8: approximately 1.3 million units remaining
- **How Program Works: Subsidy Mechanism**
  - Project-Based Section 8: rental assistance contract providing subsidy to cover the difference between HUD-approved rents and tenant contribution
- **Ownership:** Mostly private, profit-motivated or limited-dividend; some nonprofits
- **Who's Involved?**
  - HUD is usual regulator as party to Section 8 Housing Assistance Payments (HAP) contract, but HUD has contracted out role of "Contract Administrator" for many properties
- **Key Regulatory Features** (Program Contract(s), Regulations, Handbooks and Notices, Lease)
  - Project-Based Section 8: HAP Contract; 24 CFR Parts 880 through 886; HUD Handbook 4350.3 REV-1, CHG-3 (June 2009); new HUD Model Lease (Hbk 4350.3, App. 4 Form HUD-90105a, Dec. 2007)
- **Finding Out Where this Housing Is Located in Your Community (national, state, local info); Knowing Its Characteristics (occupancy and bedroom sizes)**
  - Find HUD Project-Based Section 8 in your State, City or County at National Housing Trust's web site (Excel or PDF): [http://www.nhtinc.org/housing\\_data.php](http://www.nhtinc.org/housing_data.php)
  - Project-Based Section 8: HUD data at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/mfdata](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfdata)
- **Tips for Determining What Kind of Housing Is Involved:** Lease; Rent Level; Owner type (PHA involved?); Age of Housing; Ask Manager

## Major Applicant and Tenant Issues

- **Admissions**
  - **Waiting list:** how compiled and maintained: 24 C.F.R. §880.603; HUD Handbook 4350.3 REV-1, CHG-3, ¶¶ 4-13 to 4-25.
  - **Eligibility**
    - Project-based Section 8 (24 C.F.R. §5.653):
      - Income: less than 80% of area median income (AMI), 42 U.S.C. §1437f(a) and (c)(4); but HUD rules further limit admissions to applicants less than 50% of AMI, unless HUD grants an exception, HUD Handbook 4350.3 REV-1, CHG-3, Ch.3.

- Targeting: at least 40% of units becoming available in any year must be leased to tenants with incomes below 30% of AMI, and 75% or 85% of units becoming available must be leased to tenants with incomes below 50% of AMI, and “skipping” over lower-income applicants to reach higher income is prohibited, 42 U.S.C. §1437n(c);
- Immigration status, 24 C.F.R. §5.500 *et seq.* Family must have one member of the household who is a citizen or who has eligible immigration status under one of the categories set forth in 42 U.S.C.A. § 1436a(a). If any members of the household are not citizens or lack eligible immigration status, the assistance for the family is prorated. *Id.*; 24 C.F.R. § 5.500–5.528 (2010).
- **Preferences:** some properties have elderly preference; preferences OK for working families; can use PHA-established local preferences.
- **Screening:** 24 C.F.R. Part 5; HUD Handbook 4350.3 REV-1, CHG-3, ¶¶ 4-7 & 4-8
  - Criminal activity
  - Poor tenant history
  - Poor rent paying history or bad credit
- **Procedural Protections:** Written tenant selection plan and info re: preferences must be available; owner required to provide written rejection notice, offering 14-day response, meeting, and written decision within 5 days, HUD Handbook 4350.3 REV-1, CHG-3, ¶ 4-4 (plan) and ¶ 4-9 (procedures).
- **Rents**
  - **Income-based rents**
    - 30% of adj. income for rent
  - **Annual Income and Exclusions** 24 C.F.R. § 5.609
    - No Earned Income Disregard
    - Foster care
    - Lump sums
    - One-time additions
  - **Adjusted Income after Deductions**, 24 C.F.R. § 5.611
    - Typical Deductions: \$480 per dependent; \$400 for elderly or disabled family; minors’ earned income; unreimbursed medical expenses for elderly or disabled family; unreimbursed attendant care or apparatus expenses to enable disabled family member to be employed; child care expenses necessary for employment or education
  - **Recertification:** Project-based Section 8: 24 C.F.R. §§ 5.657 & 5.659, HUD Handbook 4350.3 REV-1, Ch. 7. Recertification at least annually; interims on tenant request.



- **Minimum Rent and hardship exemptions**, 24 C.F.R. § 5.630: HUD-set figure of \$25 monthly for project-based Section 8
- **Utility Allowance:** for certain tenant-paid utilities, owner sets “reasonable” amount, credit against 30% of income tenant share
- **Ability to challenge rent level:** request meeting with owner-manager; program administrator
- **Grievance Procedures:** Generally just informal meeting with management prior to final rejection of admission or eviction or termination notice, HUD Handbook 4350.3 REV-1, CHG-3, ¶ 4-9 (admission) and Ch. 8 (terminations).
- **Evictions and Terminations**
  - Good cause required anytime, including at end of lease term: 24 C.F.R. Part 247; HUD Handbook 4350.3 REV-1, ¶¶ 8-11 to 8-16; Model Lease (Appendix 4 to Handbook 4350.3).
  - **Notice:** length (state law, or 30 days for non-breach “other good cause”); content (good cause and relevant facts, warnings & opportunity to cure for other good cause, right to meeting and to judicial defense), HUD Handbook 4350.3 REV-1, ¶¶ 8-11 to 8-16, Model Lease, state law; and service, HUD Handbook 4350.3, ¶ 4-22.
  - **Required proof by landlord:** Preponderance of evidence that breach of the lease occurred; for drug-related and criminal activity, arrest or conviction not required
  - **Pre-judicial administrative review?** Tenant has 10 days to request meeting with landlord, HUD Handbook 4350.3 REV-1, CHG-3, ¶ 8-13, & Model Lease (Appendix 4 to the Handbook).
  - **State law procedural protections not pre-empted:** HUD Handbook 4350.3 REV-1, ¶ 8-12B.

# Section 8 Voucher Overview

## Key Components of the Section 8 Voucher Program

- **Number of Units and Characteristics of Families:**
  - 2.331 million vouchers nationwide
  - 45% headed by African-Americans; 17% headed by Hispanics/Latinos (may be either African-American or Caucasian); average tenant income \$12,490; 28% are disabled non elderly; 19% are elderly; 47% are female-headed households with children; 45% are extremely low income.
  - Information such as the above is available nationally, by state, or by public housing agency (PHA) at <http://pic.hud.gov/pic/RCRPublic/rcrmain.asp>
  - Information on number of vouchers allocated to a local PHA is stated in the PHA Plan, available locally and is also posted on the HUD website for each PHA.
  
- **Ownership**

Tenants receive a voucher from a PHA and find a willing landlord. That landlord is typically a private landlord with no other federal assistance. However, it is possible that the landlord does receive other federal assistance, such as tax credits.
  
- **Parties Involved and Their Roles**

HUD provides the funds, the PHA administers the program locally, and the tenant finds a willing landlord who agrees to accept the voucher. The PHA determines if the unit meets the Housing Quality Standards (HQS), whether the rent charged for the unit is reasonable and if lease contains required addendum.

  - PHAs administer the voucher program.
  - A PHA is created by local and state enabling legislation.
  - Most PHAs are governed by a Board of Commissioners (though there are some exceptions)
  - The jurisdiction of a PHA can be statewide, countywide, citywide or by other geographical or political area.
  
- **Key Regulatory Features**
  - Federal statute, regulations and forms.
    - Statute: 42 U.S.C.A. § 1437f(o).
    - Regulations: 24 C.F.R. Part 982 (comprehensive regulations for the voucher program).
    - 24 C.F.R. Part 5 (General HUD Program Requirements which may also be applicable to other low income housing programs).
    - HUD, Voucher Program Guidebook, 7420.10G (April 2001), available at <http://www.hud.gov/offices/adm/hudclips/>, and <http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm>
    - HUD Notices and HUD Forms are available at <http://www.hud.gov/offices/adm/hudclips/>

- Form HUD-52641 Housing Assistance Payments Contract (HAP Contract) Section 8 Tenant-Based Assistance Housing Choice Voucher Program (08/2009) (contract between PHA and the landlord).
- Form HUD-52641-A, Tenancy Addendum, Section 8 Tenant-Based Assistance Housing Choice Voucher Program (08/2009) (lease addendum between the landlord and the voucher participant).
- Locally developed rules, policies and contracts:
  - PHA 5-year and Annual Plan is developed locally and must be available locally. HUD also posts the PHA plans on the HUD web site. [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/pha](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha); see also 24 C.F.R. Part 903; form HUD 50075; HUD, PHA Plan Desk Guide
  - Section 8 Administrative Plan, 24 C.F.R. § 982.54. This document is sometimes attached to the PHA Annual Plan.
  - In addition to the Lease Addendum mentioned above, the tenant may also sign the landlord's lease.
- **Finding this Housing in Your Community**

A key feature of the voucher program is housing choice and portability of the voucher. A family may use a voucher in any area within the jurisdiction of the initial issuing PHA or in the jurisdiction of another PHA. 24 C.F.R. § 982.353. A PHA may attempt to restrict housing choice and/or portability. But such restrictions are generally illegal, and HUD is making greater efforts to limit the discretion of PHAs. See Notices PIH 2006-32 and PIH 2008-43.
- **Tips for Determining What Kind of Housing Is Involved**
  - Tenant was given a voucher by the PHA.
  - Tenant had to find the unit and a willing landlord.
  - PHA inspects the unit and conducts annual rent recertification.
  - Landlord is most often a private landlord without any other federal assistance.
- **Related Subprograms or Set-Asides for Special Uses**
  - There are many types of voucher programs that are targeted to families with special needs, such as Welfare to Work, Family Unification, Mainstream, Designated Housing, Enhanced Vouchers and VASH (Veteran Affairs Supportive Housing). With the exception of Enhanced Vouchers and VASH, PHAs apply for these special programs by responding to Notice of Funding Availability (NOFA) announcements. The PHA Annual Plan should list the special voucher programs administered by the local PHA.
  - At the local level, the PHA may opt to have a voucher homeownership program, permitting voucher payments to enable a family to purchase a home. 42 U.S.C.A. § 1437f(y); 24 C.F.R. § 982.625 et seq.
  - A PHA may also opt to have a project-based voucher (PBV) program. The voucher is attached to the unit, but tenant may move with a voucher after first year. The owner retains the PBV assistance for the unit. 42 U.S.C.A. § 1437f(o)(13); 24 C.F.R. part 983.

## MAJOR APPLICANT AND TENANT ISSUES FOR VOUCHER PROGRAM

### ● ADMISSIONS

The admission process for a voucher applicant is divided between the PHA and a landlord. The PHA creates a wait list, conducts eligibility review and screens for certain criminal history and may do more extensive screening. The landlord may also screen the voucher tenant. In general, there are no special federal rules governing the landlord regarding the admission of a voucher tenant, except that certain federally assisted landlords may not discriminate against voucher holders and some states or localities have similar nondiscrimination laws.

- **Waiting list**
  - PHA maintains a list of applicants.
  - List for voucher applicants may be combined with public housing lists.
  - How lists are created is determined locally. Lists may be developed through lottery process. For example, 18,000 applicants apply and a wait list of 3,000 is created by lottery.
  - Vouchers may be issued for various bedroom sizes depending on the size and needs of the family.
  
- **Eligibility**
  - Income: Low Income (80% of Area Median Income (AMI) or very low income (50% of AMI). 42 U.S.C.A. § 1437(o)(4).
  - Targeting: 75% of all new admissions must be families with Extremely Low Incomes (ELI) (30% of AMI). 42 U.S.C.A. § 1437n(b).
  - The AMI for each jurisdiction is available at <http://huduser.org/portal/datasets/il.html>.
  - Restrictions on Assistance to Non-Citizens: In general a family must have one member of the household who is a citizen or who has eligible immigration status under one of the categories set forth in 42 U.S.C.A. § 1436a(a). If any members of the household are not citizens or lack eligible immigration status, the assistance for the family is prorated. *Id.*; 24 C.F.R. §§ 5.500–5.528.
  - Social Security Number (SSN): Individuals in mixed immigration status families, who are not claiming to qualify for subsidy, are exempt from SSN requirements. PIH Notice 2010-3.
  
- **Preferences**

PHAs may adopt local preferences for applicants. For example, preferences for families whose head of household and/or other adults are working (which preference also must include families whose head of household is elderly or disabled to avoid discrimination against protected classes), residency preferences, preferences for victims of domestic violence, and families who are homeless or threatened with homelessness. 42 U.S.C.A. § 1437f(o)(6)(A); 24 C.F.R. § 982.207. Any preferences should be included in the Section 8 Administrative Plan, a supporting document to the PHA Annual Plan. The PHA may have no preferences and accept applicants in the date-order received.

- **Screening**
  - Standards: PHA may not discriminate because members of family are unwed mothers, recipients of welfare or have children born out of wedlock. 24 C.F.R. § 982.202(b)(3).
  - Criminal activity: PHAs must screen and reject applicants for certain criminal behavior including: if any household member has been evicted from federally assisted housing within past 3 years for drug related criminal activity (except that an applicant may demonstrate rehabilitation or changed circumstances), if an applicant is currently engaged in illegal use of drugs, if any household member has ever been convicted of methamphetamine production on the premises of federally assisted housing, and if any member is a registered lifetime sex offender. 24 C.F.R. § 982.553; 42 U.S.C.A. §§ 13,661 (3 yrs. for eviction) 13,663 (sex offender), 1437n(f) (methamphetamine).
  - Criminal activity: PHA may also establish standards which would deny eligibility to an applicant who has engaged in other criminal activity or abused alcohol which may threaten the health and safety of others. 24 C.F.R. §§ 982.553(a)(2) and (3). Not all PHAs conduct the discretionary screening. 42 U.S.C.A. § 1437f(o)(6)(B).
  - Poor tenant history: PHA is not required to screen for this, but local rules may permit this practice.
  - Poor rent-paying history or bad credit: Same as poor tenant history.
  - Local policies are contained in the Section 8 Administrative Plan.
  - Landlord may screen for criminal history, tenant history, credit history, etc.
  
- **Procedural Protections**
  - Applicants must be notified of the reasons for rejection by the PHA and that they are entitled to an informal review. 24 C.F.R. §§ 982.552 and 982.554; *Baldwin v. Hous. Auth. Camden NJ*, 278 F.Supp.2d 365 (D.N.J. 2003).
  
- **RENTS**
  - **Generally:**
    - HUD adopted an Enterprise Income Verification (EIV) program which uses computer matching with a number of federal agencies to get government income as well as wage income and new hire data. This reduces errors but often creates problems for residents, due to, for example, changed circumstances or different reporting periods.
    - Rent contributions for voucher residents are a function of their required statutory contribution and the amount by which the actual unit rent exceeds (if at all) the local payment standard (see discussion below). Statutory contributions are based upon a percentage of a tenant's adjusted income or gross income, with tenants generally paying the higher of 30% of adjusted income or 10% of gross. 42 U.S.C.A. § 1437f(o)(2)(A). In a few jurisdictions, there is also a "welfare rent." Tenants may be subject to a minimum rent (see discussion below).

- **Payment Standard**
  - The payment standard is the maximum subsidy that a PHA will pay on behalf of a family. PHAs usually set the payment standard between 90% and 110% of the Fair Market Rent (FMR). Information on the level of payment standard maybe in the PHA Plan. HUD annually publishes the FMRs in the Federal Register. PHAs may seek HUD approval to increase the payment standard to an amount up to and above 120% of the FMR. See e.g., HUD Notices PIH 2005-9, PIH 2009-44 and PIH 2011-28.
  - To accommodate a family with members who are disabled, PHAs may also increase the payment standard within the basic range and/or seek HUD approval of a higher payment standard. 24 C.F.R. § 982.503.
  
