under section 9 of the Act, and that precedent already exists for allowing HUD to make certain interpretations relating to the section 42 program. The final regulations do not adopt this suggestion. The IRS and Treasury believe they should retain the ability to determine what costs are appropriately characterized as operating costs that require a reduction in a building's eligible basis under section 42(d)(5) of the Code.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Christopher J. Wilson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Section 1.42–16T and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.42–16 also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–16 is added to read as follows:

§ 1.42–16 Eligible basis reduced by federal grants.

(a) *In general.* If, during any taxable year of the compliance period (described in section 42(i)(1)), a grant is made with respect to any building or the operation thereof and any portion of the grant is funded with federal funds (whether or not includible in gross income), the eligible basis of the building for the taxable year and all succeeding taxable years is reduced by the portion of the grant that is so funded.

(b) *Grants do not include certain rental assistance payments.* A federal rental assistance payment made to a building owner on behalf or in respect of a tenant is not a grant made with respect to a building or its operation if the payment is made pursuant to—

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

(2) A qualifying program of rental assistance administered under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g); or

(3) A program or method of rental assistance as the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(c) *Qualifying rental assistance program.* For purposes of paragraph (b)(2) of this section, payments are made pursuant to a qualifying rental assistance program administered under section 9 of the United States Housing Act of 1937 to the extent that the payments—

(1) Are made to a building owner pursuant to a contract with a public housing authority with respect to units the owner has agreed to maintain as public housing units (PH-units) in the building;

(2) Are made with respect to units occupied by public housing tenants, provided that, for this purpose, units may be considered occupied during periods of short term vacancy (not to exceed 60 days); and

(3) Do not exceed the difference between the rents received from a building's PH-unit tenants and a pro rata portion of the building's actual operating costs that are reasonably allocable to the PH-units (based on square footage, number of bedrooms, or similar objective criteria), and provided that, for this purpose, operating costs do not include any development costs of a building (including developer's fees) or the principal or interest of any debt incurred with respect to any part of the building.

(d) *Effective date.* This section is effective September 26, 1997.

§ 1.42–16T [Removed]

Par. 3. Section 1.42–16T is removed.

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved: August 26, 1997.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25490 Filed 9–25–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8732]

RIN 1545–AT60

Available Unit Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the treatment of low-income housing units in a building that is occupied by individuals whose incomes increase above 140 percent of the income limitation applicable under section 42(g)(1). These regulations affect owners of those buildings who claim the low-income housing tax credit.

DATES: These regulations are effective September 26, 1997.

For dates of applicability of these regulations, see § 1.42–15(i).

FOR FURTHER INFORMATION CONTACT: David Selig, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1996, the IRS published a notice of proposed rulemaking in the **Federal Register** (PS–29–95 at 61 FR 27036) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42(g)(2)(D) of the Internal Revenue Code. A public hearing was scheduled for September 17, 1996, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. However, the IRS received no requests to speak at the public hearing, and no public hearing was held. Written comments responding to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The general rule in section 42(g)(2)(D)(i) provides that if the income

of an occupant of a low-income unit increases above the income limitation applicable under section 42(g)(1), the unit continues to be treated as a low-income unit. This general rule only applies if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii), however, provides an exception to the general rule in section 42(g)(2)(D)(i). Under this exception, the unit ceases being treated as a low-income unit when two conditions occur. The first condition is that the occupant's income increases above 140 percent of the income limitation applicable under section 42(g)(1), or above 170 percent for a deep rent skewed project described in section 142(d)(4)(B) (applicable income limitation). When this occurs, the unit becomes an over-income unit. The second condition is that a new occupant, whose income exceeds the applicable income limitation (nonqualified resident), occupies any residential unit in the building of a comparable or smaller size (comparable unit).

Rules and Definitions

One commentator suggested that the available unit rule under the proposed regulations did not clearly indicate whether the aggregate income of all occupants of a unit is taken into account. Accordingly, the final regulations clarify that an over-income unit means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B).

Commentators requested that the final regulations specify whether a comparable unit is measured by floor space or number of bedrooms. The final regulations provide that a comparable unit must be measured by the same method the taxpayer used to determine qualified basis for the credit year in which the comparable unit became available.

Some commentators stated that the provision in the proposed regulations that all available comparable units (not just the "next available" unit) must be rented to qualified residents to continue treating an over-income unit as a low-income unit is inconsistent with the title of section 42(g)(2)(D)(ii). Although the title of that provision uses the term next available unit, the text of the rule provides that if any available comparable unit is occupied by a nonqualified resident, the over-income unit ceases to be treated as a low-income unit. This means that if a building has more than one over-income unit, renting any available comparable unit (a comparably sized or smaller unit) to a qualified resident preserves the status of all over-income units as low-income units. Similarly, if any available comparable unit is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit lose their status as low-income units; thus, comparably sized or larger over-income units would lose their status as low-income units. In operation, this means that the owner must continue to rent any available comparable unit to a qualified resident until the percentage of low-income units in a building (excluding the over-income units) is equal to the percentage of low-income units on which the credit is based. At that point, failure to maintain the over-income units as low-income units has no immediate significance. (However, the failure to maintain an over-income unit as a low-income unit may affect the owner's decision of whether or not to rent a particular available unit at market rate at a later time.) Consequently, the final regulations provide that all available comparable units in the building, not only the next available comparable unit, must be rented to qualified residents to retain the low-income status of the over-income units.

Application of Rules on a Building by Building Basis

The proposed regulations provide that in a project containing more than one low-income building, the available unit rule applies separately to each building. Some commentators suggested that the regulations should permit residents of over-income units to move to available units in different buildings within the same low-income housing project without violating the available unit rule. However, because the requirements under section 42 must be satisfied on a building by building basis, the final regulations provide that the available unit rule only permits a current resident to move to another unit within the same building of a low-income housing project.

In addition, in response to requests from several commentators, the final regulations make clear that when a current resident moves to a different unit within the same low-income building, the units exchange status. (See example 2 of § 1.42–15(g) of the proposed regulations and § 1.42–15(h) of the final regulations.) Thus, the newly occupied unit adopts the status of the vacated unit, and the vacated unit assumes the status the newly occupied unit had immediately prior to its occupancy by the qualifying residents.

Timing Issues

The methods of committing rental units to tenants varies in different jurisdictions. However, it is a common rental practice to have some form of preliminary reservation for a unit prior to the date on which a lease is signed or the unit is occupied. Thus, several commentators have requested clarification that once a unit is reserved for a prospective tenant, it is no longer treated as available for purposes of the available unit rule. Accordingly, the final regulations provide that a unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to a reservation that is binding under local law.

Finally, financing arrangements using obligations that purport to be exempt facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). The requirements under section 142(d) may differ from those under section 42. Accordingly, the final regulations provide that the rules under the final regulations are not intended as an interpretation of the applicable rules under section 142.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is David Selig, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42–15 is also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–15 is added to read as follows:

§ 1.42–15 Available unit rule.

(a) *Definitions.* The following definitions apply to this section:

Applicable income limitation means the limitation applicable under section 42(g)(1) or, for deep rent skewed projects described in section 142(d)(4)(B), 40 percent of area median gross income.

Available unit rule means the rule in section 42(g)(2)(D)(ii).

Comparable unit means a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent skewed projects described in section 142(d)(4)(B), any low-income unit. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available.

Current resident means a person who is living in the low-income building.

Low-income unit is defined by section 42(i)(3)(A).

Nonqualified resident means a new occupant or occupants whose aggregate income exceeds the applicable income limitation.

Over-income unit means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B).

Qualified resident means an occupant either whose aggregate income (combined with the income of all other occupants of the unit) does not exceed the applicable income limitation and who is otherwise a low-income resident under section 42, or who is a current resident.

(b) *General section 42(g)(2)(D)(i) rule.* Except as provided in paragraph (c) of this section, notwithstanding an increase in the income of the occupants of a low-income unit above the applicable income limitation, if the income of the occupants initially met the applicable income limitation, and the unit continues to be rent-restricted—

(1) The unit continues to be treated as a low-income unit; and

(2) The unit continues to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set-aside requirement of section 42(g)(1).

(c) *Exception.* A unit ceases to be treated as a low-income unit if it becomes an over-income unit and a nonqualified resident occupies any comparable unit that is available or that subsequently becomes available in the same low-income building. In other words, the owner of a low-income building must rent to qualified residents all comparable units that are available or that subsequently become available in the same building to continue treating the over-income unit as a low-income unit. Once the percentage of low-income units in a building (excluding the over-income units) equals the percentage of low-income units on which the credit is based, failure to maintain the over-income units as low-income units has no immediate significance. The failure to maintain the over-income units as low-income units, however, may affect the decision of whether or not to rent a particular available unit at market rate at a later time. A unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law (for example, a unit is not available if it is subject to a preliminary reservation that is binding on the owner under local law prior to the date a lease is signed or the unit is occupied).

(d) *Effect of current resident moving within building.* When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current resident, whose income exceeds the applicable income limitation, moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

(e) *Available unit rule applies separately to each building in a project.* In a project containing more than one low-income building, the available unit rule applies separately to each building.

(f) *Result of noncompliance with available unit rule.* If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit within the same building lose their status as low-income units; thus, comparably sized or larger over-income units would lose their status as low-income units.

(g) *Relationship to tax-exempt bond provisions.* Financing arrangements that purport to be exempt-facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). This section is not intended as an interpretation under section 142.

(h) *Examples.* The following examples illustrate this section:

Example 1. This example illustrates noncompliance with the available unit rule in a low-income building containing three over-income units. On January 1, 1998, a qualified low-income housing project, consisting of one building containing ten identically sized residential units, received a housing credit dollar amount allocation from a state housing credit agency for five low-income units. By the close of 1998, the first year of the credit period, the project satisfied the minimum set-aside requirement of section 42(g)(1)(B). Units 1, 2, 3, 4, and 5 were occupied by individuals whose incomes did not exceed the income limitation applicable under section 42(g)(1) and were otherwise low-income residents under section 42. Units 6, 7, 8, and 9 were occupied by market-rate tenants. Unit 10 was vacant. To avoid recapture of credit, the project owner must maintain five of the units as low-income units. On November 1, 1999, the certificates of annual income state that annual incomes of the individuals in Units 1, 2, and 3 increased above 140 percent of the income limitation applicable under section 42(g)(1), causing those units to become over-income units. On November 30, 1999, Units 8 and 9 became vacant. On December 1, 1999, the project owner rented Units 8 and 9 to qualified residents who were not current residents at rates meeting the rent restriction requirements of section 42(g)(2). On December 31, 1999, the project owner rented Unit 10 to a market-rate tenant. Because Unit 10, an available comparable unit, was leased to a market-rate tenant, Units 1, 2, and 3 ceased to be treated as low-income units. On that date, Units 4, 5, 8, and 9 were the only remaining low-income units. Because the project owner did not maintain five of the residential units as low-income units, the qualified basis in the building is reduced, and credit must be recaptured. If the project owner had rented Unit 10 to a qualified resident who was not a current resident,

eight of the units would be low-income units. At that time, Units 1, 2, and 3, the over-income units, could be rented to market-rate tenants because the building would still contain five low-income units.

Example 2. This example illustrates the provisions of paragraph (d) of this section. A low-income project consists of one six-floor building. The residential units in the building are identically sized. The building contains two over-income units on the sixth floor and two vacant units on the first floor. The project owner, desiring to maintain the over-income units as low-income units, wants to rent the available units to qualified residents. J, a resident of one of the over-income units, wishes to occupy a unit on the first floor. J's income has recently increased above the applicable income limitation. The project owner permits J to move into one of the units on the first floor. Despite J's income exceeding the applicable income limitation, J is a qualified resident under the available unit rule because J is a current resident of the building. The unit newly occupied by J becomes an over-income unit under the available unit rule. The unit vacated by J assumes the status the newly occupied unit had immediately before J occupied the unit. The over-income units in the building continue to be treated as low-income units.

(i) *Effective date.* This section applies to leases entered into or renewed on and after September 26, 1997.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 26, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97-25493 Filed 9-25-97; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD8-97-038]

RIN 2115-AE46

Special Local Regulations; 1997 Galveston Offshore Powerboat Festival, Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Galveston Offshore Powerboat Festival. This event will be held on October 11, 1997 from 11 a.m. to 5 p.m. in the Galveston Ship Channel and on October 12, 1997 from 10 a.m. to 6 p.m. offshore of Galveston Island at Galveston, Texas. These regulations are needed to provide for the safety of life on the navigable waters during the event.

DATES: These regulations become effective on October 11, 1997 at 10:30 a.m. until 5:30 p.m. and on October 12, 1997 at 9:30 a.m. until 6:30 p.m.

FOR FURTHER INFORMATION CONTACT: LT Harry Schmidt, Operations Officer, U.S. Coast Guard Group Galveston. Tel: (409) 766-5603.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a power boat race called the "1997 Galveston Offshore Powerboat Festival". This event is sponsored by Texas Gulf Coast Racing, Inc. It will consist of an inshore powerboat race in the Galveston Ship Channel on October 11, 1997 and an offshore race on October 12, 1997. Approximately 60 offshore V-hull and catamaran-hull outboard and inboard race boats from 22 to 50 feet in length operating at high speeds are expected to participate in the races. The courses to be followed by the races will be marked by patrol vessels positioned at various points along each route. Fifty to two hundred spectator boats are expected for this event.

While viewing the event at any point outside the regulated area is not prohibited spectators will be encouraged to congregate within areas designated by the sponsor. Non-participating vessels will be permitted to transit the area every hour on the hour at No Wake Speed with the permission of the patrol commander.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e (34) (h) of Commandant Instruction M16475.1B, (as revised by 61 FR 13563; March 27, 1996) this rule is excluded from further environmental documentation.

List of Subjects In 33 CFR Part 100

Mine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T08-038 is added to read as follows:

§ 100.35-T08-038 Galveston, TX.

(a) *Regulated Area:* The Galveston Ship Channel from the Pelican Island Bridge to Pier 9 on October 11, 1997 and The Gulf of Mexico within the area bounded by a point on the shoreline at 29-18.7N, 094-45.5W southeast to 29-18.2N, 094-45.0W thence southwest to 29-16.0N, 094-46.4W thence west to 29-14.8.0N, 094-49.6W thence northwest to the shoreline at 29-15.7N, 094-52.0W on October 12, 1997.

(b) *Special Local Regulation:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are considered spectators.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5036-N-02]

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, and Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On December 30, 2005, HUD published a final rule implementing a new law that restricts individuals who are (1) enrolled at an institution of higher education (i.e., students), under the age of 24, not a veteran, unmarried, and do not have a dependent child, and (2) seeking assistance under section 8 of the United States Housing Act of 1937 (section 8 assistance) in their individual capacity (that is, separately from their parents) from receiving section 8 assistance if neither the student nor the student's parents are income eligible. This notice provides guidance to further assist with the implementation of these new eligibility restrictions.

FOR FURTHER INFORMATION CONTACT: For section 8 voucher issues, Patricia Arnaudo and LaDonna Reed-Morton, Management and Occupancy Division, Office of Public and Indian Housing, Room 4210, telephone (202) 708-0744; for the Office of Housing's Project-Based Section 8, Gail Williamson, Director, Housing Assistance Policy Division, Room 6138, telephone (202) 708-3000. For all of the individuals, the address is Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000. None of the aforementioned telephone numbers are toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION

I. Background

Fiscal Year 2006 appropriations for HUD were enacted in Title III of Public Law 109-115 (119 Stat. 2936) on November 30, 2005 (the Act). Section 327 of the administrative provisions of the Act (1) introduced new restrictions on housing assistance that may be provided to students of higher education under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (1937 Act), and (2) directed HUD to issue a final rule no later than 30 days following enactment of the Act. In accordance with this statutory direction, HUD published a final rule implementing section 327 of the Act (section 327) on December 30, 2005 (70 FR 77742), and this rule became effective on January 30, 2006.

In brief, the new law and HUD's rule require that if a student is enrolled at an institution of higher education, is under the age of 24, is not a veteran, unmarried and does not have a dependent child, is individually ineligible for section 8 assistance, or the student's parents are, individually or jointly, ineligible for assistance, *no* section 8 assistance can be provided to the student. Unless the student is determined independent from his or her parents, as discussed in this guidance, the eligibility of a student seeking section 8 assistance will be based on both the student *and* the parents being determined income eligible for section 8 assistance.

Under the new law and HUD's rule, the eligibility of a student seeking section 8 assistance will be examined along with the income eligibility of the student's parents. Both the student's income and the parents' income must be separately assessed for income eligibility. Additionally, the financial assistance of the student in excess of tuition will be included in annual income when determining the student's eligibility for section 8 assistance, unless the student is over the age of 23 with dependent children, and for rent calculation purposes as addressed in section II, E of this notice. The new law and rule focus on a student under the age of 24 who meets the additional requirements of section 327 of the Act and who is not residing in a section 8 assisted unit with his or her parents, but who is seeking on his or her own to reside in a section 8 assisted unit. The new law and rule do not apply to students residing with their parents in a section 8 assisted unit or who reside with parents who are applying to receive section 8 assistance. (See definition of "parents" in Appendix A of this notice.)

This notice provides guidance to public housing agencies (PHAs) and multifamily project owners and management agents (Owners and Managers) to assist with implementation of the new eligibility restrictions. Appendix A to this guidance defines certain terms. The new law, HUD's recently issued rule, and this guidance are intended to help ensure that section 8 assistance is provided to those truly in need of and eligible for such assistance.

II. Guidance

A. Covered HUD Programs

The new student eligibility restrictions only apply to HUD's section 8 programs. These new restrictions do not apply to HUD's Public Housing program. The new eligibility restrictions apply to the following section 8 programs administered by the Office of Housing and the Office of Public and Indian Housing.

Office of Housing Programs

- The Section 8 New Construction, Substantial Rehabilitation, State Agency, Rural Housing Services Section 515, Loan Management Set-Aside and Property Disposition Set-Aside Programs; and
- The Section 202/8 Direct Loan Program for the Elderly and Persons with Disabilities.

Office of Public and Indian Housing Programs

- The Housing Choice Voucher Program;
- The Project-Based Certificate Program;
- The Project-Based Voucher Program; and
- The Section 8 Moderate Rehabilitation Program.

B. Student Eligibility Requirements

The new eligibility restrictions imposed on students enrolled at institutions of higher education and seeking section 8 assistance are set out in two parts: Section 327(a) and section 327(b) of the Act.

1. Requirements of Section 327(a) of the Act and 24 CFR 5.612 of the Final Rule

The new eligibility restrictions of section 327(a) are implemented and codified in HUD's regulation at 24 CFR 5.612 and provide as follows:

No assistance shall be provided under section 8 of the 1937 Act to any individual who:

- Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);
- Is under 24 years of age;
- Is not a veteran of the United States military;
- Is unmarried;
- Does not have a dependent child, and
- Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under section 8 of the 1937 Act.

For a student under the age of 24 who is not a veteran, is unmarried, does not

have a dependent child and who is seeking section 8 assistance, section 327(a) of the Act sets up a two-part income eligibility test. Both parts of this test must be affirmatively met. That is, both the student and the student's parents (the parents individually or jointly) must be income eligible for the student to receive section 8 assistance. If it is determined that the parents are not income eligible, the student is ineligible to receive section 8 assistance.

As noted earlier in this guidance, based on program practices and criteria already in place, a student under the age of 24 who meets the additional criteria of section 327 of the Act may be income eligible for assistance in circumstances where an examination of the income of the student's parents may not be relevant or where the student can demonstrate the absence of, or his or her independence from, parents. These practices and criteria include but are not limited to consideration of all of the following:

1. The individual must be of legal contract age under state law.

2. The individual must have established a household separate from parents or legal guardians for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of an independent student. (See definition for "independent student" in Appendix A of this notice.)

3. The individual must not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations.

4. The individual must obtain a certification of the amount of financial assistance that will be provided by parents, signed by the individual providing the support. This certification is required even if no assistance will be provided.

PHAs, Owners, and Managers of section 8 assistance will need to verify a student's independence from his or her parents to determine that the student's parents' income is not relevant for determining the student's eligibility for assistance by taking into consideration all of the following:

1. Reviewing and verifying previous address information to determine evidence of a separate household, or Verifying the student meets the U.S. Department of Education's definition of "independent student"; and

2. Reviewing prior year income tax returns to verify if a parent or guardian has claimed the student as a dependent (except if the student meets the Department of Education definition of "independent student"); and

3. Verifying income provided by a parent by requiring a written certification from the individual providing the support. Certification is also required if the parent is providing no support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income.

As also noted earlier in this guidance, the new law and HUD's rule do not affect students residing in a section 8 assisted unit with his or her parents or who reside with parents who are applying to receive section 8 assistance. The law and HUD's rule focus on a student under the age of 24 who meets the additional eligibility requirements of section 327 of the Act *and* who is already residing in a section 8 assisted unit without his or her parents, or who is seeking on his or her own to reside in a section 8 assisted unit.

2. Requirements of Section 327(b) of the Act and 24 CFR 5.609 of the Final Rule

For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 10001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)) shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. (See definition of "dependent child" in Appendix A.) For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

HUD's final rule issued on December 30, 2005, amended § 5.609(b) to add a new paragraph (b)(9) to include, as annual income, any financial assistance in excess of amounts received for tuition that a student who meets the criteria of the new § 5.612 receives. With the exception of students who are over the age of 23 with dependent children, students under the age of 24 who are seeking section 8 assistance will need to meet the income requirements for the section 8 program, taking into consideration the additional eligibility restrictions provided in 24 CFR 5.609(b)(9) and 5.612. Therefore, in determining the income eligibility of a student, the student's financial assistance in excess of tuition as defined in § 5.609(b)(9) will be included in the calculation of annual income. (Also see definitions "financial assistance" and "tuition" in Appendix A of this notice.) If the student's financial assistance in excess of tuition makes the student income ineligible for section 8 assistance, the student cannot receive section 8 assistance. The income eligibility of a student will also rely on program practices and criteria already in place that assess the student's independence from his or her parents as addressed in paragraph 1, above.

As noted in this guidance, section 327 was not intended to affect the section 8 eligibility of a student's parents when the student is receiving financial assistance and residing with his or her parents, or is residing with parents who are applying to receive section 8 assistance, but only the eligibility of students applying for or receiving section 8 assistance separately from their parents. The amendment of the procedure for the determination of annual income at § 5.609 by the December 30, 2005, final rule is consistent with this intent.