- **Annual Income and Exclusions**
  - Annual income includes all income that the family anticipates that it will receive in the coming year. There are many exclusions, deductions and disallowances from anticipated income. Some of these exclusions include the Earned Income Disregard/disallowance (EID), which is available only to disabled members of a voucher household; income from full-time students who are not the head of household; income for foster care; income of live-in aides; deferred lump sum additions to family income due to the delayed start of SSI or social security payments, etc. 24 C.F.R. § 5.609.
  
- **Adjusted Income after Deductions**
  - To determine the amount of the tenant's contribution, a PHA determines for each family an adjusted annual income.
  - The standard mandatory deductions include:
    - \$480 for each dependent,
    - \$400 for each elderly or disabled family,
    - For each elderly or disabled family, unreimbursed medical expenses and cost of reasonable attendant care or auxiliary apparatus to allow a family member to work that exceeds 3% of annual income, and
    - Child care expenses (for children under 13) that allow a family member to work. 42 U.S.C.A. § 1437a(a)(5); 24 C.F.R. § 5.611.
  - If a resident loses welfare due to sanctions because of fraud or failure to comply with an economic self-sufficiency program, tenant rent will not be adjusted and the lost welfare income will be imputed for purposes of setting the tenant's contribution for rent. 24 C.F.R. § 5.615; 42 U.S.C.A. § 1437j(d).
  
- **Minimum Rent and hardship exemptions**

A PHA may decide to charge no minimum rent, or a minimum rent of up to \$50 per month. If a PHA decides to charge a minimum rent, it should be set forth in the PHA's Administrative Plan. Any tenant who pays a minimum rent is eligible for a hardship exemption, if the tenant is threatened with eviction for failure to pay the minimum rent or there is a reduction in income due to a change in family circumstances. If the family qualifies for the hardship exemption, the minimum rent is suspended for 90 days and the tenant may not be evicted during that period for nonpayment of rent. The tenant

may have to repay the minimum rent with a reasonable repayment agreement. 24 C.F.R. § 5.630; 42 U.S.C.A. § 1437a(a)(3).

- **Utility Allowance**

Residents who pay their own utilities are entitled to an allowance for the consumption of a reasonable level of utilities by an energy conservative household. This allowance is deducted from the tenant portion of the rent. 24 C.F.R. § 5.603 (definition of utility allowance). If tenant income is so low that the allowance is greater than the tenant portion of the rent, the family is entitled to a utility reimbursement, or the PHA may pay the reimbursement directly to the utility company. However, the benefit of the utility allowance for voucher recipients is often minimal because rents often are not less than the payment standard. 24 C.F.R. §§ 5.632 and 982.514(b).
- **Recertification**
  - Annual recertification required for all families.
  - PHA decides when, how and if to require interim rent recertification when tenant income increases. 24 C.F.R. §§ 903.7(d), 982.54.54(d)(18).
  - Interim recertification required if family reports decrease in income (exceptions for loss of certain welfare income). 24 C.F.R. § 982.516; 42 U.S.C.A. § 1437f(o)(5).
- **Other rent issues**
  - Tenant rent, including a reasonable utility allowance, *cannot* exceed 40% of income for a new unit or for a unit upon initial participation in the program. 24 C.F.R. § 982.508; 42 U.S.C.A. § 1437f(o)(3).
  - PHAs must review the rent to be charged by the landlord to determine if it is reasonable. If it is not reasonable, the PHA may decline to enter into a Housing Assistance Payments (HAP) contract with the landlord. 42 U.S.C.A. § 1437f(o)(10).
- **INFORMAL HEARING**
  - Tenant may request an informal hearing for certain acts of the PHA, including rent and income determinations and proposed termination of the voucher. 24 C.F.R. § 982.555.
- **EVICCTIONS AND TERMINATIONS**
  - **Notice (content and term)**
    - Midterm evictions: written notice must specify the grounds, at or before commencement of eviction; HUD rule states notice can be satisfied by the judicial complaint, 24 C.F.R. §982.310(e); term of notice set by state law.
    - End-of-term evictions: no federal requirements; state law may require notice of specified length for termination at lease expiration.
    - Copy of eviction notice must be given to the PHA by the landlord and also by the tenant.
  - **Lease Term**
    - PHA may set initial lease term for one year or less. 42 U.S.C.A. § 1437f(o)(7); 24 C.F.R. § 982.309.

- PHA must make voucher payments to landlord until court order of eviction. 24 C.F.R. § 892.311(b).
- **Good cause required at end of lease term?**
  - Not required by statute or regulation.
  - Some leases or local law may require good cause for all terminations of tenancy, even for end-of-term or month-to-month.
  - Because voucher may be combined with other federally subsidized housing, the good cause requirements of those programs may also apply.
- **Good cause required during lease term**
  - 24 C.F.R. § 982.310(a) (serious or repeated violation of lease; violation of applicable laws imposing tenant obligations).
  - Good cause includes drug-related activity *on or near* (on premises if offender is “other person under control”) or criminal activity that threatens health and safety of the premises. 24 C.F.R. §982.310(c).
  - Owner has discretion to consider all circumstances. 24 C.F.R. §982.310(h).
- PHA obligated to make voucher payments on behalf of tenant until evicted. 24 C.F.R. § 982.311(b).
- **State or local law** may impose additional requirements.
- **Required proof by landlord:** preponderance of evidence that breach occurred.
- **Pre-judicial administrative review?** None.
- **Section 8 Voucher terminations**
  - Grounds: eviction for serious lease violation (not just having committed the alleged violation), 24 C.F.R. § 982.552(b)(2) (termination *required*, also for immigration status or failure to submit consent forms); many other grounds *authorized* (e.g., violation of family obligations such as failure to supply required information, not allowing PHA inspection, failing to give PHA notice of move, not using unit as sole residence, committing fraud or drug-related or threatening criminal activity or alcohol abuse; also owing money to PHA, breach of repayment agreement, threatened or actual abusive behavior to PHA staff ). 24 C.F.R. § 982.552(c)(1), incorporating family obligations at § 982.551.
  - PHA has discretion to consider all circumstances. § 982.552(c)(2).
  - Notice and hearing protections for voucher termination: 24 C.F.R. § 982.555.

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**May 2013**

**Overview**

**HUD-Subsidized Programs**

### **Key Components**

- **Number of Units:**
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: approx. 250,000 units remaining
  - HUD Section 202 for the elderly: approx. 400,000 units remaining
  
- **How Program Works: Subsidy Mechanism**
  - In general, there are rules pertaining to provisions for the development of affordable housing, such as mortgage insurance or a grant and in addition to rental assistance
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: HUD mortgage insurance and interest rate subsidy in exchange for HUD-regulated “budget-based” rents and occupancy restrictions; may be combined with Project-Based Section 8 or other deep subsidy, such as Rent Supplement (Rent Supp) and for Section 236, Rental Assistance Program (RAP)
  - Old Section 202: direct HUD loan at below-market interest rate in exchange for HUD regulated “budget-based” rents and occupancy restrictions; new Section 202 (elderly)/811 (people with disabilities): forgivable capital advance in exchange for HUD-regulated “budget-based” rents and occupancy restrictions
  - Project-Based Section 8: rental assistance contract providing subsidy to cover the difference between HUD-approved rents and tenant contribution (See the Project-Based Section 8 Overview); new Section 202/811 uses project rental assistance contract (“PRAC”), which covers only operating expenses since capital advance requires no debt service
  
- **Ownership:** Mostly private, profit-motivated or limited-dividend; some nonprofits; Sections 202 and 811 nonprofit only (but if LIHTC is used, the owner is a for profit often with a non-profit general partner, see LIHTC Overview)
  
- **Use Restrictions**
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: Regulatory Agreement accompanying mortgage, which generally cannot be prepaid without HUD approval for at least 20 years, sometimes for full 40-year mortgage term (if original nonprofit owner or Rent Supp); any required HUD approval governed by Section 250 (12 USC §1715z-15)
  - Project-Based Section 8: for term of rental assistance contract, generally initially 20 years; upon expiration, generally one-year renewals unless longer term imposed by specific renewal option chosen by owner
  
- **Who’s Involved?**
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: HUD is usual regulator as party to Regulatory Agreement; lender (private or HUD for HUD-held loan or Section 202/811); private owner; management either owner or separate company

- Project-Based Section 8: HUD is usual regulator as party to Section 8 Housing Assistance Payments (HAP) contract or PHA for Section 8 Mod Rehab, but HUD has contracted out role of “Contract Administrator” for many properties; lender (private or HUD for HUD-held loan); private owner; management either owner or separate company
- **Key Regulatory Features** (Program Contract(s), Regs, Handbooks and Notices, Lease)
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: Regulatory Agreement; 24 CFR Parts 221, 236 (savings clause 24 CFR 200.1301 and 200.1302), 247 (evictions); HUD Handbook 4350.3 REV-1 CHG-3 (June 2009); HUD Model Lease (Hbk 4350.3 REV-1, App. 4 (Form HUD-90105a, Dec. 2007))
  - Project-Based Section 8: HAP Contract; 24 CFR Parts 880 through 886; HUD Handbook 4350.3 REV-1, CHG-3 (June 2009); HUD Model Lease (Hbk 4350.3, App. 4 Form HUD-90105a, Dec. 2007)
  - Section 202 and 811: Regulatory Agreement or its equivalent, 24 CFR Parts 891, 247 (evictions); HUD Handbook 4350.3 REV-1 CHG-3 (June 2009); HUD Model Lease (Hbk, 4530.3, App. 4 forms 90105-c (Sec. 202 PRAC) and 90105-d (Sec. 811 PRAC), Dec. 2007)) and HUD Handbook, 4571.2 (Sec. 811)
  - Section 236 RAP and Rent Supplement are also covered by HUD Handbook 4350.3
- **Finding Out Where this Housing Is Located in Your Community (national, state, local info); Knowing Its Characteristics (occupancy and bedroom sizes)**
  - Find HUD Project-Based Section 8 in your State, City or County at National Housing Trust’s web site (Excel or PDF): [http://www.nhtinc.org/housing\\_data.php](http://www.nhtinc.org/housing_data.php)
  - HUD-Subsidized Mortgage Properties: lists often available from local HUD office; see also HUD data for all insured mortgages (only in MS Access, sort by program and then location) at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/comp/rpts/mfh/mf\\_f47](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/comp/rpts/mfh/mf_f47)
  - Project-Based Section 8 and Section 202 Direct Loans: HUD data at: < [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/mfdata](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfdata)>, **only by** downloading the entire database, click on “Multifamily Assistance and Section 8 Contracts Database,” or “Section 202 Direct Loans” sortable any way you want with MS Access
  - Information regarding Section 8 developments by state, city, county or zip code is also available at <http://www.hud.gov/apps/section8/index.cfm>
  - Information regarding Section 202, 236 and 221(d)(3) properties is also available at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_13024.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_13024.pdf) (MFH for Elderly and Disabled, 6-25-10) because elderly and disabled are eligible for family housing, the list includes housing that is also available to families and not restricted to elderly or disabled.
- **Tips for Determining What Kind of Housing Is Involved:** Lease; Rent Level; Owner type (PHA involved?); Age of Housing; Ask Manager
- **Getting Information:** Statutes, Regs, Handbooks, Notices, and other resources:
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: Sections 236 and 221(d)(3) and (d)(5) of the National Housing Act, 12 U.S.C. § 1715z-1 and §§ 1715l(d)(3) and (d)(5); regulations and Handbooks *supra*; Handbooks, Notices, and forms at <<http://www.hud.gov/offices/adm/hudclips>>; NHLP, *HUD Housing Programs: Tenants’ Rights* (4<sup>th</sup> ed. 2012)
  - Project-Based Section 8: 42 U.S.C. §1437f; regulations and Handbooks *supra*; Handbooks, Notices, and forms at < <http://www.hud.gov/offices/adm/hudclips>>; NHLP, *HUD Housing Programs: Tenants’ Rights* (4th ed. 2012)
  - Sections 202 and 811: 12 U.S.C. §§ 1701q and 8013 and regulations and Handbooks, *supra*.
  - For HUD-subsidized and Project-Based Section 8 programs, peers support on legal issues available from HJN multifamily list-serve (join at <<http://www.nhlp.org/join>>), or on organizing issues from National Alliance of HUD Tenants (NAHT) network (info a <[www.saveourhomes.org](http://www.saveourhomes.org)>, or contact <[naht@saveourhomes.org](mailto:naht@saveourhomes.org)>, or phone (617) 267-9564.
- **Related Subprograms or Set-Asides for Special Uses**

- HUD-Subsidized Section 236 and 221(d)(3) BMIR: can be used with Section 8 or other forms of rental assistance; some properties designated for elderly-only occupancy
- Project-Based Section 8: many financing programs supporting the Section 8 rental assistance, each with separate regulations from 24 C.F.R. Parts 880 through 886; some properties designated for elderly-only occupancy

## Major Applicant and Tenant Issues

### ● Admissions

- **Waiting list:** how compiled and maintained: 24 C.F.R. §880.603 (Section 8); HUD Handbook 4350.3 REV-1, CHG-3, ¶¶ 4-13 to 4-25 (all HUD-subsidized and Section 8).
- **Eligibility**
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: income: less than 80% AMI (Section 236); 95% of AMI (Section 221(d)(3) BMIR)
  - Project-based Section 8 (24 C.F.R. §5.653):
    - *See* Project-Based Section 8 Overview.
- **Preferences:** some properties have elderly preference or designated occupancy; preferences OK for a preference for working families (Section 8, 42 U.S.C. §1437n(c)(4); 24 C.F.R. §5.655; HUD Handbook 4350.3 REV-1, CHG-3, ¶ 4-6); can use PHA-established local preferences or old federal preferences; can't have residency preferences.
- **Screening:** 24 C.F.R. Part 5 for Section 8; HUD Handbook 4350.3 REV-1, CHG-3, ¶¶ 4-7 & 4-8 for all HUD-subs projects.
  - Criminal activity
  - Poor tenant history
  - Poor rent paying history or bad credit
- **Nondiscrimination against voucher holders:** for most of the programs, discrimination against voucher holders not permitted. 12 U.S.C. §1715z-1b(b), *compare* 24 CFR 245.205.
- **Procedural Protections:** written tenant selection plan must be available; info re preferences; written rejection notice, offering 14-day response, meeting, and written decision within 5 days, HUD Handbook 4350.3 REV-1, CHG-3, ¶ 4-4 (plan) and ¶ 4-9 (procedures).