A student's financial assistance under new § 5.609(b)(9) is considered income only in the context of that student's application for, or retention of, section 8 assistance separately from the student's parents. This is consistent with the language of section 327(b), which states, in relevant part, "For the purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (in excess of amounts received for tuition) that an individual receives * * * shall be considered income to that *individual*," (emphasis added). The focus of section 327(b), and of section 327 as a whole, is on the income eligibility of a single student under the age of 24 who is not a veteran, is unmarried, does not have a dependent child, and whether the financial assistance of that individual student in excess of tuition makes that student income ineligible, and whether the income of the student's parents makes the student income ineligible. There is no apparent intent to affect the eligibility of a student's parents when the student resides with his or her parents.

The financial assistance of a student residing with his or her parents therefore would continue to be excluded from annual income under § 5.609(c)(6), which excludes student financial assistance from income. The December 30, 2005, final rule amended the exclusion of student financial assistance from income at § 5.609(c)(6) by making the exclusion, "Subject to paragraph (b)(9) of this section," which is the new section adding student financial assistance as income only to a student applying separately from his or her parents for section 8 assistance.

3. Recertification of Students Already Receiving Section 8 Assistance

HUD strongly encourages PHAs, Owners, and Managers to recertify those section 8 participants who may be affected by this new law as soon as it is practicable. The latest time, however, that the eligibility and income requirements can be implemented is at the time of annual recertification.

PHAs, Owners, and Managers must ensure at each annual recertification, a student remains eligible to receive section 8 assistance under the restrictions of this new law.

PHAs, Owners, and Managers have an obligation to make sure that section 8 assisted units are provided to those truly in need of such assistance.

4. All Other Eligibility Requirements Apply

While the new law and HUD's recently issued rule focus on the income eligibility of students, all student applicants for section 8 assistance must also meet all other HUD program requirements that determine eligibility for the section 8 assistance.

C. Screening and Verification of Applicants for Assistance

As it relates to the verification of a parent(s) income, PHAs, Owners, and Managers may accept from a parent(s) a declaration and certification of income, which includes a penalty of perjury. The processing entity retains the right to request and review supporting documentation at any time they determine the declaration, certification, and eligibility of the parent(s) is in question. Supporting documentation includes, but is not limited to: Internal Revenue Services (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, Temporary Assistance to Needy Families (TANF) award letter, Social Security Administration (SSA) award letter, other official and authentic documents from a Federal, State or local agency.

As is the case with all applicants for section 8 assistance, PHAs, Owners, and Managers administering section 8 programs must adequately screen and verify an applicant's source(s) of income. Failure of PHAs, Owners, and Managers, to screen applicants and verify income in accordance with applicable program requirements can result in sanctions being imposed.

PHAs must immediately update their Administrative Plans and Owners and Managers must immediately update their Tenant Selection Plans to reflect the new income eligibility restrictions for students.

D. Denial and Termination of Assistance

Denial of Assistance. An applicant who is a student and who does not meet the income eligibility requirements or who has parents who, individually or jointly, do not meet the income eligibility requirements for section 8 assistance are not eligible for section 8 assistance and will be prohibited from participating in the section 8 Program.

Termination of Assistance. A student under the age of 24 who is not a veteran, unmarried, does not have a dependent child and who is currently receiving section 8 assistance, if at recertification is determined to be ineligible, will have his or her assistance terminated.

Owners and Managers of projects under the Office of Housing's section 8 program cannot evict or require an ineligible student to move from a unit as long as the student is in compliance with the terms of the lease. Although the student is allowed to remain in the unit, the student will no longer be eligible to receive section 8 assistance. The section 8 assistance will not be prorated; therefore, if the ineligible student is residing in a household other than with the student's parents the assistance will be terminated for the entire household. If the ineligible student moves from the unit, the remaining members of the household may again be eligible for section 8 assistance, if available. If the household composition no longer qualifies the household for the unit size, the household may be required to move to an appropriate size unit when one is available, or, with the approval of the owner may move in another eligible person as a member of the household and remain in their same unit.

For PHAs administering the Housing Choice Voucher program, any member within a household comprised of both eligible and ineligible students who is determined ineligible to receive section 8 assistance in accordance with 24 CFR part 5, subpart F, and is terminated under 24 CFR 982.552(b)(5), shall be ineligible to receive continued assistance under the Housing Choice Voucher program. Eligible students, residing in such households, however, shall not be terminated under § 982.552(b)(5), but shall be issued a voucher to move with continued assistance in accordance with program regulations or shall be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit. HUD will issue separate guidance for PHAs administering the Moderate Rehabilitation, Project-Based Certificate and Project-Based Voucher programs.

Upon notification of denial or termination of assistance, the household is entitled to request an informal hearing to discuss the reasons for the denial or termination, in accordance with established program procedures and requirements.

E. Rent Determination

Determination of rent is made in accordance with the requirements for the section 8 program under which the student seeks assistance.

III. Additional HUD Guidance

In addition to this notice, HUD's Office of Housing and Office of Public and Indian Housing are developing additional guidance. This guidance, when completed, will be posted on HUD's Web site at *http://www.hud.gov.*

Dated: April 3, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

Appendix A—Definitions

1. *Dependent Child* in the context of the new eligibility restrictions, means a dependent child of an enrolled student who meets the criteria of 24 CFR 5.612. In this context, "dependent child" is defined in HUD's income eligibility regulations at 24 CFR 5.603 is a member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or a person with a disability, or is a full-time student.

2. *Financial Assistance* included in annual income is any financial assistance that a student receives in excess of tuition (e.g., athletic and academic scholarships) and that the student receives (1) under the Higher Education Act, (2) from private sources, or (3) from an institution of higher education as defined by the Higher Education Act of 1965. Financial assistance does not include loan proceeds.

a. *Higher Education Act Assistance* under the Higher Education Act of 1965 includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.

b. *Assistance from Private Sources* is non-governmental sources of assistance, including assistance that may be provided to a student from parent, guardian or other family member, whether residing within the family in the section 8 assisted unit or not, and from other persons not residing in the unit.

c. *Assistance from an Institution of Higher Education* requires reference to the particular

institution and the institution's listing of financial assistance. (See definition for Institution of Higher Education in 7, below.)

d. *Loans Are Not Financial Assistance*, and, therefore, the loan programs cited in the Higher Education Act of 1965 (the Perkins, Stafford and Plus loans) are not included in the term "financial assistance" in determining student eligibility for section 8 assistance.

3. *Independent Student* for Title IV aid, a student must meet one or more of the following criteria:

a. Be at least 24 years old by December 31 of the award year for which aid is sought;

b. Be an orphan or a ward of the court through the age of 18;

c. Be a veteran of the U.S. Armed Forces;

d. Have legal dependents other than a spouse (for example, dependent children or an elderly dependent parent);

e. Be a graduate or professional student; or,

f. Be married.

4. *Parents*, for purposes of the student eligibility restrictions, and consistent with long-standing HUD policy regarding eligibility for the Section 8 Programs, means the biological or adoptive parents, or guardians (e.g., grandparents, aunt/uncle, godparents, etc.), or such other definition as may be adopted by the PHA, Owner, or Manager through appropriate amendment to its admissions policies.

5. *Student* means all students enrolled either full-time or part-time at an institution of higher education. The new law does not exempt part-time students.

6. *Tuition* shall have the meaning given this term by the institution of higher education in which the student is enrolled.

7. *Veteran*, as used by the Department of Veterans Affairs, is codified at 38 U.S.C. 101(2). Since use of this definition is widespread in other federal programs affecting veterans, PHAs, Owners and Managers may find it useful to adopt this definition for purposes of administering the student eligibility restrictions.

Definition of veteran from 38 U.S.C. 101(2): The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

8. *Institution of Higher Education* shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

a. Definition of "Institution of Higher Education" From 20 U.S.C. 1001

(a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term "institution of higher education" means an educational institution in any State that-(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term "institution of higher education" also includes—

(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and

(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

b. Definition of "Institution of Higher Education" From 20 U.S.C. 1002

(a) Definition of institution of higher education for purposes of student assistance programs

(1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term "institution of higher education" for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

(A) A proprietary institution of higher education (as defined in subsection (b) of this section);

(B) A postsecondary vocational institution (as defined in subsection (c) of this section); and

(C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.

(2) Institutions outside the United States

(A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—

(i) In the case of a graduate medical school located outside the United States—

(I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and

(bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or

(II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or

(ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.

(B) Advisory panel

(i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

(I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and

(II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.

(D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility,

continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

(A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;

(B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

(C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

(D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

(A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

(B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

(1) Principal criteria. For the purpose of this section, the term "proprietary institution of higher education" means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;

(C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;

(D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;

(E) Has been in existence for at least 2 years; and

(F) Has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

(2) Additional institutions. The term "proprietary institution of higher education" also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

(1) Principal criteria. For the purpose of this section, the term "postsecondary vocational institution" means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and

(C) Has been in existence for at least 2 years.

(2) Additional institutions. The term "postsecondary vocational institution" also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

[FR Doc. 06–3365 Filed 4–7–06; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 880, 883, 884, 886, 891, and 982

[Docket No. FR-5036-F-01]

RIN 2501-AD19

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule implements a new law, enacted as part of HUD's Fiscal Year (FY) 2006 appropriations, that restricts individuals enrolled in an institution of higher education and who meet certain other requirements from receiving assistance under section 8 of the U.S. Housing Act of 1937. The new law directed HUD to issue a final rule within 30 days of enactment of the new law. This rule fulfills the statutory requirement.

DATES: *Effective Date:* January 30, 2006.

FOR FURTHER INFORMATION CONTACT: For Section 8 voucher issues, Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4210, telephone (202) 708-0477; for the Office of Housing's project-based Section 8, Gail Williamson, Director, Housing Assistance Policy Division, Room 6180, telephone (202) 708-3000. For all of the individuals, the address is Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000. None of the aforementioned telephone numbers are toll-free numbers. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Fiscal Year (FY) 2006 appropriations for HUD were recently enacted in Public Law 109-115 (119 Stat. 2936), which was approved on November 30, 2005 (the Act). HUD's appropriations are found in Title III of this law. Section 327 of the administrative provisions of Title III place restrictions on housing assistance that can be provided to students of higher education under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). Specifically, Section 327 of Public Law 109-115 (Section 327) provides as follows:

"Sec. 327. (a) No assistance shall be provided under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) to any individual who—

(1) Is enrolled as a student at an institution of higher education (as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002));

(2) Is under 24 years of age;

(3) Is not a veteran;

(4) Is unmarried;

(5) Does not have a dependent child; and

(6) Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible, to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(b) For purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (in excess of amounts received for tuition) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children."

The new law is intended to address recent incidents of college students obtaining federal housing assistance without their educational financial assistance counting as income for purposes of income eligibility for federal housing assistance. The law also describes how educational financial assistance is to be treated in the calculation of income for purposes of determining eligibility.

Section 327 of the Act directs HUD to issue a final rule to carry out this section no later than 30 days from the date of enactment of the law. Since HUD finds the restrictions of the law to be clear, this final rule codifies the restrictions largely as set forth in the statute.

HUD strongly encourages public housing agencies, owners, and management agents administering Section 8 programs to, as soon as it is practicable, recertify existing Section 8 participants that have family members that may meet the requirements of Section 327 of the Act. Prompt recertification, in addition to careful applicant screening, will ensure compliance with the restrictions of the new law.

II. This Final Rule

This final rule amends 24 CFR part 5, subpart F, which addresses income eligibility in assisted housing, among other matters, to incorporate the provisions of the new law. Specifically, this rule makes the following amendments to 24 CFR part 5, subpart F.

Section 5.609(b) of subpart F, which lists forms of compensation that are calculated as income, is amended to include as income, for programs under section 8 of the U.S. Housing Act of 1937 (section 8), the educational financial assistance described in Section 327(b) of the Act, except for persons over the age of 23 with dependent children. Section 327(b) provides for such exemption for persons over the age of 23 with dependent children. HUD has interpreted the term "financial assistance" as used in Section 327(b) to not include loan proceeds for the purpose of determining income.

Section 5.609(c)(6) of subpart F lists forms of compensation that are excluded from the calculation of annual income. Prior to the change being made by this final rule, § 5.609(c) provided for the full amount of student financial assistance paid directly to the student or the educational institution to be excluded from annual income. Section 5.609(c)(6) is amended to provide, by cross-reference to § 5.609(b), that the exclusion does not pertain, with regard to Section 8 programs, to the financial assistance described in Section 327(b) of the Act.

A new regulatory section, § 5.612, is added to 24 CFR part 5, subpart F, to codify the criteria set forth in Section 327(a) of the Act by which an individual enrolled in an institution of higher education is ineligible for assistance. Subsection (a)(6) of Section 327 concludes the list of criteria by providing that an individual who is enrolled in an institution of higher education is ineligible for assistance if the individual is not otherwise individually eligible, or has parents who, individually or jointly, are ineligible to receive assistance under Section 8. Since Section 327 is focused on income eligibility of a higher education student, the Department interprets the section's reference to the eligibility of the parents to also refer to income eligibility.

In addition to the amendments made to 24 CFR part 5, subpart F, this final rule also makes conforming amendments to 24 CFR 880.603(b), 24 CFR 883.302, 24 CFR 884.102, 24 CFR 886.102, 24 CFR 886.132, 24 CFR 886.321(b), 24 CFR 891.610(c), 24 CFR 982.201, and 24 CFR 982.552.

III. Justification for Final Rule

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own

regulations on rulemaking in 24 CFR part 10. Part 10, however, provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (see 24 CFR 10.1). In this rulemaking, however, HUD is issuing a final rule to comply with a statutory directive to issue final regulations within 30 days of enactment of Public Law 109–115.

IV. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would impose no additional economic or other burdens on small entities. The entities affected by this rule are agencies administering tenant-based and project-assisted housing and properties that are already required to screen applicants applying for assistance. This rule provides clear directions on how educational financial assistance is to be calculated in an income determination prior to receiving assistance under section 8 of the U.S. Housing Act of 1937.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

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

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects

24 CFR Part 5

Administrative practice and procedure; Aged; Claims; Crime; Government contracts; Grant programs—housing and community development; Individuals with disabilities; Intergovernmental relations; Loan programs-housing and community development; Low and moderate income housing; Mortgage insurance; Penalties; Pets; Public housing; Rent subsidies; Reporting and recordkeeping requirements; Social security; Unemployment compensation; Wages.

24 CFR Part 880

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

24 CFR Part 883

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

24 CFR Part 884

Grant programs—housing and community development; Rent subsidies; Reporting and recordkeeping requirements; Rural areas.

24 CFR Part 886

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

24 CFR Part 891

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

24 CFR Part 982

Grant programs—housing and community development; Grant programs—Indians; Indians; Public housing; Rent subsidies; Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for 24 CFR part 5 is revised to read as follows:

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

■ 2. In § 5.609, add a new paragraph (b)(9) and revise paragraph (c)(6) to read as follows:

§ 5.609 Annual income.

* * * * *

(b) * * *

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

* * * * *

(c) * * *

(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

* * * * *

■ 3. Add § 5.612 to read as follows:

§ 5.612 Restrictions on assistance to students enrolled in an institution of higher education.

No assistance shall be provided under section 8 of the 1937 Act to any individual who:

(a) Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);

(b) Is under 24 years of age;

(c) Is not a veteran of the United States military;

(d) Is unmarried;

(e) Does not have a dependent child; and

(f) Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under section 8 of the 1937 Act.

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

■ 4. The authority citation for 24 CFR part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 3535(d), 12701, 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 5. In § 880.603(b), the introductory paragraph is revised to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income eligibility in accordance with 24 CFR part 5, subpart F, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 5, subpart E, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR part 5, and to select families for admission to the program, which includes giving selection preferences in accordance with 24 CFR part 5, subpart D.

* * * * *

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

■ 6. The authority citation for 24 CFR part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 7. In § 883.302, the definitions of *Family* and *Low-Income Family* are removed and the definition of *Annual Income* is revised to read as follows:

§ 883.302 Definitions.

* * * * *

Annual Income. As defined in part 5 of this title.

* * * * *

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

■ 8. The authority citation for 24 CFR part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 9. In § 884.102, the definition of *Income* is revised to read as follows:

§ 884.102 Definitions.

* * * * *

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD and as defined in 24 CFR part 5, subpart F.

* * * * *

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

■ 10. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 11. In § 886.102, the definition of *Income* is revised to read as follows:

§ 886.102 Definitions.

* * * * *

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD and as defined in part 5 of this title.

* * * * *

■ 12. Revise § 886.132 to read as follows:

§ 886.132 Tenant selection.

Subpart F of 24 CFR part 5 governs selection of tenants and occupancy requirements applicable under this subpart A of part 880.

■ 13. Section 886.321(b)(1) is revised to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility of assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for taking applications, selecting families, and all related determinations, in accordance with part 5 of this title. (See especially, 24 CFR part 5, subpart F).

* * * * *

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

■ 14. The authority citation for 24 CFR part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q, 42 U.S.C. 1437f, 3535(d), 8013, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 15. Section 886.610(c) is revised to read as follows:

§ 891.610 Selection and admission of tenants.

* * * * *

(c) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant must be an elderly or handicapped family as defined in § 891.505; meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirements for Social Security Numbers and sign and submit consent forms for obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and, if applying for an assisted unit, be eligible for admission under 24 CFR part 5, subparts E and F.

* * * * *

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

■ 16. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 3535(d), 12701, 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 17. Section 982.201(a) is revised to read as follows:

§ 982.201 Eligibility and targeting.

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

* * * * *

■ 18. Section 982.552 is amended to add a new paragraph (b)(5) to read as follows:

§ 982.552 PHA Denial or termination of assistance for family.

* * * * *

(b) * * *

(5) The PHA must deny or terminate assistance if any family member fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education as specified in 24 CFR 5.612.

* * * * *

Dated: December 27, 2005.

Roy A. Bernardi,

Deputy Secretary.

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Part IV

Department of Housing and Urban Development

24 CFR Part 100

Implementation of the Housing for Older Persons Act of 1995; Final Rule

phrases such as "adult living", "adult community", or similar statements are inconsistent with the intent to establish housing for older persons. Such phrases are not evidence that the facility or community intends to operate as housing for older persons and are inconsistent with that intent. HUD, in order to make an assessment of intent, will consider all of the measures taken by the facility or community to demonstrate the intent required by the Act. Moreover, the housing facility or community may not evict or terminate leases of families with children in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

HUD also provides guidance to assist housing facilities and communities in applying the requirements of this rule. These examples are contained in an appendix to this rule. The appendix will not be codified in title 24 of the CFR. HUD may update or revise the appendix as necessary.

C. Discussion of Public Comments on the January 19, 1997 Proposed Rule

The Housing for Older Persons Act (HOPA) was a remedial amendment to the Fair Housing Act overwhelmingly passed by Congress in an attempt to clarify the Act's senior housing exemption which Congress found was being effectively repealed by the judicial and administrative interpretation which the exemption had received.

Senator Brown described the purpose of HOPA as "making the law clearer and more workable for seniors * * * to protect seniors so that they can, if they wish to, move to housing where they are protected in their safety and their privacy." (Congressional Record, S. 18084). Senate Report #104–172 describes the purpose as a "return to the original intent of the Fair Housing Act exemption Congress created in 1988. HOPA is designed to make it easier for a housing community of older persons to determine whether they qualify for the Fair Housing Act exemption". While House Report 104–91 states "legislation is necessary to establish a workable and fair exemption to protect senior citizens who wish to live in retirement community". In short, HOPA was passed in order to protect senior housing.

HUD published a proposed rule for comment on January 14, 1997, at 62 FR 2000, and received approximately 130 comments on the proposed rule. The comments were evenly split between comments which expressed the belief that the regulation went too far in allowing the creation or continuation of senior housing and those which generally supported the rule but felt that it should have done more to stabilize the conditions at senior housing communities or which objected to isolated provisions. Several of the specific points raised will be addressed later in the preamble and have resulted in changes and refinements to the proposed regulation. As a general response, some of the comments from each side are based upon premises with which HUD does not agree. In addition, Congress did not state that HOPA should be retroactively applied. Therefore, a matter involving a claim of alleged discrimination occurring *before* December 28, 1995 will be covered by those laws and regulations in effect at the time of the claimed violation. Claims of alleged discrimination occurring after December 28, 1995, but before the effective date of this regulation will be analyzed using HOPA and its legislative history.

Those who maintain that HUD's interpretation of the exemption should be narrowed ignore the history of the senior housing exemption and HOPA. Congress made explicit findings that HOPA was necessary because of the narrow construction afforded the senior housing exemption in the past. It would be contrary to the intent of the HOPA to abolish the "significant facilities and services" requirement that hindered senior housing only to construct new impediments by strictly construing the remaining requirements. At the same time, Congress provided no indication that it intended to change the usual standards applicable in judicial constructions of exemptions, and, thus, HUD believes that, as with any exemption to the Fair Housing Act, the burden will be on the housing provider to prove that it meets the requirements set forth in this regulation in order to qualify for the exemption.

Others who believed that HUD should go further in specifying exactly what must be done by each facility and community fail to take into full account the limited nature of the exemption provided under the law. The Fair Housing Act and its senior exemptions, as amended by HOPA, do not provide standards for the proper operation of a senior community; they are designed only to advise communities and facilities what will not violate the familial status provisions of the Act. Most aspects of living in a senior community are governed by private contractual agreements between senior housing developers and individuals who purchased or rented the dwelling. Other aspects may be governed by state or local ordinances, particularly regarding mobile and manufactured homes. These private agreements and local laws, for the most part, are left undisturbed by HUD's interpretation of HOPA.

HUD has also taken into consideration the broader historical aspects of the senior housing issue. Until the advent of the familial status protection established in the Fair Housing Amendments Act of 1988, the senior housing industry was a well-established, accepted component of housing options for seniors. With no federal law directly applicable, the industry developed in a variety of configurations and circumstances. Age restrictions in individual communities started at various ages—age 40, age 45, age 50 and so forth. Many communities defined themselves as "adult" communities, but in operation served seniors. Many senior communities served mature residents who are active, participating members of their communities. State and local law, local custom, and various provisions of covenants and restrictions affected how rules for occupancy were established or changed, against whom those rules could be enforced, the senior community's interplay with state and local land use and anti-discrimination statutes, and other practical day-to-day issues of senior housing. Against the backdrop of the nearly infinite number of possible scenarios, HUD and courts attempted to enforce the 1988 provisions of the exemptions. Congress has determined that those efforts did not achieve the desired results, and amended the Act. The rules that are included here in final form have attempted to the address the issue in the broadest possible terms to account for the large variety of senior communities while being sufficiently detailed to provide clear guidance on the requirements of the senior housing exemption, without dictating results which may be inconsistent with local practice or deny flexibility in a variety of circumstances.