### ● Rents

#### ● Income-based rents?

- HUD-Subsidized Section 236 and 221(d)(3) BMIR: minimum flat rents (e.g., “basic rent”) based on project’s budget for most tenants (if no Section 8); 30% of adj. income if higher (Section 236, up to ceiling Section 236 “market” rent (no interest subsidy)).
- Project-based Section 8: 30% of adjusted income for rent
- PAC and PRAC: 30% of adjusted income for rent
- HUD Form 50058 (tenant certification and recertification)

#### ● Annual Income and Exclusions (for those paying income-based rents), 24 C.F.R.

§5.609 (HUD projects)

- No Earned Income Disregard
- Foster care
- Lump sums
- One-time additions

#### ● Adjusted Income after Deductions, 24 C.F.R. §5.611 (HUD projects)

- Typical Deductions: \$480 per dependent; \$400 for elderly or disabled family; minors’ earned income; unreimbursed medical expenses for elderly or disabled family; unreimbursed attendant care or apparatus expenses to enable disabled family member to be employed; child care expenses necessary for employment or education; 1990 deductions for child or spousal support (42 U.S.C. §1437a(a)(5)(A)) never backed by appropriations
- 10% of gross monthly income (rarely applies, unless extremely low income or huge deductions)

- **Recertification:** Project-based Section 8: 24 C.F.R. §5.657 & 5.659, HUD Handbook 4350.3 REV-1, Ch. 7 (recertification at least annually; interims on tenant request); note statute specifies *monthly* income, potentially useful to extent HUD’s rules use annual income and actual monthly is lower
  - **Minimum Rent and hardship exemptions,** 24 C.F.R. §5.630: HUD-set figure of \$25 monthly for Section 8 only. Minimum rent does not apply to other programs, such as Sec. 202 PRAC, Sec. 811 PRAC, RAP, Rent Supplement, Section 236 or Section 221(d)(3) programs.
  - **Utility Allowance:** (if income-based rent) for certain tenant-paid utilities, owner sets “reasonable” amount, credit against 30% of income tenant share; adjust when base rates change by >10%
  - **Other Rents** (mostly explained *supra*); if not Section 236 tenant paying Basic Rent, tenant pays 30% of income up to rent ceiling (Section 236 “market” rent or Section 8 contract rent)
  - **Ability to challenge rent level** (For those units with budget rents, request meeting with owner-manager; program administrator)
- 
- **Grievance Procedures:** generally just informal meeting with management prior to final rejection of admission or eviction or termination notice, 24 C.F.R. Part 247 (eviction), HUD Handbook 4350.3 REV-1, CHG-3, ¶ 4-9 (admission) and Ch. 8 (terminations). For Sec. 202 and 811, there may be fewer opportunities to meet.
- 
- **Evictions and Terminations**
    - Good cause required *anytime, including at end of lease term.*; 12 U.S.C. §1715z-1b(b); 24 C.F.R. Part 247; HUD Handbook 4350.3 REV-1, ¶¶ 8-11 to 8-16; Model Lease (HUD projects, App. 4 to Hbk).
      - Basics: case law re material violation and specific facts, HUD HOUSING PROGRAMS: TENANTS’ RIGHTS, Ch. 11 (4<sup>th</sup> ed. 2011); *caveat*: more recent regulations may affect precedential value of older cases; also use HJN List-Serve for peer advice on novel situations
      - Drug-related or criminal activity that threatens: 24 C.F.R. Subpart I, §§5.858 et seq. & Subpart A (many definitions); Model Lease ¶ 23 (drug-related has “*on or near*” premises requirement; other threatening criminal activity has nexus to property via other tenants, staff or residents in immediate area)
      - Other good cause
    - **Notice:** length (state law, or 30 days for non-breach “other good cause”); content (good cause and relevant facts, warnings & opportunity to cure for other good cause, right to meeting and to judicial defense), 12 U.S.C. §1715z-1b(b), 24 C.F.R. Part 247, HUD Handbook 4350.3 REV-1, ¶¶ 8-11 to 8-16, Model Lease, state law; and service, 24 C.F.R. Part 247, HUD Handbook 4350.3, ¶ 4-22 (HUD projects).
    - **Required proof by landlord** (preponderance of evidence that breach occurred; for drug and criminal, arrest or conviction not required)
    - **Pre-judicial administrative review?** (10 days to request meeting with landlord), 24 C.F.R. Part 247, HUD Handbook 4350.3 REV-1, CHG-3, ¶ 8-13, & Model Lease (HUD projects, App. 4 to Hbk); 10 days to request a meeting not included in form lease for Sec. 202/811, but tenant may request a meeting to contest rent calculation Model Lease Sec. 202/811 PRAC..
    - **Section 8 terminations by landlord prior to any eviction:** limited grounds (failure to provide required certification information could yield temporary or permanent termination of subsidy), notice and hearing protections (may not comply with due process), HUD Handbook 4350.3 REV-1, CHG-3, ¶¶ 8-5 & 8-6; Model Lease ¶ 17. Lease does not provide for subsidy termination in Sec. 202/811 PRAC units. HUD Handbook 4350.3, App. 4 Model Leases.
    - **State law procedural protections not pre-empted:** HUD Handbook 4350.3 REV-1, ¶ 8-12B.



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## Overview

### Low-Income Housing Tax Credit (LIHTC) Program

#### Key Components

- **Number of Units:** about 2,000,000, growing at about 100,000 annually, at a foregone revenue cost anticipated to be nearly \$ 8 billion per year  
<http://www.huduser.org/portal/datasets/lihtc.html>; credit allocation increased and indexed Dec. 2000. Now \$2.25 x state population or minimum of \$2.6 million.
- **How Program Works: Subsidy Mechanism:** fixed amount of tax credits given to state Housing Finance Agency (HFA), which competitively allocates credits under Qualified Allocation Plan (QAP); (find the amount allocated to your state at [http://www.novoco.com/low\\_income\\_housing/lihtc/federal\\_lihtc.php](http://www.novoco.com/low_income_housing/lihtc/federal_lihtc.php). Investors buy income tax credits in qualified properties that have received state allocation, creating cash equity for owner that reduces project development debt burden, in exchange for agreement to rent a specific number of units to qualified tenants at specified rents, usually below-market. Unused amounts get reallocated to other states. Two tax credits are available: one at 9% of depreciable basis, competitively allocated; the other, at 4% of depreciable basis, comes with state bond financing, which is capped and allocated by a state agency, which may or may not be very competitive.
- **Ownership:** During recapture period, usually limited partnerships, in which individuals and corporations invest as limited partners, with corporate, nonprofit, or individual general partners; after credits used, properties often later sold to general partner or others, often with new credits & re-syndication.
- **Use Restrictions:** *Occupancy restrictions* (federal minimum): owner's choice of two: at least 20% of units occupied by tenants at no more than 50% of AMI, or 40% of units occupied by tenants at no more than 60% of AMI; many projects have 100% LIHTC units. *Rent restrictions:* those units must have "affordable" flat rents set at 30% of income of tenants at the top of the selected AMI category, with an assumed family size of 1.5 persons per bedroom. For properties developed between 1986 and 1989, these restrictions last only 15 years; post-1989 developments have at least 30 years, and up to 55 years in some states. Because tax credits are competitively allocated, *states may impose more restrictive requirements than the Code minimum, e.g.,* greater percentages of restricted units, deeper income targeting and rent levels, or longer use restrictions. In any event, LIHTC owners may not refuse to rent to Voucher holders because of their status, presumably at least so long as the rents are determined "reasonable" by the PHA. 26 U.S.C.A. § 42(h)(6)(B)(iv) and 26 C.F.R. § 1.42-5(c)(1)(xi).
- **Who's Involved?** IRS, state credit allocation agency, owner, management either owner or separate company. If there are additional subsidies, such as vouchers or Project-Based Vouchers, PHA may also be involved.

- **Key Regulatory Features:** State agency regulatory agreement, Treasury regulations at 26 C.F.R. §1.42, Lease. Owner files annual compliance certification with state agency. State Qualified Allocation Plan, copies available at [http://www.novoco.com/low\\_income\\_housing/lihtc/qap\\_2013.php](http://www.novoco.com/low_income_housing/lihtc/qap_2013.php)
- **Finding Out Where this Housing Is Located in Your Community:** available at: <http://www.huduser.org/portal/datasets/lihtc.html>. This site will also provide general information about the characteristics of the program by state. More accurate data may be available from your state agency, often via its website. To see where units are located on a map and by zip code or address, go to [http://www.novoco.com/low\\_income\\_housing/resources/maps\\_data.php](http://www.novoco.com/low_income_housing/resources/maps_data.php) This site will also provide basic information about the development including who it serves, bedroom size, types of funding, etc.
- **Tips for Determining What Kind of Housing Is Involved:** Lease; Rent Level; Owner type; Age of Housing (LIHTC can be used for new or rehab, but all post-1986); Ask manager
- **Getting Information:** 26 U.S.C. § 42 (part of Internal Revenue Code); 26 C.F.R. §1.42; state agency rules or guidance (if unpublished, ask state agency); IRS Guide, *Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition* (Jan. 2011) (available at: <http://www.irs.gov/businesses/small/article/0,,id=235488,00.html>)
- **Related Subprograms or Set-Asides for Special Uses:** determined by state agency rules and Qualified Allocation Plan.

## Major Applicant and Tenant Issues

- **Admissions:**
  - Code requirements concerning occupancy of certain units by tenants in specific income categories.
  - Requirement of non-discrimination against Voucher holders, *supra*.
  - Students: Special Rules on Student Eligibility. *See* 26 U.S.C.A. § 42 (i)(3)(D) (West 2012); student status verified annually.
  - Protections (on common substantive criteria and procedural protections) from Fair Housing laws (e.g., Title VIII of the 1968 Civil Rights Act), from any state-imposed requirements pursuant to the QAP and regulatory agreement, or possibly from constitutional sources, e.g., due process (note governmental action and property interest issues).
  - HFA may have awarded tax credits based on owner's commitment to serve special populations
- **Rents**
  - Income-based rents? No, gross rents under program are flat rents based on AMI and number of bedrooms, not individual tenant income; for restricted units, unless owner has agreed to even lower rents with state agency, gross rents are set at either 30% of 50% of AMI, or 30% of 60% of AMI, in both cases with an assumed family size of 1.5 persons per bedroom (one person for 0-BR unit). Calculator for determining rent <http://www.novoco.com/products/rentincome.php>. Rents can increase upward with changes in AMI. 26 U.S.C. § 42(g)(2). Some tenants may have Vouchers (Project-Based or Housing Choice), or other project-based Section 8. with their contributions determined under applicable Section 8 program. Some tenants may have Rural Development (RD) rental assistance.

- Recertification:
  - For mixed-income developments, once annually (tenant right to continued occupancy unaffected by increases in income until 140% of income limit (i.e., 140% of 50% AMI, or 140% of 60% AMI). If recertified tenant income exceeds this 140% limit, the unit can still qualify for credit if owner rents next available unit to eligible family and tenant could stay at LIHTC rent level). However, unclear whether owner could instead claim good cause to evict.
  - If development is 100% LIHTC rent-restricted, IRS does not require recertification after initial occupancy (because next available unit will be rented to eligible family, regardless of any one family's increase in income), but state agency may require additional income recertifications (e.g., CA requires one more after initial occupancy).
  - IRS Guide for Form 8823 (rev. Jan. 2011) references HUD Handbook 4350.3, which outlines requirements for verification of income and assets. HFA may add additional requirements.
  - Utility Allowance: flat rents are gross rents, and where utilities are tenant-paid, tenant must receive a utility allowance based usually on the local PHA's allowance for comparable units with similar utility mix or utility allowance used by Rural Development housing, if applicable. 26 C.F.R. §1.42-10 (may use engineering study).
  - All mandatory charges and any charges for services included in eligibility basis are included in rent.
  
- **Grievance Procedures:** none required by statute or regulation, although regulatory agreement could do so.
  
- **Evictions and Terminations**
  - Notice: no federal statutory or regulatory requirements re length and content. Due process (where cause required)? State rules or policies may require certain notice.
  - Good cause required, both during lease and at end of lease term? Good cause required by the statute, *see* IRS Revenue Ruling 2004-82 (July 30, 2004) (statutory interpretation), or by due process, or by the terms of the state's regulatory agreement. *See also, e.g.,* Owner's Annual Certificate of Compliance with state agency; the project's Regulatory Agreement; and various cases, *e.g., Carter v. Maryland Mgmt. Co.*, 835 A.2d 158 (Md. 2003) (good cause required for termination of LIHTC/Voucher tenancy, but good cause found); *Cimarron Village Townhomes, Ltd. v. Washington*, 1999 WL 538110, 1999 Minn. App. LEXIS 890 (Minn. App. 1999) (good cause eviction protection required under LIHTC statute), 659 N.W.2d 811 (Minn. App. 2003) (finding good cause); *Bowling Green Manor v. LaChance*, 1995 Ohio App. LEXIS 2767 (because eviction of Section 8 Voucher tenant from LIHTC unit constituted state action, owner could therefore not refuse to renew lease absent good cause); *Mendoza v. Frenchman Hill Apts.*, No. CS-03-0494-RHW (E.D. Wa. order Jan. 20, 2005) (finding § 1983 claim unavailable to challenge HFA's and owner's failure to include required prohibition on no-cause evictions in regulatory agreement); Jolin, "Good Cause Eviction and the Low Income Housing Tax Credit," 67 U. Chi. L. Rev. 521 (2000); *see also* info on NHLP website <<http://nhlp.org/resourcecenter?tid=106>>.
  - Confusion created because: Tenant may not be aware of good cause requirement, many states do not require provision to be in lease, some just include in lease addendum, IRS Guide to Form 8823, Ch. 26 (rev. Jan. 2011)?, effect of Owner Annual Certification?
  - Pre-judicial administrative review?: None.
  - Effect of eviction on future application to federally assisted housing: no ban, just impact on prior tenant history.

- **Current Important Issues:**
  - Will LIHTC survive budget pressure to restrict various “tax preferences”? How will any reduction in available Vouchers affect number of ELI tenants in LIHTC properties?
  - Use restrictions (15 years) on pre-1990 units have expired, possibly causing displacement if restricted rents were below-market and property exited program; next wave of expirations should occur after 2020 (30 years); major risks concerning compliance and regulatory oversight during the last 15 years of the extended use period after credits have already been taken and recapture period has closed.
  - Fair Housing considerations in location of units (*e.g., Inclusive Communities Project v. Texas Dep’t of HCA* litigation)
  - Basic tenants’ rights often lacking
    - Good cause in the lease, in eviction notices, or in regulations of state tax credit allocation agency?
  - If data demonstrates low voucher utilization, evidence of violation of LIHTC non-discrimination duty or of Fair Housing laws? PHA could provide information about the use of Vouchers in particular developments.
  - Housing and Economic Recovery Act (HERA) of 2008 required HFAs to begin reporting tenant incomes and rent to HUD and in 2011 to gather race and ethnicity data. The information must be available to the public. 42 U.S.C. § 1437z—8
  - Seek to influence the QAP or state agency rules governing LIHTC developments? (state tax credit agency must submit QAP annually after public hearing)
    - Advocacy in QAP process to ensure:
      - LIHTC subsidy linked with other available subsidies to reach needs of very low-income tenants
      - Fair Housing considerations in unit locations
      - Preference or set aside for special populations, preservation of units, etc.





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## Overview

### RD-Subsidized Programs

#### Key Components

##### ● **Number of Units:**

- Rural Development/Rural Housing Service (RD/RHS), part of the U.S. Department of Agriculture (RD, formerly Farmers Home Administration (FmHA))
- Subsidized Section 515 (Rental Housing Direct) 42 U.S.C § 1485
  - Approximately 350,000 Section 515 units remain.
  - Section 515 units are being lost because of prepayment, maturing loans and foreclosures in communities suffering loss of population.
  - Congress continues to fund Section 515 program for additional units (\$65 million FY 2012 (funds allocated by Notice of Funding Availability (NOFA))
  - Congress continues to fund Section 521 Rental Assistance program used in conjunction with Section 515 (\$905 million FY 2012) (to support existing rent assistance contracts) 42 USC 1490a(a)(2)..
  - RD has a Section 538 guaranteed rental housing program (42 U.S.C. § 1490p-2) with less than 30,000 units. Probably being used with LIHTC, no rental subsidies from RD but could have Section 8; Good Cause required for eviction and tenants have right to a Grievance and Appeal Process, *see infra*.
  - Section 514/516 (Farm Labor Housing): Approximately 15,000-17,000? units remaining.