Opposition to the proposed rule came largely from Fair Housing advocacy groups and some housing industry groups. The comments of the Northern California Fair Housing Coalition (NCFHC), a coalition of 18 fair housing groups, is a representative example of the issues raised by these groups. NCFHC urges that the rule be withdrawn or significantly altered based on a strict interpretation of the exemption which HUD believes is contrary to the clear Congressional intent. Specifically, NCHFC considers § 100.305(e)(5), the so called "transition provision," to be without legal authority and bad public policy because, they assert, it would allow communities with

There continues to be confusion concerning what is often referred to as the 80/20 split. HOPA states that the minimum standard to obtain housing for persons who are 55 years of age or older status is that "at least 80%" of the occupied units be occupied by persons 55 years or older. There is no requirement that the remaining 20% of the occupied units be occupied by persons under the age of 55, nor is there a requirement that those units be used only for persons where at least one member of the household is 55 years of age or older. Communities may decline to permit any persons under the age of 55, may require that 100% of the units have at least one occupant who is 55 years of age or older, may permit up to 20% of the occupied units to be occupied by persons who are younger than 55 years of age, or set whatever requirements they wish, as long as "at least 80%" of the occupied units are occupied by one person 55 years of age or older, and so long as such requirements are not inconsistent with the overall intent to be housing for older persons.

The final regulation retains the provision that a unit occupied by a person or persons as a reasonable accommodation to the disability of an occupant need not be counted in meeting the 80% requirements. This provision ensures that a community or facility seeking to authorize the reasonable accommodation for a resident who, because of a disability, requires an attendant, including family members under the age of 18, residing in a unit in order for that person to benefit from the housing will not have its exemption adversely affected by permitting the accommodation. The authority for this provision arises under the Act's requirement that reasonable accommodations be provided to persons with disabilities.

Although occupancy by a person under the age of 55 who inherits a unit or a surviving spouse who is younger than 55 years of age are the original examples cited by Congress in justifying the original 80/20 split, HUD does not consider these to be the only appropriate uses of the flexibility provided by the up to 20% allowed by the exemption, nor are protections for those groups required. HUD believes that the appropriate use of the 20%, if any, is at the discretion of the community or facility and does not intend to impose more specific requirements in this area. For example, a community could allow some percentage of its units, up to 20%, to be made available to persons over the age of *50*, and, as long as the overall intent to be senior housing remained clear, HUD would not have an objection. However, the remaining portion of units not counted for purposes of meeting the 80% requirement may not be segregated within a community or facility.

Some commenters offered opinions concerning the proper nomenclature for senior communities and the consequences of using the "wrong" term. HUD believes that the best practice is to refer to such housing as "Senior Housing" or "A 55 and older community" or "retirement community," and discourages the use of the terms "adult housing" or similar language. While use of adult housing or similar phrases, standing alone, do not destroy the intent requirement of HOPA, they send a clear message which is inconsistent with the intent to be housing for older persons. If a community or facility has clearly shown its intent in other ways, and meets the 80% requirement, then the intent requirement has been met even if the phrase "adult" or similar terminology is occasionally used. However, a community which describes itself as "adult" leaves itself vulnerable to complaints about its eligibility for the exemption, which could result in an investigation or litigation to determine whether the community in fact qualifies for the exemption.

Other questions on the intent requirement concerned whether HUD intended to require that all of the items in § 100.306 be provided and whether the examples of compliance with the intent requirement were mandatory. HUD does not intend to impose any rigid requirements on indicating intent. Section 100.306 only speaks to relevant factors to be considered and the examples simply illustrate what could satisfy the requirement. Intent is judged based on the common understanding of the word and whether the community or facility has established through various means whether they intend to operate housing for persons who are 55 years of age or older.

Other commenters objected to the inclusion of a "municipally zoned area" as a possible type of housing for persons who are 55 years of age or older, while others questioned the use of the terminology of "mobile home park" instead of "manufactured housing". When former Assistant Secretary Roberta Achtenberg conducted public hearings on the "55 and over" rule, HUD learned that there are a large variety of senior housing communities, organized and administered in various ways. HUD attempted to define the possibilities as broadly as possible to include any type of housing which could qualify for the exemption.

On the issue of age verification, commenters had several diverse suggestions. Several commenters urged that only the individual resident should be able to attest to his or her age and that anyone not cooperating with the survey should be considered to be not 55 years or older. It is HUD's position that the test is whether 80% of the occupied units are, in fact, occupied by persons 55 years or older. This need only be documented through reliable survey, census or affidavit, or other documentation, a copy of which should be retained for recordkeeping purposes, and which confirms that the 80% threshold is being met. A self certification of his or her age by an individual will be adequate to meet this standard. An affidavit from someone who knows the age of the occupant(s) and states his/her basis for the knowledge is sufficiently reliable to satisfy the statute. To hold otherwise would effectively allow 21% of a senior community to destroy the exemption by not cooperating with verification procedures.

Other comments concerning verification were that the use of immigration documents should be removed from the list of possible sources of age verification lest it encourage discrimination against legal immigrants. The option remains in the rule since it is only one way of verifying age. HUD does not intend to require any particular documentation be provided as a condition of occupancy, including immigration documentation. If any individual chooses to verify by providing a drivers license or affidavit instead of an immigration document, the verification requirement will be satisfied. A summary of the information gathered in support of the occupancy verification should be retained for confirmation purposes. Copies of supporting information gathered in support of the occupancy verification may be retained in a separate file with limited access, created for the sole purpose of complying with HOPA, and not in general or resident files that may be widely accessible to employees or other residents. The segregated documents may be considered confidential and not generally available for public inspection. HUD, state or local fair housing enforcement agencies, or the Department of Justice may review this documentation during the course of an investigation.

Other commenters questioned the reference to a "census" as a source of verification, noting that the census does not specify individual names but

forth in this final rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and the authorities cited in 24 CFR 50.4.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official, under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule implements the requirements of HOPA by revising the provisions for "55-or-older" housing found at 24 CFR part 100, subpart E. It effects no changes in the current relationships among the Federal government, the States and their political subdivisions in connection with HUD programs.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule updates HUD's regulations implementing the "housing for older persons" exemption to the Fair Housing Act. Specifically, the rule implements the statutory amendments made by HOPA. These revisions provide housing facilities and communities with a better understanding of what housing qualifies for the "55-or-older" exemption to the Fair Housing Act's prohibitions against discrimination on the basis of familial status. The final rule will not have any meaningful impact on small entities.

List of Subjects in 24 CFR part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 100 is amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

2. Subpart E is amended by revising § 100.304 and by adding §§ 100.305, 100.306, 100.307, and 100.308, to read as follows:

Subpart E—Housing for Older Persons

* * * * *

§ 100.304 Housing for persons who are 55 years of age of older.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for persons 55 years of age or older. Housing qualifies for this exemption if:

(1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged violation; or

(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

(i) Section 807(b)(2)(C) (42 U.S.C. 3607(b)) of the Fair Housing Act as amended; and

(ii) 24 CFR 100.305, 100.306, and 100.307.

(b) For purposes of this subpart, *housing facility or community* means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

(1) A condominium association;

(2) A cooperative;

(3) A property governed by a homeowners' or resident association;

(4) A municipally zoned area;

(5) A leased property under common private ownership;

(6) A mobile home park; and

(7) A manufactured housing community.

(c) For purposes of this subpart, *older person* means a person 55 years of age or older.

§ 100.305 80 percent occupancy.

(a) In order for a housing facility or community to qualify as housing for older persons under § 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

(b) For purposes of this subpart, *occupied unit* means:

(1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or

(2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this subpart, *occupied by at least one person 55 years of age or older* means that on the date the exemption for housing designed for persons who are 55 years of age or older is claimed:

(1) At least one occupant of the dwelling unit is 55 years of age or older; or

(2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

(d) Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes a facility or community that has been wholly unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by § 100.204 and who are under the age of 55.

(5) For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:

(i) Has reserved all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(ii) Meets the requirements of §§ 100.304, 100.306, and 100.307.

(f) For purposes of the transition provision described in § 100.305(e)(5), a housing facility or community may not evict, refuse to renew leases, or

(4) For purposes of this section, a person means a natural person.

(5) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons 55 years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (b) of this section.

Dated: March 25, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

Note: This Appendix will not be Codified in Title 24 of the CFR.

Appendix

Examples of Applications of HUD'S Regulations Governing the Exemption for Housing for Persons 55 Years of Age or Older to the Fair Housing Act

Sections

1. Purpose.
2. 80 percent occupancy.
3. Intent to operate as housing for persons who are 55 years of age or older.
4. Verification of occupancy.
5. Future revisions to this appendix.

1. Purpose.

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619) (the Act) exempts "housing for older persons" from the prohibitions against discrimination because of familial status. Section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by persons 55 years of age or older that satisfies certain criteria. HUD has implemented the "housing for older persons" exemption at 24 CFR part 100, subpart E. Specifically, §§ 100.304, 100.305, 100.306, and 100.307 set forth the requirements for housing seeking to qualify for the exemption. The purpose of this appendix is to provide guidance to housing facilities or communities in applying these HUD requirements.

2. 80 Percent Occupancy.

Section 100.305 provides that in order for a housing facility or community to qualify for the exemption, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older. This occupancy requirement must be met at the time of any alleged violation of the Act. Paragraph (f) of § 100.305 states that where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

Example: A community or facility contains 63 occupied units. Eighty percent of 63 units equals 50.4. Under § 100.305(d), 51 units would require occupancy by at least one person 55 years of age or older to qualify as 55 and older housing.

Section 100.305 also sets forth the other requirements a housing facility or community must follow in calculating occupancy. The following examples illustrate these requirements:

Example 1:

Buena Vista is a condominium association of 120 units. On September 13, 1988, twenty (20) of the occupied units are not occupied by at least one person 55 years of age or older.

On April 1, 1998, Buena Vista declares itself to be housing for persons 55 years of age or older. On that date:

(1) The twenty (20) persons described above are still residing at Buena Vista;

(2) Ten (10) units of the total 120 units are unoccupied;

(3) One (1) of the units is occupied by the association's maintenance supervisor; and

(4) Two (2) units are occupied only by live-in health aides who provide reasonable accommodations to residents with disabilities and who are under the age of 55.

How many of the occupied units must be occupied by at least one person 55 years of age or older in order for Buena Vista to qualify as 55-or-older housing?

Under § 100.305(e), Buena Vista would calculate its compliance with the 80 percent occupancy requirement by subtracting the following units from the total 120 units:

(1) The 20 units not occupied by at least one person 55 years of age or older on September 13, 1988 (See § 100.305(e)(1));

(2) The ten (10) unoccupied units (See § 100.305(e)(2));

(3) The one (1) unit occupied by the maintenance person (See § 100.305(e)(3)); and

(4) The two (2) units occupied by the health aides (See 42 U.S.C. 3607 (b)(3)(A) and 42 § 100.305(e)(4)).

Subtracting these 33 units from the total of 120 units leaves 87 units. At least 80 percent of these 87 units must be occupied by at least one person 55 years of age or older. Eighty percent of 87 equals 69.6. Due to § 100.305(d), 70 units must be occupied by at least one person 55 years of age or older. This example assumes that the community also meets the requirements of §§ 100.306 and 100.307.

Example 2:

Topaz House is a cooperative of 100 units. On January 20, 1998, Topaz House announces its intent to be 55-or-older housing and publishes policies and procedures sufficient to satisfy § 100.306. On that date, of the 100 total units:

(1) Sixty (60) of the occupied units are occupied by at least one person 55 years of age or older;

(2) Thirty (30) of the occupied units do not have occupants 55 years of age or older; and

(3) Ten (10) units are unoccupied.