##### ● **How Program Works: Subsidy Mechanism:**

- RD Section 515: always *direct* RD loan at market interest rate in exchange for RD-regulated “budget-based” rents and occupancy restrictions; practically all development have a shallow subsidy of an 1% interest rate loan that effectively reduces rents (as with old HUD Section 236 program) may be combined with Project-based Section 8, RD Rental Assistance, voucher or other deep subsidy.

##### ● **Ownership:** Mostly private, profit-motivated or limited-dividend; some nonprofits and public agencies.

##### ● **Use Restrictions:**

- RD Section 515: Regulatory Agreement accompanying mortgage, with varying use and prepayment restrictions; post 1979 developments have 20-year use restrictions; all developments have prepayment restrictions imposed by Emergency Low-Income Housing Preservation Act (ELIHPA) (42 U.S.C. §1472(c)).

##### ● **Who’s Involved?**

- RD Section 515: RD is regulatory party to Regulatory Agreement with owner and also the lender (newer loans Section 538 may be RD-insured with a private lender); private owner; management either owner or separate company. RD state and local offices do direct supervision of owner. Periodic visits and review of all reports. Find an RD office at <http://offices.sc.egov.usda.gov/locator/app?state=us&agency=rd>

##### ● **Key Regulatory Features:** (Program Contract(s), Regulations, Handbooks and Notices, Lease)

- RD Section 515: RD Regulatory Agreement; 7 CFR Part 3560; Asset Management Handbook

HB-2-3560 on RD website, <http://www.rurdev.usda.gov/Handbooks.html> see also <http://www.rurdev.usda.gov/RegulationsAndGuidance.html> (for a listing of many other regulatory guidances, including Spanish language forms).

● **Finding Out Where this Housing Is Located in Your Community (national, state, local info); Knowing Its Characteristics (occupancy and bedroom sizes):**

- RD Section 515 units are built in towns with no more 20,000 in population or if within a Standard Metropolitan Area (SMA), 10,000 in population and rural in character. Some RD units are now located outside of such areas because of population shifts.
- Find RD Section 515 in your state, city or county: lists often available from RD state office; also properties by state, county, town or zip code available at: [http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select\\_state.jsp?home=NO](http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp?home=NO) and National Housing Trust's web site (Excel or PDF) lists Section 515 properties at [http://www.nhtinc.org/housing\\_data.php](http://www.nhtinc.org/housing_data.php).

● **Tips for Determining What Kind of Housing Is Involved:** Lease; Rent Level; Owner type (PHA involved?); Age of Housing; Ask Manager. Check the RD/RHS website above; it will tell you size of project, RD subsidy, type of housing (family/senior) and management company.

- **Getting Information:** Statutes, Regulations, Handbooks, Notices, and other resources:
- RD Section 515: 42 U.S.C. §1485; regulations and Handbooks *supra*; Administrative Notices at < [http://www.rurdev.usda.gov/rd-an\\_list.html](http://www.rurdev.usda.gov/rd-an_list.html)>.

● **Related Subprograms or Set-Asides for Special Uses:**

- RD Section 515: can be used with Section 8 Project -based and vouchers, RD Rental Assistance or other deep subsidies; also may have Low Income Housing Tax Credits (LIHTC).

**Major Applicant and Tenant Issues:**

● **Admissions:**

- **Application fee:** RD Asset Management Handbook, HB-2-3560, ¶ 6.18B (discouraged, but not prohibited).
- **Waiting list:** how compiled and maintained: 7 C.F.R. § 3560.154(f) and RD Asset Management Handbook, HB-2-3560, ¶ 6.18 (RD).
- **Eligibility:**
  - Income: 7 C.F.R. §§ 3560.152 and 3560.11 (less than 80% of AMI + \$5500); RD Asset Mgmt Hbk, HB-2-3560, ¶6.3.
  - U.S. citizen or qualified alien 7 C.F.R. § 3560.152, *but see* 70 Fed. Reg 8503 (Feb. 22, 2005) in § 3560.152(a)(1), implementation of the words “Be a United States citizen or qualified alien, and” was delayed indefinitely
- **Preferences:** some properties have elderly preference or designated occupancy; RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.5 (elderly family may include a person younger than 62 years old); 7 C.F.R. § 3560.154(g) (ranking priorities for very low-, low- and then moderate-income applicants); RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.23; *Id.* ¶ 6.6 (owner may give priority to tenants who agree to participate in services provided)
- **Screening:** 7 C.F.R. § 3560.154 and RD Asset Mgmt Hbk, HB-2-3560, Ch. 6, Section 4 (owner has discretion not to reject for certain criminal history but may consider criminal activity or alcohol abuse, poor tenant history, poor rent paying history or bad credit)
- **Procedural Protections:** RD projects: Applicants are entitled to grievance process; 7 CFR. 3560.160; *see also* 7 C.F.R. §§ 3560.102(b), 3560.154(h) & RD Asset Mgmt Hbk, HB-2-3560, Section 8 (applicant entitled to grievance procedures if denied ; *Id.* Attachment 3-A and ¶ 6.19. (If development located in area with a high concentration of non-English speakers, notice of rejection must be in English and the language prevalent in the area.)

● **Rents:**

- **Flat rents:**

- RD projects: “Market Rent” (promissory note rent) and “Basic Rent” (1% rent): resident pays the higher of basic rent or 30% of income up to market rent ; some developments only have market rent; a very small number of senior projects have flat rent based on 3% loan; unless RD Rental Assistance or Section 8, where rents set like Section 8. 7 C.F.R. § 3560.203
  - **Income-based rents?**
    - 7 C.F.R. § 3560 Part F (rental assistance rules). Tenant rent: the greater of 30% of adjusted income, 10% of gross or the applicable welfare rent. 7 C.F.R § 3560.203. Most tenants pay 30% of adjusted income.
    - Higher income tenants with no rental assistance pay the higher of “Basic Rent” or 30% of income, *supra*.
  - **Annual Income and Exclusions:** (for those paying income-based rents), 24 C.F.R. §5.609 (HUD projects; incorp. for RD projects by 7 C.F.R. § 3560.153; RD Asset Mgmt Hbk, HB-2-3560, Attachment 6-A), for example:
    - No earned income disregard
    - Exclude foster care payments
    - Exclude lump sums additions from certain sources
    - Exclude earned income of minors
  - **Adjusted Income after Deductions:** 24 C.F.R. §5.611 (HUD project rules; incorp. for RD projects by 7 C.F.R. § 3560.153; RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.9C) (but note ¶ 6.9B if tenant says that amount not being received for child support, owner must document that request to state for enforcement has been made) *compare Johnson v. U.S. Dept. Agric.*, 734 F.2d 774 (11<sup>th</sup> Cir. 1984) (owner precluded from including support payments that were not being made).
    - Typical Deductions: \$480 per dependent; \$400 for elderly or disabled family; minors’ earned income; unreimbursed medical expenses for elderly or disabled family; unreimbursed attendant care or apparatus expenses to enable disabled family member to be employed; child care expenses necessary for employment or education; But 1990 deductions for child or spousal support (42 U.S.C. §1437a(a)(5)(A)) never backed by appropriations
  - **Recertification:** RD projects: Annual recertification and for changes in income of \$100 or more per month; family must report changes in family size and income. 7 C.F.R. §§ 3560.152 and 3560.158)
  - **Utility Allowance:** (If income-based rent i.e., tenant receives rental subsidy) for certain tenant-paid utilities, owner sets “reasonable” amount, credit against 30% of income tenant share; owner must review and adjust allowance annually when necessary. (If tenant has no rental subsidy but pays more than basic rent) the same rules as with rental subsidy apply—utility allowance is deducted from tenant payment but tenant must pay at least basic rent. 7 U.S.C. §3560.202
  - **Ability to challenge rent level for individual:** (request meeting with owner-manager and a grievance hearing, *see infra*.)
  - **Project wide rent increases:** Notice and comment when owner proposes to institute rent change for all units. 7 C.F.R. § 3560.205(d).
- **Grievance Procedures:** RD Tenant Grievance and Appeals Procedure, 7 C.F.R. § 3560.160 and RD Asset Mgmt Hbk, HB-2-3560, Ch. 6, Section 8, and ¶¶ 6.33-6.39. (tenant or applicant may file a grievance for owner action or failure to act in accordance with lease, or RD regulations that results in a denial, significant reduction or termination of benefits, etc.); *Id.* ¶ 6.34 (informal meeting required prior to grievance hearing).
  - **Lease:** Rules for what must be in lease. 7 C.F.R. § 3560.156; Owner must use lease approved by agency. 7 C.F.R. § 3560.156(a) *see also* RD Asset Mgmt Hbk, HB-2-3560 Attachment 6-E (Lease states that DV will not be tolerated and that such action is a material violation of the lease, all perpetrators will be evicted while the other eligible household occupants may remain); in areas of concentration of non-English speaking population lease must be available in English and pertinent non-English language.

- **Evictions and Terminations:**
  - Good cause required *anytime, including at end of lease term*: 7 C.F.R. § 3560.159 and 3560.156(c)(18)(xvii) (also incorporates criminal activity provisions of 24 C.F.R. § [5.858](#), [5.859](#), [5.860](#), and [5.861](#)); *Id.* and RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.32 (terminate lease for material noncompliance with lease or rules or for other good cause);
  - Case law regarding material violation and specific facts, HUD HOUSING PROGRAMS: TENANTS' RIGHTS, Ch. 11 (4th ed. 2012).
  - *Majors v. Green Meadows Apartments, Ltd.*, 546 F.Supp. 895 (S.D. Ga 1980) (to evict there must be material non-compliance with lease or other good cause and tenant must be given prior notice of conduct that will be a basis for termination of tenancy.)
  - *Alvera v. The C.B.M. Group, Inc.*, Civil No. 01-857-PA (D. Or., October 2001) (property management company agreed based upon a claim of a violation of the Fair Housing Act to stop applying its “zero-tolerance” policy and evicting victims of domestic violence in the five western states where it owns or operates housing facilities (Arizona, California, Hawaii, Nevada, and Oregon).
  - **Notice:** 7 C.F.R. § 3560.159 (RD projects, content must set forth good cause, no specific period, therefore state law and lease control); *Id.* and RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.23 (owner must give tenant written notice of violation and an opportunity to cure; limited English proficiency protections)
  - **Required proof by landlord:** Burden of proof is not clear. 7 C.F.R. § 3560.160(h)(3)
  - **Pre-judicial administrative review prior to eviction?** RD Tenant Grievance and Appeals Process, 7 C.F.R. § 3560.160 RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.35 and Exhibit 6-7 (excludes evictions from the grievance hearing process).
  - **Right to Cure:** Absolute right to cure any violation.
- **State law procedural protections not pre-empted:** 7 C.F.R. § 3506.5
- **Section 8 or RD rental assistance terminations by landlord prior to any eviction:** Tenant entitled Tenant Grievance and Appeal Procedure (tenants requests a meeting with the owner and if that fails a grievance hearing, *see supra*).
- **Other Current Important Issues:**
  - Contracts on about 800,000 HUD-Assisted project-based Section 8 units are for one year terms and expire annually; any inadequate renewal funding under 2011 Budget Control Act and annual Appropriations threatens losses of these units or, if statutes revised, tenant rent increases originally there were only 40,000-50000 RD/Section 8 units. There are probably less than 20,000 now.
  - Mortgage maturity (developments have different mortgage terms; most recently 30 years with 10 year optional renewals; previously 40 and 50 year terms) on & RD properties poses rent increases and displacement threat to thousands of unassisted tenants
  - 112th Congress unlikely to develop new policy legislation on RD preservation
  - There are about 70,000 residents in RD housing that are in need of rental assistance—they are paying more than 30% of income towards shelter.
  - Growing risk of deterioration in some RD properties due to diminishing and shifting regulatory responsibilities (?) and subsidy reductions (?). Aging properties, inadequate reserves and insufficient funding for rehabilitation and preservation.
    - Congress has been considering legislation which would change the determination of adjusted income for tenants in the public housing and Section 8 programs. Formerly known as the Section 8 Voucher Reform Act (SEVRA), a draft bill now known as the Section 8 Savings Act (SESA) contains these changes and has received a hearing in the House in mid-2011. Enactment would bring significant changes for some tenants' rent calculations.



**Comparison of Housing Provisions of VAWA 2005, VAWA 2013 and HUD Regs Implementing VAWA 2005**  
 (Changes made by VAWA 2013 are in red)

Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
<b>Definition of “domestic violence”</b>	<p><del>42 U.S.C. § 13925(a)(6):</del></p> <p><b>42 U.S.C. § 13925(a)(8):</b></p> <p>“The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse <b>or intimate partner</b> 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 <b>intimate partner</b>, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.”</p>	<p><del>42 U.S.C. § 1437d(u)(3)(A) incorporates the definition found at § 13925</del></p> <p><b>[Subsection (u) struck]</b></p>	<p><del>42 U.S.C. § 1437f(f)(8) incorporates the definition found at § 13925</del></p> <p><b>[Subsection (f)(8) struck]</b></p>	<p><del>42 U.S.C. § 1437f(f)(8) incorporates the definition found at § 13925</del></p> <p><b>[Subsection (f)(9) struck]</b></p>	<p>24 C.F.R. § 5.2003:</p> <p>“Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.”</p>
<b>Definition of “dating violence”</b>	<p><del>42 U.S.C. § 13925(a)(8):</del></p> <p><b>42 U.S.C. § 13925(a)(10):</b></p> <p>“The term "dating violence" means violence committed by</p>	<p><del>42 U.S.C. § 1437d(u)(3)(B) incorporates the definition found at § 13925</del></p> <p><b>[Subsection (u) struck]</b></p>	<p><del>42 U.S.C. § 1437f(f)(9) incorporates the definition found at § 13925</del></p> <p><b>[Subsection (f)(9) struck]</b></p>	<p><del>42 U.S.C. § 1437f(f)(9) incorporates the definition found at § 13925</del></p> <p><b>[Subsection (f)(9) struck]</b></p>	<p>24 C.F.R. § 5.2003:</p> <p>“Dating violence means violence committed by a person:</p> <p>(1) Who is or has been in a</p>



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 (Changes made by VAWA 2013 are in red)

Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
	a person-- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.”				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.”
<b>Definition of sexual assault</b>	<b>42 U.S.C. § 13925(a)(29):</b>  <b>“The term ‘sexual assault’ means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victims lacks capacity to consent.”</b>	N/A	N/A	N/A	N/A
<b>Definition of stalking</b>	N/A  <b>42 U.S.C. § 13925(a)(30):</b>  <b>“The term “stalking” means engaging in a course of conduct directed at a specific person that would</b>	<del>42 U.S.C. § 1437d(u)(3)(C):</del>  <del>“(C) the term “stalking” means-</del> <del>(i)(I) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or</del>	<del>42 U.S.C. § 1437f(f)(10):</del>  <del>“(10) the term “stalking” means-</del> <del>(A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another</del>	<del>42 U.S.C. § 1437f(f)(10):</del> <del>See project-based Section 8 citation.</del>  <b>[Subsection (f)(10) struck]</b>	24 C.F.R. § 5.2003:  “Stalking means: (1)(i) To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or