Since 60 out of the 90 occupied units are occupied by at least one person 55 years of age or older, the Topaz House only has 67 percent of its occupied units occupied by at least one person 55 years of age or older.

Under § 100.305(e)(5), Topaz House may still qualify for the 55-or-older exemption if, during a period which is one year from the effective date of this regulation, it:

(1) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(2) Meets the requirements of §§ 100.304, 100.305, 100.306, and 100.307 and

(3) Within the one year period achieves occupancy of at least 80% of its occupied units by at least one person who is 55 years of age or older.

There is no requirement that Topaz House take any action concerning the residents under 55 years of age who are occupying units on the date the building declares its intent to be 55-or-older housing. Topaz may not evict, or terminate the leases of households containing children under the age of 18, in order to qualify for the exemption.

Example 3:

Snowbird City is a mobile home community in Texas with 100 units. Snowbird City complies with all other requirements of 55-or-older housing, but is uncertain of its compliance with the 80 percent occupancy rule.

Fifty out of the 100 units are occupied year round. Of these fifty units, 12 units are not occupied by at least one person 55 years of age or older. Of the remaining 50 units, 5 are unoccupied and offered for sale, and the remaining 45 are occupied by at least one person 55 years of age or older each winter on a routine and reoccurring basis.

If a complaint of familial status discrimination is filed in December, the community meets the 80 percent occupancy requirement because 83 out of the 95 occupied units (87 percent), are occupied by at least one person 55 years of age or older. If the complaint is filed in July, Snowbird City still meets the requirement. Under § 100.305(b), a temporarily vacant unit is considered occupied by a person 55 years of age or older if:

(1) The primary occupant has resided in the unit during the past year; and

(2) The occupant intends to return on a periodic basis.

Example 4:

The King Philip Senior Community is a newly renovated building originally built in 1952. It has been vacant for over one year while extensive renovations were completed. The building contains 200 units. The King Philip Senior Community is intended to be operated as a 55-or-older community.

Under § 100.305(d), newly constructed housing need not comply with the 80 percent occupancy requirement until 25 percent of the total units are occupied. For purposes of § 100.305(d), newly constructed housing includes housing that has been unoccupied for at least 90 days due to renovation or rehabilitation. Accordingly, the King Philip Senior Community need not comply with the 80 percent occupancy requirement until 50 out of its 200 units (25 percent) are occupied. Subsequent to occupancy of the 50th unit, however, the building will have to satisfy the 80 percent occupancy rule in order to qualify as 55-or-older housing.

annuitized. The fair market value of such an annuity contract is permitted to be determined using the methodology provided in § 1.401(a)(9)–6, A–12, with the following modifications:

(i) All front-end loads and other non-recurring charges assessed in the twelve months immediately preceding the conversion must be added to the account value.

(ii) Future distributions are not to be assumed in the determination of the actuarial present value of additional benefits.

(iii) The exclusions provided under § 1.401(a)(9)–6, A–12(c)(1) and (c)(2), are not to be taken into account.

(c) *Effective/applicability date.* The provisions of this paragraph A–14 are applicable to any conversion in which an annuity contract is distributed or treated as distributed from a traditional IRA on or after August 19, 2005. However, for annuity contracts distributed or treated as distributed from a traditional IRA on or before December 31, 2008, taxpayers may instead apply the valuation methods in § 1.408A–4T (as it appeared in the April 1, 2008, edition of 26 CFR part 1) and Revenue Procedure 2006–13 (2006–1 CB 315) (See § 601.601(d)(2)(ii)(*b*)).

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy)

[FR Doc. E8–17271 Filed 7–28–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9406]

RIN 1545–BH03

Modifications to Subpart F Treatment of Aircraft and Vessel Leasing Income; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9406) that was published in the **Federal Register** on Thursday, July 3, 2008 (73 FR 38113) addressing the treatment of certain income and assets related to the leasing of aircraft or vessels in foreign commerce under sections 367, 954, and 956 of the Internal Revenue Code. The regulations reflect statutory changes made by section 415 of the American Jobs Creation Act of 2004. In general, the regulations will affect the United States shareholders of controlled foreign corporations that derive income from the leasing of aircraft or vessels in foreign commerce and U.S. persons that transfer property subject to these leases to a foreign corporation.

DATES: This correction is effective July 29, 2008, and is applicable on July 3, 2008.

FOR FURTHER INFORMATION CONTACT: Concerning the temporary regulations under section 367, John H. Seibert at (202) 622–3860; concerning the temporary regulations under section 954 or 956, Paul J. Carlino at (202) 622–3840 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subjects of this document are under sections 367, 954, and 956 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9406) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.954–2(c)(2) is amended by adding paragraph (vii) to read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(c) * * *

(2) * * *

(vii) [Reserved]. For further guidance, see § 1.954–2T(c)(2)(vii).

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–17269 Filed 7–28–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9420]

RIN 1545–BC22

Section 42 Utility Allowance Regulations Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the utility allowances regulations concerning the low-income housing tax credit. The final regulations update the utility allowance regulations to provide new options for estimating tenant utility costs. The final regulations affect owners of low-income housing projects who claim the credit, the tenants in those low-income housing projects, and the State and local housing credit agencies that administer the credit.

DATES: *Effective Date:* These regulations are effective July 29, 2008. *Applicability Date:* For dates of applicability see § 1.42–12(a)(4).

FOR FURTHER INFORMATION CONTACT: David Selig (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) relating to the low-income housing credit under section 42 of the Internal Revenue Code (Code). On June 19, 2007, the IRS and Treasury Department published in the **Federal Register** proposed regulations under section 42(g)(2)(B)(ii) (72 FR 33703). Written and electronic comments responding to the proposed regulations were received and a public hearing was held on the proposed regulations on October 9, 2007. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision.

General Overview

Section 42(a) provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. A qualified low-income building is defined in section 42(c)(2) as any building that is part of a qualified low-income housing project.

A qualified low-income housing project is defined in section 42(g)(1) as any project for residential rental property if the project meets one of the following tests elected by the taxpayer: (1) At least 20 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or (2) at least 40 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. If a taxpayer does not meet the elected test, the project is not eligible for the section 42 credit.

Under section 42(g)(4), section 142(d)(2)(B) applies when determining whether any project is a qualified low-income housing project under section 42(g)(1). Section 142(d)(2)(B) provides that the income of individuals and area median gross income is determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937. Under Rev. Rul. 94–57 (1994–2 CB 5), taxpayers may rely on a list of income limits released by the Department of Housing and Urban Development (HUD) until 45 days after HUD releases a new list of income limits, or until HUD's effective date for the new list, whichever is later.

In order to qualify as a rent-restricted unit within the meaning of section 42(g)(2), the gross rent for the unit must not exceed 30 percent of the imputed income limitation applicable to the unit. Section 42(g)(2)(B)(ii) requires the inclusion in gross rent of a utility allowance determined by the Secretary after taking into account the determinations under section 8 of the United States Housing Act of 1937.

Section 1.42–10(a) provides that if utility costs (other than telephone) for a residential rental unit are paid directly by the tenant, then the gross rent for that unit includes the applicable utility allowance as determined under § 1.42–10. Section 1.42–10(b) provides rules for calculating the appropriate utility allowance based upon whether (1) the building receives rental assistance from the Farmers Home Administration (FmHA), now known as the Rural Housing Service; (2) the building has any tenant that receives FmHA rental assistance; (3) the building is not described in (1) or (2) above and the building's rents and utility allowances are reviewed by HUD on an annual basis; or (4) the building is not described in (1), (2), or (3) above (other buildings).

Currently, under § 1.42–10(b)(4), other buildings generally use the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program or use a local utility company estimate. The local utility company estimate may be obtained by any interested party (including a low-income tenant, a building owner, or a State or local housing credit agency (Agency)).

The proposed regulations proposed two additional options for calculating utility allowances. The first option would permit a building owner to obtain a utility estimate for each unit in a building from the Agency that has jurisdiction over the building (the Agency estimate). The Agency estimate must take into account the local utility rates data, property type, climate variables by region in the State, taxes and fees on utility charges, and property building materials and mechanical systems. An Agency may also use actual utility company usage data and rates for the building. The second option would permit a building owner to calculate utility allowances using the "HUD Utility Schedule Model" found on the Low-Income Housing Tax Credits page at *http://www.huduser.org/datasets/lihtc.html* (or successor URL). The HUD Utility Schedule Model is based on data from the Residential Energy Consumption Survey (RECS) conducted by the Department of Energy. RECS data provides energy consumption by structure for heating, air conditioning, cooking, water heating, and other electric (lighting and refrigeration). The HUD Utility Schedule Model incorporates building location and climate.

Summary of Comments and Explanation of Changes

Exclusions From Utility Allowance

Prior to these final regulations, § 1.42–10(a) provided for the exclusion of telephone costs in determining the amount of the utility allowance to be included in gross rent. The proposed regulations excluded cable television costs as well as telephone costs. The final regulations retain the exclusions for cable television and telephone costs and also exclude Internet costs. The IRS and Treasury Department believe it is appropriate to exclude cable television and Internet costs as comparable to telephone costs.

Additional Option for Determining Utility Allowances

Commentators stated that the Agency estimate in the proposed regulations may be administratively burdensome for some Agencies. As an alternative, commentators suggested adding an option that would allow utility estimates to be calculated by a state-certified engineer or other qualified professional. The commentators specified that, under this option, computer software could be developed that would estimate the energy or water and sanitary sewer service cost for each type of unit in a building. The estimates would be determined based on the applicable current local utility billing rate schedule and would be applied to all comparable units in the building using specific information about the design, materials, equipment, and location of the building.

A computer software model that incorporates specific information about the design and location of the building for which the utility allowances are being developed, and that can be updated with actual consumption data and with consumption estimates as new efficiency measures and improvements are undertaken, would provide more accurate estimates of utility consumption. Therefore, the final regulations also include a new option allowing building owners to retain the services of a qualified professional to calculate utility allowances based on an energy consumption model.

The use of this new option is subject to several special rules. First, the energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. Second, the utility estimates must be calculated by either (1) a properly licensed engineer or (2) a qualified professional approved by the Agency that has jurisdiction over the building (together, qualified professional). The qualified professional and the building owner must not be related within the meaning of section 267(b) or 707(b). Third, the building owner must furnish a copy of the estimates derived from the energy consumption model to the Agency and make copies of the estimates available to

all tenants in the building. Finally, the building owner must pay for all costs incurred in obtaining the utility estimates from the qualified professional and providing the estimates to the Agency and tenants.

Default Option/Option Ordering

One commentator suggested that the final regulations should provide a default option because, in the absence of a definitive standard for determining utility allowances, building owners would use the option that yields the lowest utility estimates. Commentators further requested clarification as to which option should be used when multiple options are available, whether building owners may use different options for different utilities, and whether owners may change the options used for calculating utilities from time to time.

An energy consumption model developed by a qualified professional that takes into account specific information about the design and location of the building for which the utility allowances are being developed should produce the most accurate utility estimates. It is expected that this more accurate model will be the model most commonly used by most building owners, particularly those with buildings that are not very old. However, if a building owner selects an option that yields higher utility allowances, the building owner should be free to accept a lower amount of rent from tenants. Therefore, there is no need for a stated default option or option ordering rule. Further, the final regulations neither prohibit using different options for different utilities nor prohibit changing the options used for calculating utilities. If an Agency determines that a building owner has understated the utility allowances for the building under the particular option chosen by the owner for calculating the utility allowance, and the building's units are not rent-restricted units under section 42(g)(2) as a result, the Agency must report the noncompliance on Form 8823, *Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.*

Application of Newly Calculated Utility Allowances

Under current § 1.42–10(c) of the regulations, if the applicable utility allowance for units changes, the new utility allowance must be used to compute gross rent of rent-restricted units due 90 days after the change (the 90-day period). The proposed regulations limited the effective date of any new utility allowances to the earlier of the date the building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period. The proposed regulations also modified § 1.42–10(c) by requiring that a building owner must review at least annually the basis on which utility allowances have been established and must update the applicable utility allowance. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

Commentators suggested that building owners should be obligated to adjust utility allowances when utility rates increase by a stated percentage, for example, 10 percent, which is the rule for revising utility allowance schedules for PHAs under 24 CFR 982.517(c). This HUD rule provides that a PHA must review its schedule of utility allowances each year and revise its allowance for a utility category if the utility rate has changed by 10 percent or more since the utility allowance schedule was last revised. The commentators did not address decreases in utility rates. A commentator also suggested that the final regulations should require an Agency to review or have owners review local utility rates quarterly to determine if rates have increased sufficiently to require an adjustment. A different commentator suggested limiting reviews to no more than once per year.

The IRS and Treasury Department do not believe that fluctuations in utility rates within a given year should trigger recalculations of utility allowances more than once a year. The IRS and Treasury Department do not believe that the additional burden of updating the utility allowances more than once a year is warranted at this time. Utility rates generally do not change more than once a year, and yearly updated utility allowances would reflect average rates applicable to all tenants in a building from year to year. Therefore, the final regulations require building owners to calculate new utility allowances once during the calendar year regardless of any percentage change in utility rates. Building owners may choose, however, to calculate new utility allowances more frequently than once during the calendar year provided the owner complies with the requirements of these regulations, including the notification requirements to the Agency and tenants.

Another commentator suggested that new utility allowances should be implemented within 90 days after HUD publishes its annual income limits (which are used in determining section 42 rents), but in no case later than June 30 of any year. Section 42 rents under section 42(g)(2) may or may not increase depending on HUD's calculation of area median gross income. Therefore, the IRS and Treasury Department do not believe that the rules should require that the effective date of any new utility allowance coincide with the section 42 effective date of HUD's income lists. Building owners, however, may choose to implement any new utility allowances on the section 42 effective date of HUD's income lists.

To bring financial stability to a project during the beginning of its operations, the final regulations clarify that the building owner is not required to review the utility allowances, or implement new utility allowances, until the earlier of the date the building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period.

Procedural Safeguards for Tenants

One commentator made several recommendations regarding procedural safeguards for tenants including: Owners should be required to give tenants 30 days notice before the effective date of any utility allowance; tenants should be provided with all information used in calculating the utility allowances; tenants should be given the opportunity to comment on the proposed allowances; and owners should be required to review those comments prior to the utility allowances becoming effective. The commentator believed that the new options for determining utility allowances should be available only after one full year of occupancy and one full year after the building is placed in service. A commentator also recommended that a building owner should be allowed to use the new options only if the owner provides all data to the Agency no later than February 15 and the Agency informs the owner whether the proposed utility allowances are approved by March 31.

To provide tenants with the opportunity to comment on proposed utility allowances to the Agency and building owner, the final regulations apply the existing disclosure requirement under current § 1.42–10(b)(4)(ii)(B) (regarding the utility company estimate) to an owner using a utility company estimate, the HUD Utility Schedule Model, or an energy consumption model. Therefore, an owner must submit copies of the proposed utility allowances to the Agency and make the proposed utility allowances available to all tenants in the building at the beginning of the 90-day period before the utility allowances are

used in determining the gross rents of rent-restricted units. Similarly, the final regulations require that any utility estimates obtained under the Agency estimate option must be made available to all tenants in the building at the beginning of the 90-day period. An Agency may continue to require additional information from the owner during the 90-day period.

Commentators suggested that the final regulations should limit the use of the HUD Utility Schedule Model to data for a twelve-month period ending in the most recent calendar year and require the owner to certify the accuracy of the data and the calculations of the utility allowances. However, the HUD Utility Schedule Model already incorporates consumption data derived from RECS data. Thus, building owners using this option need not be required to use consumption data for any particular twelve-month period. These final regulations, however, provide that the use of the energy consumption model is limited to consumption data for a twelve-month period ending no earlier than 60 days prior to the beginning of the 90-day period. In the case of newly constructed or renovated buildings with less than twelve months of consumption data, the energy consumption model allows a qualified professional to use consumption data for the twelve-month period of units of similar size and construction in the geographic area in which the building containing the units is located. Further, the final regulations require that utility rates used for the HUD Utility Schedule Model, the Agency estimate option, and the energy consumption model must be no older than the rates in place 60 days prior to the beginning of the 90-day period.

In addition to these safeguards, if an Agency determines that a building owner has understated the utility allowances for the owner's building under the particular option chosen, and, therefore, some or all of the units in the building are not rent-restricted units under section 42(g)(2), then the Agency must report the noncompliance to the Service on Form 8823, *Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition*.

Commentators requested that building owners should be required to certify the estimate and the accuracy of the data used under the new options. Because Agencies may request additional information at any time during their mandatory review of proposed utility allowances, and must report any noncompliance to the Service, the final regulations do not require building owners to provide such certification.

Utility Allowances for Tenants With Special Needs

One commentator suggested that the calculation of utility allowances should take into account any special needs tenants such as people with disabilities who require high energy consumption equipment. Section 42 does not require that the owner's calculation of utility allowances be based on a tenant's particular use of utility services. If such a requirement were imposed, owners and Agencies would have to determine the utility allowance for the tenants in each unit, as opposed to allowances based on the size of the unit, which would greatly increase burden. Additionally, it is unclear whether it is appropriate to implement rules that might encourage tenants to be indifferent to their energy consumption. Such indifference could lead to cost overruns by owners, and the viability of low-income housing could be jeopardized. Therefore, the final regulations do not require the calculation of utility allowances based on consumption by particular tenants.

Calculation of Utility Company Estimate Option for Deregulated Utilities

Section 1.42–10(b)(4)(ii)(B) currently provides that any interested party (including an owner, low-income tenant, or Agency) may obtain a local utility company estimate for a unit. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the units is located. In light of utility services deregulation, the proposed regulations proposed to amend this option by requiring the interested party to obtain cost estimates from the local utility company that include combined rate charges from multiple utility companies.

Commentators thought this proposed amendment would require the interested party to obtain utility consumption estimates from every utility company providing the same utility service and stated that this would present an unworkable administrative burden in deregulated jurisdictions with multiple utility providers. In some jurisdictions, many utility providers may be available for a given building. The proposed amendment was not intended to require the interested party to obtain utility consumption estimates from every utility company providing the same utility service. The amendment was proposed to address deregulation by requiring the interested party to obtain estimates for all the components of the utility service if the service is divided between two or more types of service providers (for example, electric generation and electric transmission). The final regulations clarify that, in the case of deregulated utility services, the interested party is required to obtain an estimate from only one utility company even if multiple companies can provide the same utility service to a unit. However, the utility company furnishing the estimate must offer utility services to the building in order for that utility company's rates to be used in calculating utility allowances. The estimate should include all component charges for providing the utility service.

Agency Costs/Administrative Burden

One commentator requested that specific language be added to address when Agencies may charge a reasonable fee for making a determination pursuant to the Agency estimate option, and who bears the fee when a particular option is used. The proposed regulations provided that costs incurred in obtaining an Agency estimate are borne by the building owner. The final regulations adopt this provision, and further require building owners to pay for all costs incurred in obtaining the estimates under the HUD Utility Schedule Model and the energy consumption model and in providing estimates to Agencies and tenants.

Effective/Applicability Date

The proposed regulations were proposed to be effective for taxable years beginning on or after the date of publication of the final regulations in the **Federal Register**. A commentator suggested that the final regulations be effective earlier on the basis that if they are published after 2007, they would not be effective until 2009 for calendar year taxpayers. The IRS and Treasury Department believe that the burden associated with an earlier effective date is not warranted. Therefore, the final regulations do not adopt this suggestion. However, in order to allow a building owner to implement the utility allowances as of the first day of the owner's taxable year beginning on or after July 29, 2008, the final regulations provide that taxpayers may rely on the rules for determining utility allowances before the first day of the owner's taxable year beginning on or after July 29, 2008 provided that any utility allowances so calculated are effective no earlier than the first day of the owner's taxable year beginning on or after July 29, 2008.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the information has previously been reviewed and approved under OMB control number 1545–1102, and that the information required by these final regulations adds no new burden to the existing requirements. Accordingly, a Regulatory Flexibility Analysis under the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.42–10 is amended by:

■ 1. Revising the first sentence of paragraph (a).

■ 2. Revising paragraphs (b)(1), (b)(2), and (b)(3), and the introductory text of paragraph (b)(4).

■ 3. Adding two sentences at the end of paragraph (b)(4)(ii)(A).

■ 4. Adding three sentences after the second sentence in paragraph (b)(4)(ii)(B).

■ 5. Adding paragraphs (b)(4)(ii)(C), (b)(4)(ii)(D), and (b)(4)(ii)(E).

■ 6. Revising paragraph (c).

■ 7. Adding paragraph (d).

The additions and revisions read as follows:

§ 1.42–10 Utility allowances.

(a) * * * If the cost of any utility (other than telephone, cable television, or Internet) for a residential rental unit is paid directly by the tenant(s), and not by or through the owner of the building, the gross rent for that unit includes the applicable utility allowance determined under this section. * * *

(b) *Applicable utility allowances*—(1) *Buildings assisted by the Rural Housing Service.* If a building receives assistance from the Rural Housing Service (RHS-assisted building), the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the Rural Housing Service (RHS) for the building (whether or not the building or its tenants also receive other state or federal assistance).

(2) *Buildings with Rural Housing Service assisted tenants.* If any tenant in a building receives RHS rental assistance payments (RHS tenant assistance), the applicable utility allowance for all rent-restricted units in the building (including any units occupied by tenants receiving rental assistance payments from the Department of Housing and Urban Development (HUD)) is the applicable RHS utility allowance.

(3) *Buildings regulated by the Department of Housing and Urban Development.* If neither a building nor any tenant in the building receives RHS housing assistance, and the rents and utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

(4) *Other buildings.* If a building is neither an RHS-assisted nor a HUD-regulated building, and no tenant in the building receives RHS tenant assistance, the applicable utility allowance for rent-restricted units in the building is determined under the following methods.

* * * * *

(ii) * * * (A) * * * However, if a local utility company estimate is obtained for any unit in the building under paragraph (b)(4)(ii)(B) of this section, a State or local housing credit agency (Agency) provides a building owner with an estimate for any unit in a building under paragraph (b)(4)(ii)(C) of this section, a cost estimate is calculated using the HUD Utility Schedule Model under paragraph (b)(4)(ii)(D) of this section, or a cost estimate is calculated by an energy consumption model under paragraph (b)(4)(ii)(E) of this section, then the estimate under paragraph (b)(4)(ii)(B), (C), (D), or (E) becomes the applicable utility allowance for all rent-restricted units of similar size and construction in the building. Paragraphs (b)(4)(ii)(B), (C), (D), and (E) of this section do not apply to units to which the rules of paragraphs (b)(1), (2), (3), or (4)(i) of this section apply.