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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
	<p><b>cause a reasonable person to –</b>  <b>(A) fear for his or her safety of others; or</b>  <b>(B) suffer substantial emotional distress.”</b></p>	<p><del>(H) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and</del>  <del>(ii) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to-</del>  <del>(I) that person;</del>  <del>(II) a member of the immediate family of that person; or</del>  <del>(III) the spouse or intimate partner of that person”</del></p> <p><b>[Subsection (u) struck]</b></p>	<p><del>person; or</del>  <del>(ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and</del>  <del>(B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to-</del>  <del>(i) that person;</del>  <del>(ii) a member of the immediate family of that person; or</del>  <del>(iii) the spouse or intimate partner of that person”</del></p> <p><b>[Subsection (f)(10) struck]</b></p>		<p>(ii) To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and          (2) In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to          (i) That person,          (ii) A member of the immediate family of that person, or          (iii) The spouse or intimate partner of that person.”</p>
<p><b>Definition of immediate family member</b></p>	<p><del>N/A</del>  <b>42 U.S.C. § 14043e-11(a)(1):</b>  <b>“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</b></p>	<p>42 U.S.C. § 1437d(u)(3)(D):  <del>“(D) the term “immediate family member” means, with respect to a person--</del>  <del>(i) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or</del>  <del>(ii) any other person living in the household of that person and related to that person by</del></p>	<p>42 U.S.C. § 1437f(f)(11):  <del>“(11) the term “immediate family member” means, with respect to a person--</del>  <del>(A) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or</del>  <del>(B) any other person living in the household of that person and related to that</del></p>	<p>42 U.S.C. § 1437f(f)(11):  <del>See project-based Section 8 citation</del>  <b>[Subsection (f)(11) struck]</b></p>	<p>24 C.F.R. § 5.2003:  <del>“Immediate family member means, with respect to a person:</del>  <del>(1) A spouse, parent, brother, or sister, or child of that person, or an individual to whom that person stands in loco parentis; or</del>  <del>(2) Any other person living in the household of that person and related to that</del></p>



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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
	<p><del>parentis; or</del>  <b>(B) any individual, tenant, or lawful occupant living in the household of that individual.</b></p>	<p><del>blood or marriage.”</del>  <b>[Subsection (u) struck]</b></p>	<p><del>person by blood or marriage.”</del>  <b>[Subsection (f)(11) struck]</b></p>		<p>person by blood or marriage.”</p>
<p><b>Housing Authority Annual Plan Requirements</b></p>	<p>42 U.S.C. § 1437c-1(d)(13):</p> <p>“(d) An annual public housing agency plan ... shall contain:</p> <p>(13) .... A description of-</p> <p>(A) any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;</p> <p>(B) any activities, services, or programs provided or offered by a public housing agency that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and</p> <p>(C) any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>What information must a PHA provide in an annual plan?</p> <p>24 C.F.R. § 903.7(m)(5):</p> <p>A statement of any domestic violence, dating violence, sexual assault, and stalking prevention programs:</p> <p>(i) A description of any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;</p> <p>(ii) Any activities, services, or programs provided or offered by a PHA that help child and adult victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing; and</p> <p>(iii) Any activities, services, or programs provided or offered by a PHA to prevent</p>





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	assisted families.”				domestic violence, dating violence, sexual assault, or stalking, or to enhance victim safety in assisted families.
<b>Housing Authority Five-Year Plan Requirements</b>	42 U.S.C. § 1437c-1(a)(2): “(a)(2) The 5-year plan shall include a statement by any public housing agency of the goals, objectives, policies, or programs that will enable the housing authority to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.”	N/A	N/A	N/A	What information must a PHA provide in the 5-Year Plan?  24 C.F.R. § 906.3(a)(3):  A statement about goals, activities, objectives, policies, or programs that will enable a PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.
<b>Consolidated Plan Requirements</b>	42 U.S.C. § 12705(b)(1): “A housing strategy submitted under this section shall ... (1) describe the jurisdiction's estimated housing needs projected for the ensuing 5-year period, and the jurisdiction's need for assistance for ... victims of domestic violence, dating violence, sexual assault, and stalking”	N/A	N/A	N/A	
<b>Admissions:</b>	<del>N/A</del>	<del>42 U.S.C. § 1437d(e)(3):</del>	<del>42 U.S.C. § 1437f(e)(9)(A)</del>	42 U.S.C. § 1437f(o)(6)(B):	24 C.F.R. § 5.2005(b):



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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
That an applicant has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission.	<b>Sec. 14043e-11(b)(1):</b>  <b>“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.”</b>	<del>“[T]he public housing agency shall not deny admission to the project to any applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking if the applicant otherwise qualifies for assistance or admission”</del>  <b>[Subsection (c)(3) struck]</b>	<del>“That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.”</del>  <b>[Subsection (c)(9) struck]</b>	“That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission.”  <b>[VAWA 2013 may have accidentally left in this sentence.]</b>	“Admission to the program shall not be denied on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking, if the applicant otherwise qualifies for assistance or admission.”
<b>Termination of tenancy or assistance:</b> An incident of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated	<del>N/A</del>  <b>Sec. 14043e-11(b)(1) &amp; (2):</b>  <b>“(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</b>	<del>42 U.S.C. § 1437d(l)(5):</del>  <del>“[A]n incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such</del>	<del>42 U.S.C. § 1437f(e)(9)(B):</del>  <del>“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</del>	<del>42 U.S.C. § 1437f(o)(20)(B):</del>  <del>“Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered a serious or repeated violation of the lease by the victim or threatened victim of that eriminal activity justifying termination of assistance to</del>	24 C.F.R. § 5.2005(c)(1):  “Domestic violence, dating violence, or stalking. An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated lease violation by the victim or threatened victim of the domestic violence, dating violence, or



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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
violation of the lease by the victim and will not be good cause for terminating the assistance or tenancy of the victim.	<p><b>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.</b></p> <p><b>(2) CONSTRUCTION OF LEASE TERMS.—An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as—</b></p> <p><b>(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></p> <p><b>(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.”</b></p>	<p><del>violence”</del></p> <p><b>[This part of (l)(5) struck]</b></p>	<p><del>occupancy rights of the victim of such violence.”</del></p> <p><b>[Subsection (c)(9) struck]</b></p>	<p><del>the victim or threatened victim.”</del></p> <p><b>[Subsection (o)(20) struck]</b></p>	stalking, or as good cause to terminate the tenancy of, occupancy rights of, or assistance to the victim.”
<b>Criminal activity</b>	<b>N/A</b>	<b>42 U.S.C. § 1437d(l)(6)(A):</b>	<b>42 U.S.C. § 1437f(e)(9)(C)(i):</b>	<b>42 U.S.C. § 1437f(o)(20)(C):</b>	<b>24 C.F.R. § 5.2005(c)(2):</b>



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<b>directly related to abuse:</b> Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be cause for termination of the victim's tenancy or assistance.	<b>Sec. 14043e-11(b)(3)(A):</b> <del>“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.”</del>	<del>“[C]riminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking.”</del>  [This part of (I)(6) struck]	<del>“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.”</del>  [Subsection (c)(9) struck]	<del>“Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered cause for termination of assistance for any participant or immediate member of a participant's family who is a victim of the domestic violence, dating violence, or stalking.”</del>  [Subsection (o)(20) struck]	“Criminal activity related to domestic violence, dating violence, or stalking. Criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of tenancy of, occupancy rights of, or assistance to the victim, if the tenant or immediate family member of the tenant is the victim.”
<b>Actual and imminent threat provision:</b> A PHA, owner or manager may evict or terminate assistance to a victim if the PHA, owner, or manager can	<del>N/A</del> <b>Sec. 14043e-11(b)(3)(C)(iii):</b> <del>“Nothing in subparagraph (A) shall be construed...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</del>	<del>42 U.S.C. § 1437d(l)(6)(E):</del> <del>“[N]othing in [this section] may be construed to limit the authority of a public housing agency to terminate the tenancy of any tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the</del>	<del>42 U.S.C. § 1437f(e)(9)(C)(v)</del> <del>“Nothing in [this section] may be construed to limit the authority of an owner, manager, or public housing agency to evict or terminate from assistance any tenant or lawful occupant if the owner, manager or public housing agency can</del>	<del>42 U.S.C. § 1437f(o)(20)(D)(iv):</del> <del>“Nothing in [this section] may be construed to limit the authority of the public housing agency to terminate voucher assistance to a tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those</del>	24 C.F.R. § 5.2005(d)(2), (d)(3), (e):  (d)(2) Nothing in this section may be construed to limit the authority of a PHA, owner, or management agent to evict or terminate assistance to any tenant or lawful occupant if the PHA, owner, or management agent can demonstrate an



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<p>demonstrate an actual and imminent threat to other tenants or employees at the property if the tenant is not evicted or terminated from assistance.</p>	<p><b>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”</b></p>	<p><del>property if that tenant's tenancy is not terminated”</del>  <b>[This part of (l)(6) struck]</b></p>	<p><del>demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance.”</del>  <b>[Subsection (c)(9) struck]</b></p>	<p><del>employed at or providing service to the property or public housing agency if that tenant is not evicted or terminated from assistance.”</del>  <b>[Subsection (o)(20) struck]</b></p>	<p>actual and imminent threat to other tenants or those employed at or providing service to the public housing or Section 8 assisted property if that tenant or lawful occupant is not terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an “actual imminent threat” if they meet the standards provided in paragraph (e) of this section.</p> <p>(d)(3) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section, should be utilized by a PHA, owner, or management agent only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies</p>



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					<p>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.</p> <p><i>(e) Actual and imminent threat.</i> An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual an imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.</p>
<p><b>Victims must be held to same standard as other tenants:</b>            For lease violations unrelated to</p>	<p>N/A</p> <p><b>Sec. 14043e-11(b)(3)(C)(ii):</b></p> <p><b>“Nothing in subparagraph (A) shall be construed...to limit any otherwise</b></p>	<p><del>42 U.S.C. § 1437d(1)(6)(D):</del></p> <p><del>“[N]othing in [this section] limits any otherwise available authority of a public housing agency to evict a tenant for any violation of a lease not</del></p>	<p><del>42 U.S.C. § 1437f(e)(9)(C)(iv)</del></p> <p><del>“Nothing in [this section] limits any otherwise available authority of an owner or manager to evict</del></p>	<p><del>42 U.S.C. § 1437f(e)(20)(D)(iii):</del></p> <p><del>“Nothing in [this section] limits any otherwise available authority of the public housing agency to</del></p>	<p>24 C.F.R. § 5.2005(d)(1). (d)(3):</p> <p>(1) Nothing in this section limits the authority of the PHA, owner, or management agent to evict a</p>



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<p>abuse, a PHA, owner or manager must not subject an individual who is a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.</p>	<p><b>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”</b></p>	<p><del>premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate”</del></p> <p>[This part of (I)(6) struck]</p>	<p><del>or the public housing assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.”</del></p> <p>[Subsection (c)(9) struck]</p>	<p><del>terminate voucher assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to terminate.”</del></p> <p>[Subsection (o)(20) struck]</p>	<p>tenant or terminate assistance for a lease violation unrelated to domestic violence, dating violence, or stalking, provided that the PHA, owner, or management agent does not subject such a tenant to a more demanding standard than other tenants in making the determination whether to evict, or to terminate assistance or occupancy rights;</p> <p>(3) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section, should be utilized by a PHA, owner, or management agent only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator</p>



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					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.
<b>Bifurcation:</b> A PHA, owner, or manager may evict, remove, or terminate assistance to the abuser without evicting or terminating assistance to the victim	<p>N/A</p> <p><b>Sec. 14043e-11(b)(3)(B):</b></p> <p><b>“(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</b></p>	<p><del>42 U.S.C. § 1437d(1)(6)(B):</del></p> <p><del>“[N]otwithstanding . . . any Federal, State, or local law to the contrary, a public housing agency may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant and such eviction, removal, termination of occupancy rights, or</del></p>	<p><del>42 U.S.C. § 1437f(e)(9)(C)(ii):</del></p> <p><del>“Notwithstanding . . . any Federal, State, or local law to the contrary, an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant. Such eviction,</del></p>	<p><del>42 U.S.C. § 1437f(o)(20)(D)(i):</del></p> <p><del>“Nothing in [this section] may be construed to limit the authority of the public housing agency to terminate voucher assistance to individuals who engage in criminal acts of physical violence against family members or others.”</del></p> <p><b>[Subsection (o)(20) struck]</b></p>	<p>24 C.F.R. § 5.2003, 5.2009(a):</p> <p><i>“Bifurcate</i> means, with respect to a public housing or a Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.”</p> <p><i>“Lease bifurcation.</i> Notwithstanding any Federal, State, or local law to the contrary, a PHA, owner, or management agent may bifurcate a lease, or remove a household member from a lease without regard to whether the household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to</p>





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	<p><b>victim of such criminal activity who is also a tenant or lawful occupant of the housing.</b>  <b>(ii) EFFECT OF EVICTION ON OTHER TENANTS.—</b>  <b>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 an opportunity to establish eligibility for the covered housing program. If a tenant described in the preceding sentence cannot establish eligibility, the public housing agency or owner or manager of the housing shall provide the tenant a reasonable time, as determined by the appropriate agency, to find new housing or to establish</b></p>	<p><del>termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.”</del>   <b>[This part of (l)(6) struck]</b></p>	<p><del>removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.”</del>   <b>[Subsection (c)(9) struck]</b></p>		<p>any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, or local law for termination of assistance or leases under the relevant public housing, Section 8 Housing Choice Voucher, and Section 8 project-based programs.”</p>



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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
	<p><b>eligibility for housing under another covered housing program.”</b></p>				
<p><b>Portability:</b>            Even if moving would otherwise violate the lease, a Section 8 voucher family may move to another jurisdiction if the family has complied with all program obligations and is moving to protect the safety of a victim of domestic violence, dating violence, or stalking.</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>42 U.S.C. § 1437f(r)(5):            “A family may not receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has moved out of the assisted dwelling unit of the family in violation of a lease, except that family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.”</p>	<p>24 C.F.R. §§ 982.314(b), 982.353(b):</p> <p>(b) When family may move. A family may move to a new unit if:</p> <p>(1) The assisted lease for the old unit has terminated. This includes a termination because:</p> <p>(i) The PHA has terminated the HAP contract for the owner’s breach; or</p> <p>(ii) The lease has terminated by mutual agreement of the owner and the tenant.</p> <p>(2) The owner has given the tenant a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the tenant.</p> <p>(3) The tenant has given notice of lease termination (if the tenant has a right to terminate the lease on notice to the owner, for owner breach, or otherwise).</p> <p>(4) The family or a member of the family is or has been</p>



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					<p>the victim of domestic violence, dating violence, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, already moved out of a unit in violation of the lease, if such move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the dwelling unit.</p> <p>(c) * * *</p> <p>(2) The PHA may establish:</p> <p>(i) Policies that prohibit any move by the family during the initial lease term; and</p> <p>(ii) Policies that prohibit more than one move by the family during any one- year period.</p> <p>(iii) The above policies do not apply when the family</p>



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					<p>or a member of the family is or has been the victim of domestic violence, dating violence, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member.</p> <p>(b) * * * The initial PHA must not provide such portable assistance for a participant if the family has moved out of the assisted unit in violation of the lease, except that if the family moves out in violation of the lease in order to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the dwelling unit, and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the PHA and move to another jurisdiction</p>



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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
					under the Housing Choice Voucher Program.
<b>Court orders:</b> VAWA does not limit the authority of PHAs, owners, or managers to honor court orders addressing rights of access to or control of property.	N/A  <b>Sec. 14043e-11(b)(3)(C)(i):</b>  <b>“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”</b>	<del>42 U.S.C. § 1437d(1)(6)(C):</del>  <del>“[N]othing in [this section] may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up”</del>  [This part of (1)(6) struck]	<del>42 U.S.C. § 1437f(e)(9)(C)(iii):</del>  <del>“Nothing in [this section] may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.”</del>  [Subsection (c)(9) struck]	<del>42 U.S.C. § 1437f(e)(20)(D)(ii):</del>  <del>“Nothing in [this section] may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.”</del>  [Subsection (o)(20) struck]	24 C.F.R. § 5.2009(b):  “ <i>Court orders.</i> Nothing in this subpart may be construed to limit the authority of a PHA, owner, or management agent, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and to address the distribution of property among household members in a case where a family breaks up.”
<b>Certification— Discretion of PHAs and owners:</b> PHAs and owners are	N/A  <b>Sec. 14043e-11(c)(3)(D) &amp; (c)(5):</b>	<del>42 U.S.C. § 1437d(u)(1)(D):</del>  <del>“Nothing in this subsection shall be construed to require any public housing agency to</del>	<del>42 U.S.C. § 1437f(ee)(1)(D):</del>  <del>“Nothing in this subsection shall be construed to require</del>	<del>42 U.S.C. § 1437f(ee)(1)(D):</del> See project-based Section 8 citation.	24 C.F.R. § 5.2007(d):  At its discretion, a PHA, owner, or management agent may provide benefits



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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
not required to demand official documentation of victim status. PHAs and owners may rely solely on the individual's statement.	<p><b>“A form of documentation described in this paragraph is—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.”</b></p> <p><b>“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.”</b></p>	<p><del>demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this section. At the public housing agency's discretion, a public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.”</del></p> <p>[Subsection (u) struck]</p>	<p><del>an owner, manager, or public housing agency to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this section. At their discretion, the owner, manager, or public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.”</del></p> <p>[Subsection (ee) struck]</p>	[Subsection (ee) struck]	to an individual based solely on the individual's verbal statement or other corroborating evidence. A PHA's, owner's, or management agent's compliance with this section, whether based solely on the individual's verbal statements or other corroborating evidence, shall not alone be sufficient to constitute evidence of an unreasonable act or omission by a PHA, PHA employee, owner, or employee or agent of the owner. Nothing in this subparagraph shall be construed to limit liability for failure to comply with the requirements of 24 CFR part 5.
<p><b>Certification—HUD-approved form:</b></p> <p>A PHA, owner, or manager may request that an individual certify via a HUD-approved form that the</p>	<p><del>N/A</del></p> <p><b>Sec. 14043e-11(c)(3)(A):</b></p> <p><b>“A form of documentation described in this paragraph is—</b>  <b>(A) a certification form approved by the appropriate agency that—</b>  <b>(i) states that an applicant</b></p>	<p>42 U.S.C. § 1437d(u)(1)(A):</p> <p><del>“A public housing agency responding to subsection (1)(5) and (6) of this section may request that an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that</del></p>	<p>42 U.S.C. § 1437f(ee)(1)(A):</p> <p><del>“An owner, manager, or public housing agency responding to subsections (e)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), and (r)(5) of this section may request that an individual certify via</del></p>	<p>42 U.S.C. § 1437f(ee)(1)(A): <del>See project-based Section 8 citation.</del></p> <p>[Subsection (ee) struck]</p>	<p>24 C.F.R. § 5.2007(b)(1):</p> <p>May consist of a HUD-approved certification form indicating that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or</p>



**Comparison of Housing Provisions of VAWA 2005, VAWA 2013 and HUD Regs Implementing VAWA 2005**  
 (Changes made by VAWA 2013 are in red)

Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
individual is a victim of domestic violence, dating violence, or stalking. Such certification shall include the name of the perpetrator.	<b>or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;</b> <b>(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</b> <b>(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>	<del>the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the aforementioned paragraphs.—Such certification shall include the name of the perpetrator.”</del>  [Subsection (u) struck]	<del>a HUD-approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the aforementioned paragraphs.—Such certification shall include the name of the perpetrator.”</del>  [Subsection (ee) struck]		threatened abuse. Such certification must include the name of the perpetrator, and may be based solely on the personal signed attestation of the victim.
<b>Certification—other permissible documents:</b> In lieu of the HUD-approved form, a victim may certify by providing: (1) a statement signed by the victim and a victim service provider, attorney, or medical professional; or	<del>N/A</del>  <b>Sec. 14043e-11(c)(3)(B) &amp; (C):</b>  <b>“A form of documentation described in this paragraph is—</b> <b>(B) a document that—</b> <b>(i) is signed by—</b> <b>(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</b>	<del>42 U.S.C. § 1437d(u)(1)(C):</del>  <del>“An individual may satisfy the certification requirement of subparagraph (A) by—</del> <del>(i) providing the requesting public housing agency with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse, in which the</del>	<del>42 U.S.C. § 1437f(ee)(1)(C):</del>  <del>An individual may satisfy the certification requirement of subparagraph (A) by—</del> <del>(i) providing the requesting owner, manager, or public housing agency with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating</del>	<del>42 U.S.C. § 1437f(ee)(1)(C): See project-based Section 8 citation.</del>  [Subsection (ee) struck]	24 C.F.R. § 5.2007(b)(2)-(3):  (2) May consist of a Federal, State, tribal, territorial, or local police report or court record; or  (3) May consist of documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, from whom the victim has sought assistance in addressing domestic



**Comparison of Housing Provisions of VAWA 2005, VAWA 2013 and HUD Regs Implementing VAWA 2005**  
 (Changes made by VAWA 2013 are in red)

Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
(2) a police or court record.	<b>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”</b>	<del>professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or (ii) producing a Federal, State, tribal, territorial, or local police or court record.”</del>  [Subsection (u) struck]	<del>violence, or stalking, or the effects of the abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or (ii) producing a Federal, State, tribal, territorial, or local police or court record.</del>  [Subsection (ee) struck]		violence, dating violence, or stalking, or the effects of abuse, in which the professional attests under penalty of perjury under 28 U.S.C. 1746 to the professional’s belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation.
<b>Certification—Timeline:</b> If an individual does not provide certification within 14 business days after receiving a written request, the PHA or	N/A  <b>Sec. 14043e-11(c)(2):</b>  “(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	42 U.S.C. § 1437d(u)(1)(B):  “If the individual does not provide the certification within 14 business days after the individual has received a request in writing for such certification from the public housing agency, nothing in this subsection . . . may be	42 U.S.C. § 1437f(ee)(1)(B):  “If the individual does not provide the certification within 14 business days after the individual has received a request in writing for such certification for the owner, manager, or public	42 U.S.C. § 1437f(ee)(1)(B): See project-based Section 8 citation.  [Subsection (ee) struck]	24 C.F.R. § 5.2007(a), (c):  (a) <i>Request for documentation.</i> A PHA, owner, or management agent presented with a claim for continued or initial tenancy or assistance based on status as a victim of domestic violence, dating





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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
<p>owner may evict any individual who commits lease violations. The PHA or owner may extend the 14-day deadline at their discretion.</p>	<p><b>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 chapter may agency or owner or manager to—</b>  <b>(i) deny admission by the applicant or tenant to the covered program;</b>  <b>(ii) deny assistance under the covered program to the applicant or tenant;</b>  <b>(iii) terminate the participation of the applicant or tenant in the covered program; or</b>  <b>(iv) evict the applicant, the tenant, or a lawful occupant that commits violations of a lease.</b>  <b>(B) EXTENSION.—A public housing agency or owner or manager of housing may extend the 14-day deadline under subparagraph (A) at its discretion.”</b></p>	<p><del>construed to limit the authority of the public housing agency to evict any tenant or lawful occupant that commits violations of a lease. The public housing agency may extend the 14-day deadline at its discretion.”</del></p> <p><b>[Subsection (u) struck]</b></p>	<p><del>housing agency, nothing in this subsection . . . may be construed to limit the authority of an owner or manager to evict, or the public housing agency or assisted housing provider to terminate voucher assistance for, any tenant or lawful occupant that commits violations of a lease. The owner, manager or public housing agency may extend the 14 day deadline at their discretion.”</del></p> <p><b>[Subsection (ee) struck]</b></p>		<p>violence, stalking, or criminal activity related to domestic violence, dating violence, or stalking may request that the individual making the claim document the abuse. The request for documentation must be in writing. The PHA, owner, or management agent may require submission of documentation within 14 business days after the date that the individual received the request for documentation. However, the PHA, owner, or management agent may extend this time period at its discretion.</p> <p><i>(c) Failure to provide documentation.</i> In order to deny relief for protection under VAWA, a PHA, owner, or management agent must provide the individual with a written request for documentation of the abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt of the PHA’s, owner’s, or management agent’s written request, or</p>



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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
					such longer time as the PHA, owner, or management agent at their discretion may allow, VAWA protections do not limit the authority of the PHA, owner, or management agent to evict or terminate assistance of the tenant or a family member for violations of the lease or family obligations that otherwise would constitute good cause to evict or grounds for termination. The 14-business day window for submission of documentation does not begin until the individual receives the written request. The PHA, owner, or management agency has discretionary authority to extend the statutory 14-day period.
<b>Confidentiality</b> : A PHA or owner shall keep confidential the information an individual provides to certify victim	N/A  <b>Sec. 14043e-11(c)(4):</b>  <b>“Any information submitted to a public housing agency or owner or manager under this subsection,</b>	<del>42 U.S.C. § 1437d(u)(2)(A):</del>  <del>“All information provided to any public housing agency pursuant to paragraph (1), including the fact that an individual is a victim of domestic violence, dating violence, or stalking, shall be</del>	<del>42 U.S.C. § 1437f(ee)(2)(A):</del>  <del>“All information provided to an owner, manager, or public housing agency pursuant to paragraph (1), including the fact that an individual is a victim of</del>	<del>42 U.S.C. § 1437f(ee)(2)(A): See project-based Section 8 citation.</del>  <b>[Subsection (ee) struck]</b>	24 C.F.R. § 5.2007(b)(4):  Shall be kept confidential by the PHA, owner, or management agent. The PHA, owner, or management agent shall not: (i) Enter the information



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status.	<p><b>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—</b></p> <p><b>(A) requested or consented to by the individual in writing;</b></p> <p><b>(B) required for use in an eviction proceeding under subsection (b); or</b></p> <p><b>(C) otherwise required by applicable law.”</b></p>	<p><del>retained in confidence by such public housing agency, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is—</del></p> <p><del>(i) requested or consented to by the individual in writing;</del></p> <p><del>(ii) required for use in an eviction proceeding . . . ; or</del></p> <p><del>(iii) otherwise required by applicable law.”</del></p> <p><b>[Subsection (u) struck]</b></p>	<p><del>domestic violence, dating violence, or stalking, shall be retained in confidence by such public housing agency, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is—</del></p> <p><del>(i) requested or consented to by the individual in writing;</del></p> <p><del>(ii) required for use in an eviction proceeding . . . ; or</del></p> <p><del>(iii) otherwise required by applicable law.”</del></p> <p><b>[Subsection (ee) struck]</b></p>		<p>contained in the documentation into any shared database;</p> <p>(ii) Allow employees of the PHA, owner, or management agent, or those within their employ (e.g., contractors) to have access to such information unless explicitly authorized by the PHA, owner, or management agent for reasons that specifically call for these employees or those within their employ to have access to this information; and</p> <p>(iii) Disclose this information to any other entity or individual, except to the extent that disclosure is:</p> <p>(A) Requested or consented to by the individual making the documentation, in writing;</p> <p>(B) Required for use in an eviction proceeding, or</p> <p>(C) Otherwise required by applicable law.</p>
<p><b>Notification:</b> PHAs must provide notice to tenants, owners, and</p>	<p>N/A</p> <p><b>Sec. 14043e-11(d):</b></p> <p><b>(1) DEVELOPMENT.—The</b></p>	<p><del>42 U.S.C. § 1437d(u)(2)(B):</del></p> <p><del>“Public housing agencies must provide notice to tenants assisted under this</del></p>	<p><del>42 U.S.C. § 1437f(ee)(2)(B):</del></p> <p><del>“Public housing agencies must provide notice to</del></p>	<p><del>42 U.S.C. § 1437f(ee)(2)(B): See project-based Section 8 citation.</del></p>	<p>24 C.F.R. § 5.2005(a):</p> <p>(1) PHAs must provide notice to public housing and Section 8 tenants of their</p>



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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
<p>managers of their rights and obligations under VAWA.</p>	<p><b>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.</b>  <b>(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—</b>  <b>(A) at the time the applicant is denied residency in a dwelling unit assisted under the covered housing program;</b>  <b>(B) at the time the individual is admitted to a dwelling unit assisted under the covered housing program;</b>  <b>(C) with any notification of eviction or notification of termination of assistance; and</b>  <b>(D) in multiple languages, consistent with guidance</b></p>	<p><del>section of their rights under this section and subsection (1)(5) and (6) of this section, including their right to confidentiality and the limits thereof.”</del></p> <p><b>[Subsection (u) struck]</b></p>	<p><del>tenants assisted under this section of their rights under this subsection and subsections (e)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), and (r)(5) of this section, including their right to confidentiality and the limits thereof, and to owners and managers of their rights and obligations under this subsection and subsections (e)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), and (r)(5) of this section.”</del></p> <p><b>[Subsection (ee) struck]</b></p>	<p><b>[Subsection (ee) struck]</b></p>	<p>rights under VAWA and this subpart, including the right to confidentiality and the exceptions; and          (2) PHAs must provide notice to owners and management agents of assisted housing, of their rights and obligations under VAWA and this subpart; and          (3) Owners and management agents of assisted housing administering an Office of Housing project-based Section 8 program must provide notice to Section 8 tenants of their rights and obligations under VAWA and this subpart.          (4) The HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, or stalking, as provided in this subpart.”</p>



**Comparison of Housing Provisions of VAWA 2005, VAWA 2013 and HUD Regs Implementing VAWA 2005**  
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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
	<p>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).”</p>				
<p><b>Preemption:</b> VAWA does not preempt any Federal, State, or local law that provides greater protections for victims of domestic violence, dating violence, or stalking.</p>	<p>N/A</p> <p><b>Sec. 14043e-11(b)(3)(C)(iv) &amp; (c)(8):</b></p> <p><b>Prohibited basis for denial or termination of assistance of eviction – “Nothing in subparagraph (A) shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking”</b></p> <p><b>Documentation – “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</b></p>	<p><del>42 U.S.C. § 1437d(u)(1)(E):</del></p> <p><del>“Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.”</del></p> <p><b>[Subsection (u) struck]</b></p>	<p><del>42 U.S.C. § 1437f(ee)(1)(F):</del></p> <p><del>“Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.”</del></p> <p><b>[Subsection (ee) struck]</b></p>	<p><del>42 U.S.C. § 1437f(ee)(1)(F):</del> See project-based Section 8 citation:</p> <p><b>[Subsection (ee) struck]</b></p>	<p>24 C.F.R. § 5.2011:</p> <p><i>“Effect on other laws.</i> Nothing in this subpart shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.”</p>



**Comparison of Housing Provisions of VAWA 2005, VAWA 2013 and HUD Regs Implementing VAWA 2005**  
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Provision	General Citation	Public Housing Citation	Project-Based Sec. 8 Citation	Sec. 8 Voucher Citation	HUD regs implementing VAWA 2005
	<b>violence, dating violence, sexual assault, or stalking.”</b>				



**Comparison of Housing Provisions of VAWA 2005, VAWA 2013 and HUD Regs Implementing VAWA 2005**  
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	Other new issues covered in VAWA 2013	HUD regs – VAWA 2005
Covered housing program	<p><b>Sec. 14043e-11(a)(3):</b></p> <p>“(A) the program under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q); (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 221(d) of the National Housing Act (12 U.S.C. 1715l(d)) that bears interest at a rate determined under the proviso under paragraph (5) of such section 221(d); (G) the program under section 236 of the National Housing Act (12 U.S.C. 1715z-1); (H) the programs under sections 6 and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437d and 1437f); (I) rural housing assistance provided under sections 514, 515, 516, 533, and 538 of the Housing Act of 1949 (42 U.S.C. 1484, 1485, 1486, 1490m, and 1490p-2); and (J) the low income housing tax credit program under section 42 of the Internal Revenue Code of 1986.”</p>	N/A
Compliance not sufficient to constitute evidence of unreasonable act	<p><b>Sec. 14043e-11(c)(6):</b></p> <p>“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).”</p>	<p>24 C.F.R. § 5.2007(d):</p> <p>At its discretion, a PHA, owner, or management agent may provide benefits to an individual based solely on the individual’s verbal statement or other corroborating evidence. A PHA’s, owner’s, or management agent’s compliance with this section, whether based solely on the individual’s verbal statements or other corroborating evidence, shall not alone be sufficient to constitute evidence of an unreasonable act or omission by a PHA, PHA employee, owner, or employee or agent of the owner. Nothing in this subparagraph shall be construed to limit liability for failure to comply with the requirements of 24 CFR part 5.</p>



**Comparison of Housing Provisions of VAWA 2005, VAWA 2013 and HUD Regs Implementing VAWA 2005**  
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<p><b>Conflicting certification</b></p>	<p><b>Sec. 14043e-11(c)(7):</b></p> <p><b>“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).”</b></p>	<p>24 C.F.R. § 5. 2007(e):</p> <p>In cases where the PHA, owner, or management agent receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, a PHA, owner, or management agent may determine which is the true victim by requiring third-party documentation as described in this section and in accordance with any HUD guidance as to how such determinations will be made. A PHA, owner, or management agent shall honor any court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household.</p>
<p><b>Emergency transfers</b></p>	<p><b>Sec. 14043e-11(e) &amp; (f):</b></p> <p><b>“(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—</b></p> <p><b>(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—</b></p> <p><b>(A) the tenant expressly requests the transfer; and</b></p> <p><b>(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</b></p> <p><b>(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</b></p> <p><b>(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.</b></p> <p><b>(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</b></p>	<p>N/A</p>





**Comparison of Housing Provisions of VAWA 2005, VAWA 2013 and HUD Regs Implementing VAWA 2005**  
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	<p><b>availability of tenant protection vouchers, assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)).”</b></p>	
<b>Implementation</b>	<p><b>Sec. 14043e-11(g):</b></p> <p><b>“The appropriate agency with respect to each covered housing program shall implement this section, as this section applies to the covered housing program.”</b></p>	N/A
<b>Rule of construction</b>	<p><b>42 U.S.C. § 1437d note</b></p> <p><b>“Nothing in this Act, or the amendments made by this Act, shall be construed—</b></p> <p><b>(A) to limit the rights or remedies available to any person under section 6 or 8 of the United States Housing Act of 1937 (42 U.S.C. 1437d and 1437f), as in effect on the day before the date of enactment of this Act;</b></p> <p><b>(B) to limit any right, remedy, or procedure otherwise available under any provision of part 5, 91, 880, 882, 883, 884, 886, 891, 903, 960, 966, 982, or 983 of title 24, Code of Federal Regulations, that—</b></p> <p><b>(i) was issued under the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109–162; 119 Stat. 2960) or an amendment made by that Act; and</b></p> <p><b>(ii) provides greater protection for victims of domestic violence, dating violence, sexual assault, and stalking than this Act; or</b></p> <p><b>(C) to disqualify an owner, manager, or other individual from participating in or receiving the benefits of the low income housing tax credit program under section 42 of the Internal Revenue Code of 1986 because of noncompliance with the provisions of this Act.”</b></p>	N/A



## VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards

On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). The law continues many of the housing protections that had been provided by the Violence Against Women Act of 2005 (VAWA 2005) and further expands these safeguards in several crucial ways. Like VAWA 2005, VAWA 2013 prohibits public housing authorities (PHAs) and owners and managers of public housing, the Section 8 Housing Choice Voucher program and Section 8 Project-based housing from denying a survivor admission to, assistance for, or evicting them from the housing because the applicant or tenant is a victim of domestic violence, dating violence, or stalking. In addition, incidents of abuse can neither be construed as a serious or repeated lease violation nor considered good cause for terminating the assistance or tenancy. Survivors also cannot be denied or evicted from the housing on the basis of criminal activity related to the abuse committed against them or a household member. However, a PHA, owner or manager may evict or terminate assistance to a victim if the PHA, owner or manager can demonstrate an actual and imminent threat to other tenants or employees at the property in the event that the tenant is not evicted or terminated from assistance. Additionally, VAWA 2013 continues safeguards for survivors concerning lease bifurcation, portability of Section 8 voucher assistance and confidentiality. The new law also does not amend PHAs' obligations to undertake programs to assist survivors and, in their five-year plans, to set out goals and policies used to serve survivors' housing needs.

The following highlights key differences between VAWA 2005 and VAWA 2013.

**Housing covered.** Previously, VAWA 2005 only applied to public housing, the Section 8 Housing Choice Voucher program and Section 8 Project-based housing. HUD regulations implementing VAWA 2005 also covered Section 202 housing for the elderly and Section 811 housing for people with disabilities. All of these programs are administered by HUD. VAWA 2013 expanded the list of housing to which VAWA applies by including additional HUD programs and certain housing administered by the Department of Agriculture and the Department of Treasury. VAWA 2013 applies to the following types of housing ("covered housing programs"):

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

**Parties whom VAWA protects.** VAWA 2013 expands the housing protections to cover survivors of sexual assault. As such, VAWA 2013 protects anyone who:

1. Is a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking, or an “affiliated individual” of the victim (spouse, parent, brother, sister, or child of that victim; or an individual to whom that victim stands in loco parentis; or an individual, tenant or lawful occupant living in the victim’s household) AND
2. Is living in, or seeking admission to, any of the covered housing programs.

Notably, VAWA 2013 gets rid of the requirement under VAWA 2005 that the household member be related by blood or marriage to the victim. Therefore, VAWA 2013 protects individuals who simply live in the victim’s household, regardless of whether they are related by marriage or blood to the victim. In addition, the law revised the definition of “domestic violence” to include crimes of violence committed by an intimate partner of the victim or by a person who has cohabitated with the victim as an intimate partner. VAWA 2013 further amended the definition of “stalking” by including a more general definition than had been provided by VAWA 2005.

**Bifurcation.** Like VAWA 2005, VAWA 2013 allows PHAs, owners and managers of the covered housing programs to bifurcate a lease to evict or terminate assistance to any tenant or lawful occupant who engages in criminal acts of violence against an affiliated individual or others. This action may be taken without penalizing the survivor who is also a tenant or lawful occupant. Importantly, VAWA 2013 adds a new protection for tenants who remain in the housing as a result of the lease bifurcation. Specifically, if a PHA, owner or manager evicts or terminates assistance to an individual because of criminal acts of violence against family members or others, and that individual is the only tenant eligible to receive the housing assistance, then any remaining tenant will have the opportunity to establish eligibility for the assistance. If no tenant can establish such eligibility, then the PHA, owner or manager must provide the tenant reasonable time (as determined by the respective federal agency) to find new housing or to establish eligibility under another covered housing program.

#### **Certification.**

- Discretion of PHAs and owners. Like VAWA 2005, VAWA 2013 allows, but does not require, PHAs, owners and managers to ask in writing an individual for certification that he or she is a victim of domestic violence, dating violence, sexual assault or stalking if the individual seeks VAWA’s protections. At their discretion, PHAs, owners or managers may apply VAWA to an individual based solely on the individual’s statement or other evidence.
- Agency-approved form. VAWA 2013 revised the certification process outlined under VAWA 2005 and implemented through forms HUD-50066 or HUD-91066. The new law permits PHAs, owners and managers to request that an individual certify via a form approved by the appropriate federal agency. This form must (1) state that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault or stalking; (2) state that the incident that is the ground for protection meets the requirements under the statute; and (3) include the name of perpetrator, if the name is known and safe to provide.
- Other permissible documents. VAWA 2013 expanded the type of third-party documentation to add one signed by a victim and a mental health professional. Also, a victim may now provide an administrative record to document the abuse.
- Timeline. Both VAWA 2005 and 2013 provide that after a PHA, owner or manager has requested certification in writing, an applicant or tenant has 14 business days to respond to the request. If an individual does not provide the documentation within the 14 days, a PHA, owner or manager may deny admission or assistance, terminate the assistance or bring eviction proceedings for good cause. However, a PHA, owner or manager may extend this timeframe.



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**Conflicting certification.** In situations where the PHA, owner or manager receives documentation with conflicting information, VAWA 2013 provides that the PHA, owner or manager may require an applicant or tenant to submit any of the above-mentioned third-party documentation. While VAWA 2005 did not cover this issue, the HUD regulations implementing VAWA 2005 did address the matter by similarly allowing third-party documentation in instances where two or more household members claimed to be the victim and named the other person as the perpetrator.

**Emergency transfers.** VAWA 2013 includes a new provision mandating that each federal agency adopt a model emergency transfer plan to be used by PHAs and owners or managers of housing assisted under the covered housing programs. This transfer plan must allow survivor tenants to transfer to another available and safe dwelling unit assisted under a covered housing program if (1) the tenant expressly requests the transfer and (2) either the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same assisted dwelling unit, or where the tenant is a victim of sexual assault and the sexual assault occurred on the premises 90 days before the transfer request. In addition, the transfer plan must incorporate reasonable confidentiality measures to ensure that the PHA, owner or manager does not disclose the location of the new unit to the abuser. VAWA 2013 further mandates that HUD establish policies and procedures under which a victim requesting an emergency transfer can receive a tenant protection voucher.

**Notification and language access.** VAWA 2013 significantly revised the notification requirements for PHAs and owners or managers of the covered housing programs. The new law requires HUD to develop a notice of rights for victims (“HUD notice”), which includes the right of confidentiality. PHAs, owners and managers must provide the HUD notice accompanied by the agency-approved, self-certification form to applicants and tenants: (1) at the time an applicant is denied residency; (2) at the time the individual is admitted; and (3) with any notification of eviction or termination of assistance. In addition, the HUD notice must be available in multiple languages and be consistent with HUD guidance concerning language access for individuals with limited-English proficiency.

Resource:

Violence Against Women Reauthorization Act of 2013  
<http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf>

## VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards

On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).<sup>1</sup> VAWA 2013 extends protections to victims on tribal land as well as LGBT and immigrant survivors of sexual assault and domestic violence. In addition, the law continues many of the housing protections that had been provided by the Violence Against Women Act of 2005 (VAWA 2005) and further expands these safeguards in several crucial ways. These changes include covering more federal housing programs; extending protections to survivors of sexual assault; allowing survivors who remain in the unit to establish eligibility or find new housing when a lease is bifurcated; providing survivors with emergency transfers; and notifying applicants and tenants of VAWA housing rights at three critical junctures. Another notable amendment concerns the mechanics of the revisions: VAWA 2013 makes the housing protections for all covered programs more consistent by repealing many of the prior provisions that had been replicated in several program statutes and consolidating them into a new section within the Violence Against Women Act.<sup>2</sup>

This article summarizes the major housing provisions of VAWA 2013 and highlights key differences between VAWA 2005 and VAWA 2013.

**Housing covered.** Previously, the housing protections of VAWA 2005 only applied to public housing, the Section 8 Housing Choice Voucher program, Section 8 project-based housing, Section 202 housing for the elderly and Section 811 housing for people with disabilities.<sup>3</sup> All of these programs are administered by HUD. VAWA 2013 expanded the list of housing to which VAWA applies by including additional HUD programs and specific affordable housing programs administered by the Department of Agriculture and the Department of Treasury. VAWA 2013 applies to the following types of housing (“covered housing programs”):

- Department of Housing and Urban Development (HUD)
  - Public housing;
  - Section 8 Housing Choice Voucher program;
  - Section 8 project-based housing;
  - Section 202 housing for the elderly;
  - Section 811 housing for people with disabilities;
  - Section 236 multifamily rental housing;
  - Section 221(d)(3) Below Market Interest Rate (BMIR) housing;
  - HOME;
  - Housing Opportunities for People with Aids (HOPWA);
  - McKinney-Vento Act programs.
- Department of Agriculture
  - Rural Development (RD) multifamily housing programs.
- Department of Treasury
  - Low-Income Housing Tax Credit (LIHTC)<sup>4</sup>

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<sup>1</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) [hereinafter “VAWA 2013”], available at <http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf>.

<sup>2</sup> See generally VAWA 2013, § 601 (to be codified at 42 U.S.C. §§ 14043e-11, 1437d note).

<sup>3</sup> See HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66,246 (Oct. 27, 2010) (codified at 24 C.F.R. Parts 5, 91, 880, et al).

<sup>4</sup> VAWA 2013, § 601 (to be codified at 42 U.S.C. § 14043e-11(a)(3); amending 42 U.S.C. § 1437d (c), (l), (u) (public housing program) and 42 U.S.C. § 1437f (c), (d)(1), (f), (o), (ee) (Section 8 programs)).

While these changes substantially extend VAWA's coverage to include most affordable housing programs, they provide no protection to tenants in private market-rate housing.

**Parties whom VAWA protects.** VAWA 2013 expands the housing protections to cover survivors of sexual assault.<sup>5</sup> As such, VAWA 2013 protects anyone who:

1. Is a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking, or an "affiliated individual" of the victim (spouse, parent, brother, sister, or child of that victim; or an individual to whom that victim stands in loco parentis; or an individual, tenant or lawful occupant living in the victim's household) AND
2. Is living in, or seeking admission to, any of the covered housing programs.<sup>6</sup>

Notably, VAWA 2013 gets rid of the requirement under VAWA 2005 that the household member be related by blood or marriage to the victim.<sup>7</sup> Therefore, VAWA 2013 protects individuals who simply live in the victim's household, regardless of whether they are related by marriage or blood to the victim.

**Definitions of "domestic violence," "dating violence," "sexual assault" and "stalking."** The new law revised the definition of "domestic violence" to include crimes of violence committed by an intimate partner of the victim or by a person who has cohabitated with the victim as an intimate partner. VAWA 2013 further amended the definition of "stalking" by including a more general definition than had been provided by VAWA 2005.

VAWA 2013 defines the terms in the following manner:

- "Domestic violence" includes felony or misdemeanor crimes of violence committed by:
  - A current or former spouse or intimate partner of the victim;
  - A person with whom the victim shares a child;
  - A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
  - A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or
  - Any other person who committed a crime against an adult or youth victim who is protected under the domestic or family violence laws of the jurisdiction.<sup>8</sup>
- "Dating violence" is violence committed by a person:
  - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - The existence of such a relationship is determined based on the following factors:
    - Length of the relationship
    - Type of relationship
    - Frequency of interaction between the persons involved in the relationship.<sup>9</sup>
- "Sexual assault" means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.<sup>10</sup>

<sup>5</sup> See generally VAWA 2013, § 601.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* (to be codified at 42 U.S.C. § 14043e-11(a)(1); striking 42 U.S.C. § 1437d(u)(3)(D), 42 U.S.C. § 1437f(f)(11)).

<sup>8</sup> VAWA 2013, § 3(a) (amending definition of "domestic violence" and relocating it to 42 U.S.C. § 13925(a)(8)); VAWA 2013, § 601 (striking 42 U.S.C. § 1437d(u)(3)(A), 42 U.S.C. § 1437f(f)(8)).

<sup>9</sup> VAWA 2013, § 3(a) (relocating definition of "dating violence" to 42 U.S.C. § 13925(a)(10)); VAWA 2013, § 601 (striking 42 U.S.C. § 1437d(u)(3)(B), 42 U.S.C. § 1437f(f)(9)).

<sup>10</sup> VAWA 2013, § 3(a) (adding 42 U.S.C. § 13925(a)(29)).

- “Stalking” is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for his or her safety or others; or
  - Suffer substantial emotional distress.<sup>11</sup>

**Parties who must comply with VAWA.** Public housing authorities, owners and managers participating in the covered housing programs must comply with VAWA 2013.<sup>12</sup>

**Denials of admissions, termination of tenancy or assistance.** VAWA 2013 continues VAWA 2005’s protections that prohibit an applicant or tenant from being denied admission to, denied assistance under, terminated from participation in, or evicted 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. Like VAWA 2005, the new law indicates that an incident of actual or threatened domestic violence, dating violence, sexual assault or stalking will not be construed as a serious or repeated violation of the lease by the victim and will not be good cause for terminating the assistance or tenancy of the victim.<sup>13</sup>

**Criminal activity directly related to the abuse.** VAWA 2013 prohibits any person from being denied assistance, tenancy or occupancy rights to housing solely on the basis of criminal activity, if that activity is directly related to domestic violence, dating violence, sexual assault or stalking engaged in by a household member, guest or any person under the tenant’s control, if the tenant or affiliated individual of the tenant is the victim.<sup>14</sup>

**“Actual and imminent threat” provision.** As previously authorized by VAWA 2005, a PHA, owner or manager may evict or terminate assistance to a victim if the PHA, owner or manager can demonstrate an actual and imminent threat to other tenants or employees at the property in the event that the tenant is not evicted or terminated from assistance.<sup>15</sup>

Like VAWA 2005, VAWA 2013 does not define “actual and imminent threat.” Therefore, it will be critical for advocates to work with the federal agencies responsible for administering the covered housing programs, especially USDA’s Rural Development or the Treasury’s IRS, to include in their implementing regulations a clear definition of this crucial term as well as guidance. For example, current HUD regulations implementing VAWA 2005 define the term as a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.<sup>16</sup> Furthermore, the regulations provide that certain factors be considered in determining the existence of an “actual or imminent threat,” including the duration of the risk, the nature and severity of the potential harm, the

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<sup>11</sup> *Id.* (relocating definition of “stalking” to 42 U.S.C. § 13925(a)(30)); VAWA 2013, § 601 (striking 42 U.S.C. § 1437d(u)(3)(C), 42 U.S.C. § 1437f(f)(10)).

<sup>12</sup> *See generally* VAWA 2013, § 601.

<sup>13</sup> *See id.* (to be codified at 42 U.S.C. § 14043e-11(b)(1), (b)(2); striking 42 U.S.C. § 1437d(c)(3), 42 U.S.C. § 1437f(c)(9)(A), 42 U.S.C. § 1437d(l)(5), 42 U.S.C. § 1437f(c)(9)(B), 42 U.S.C. § 1437f(o)(20)(B)). Note that VAWA 2013 did not strike VAWA 2005’s protections concerning admissions in the Section 8 Voucher statute, 42 U.S.C. § 1437f(o)(6)(B) (2013). This is likely an oversight. Advocates should use the housing provisions of VAWA 2013 for these safeguards as applied to the Voucher program because they also cover sexual assault victims.

<sup>14</sup> *Id.* (to be codified at 42 U.S.C. § 14043e-11(b)(3)(A); striking 42 U.S.C. § 1437d(l)(6)(A), 42 U.S.C. § 1437f(c)(9)(C)(i), 42 U.S.C. § 1437f(o)(20)(C)).

<sup>15</sup> *Id.* (to be codified at 42 U.S.C. § 14043e-11(b)(3)(C)(iii); striking 42 U.S.C. § 1437d(l)(6)(E), 42 U.S.C. § 1437f(c)(9)(C)(v), 42 U.S.C. § 1437f(o)(20)(D)(iv)).

<sup>16</sup> 24 C.F.R. § 5.2005(e) (2013).

likelihood that the potential harm will occur, and the length of time before the potential harm would occur.<sup>17</sup> In addition, HUD indicated that eviction or termination of a victim's assistance under this provision should occur "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."<sup>18</sup>

**Victims must be held to the same standard as other tenants.** As under VAWA 2005, for lease violations unrelated to the abuse, a PHA, owner or manager cannot subject an individual who is 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.<sup>19</sup>

**Bifurcation.** Like VAWA 2005, VAWA 2013 allows PHAs, owners and managers of the covered housing programs to bifurcate a lease to evict or terminate assistance to any tenant or lawful occupant who engages in criminal acts of violence against an affiliated individual or others. This action may be taken without penalizing the survivor who is also a tenant or lawful occupant.<sup>20</sup>

Importantly, VAWA 2013 adds a new protection for tenants who remain in the housing as a result of the lease bifurcation. Specifically, if a PHA, owner or manager evicts, removes or terminates assistance to an individual because of criminal acts of violence against family members or others, and that individual is the only tenant eligible to receive the housing assistance, then any remaining tenant will have the opportunity to establish eligibility for the assistance. If no tenant can establish such eligibility, then the PHA, owner or manager must provide the tenant reasonable time (as determined by the respective federal agency) to find new housing or to establish eligibility under another covered housing program.<sup>21</sup>

**Portability.** VAWA 2013 makes no change to victims' protections concerning portability of Section 8 vouchers, as provided by VAWA 2005. Therefore, a PHA may still permit a family with a Section 8 voucher to move to another jurisdiction if the family has complied with all other obligations of the program and is moving to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence or stalking. The PHA may permit the family to move even if the family's lease term has not yet expired.<sup>22</sup>

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

**Court orders.** Like VAWA 2005, VAWA 2013 requires that PHAs, owners and managers honor court orders addressing rights of access to or control of property, including civil protection orders issued to

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<sup>17</sup> *Id.*

<sup>18</sup> 24 C.F.R. § 5.2005(d)(3) (2013).

<sup>19</sup> VAWA 2013, § 601 (to be codified at 42 U.S.C. § 14043e-11(b)(3)(C)(ii); striking 42 U.S.C. § 1437d(l)(6)(D), 42 U.S.C. § 1437f(c)(9)(C)(iv), 42 U.S.C. § 1437f(o)(20)(D)(iii)).

<sup>20</sup> *Id.* (to be codified at 42 U.S.C. § 14043e-11(b)(3)(B)(i); striking 42 U.S.C. § 1437d(l)(6)(B), 42 U.S.C. § 1437f(c)(9)(C)(ii), 42 U.S.C. § 1437f(o)(20)(D)(i)).

<sup>21</sup> *Id.* (to be codified at 42 U.S.C. § 14043e-11(b)(3)(B)(ii)).

<sup>22</sup> 42 U.S.C.A. § 1437f(r)(5) (West 2013).



protect the victim, as well as orders addressing the distribution or possession of property among household members in a case.<sup>23</sup>

### Certification.

- Discretion of PHAs and owners. Like VAWA 2005, VAWA 2013 allows, but does not require, PHAs, owners and managers to make a written request to an individual for certification that he or she is a victim of domestic violence, dating violence, sexual assault or stalking when seeking VAWA's protections. At their discretion, PHAs, owners or managers may apply VAWA to an individual based solely on the individual's statement or other evidence. Any requests for certification must be in writing.<sup>24</sup>
  - Agency-approved form. VAWA 2013 revised the certification process outlined under VAWA 2005 and implemented through forms HUD-50066 or HUD-91066. The new law permits PHAs, owners and managers to request that an individual certify via a form approved by the appropriate federal agency. This form must: (1) state that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault or stalking; (2) state that the incident that is the ground for protection meets the requirements under the statute; and (3) include the name of perpetrator, if the name is known and safe to provide.<sup>25</sup>
- Other permissible documents. VAWA 2013 expanded the forms of documentation to include one signed by a victim and a mental health professional in which the professional attests under penalty of perjury. In addition, a victim may now provide an administrative record to document the abuse. Under the new law, instead of the certification form, the applicant or tenant may provide:
- Documentation signed by the victim and a victim service provider, an attorney, a medical professional, or a mental health professional in which the professional attests under penalty of perjury to his or her belief that the victim has experienced an incident of domestic violence, dating violence, sexual assault or stalking that meets the grounds for protection under the statute; or
  - A federal, state, tribal, territorial, or local law enforcement, court or administrative record.<sup>26</sup>
- Timeline. After a PHA, owner or manager has requested certification in writing, an applicant or tenant has 14 business days to respond to the request. If an individual does not provide the documentation within the 14 days, a PHA, owner or manager may deny admission or assistance, terminate the assistance or bring eviction proceedings for good cause. However, a PHA, owner or manager may extend this timeframe.<sup>27</sup>

**Conflicting certification.** In situations where the PHA, owner or manager receives documentation with conflicting information, VAWA 2013 provides that the PHA, owner or manager may require an applicant

<sup>23</sup> VAWA 2013, § 601 (to be codified at 42 U.S.C. § 14043e-11(b)(3)(C)(i); striking 42 U.S.C. § 1437d(1)(6)(C), 42 U.S.C. § 1437f(c)(9)(C)(iii), 42 U.S.C. § 1437f(o)(20)(D)(ii)).

<sup>24</sup> *Id.* (to be codified at 42 U.S.C. § 14043e-11(c)(3)(D), (c)(5); striking 42 U.S.C. § 1437d(u)(1)(D), 42 U.S.C. § 1437f(ee)(1)(D)).

<sup>25</sup> *Id.* (to be codified at 42 U.S.C. § 14043e-11(c)(3)(A); striking 42 U.S.C. § 1437d(u)(1)(A), 42 U.S.C. § 1437f(ee)(1)(A)).

<sup>26</sup> *Id.* (to be codified at 42 U.S.C. § 14043e-11(c)(3)(B), (C); striking 42 U.S.C. § 1437d(u)(1)(C), 42 U.S.C. § 1437f(ee)(1)(C)).

<sup>27</sup> *Id.* (to be codified at 42 U.S.C. § 14043e-11(c)(2); striking 42 U.S.C. § 1437d(u)(1)(B), 42 U.S.C. § 1437f(ee)(1)(B)).

or tenant to submit any of the above-mentioned third-party documentation.<sup>28</sup> While VAWA 2005 did not cover this issue, the HUD regulations implementing VAWA 2005 did address the matter by similarly allowing third-party documentation in instances where two or more household members claimed to be the victim and named the other person as the perpetrator.<sup>29</sup>

**Emergency transfers.** VAWA 2013 includes a new provision mandating that each federal agency adopt a model emergency transfer plan to be used by PHAs and owners or managers of housing assisted under the covered housing programs. This transfer plan must allow survivor tenants to transfer to another available and safe dwelling unit assisted under a covered housing program if: (1) the tenant expressly requests the transfer and (2) either the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same assisted dwelling unit, or where the tenant is a victim of sexual assault and the sexual assault occurred on the premises within 90 days before the transfer request. In addition, the transfer plan must incorporate reasonable confidentiality measures to ensure that the PHA, owner or manager does not disclose the location of the new unit to the abuser. Because the new statute fails to explicitly require PHAs and owners to adopt the model plan, regulatory clarifications concerning this duty appear necessary. VAWA 2013 further mandates that HUD establish policies and procedures under which a victim requesting an emergency transfer may receive a tenant protection voucher,<sup>30</sup> although the statute is unclear about whether a victim is entitled to receive a transfer voucher where other transfer options are infeasible.

**Confidentiality.** In addition to the confidentiality mandate under the new emergency transfer provision, VAWA 2013 further requires that a PHA, owner or manager keep confidential the information an individual provides to certify victim status, including the individual's status as a victim. Furthermore, this information cannot be entered into a shared database or disclosed to another entity or individual, unless the disclosure is: requested or consented to by the individual in writing; required for use in an eviction proceeding to determine whether the incident qualifies as a serious or repeated violation of the lease, good cause to terminate assistance or tenancy, or criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking; or otherwise required by law.<sup>31</sup>

The HUD regulations implementing VAWA 2005 also prohibit employees of a PHA, owner or management agent from accessing the information regarding domestic violence unless they are specifically and explicitly authorized to access this information because it is necessary for their work.<sup>32</sup> Presumably, this access limitation will remain effective under VAWA 2013, and, hopefully, will be expanded to the other newly covered housing programs.

**Notification and language access.** VAWA 2013 significantly revised the notification requirements for PHAs and owners or managers of the covered housing programs. The new law requires HUD to develop a notice of VAWA housing rights ("HUD notice"), which includes the right of confidentiality, for applicants and tenants. Specifically, PHAs, owners and managers must provide the HUD notice accompanied by the agency-approved, self-certification form to applicants and tenants: (1) at the time an applicant is denied residency; (2) at the time the individual is admitted; and (3) with any notification of

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<sup>28</sup> *Id.* (to be codified at 42 U.S.C. § 14043e-11(c)(7)).

<sup>29</sup> *See* 24 C.F.R. § 5.2007(e) (2013).

<sup>30</sup> VAWA 2013, § 601 (to be codified at 42 U.S.C. § 14043e-11(e), (f)).

<sup>31</sup> *Id.* (to be codified at 42 U.S.C. § 14043e-11(c)(4); striking 42 U.S.C. § 1437d(u)(2)(A), 42 U.S.C. § 1437f(ee)(2)(A)).

<sup>32</sup> *See* 24 C.F.R. § 5.2007(b)(4) (2013).

eviction or termination of assistance.<sup>33</sup> In addition, the HUD notice must be available in multiple languages and be consistent with HUD guidance concerning language access for individuals with limited-English proficiency.<sup>34</sup>

**PHA plans.** VAWA 2013 did not amend VAWA 2005's provisions concerning the PHA planning process. Therefore, a PHA must still include in its annual plan a description of any activities, services, or programs being undertaken to assist victims of domestic violence, dating violence, sexual assault or stalking.<sup>35</sup> In addition, a PHA must include in its five-year plan a description of any goals, objectives, policies, or programs it uses to serve victims' housing needs.<sup>36</sup> Furthermore, any local community that receives HUD assistance must include in its consolidated planning process a description of the housing needs of victims of domestic violence, dating violence, sexual assault and stalking.<sup>37</sup>

**Preemption and impact on existing protections.** VAWA 2013 does not preempt any Federal, State or local law that provides greater protections for victims of domestic violence, dating violence, sexual assault or stalking.<sup>38</sup> Further, the new law does not limit any rights or remedies available under Section 6 or 8 of the United States Housing Act of 1937 and the implementing regulations of VAWA 2005's housing provisions.<sup>39</sup> Accordingly, the implementing regulations for VAWA 2013 can only augment the existing regulatory protections.

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<sup>33</sup> VAWA 2013, § 601 (to be codified at 42 U.S.C. § 14043e-11(d); striking 42 U.S.C. § 1437d(u)(2)(B), 42 U.S.C. § 1437f(ee)(2)(B)).

<sup>34</sup> *Id.*

<sup>35</sup> 42 U.S.C.A. § 1437c-1(d)(13) (West 2013).

<sup>36</sup> 42 U.S.C.A. § 1437c-1(a)(2) (West 2013).

<sup>37</sup> 42 U.S.C.A. § 12705(b)(1) (West 2013).

<sup>38</sup> VAWA 2013, § 601 (to be codified at 42 U.S.C. § 14043e-11(b)(3)(C)(iv), (c)(8); striking 42 U.S.C. § 1437d(u)(1)(E), 42 U.S.C. § 1437f(ee)(1)(F)).

<sup>39</sup> VAWA 2013, § 601(b)(3) (to be codified at 42 U.S.C.A. § 1437d note).