(B) * * * In the case of deregulated utility services, the interested party is required to obtain an estimate only from one utility company even if multiple companies can provide the same utility service to a unit. However, the utility company must offer utility services to the building in order for that utility company's rates to be used in calculating utility allowances. The estimate should include all component deregulated charges for providing the utility service. * * *

(C) *Agency estimate.* A building owner may obtain a utility estimate for each unit in the building from the Agency that has jurisdiction over the building provided the Agency agrees to provide the estimate. The estimate is obtained when the building owner receives, in writing, information from the Agency providing the estimated per-unit cost of the utilities for units of similar size and construction for the geographic area in which the building containing the units is located. The Agency estimate may be obtained by a building owner at any time during the building's extended use period (see section 42(h)(6)(D)). Costs incurred in obtaining the estimate are borne by the building owner. In establishing an accurate utility allowance estimate for a particular building, an Agency (or an agent or other private contractor of the Agency that is a qualified professional within the meaning of paragraph (b)(4)(ii)(E) of this section) must take into account, among other things, local utility rates, property type, climate and degree-day variables by region in the State, taxes and fees on utility charges, building materials, and mechanical systems. If the Agency uses an agent or other private contractor to calculate the utility estimates, the agent or contractor and the owner must not be related within the meaning of section 267(b) or 707(b). An Agency may also use actual utility company usage data and rates for the building. However, use of the Agency estimate is limited to the building's consumption data for the twelve-month period ending no earlier than 60 days prior to the beginning of the 90-day period under paragraph (c)(1)

of this section and utility rates used for the Agency estimate must be no older than the rates in place 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section. In the case of newly constructed or renovated buildings with less than 12 months of consumption data, the Agency (or an agent or other private contractor of the Agency that is a qualified professional within the meaning of paragraph (b)(4)(ii)(E) of this section) may use consumption data for the 12-month period of units of similar size and construction in the geographic area in which the building containing the units is located.

(D) *HUD Utility Schedule Model.* A building owner may calculate a utility estimate using the "HUD Utility Schedule Model" that can be found on the Low-Income Housing Tax Credits page at *http://www.huduser.org/datasets/lihtc.html* (or successor URL). Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section.

(E) *Energy consumption model.* A building owner may calculate utility estimates using an energy and water and sewage consumption and analysis model (energy consumption model). The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The utility consumption estimates must be calculated by either a properly licensed engineer or a qualified professional approved by the Agency that has jurisdiction over the building (together, qualified professional), and the qualified professional and the building owner must not be related within the meaning of section 267(b) or 707(b). Use of the energy consumption model is limited to the building's consumption data for the twelve-month period ending no earlier than 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section, and utility rates used for the energy consumption model must be no older than the rates in place 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section. In the case of newly constructed or renovated buildings with less than 12 months of consumption data, the qualified professional may use consumption data for the 12-month period of units of similar size and construction in the geographic area in which the building containing the units is located.

(c) *Changes in applicable utility allowance*—(1) *In general.* If, at any time during the building's extended use period (as defined in section 42(h)(6)(D)), the applicable utility allowance for units changes, the new utility allowance must be used to compute gross rents of the units due 90 days after the change (the 90-day period). For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due at the end of the 90-day period. A building owner using a utility company estimate under paragraph (b)(4)(ii)(B) of this section, the HUD Utility Schedule Model under paragraph (b)(4)(ii)(D) of this section, or an energy consumption model under paragraph (b)(4)(ii)(E) of this section must submit copies of the utility estimates to the Agency that has jurisdiction over the building and make the estimates available to all tenants in the building at the beginning of the 90-day period before the utility allowances can be used in determining the gross rent of rent-restricted units. An Agency may require additional information from the owner during the 90-day period. Any utility estimates obtained under the Agency estimate under paragraph (b)(4)(ii)(C) of this section must also be made available to all tenants in the building at the beginning of the 90-day period. The building owner must pay for all costs incurred in obtaining the estimates under paragraphs (b)(4)(ii)(B), (C), (D), and (E) of this section and providing the estimates to the Agency and the tenants. The building owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.

(2) *Annual review.* A building owner must review at least once during each calendar year the basis on which utility allowances have been established and must update the applicable utility allowance in accordance with paragraph (c)(1) of this section. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

(d) *Record retention.* The building owner must retain any utility consumption estimates and supporting data as part of the taxpayer's records for purposes of § 1.6001–1(a).

■ **Par. 3.** Section 1.42–12 is amended by adding paragraph (a)(4) to read as follows:

§ 1.42–12 Effective dates and transitional rules.

(a) * * *

(4) *Utility allowances.* The first sentence in § 1.42–10(a), § 1.42–10(b)(1), (2), (3), and (4), the last two sentences in § 1.42–10(b)(4)(ii)(A), the third, fourth, and fifth sentences in § 1.42–10(b)(4)(ii)(B), § 1.42–10(b)(4)(ii)(C), (D), and (E), and § 1.42–10(c) and (d) are applicable to a building owner's taxable years beginning on or after July 29, 2008. Taxpayers may rely on these provisions before the beginning of the building owner's taxable year beginning on or after July 29, 2008 provided that any utility allowances calculated under these provisions are effective no earlier than the first day of the building owner's taxable year beginning on or after July 29, 2008. The utility allowances provisions that apply to taxable years beginning before July 29, 2008 are contained in § 1.42–10 (see 26 CFR part 1 revised as of April 1, 2008).

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–17268 Filed 7–28–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0695]

RIN 1625–AA00

Safety Zone; Maine; Sector Northern New England August Swim Events.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones during the month of August around the "Sprucewold Cabbage Island Swim," "Tri for a Cure Triathlon," "Greater Burlington YMCA Lake Swim," "Y-Tri Triathlon," and "Rockland Breakwater Swim" marine events while the events are in progress. These safety zones are needed to protect swimmers, event sponsors' safety vessels, and others in the maritime community from the safety hazards that may arise from events of

applicants' and participants' annual income, as listed in 24 CFR 5.609, this notice, or otherwise specified by statute.

Changes to the Previously Published List

HUD last published in the **Federal Register** a notice of Federally mandated exclusions from income on December 14, 2012, at 77 FR 74498. Today's notice replaces the previously published version by adding a new exclusion, including an inadvertent omission, and correcting two previously listed exclusions:

(1) Adds exclusion of any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107–110, 42 U.S.C. 604(h)(4)), listed as exclusion (xxiv);

(2) Includes previously omitted exclusion of any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802–05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811–16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821)), listed as exclusion (xvi);

(3) Clarifies the criteria for Section 8 participants for exclusion (viii); and

(4) Corrects the timeline of exclusion (xxiii) for settlements payments pursuant to the case entitled *Elouise Cobell et al.* v. *Ken Salazar et al.*

Updated List of Federally Mandated Exclusions From Income

The following updated list of federally mandated exclusions supersedes the notice published in the **Federal Register** on December 14, 2012. The following list of program benefits is the comprehensive list of benefits that currently qualify for the income exclusion in either any Federal program or in specific Federal programs (exclusions (viii), (xiii), (xxi), and (xxii) have provisions that apply only to specific HUD programs):

(i) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(ii) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(f)(1), 5058);

(iii) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(iv) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(v) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540, section 6);

(vii) The first $2000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407–1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(viii) Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109–115, section 327) (as amended);

(ix) Payments received from programs funded under title V of the Older Americans Act of 1965 (42 U.S.C. 3056g);

(x) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (Pub. L. 101–201) or any other fund established pursuant to the settlement in *In Re Agent Orange Liability Litigation*, M.D.L. No. 381 (E.D.N.Y.);

(xi) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, 25 U.S.C. 1728);

(xii) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

(xiii) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(i));

(xiv) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95–433);

(xv) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));

(xvi) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802–05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811–16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821).

(xvii) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));

(xviii) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

(xix) Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1760(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

(xx) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(xxi) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. § 1437a(b)(4));

(xxii) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 *et seq.*) and administered by the Office of Native American Programs;

(xxiii) A lump sum or a periodic payment received by an individual

Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al.* v. *Ken Salazar et al.*, 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111–291);

(xxiv) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107–110, 42 U.S.C. 604(h)(4));

(xxv) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013–30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and

(xxvi) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)).

Dated: May 12, 2014.

Deborah A. Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2014–11888 Filed 5–19–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–RF–2014–NXXX; FXRS12630900000–145–FF09R81000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; National Wildlife Refuge Special Use Permit Applications and Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on June 30, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before June 19, 2014.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (email). Please include "1018–0102" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov*. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

Information Collection Request

OMB Control Number: 1018–0102.

Title: National Wildlife Refuge Special Use Permit Applications and Reports, 50 CFR 25, 26, 27, 29, 30, 31, 32, and 36.

Type of Request: Extension of a previously approved collection.

Service Form Numbers: 3–1383–G, 3–1383–C, and 3–1383–R.

Description of Respondents: Individuals and households; businesses and other for-profit organizations; nonprofit organizations; farms; and State, local, or tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (in hours)	Total annual burden hours
Form 3–1383–G	13,630	13,630	½	6,816
Form 3–1383–C	1,212	1,212	4	4,848
Form 3–1383–R	303	303	5	1,515
Activity Reports	606	606	½	303
Totals	15,751	15,751		13,482

Estimated Annual Nonhour Burden Cost: $121,200 for fees associated with applications for commercial use activities.

Abstract: The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, consolidated all refuge units into a single National Wildlife Refuge System (System). It also authorized us to offer visitor and public programs, including those facilitated by commercial visitor and management support services, on lands of the System when we find that the activities are appropriate and compatible with the purpose for which the refuge was established and the System's mission. The Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) allows the use of refuges for public recreation when it is not inconsistent or does not interfere with the primary purpose(s) of the refuge. The Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) (ANILCA) provides specific authorization and guidance for the administration and management of national wildlife refuges within the State of Alaska. Its provisions provide for the issuance of permits under certain circumstances.

We issue special use permits for a specific period as determined by the type and location of the management activity or visitor service provided. These permits authorize activities such as:

- Agricultural activities (haying and grazing, 50 CFR 29.1 and 29.2).
- Beneficial management tools that we use to provide the best habitat possible on some refuges (50 CFR 30.11, 31.14, 31.16, and 36.41).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

[Docket No. FR–5720–F–03]

RIN 2501–AD71

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

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

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

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

This rule reflects the statutory changes made by VAWA 2013, as well as HUD's recognition of the importance of providing housing protections and rights to victims of domestic violence, dating violence, sexual assault, and stalking. By increasing opportunities for all individuals to live in safe housing, this will reduce the risk of homelessness and further HUD's mission of utilizing housing to improve quality of life.

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

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

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

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action

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

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

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

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

Summary of the Major Provisions of This Regulatory Action

Major provisions of this rule include:

- Specifying "sexual assault" as a crime covered by VAWA in HUD-covered programs.
- Establishing a definition for "affiliated individual" based on the statutory definition and that is usable and workable for HUD-covered programs.
- Applying VAWA protections to all covered HUD programs as well as the Housing Trust Fund, which was not statutorily listed as a covered program.
- Ensuring that existing tenants, as well as new tenants, of all HUD-covered programs receive notification of their rights under VAWA and HUD's VAWA regulations.
- Establishing reasonable time periods during which a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking may establish eligibility to remain in housing, where the tenant's household is divided due to a VAWA crime, and where the tenant was not the member of the household that previously established eligibility for assistance.
- Establishing that housing providers may, but are not required to, request certain documentation from tenants seeking emergency transfers under VAWA.
- Providing for a six-month transition period to complete an emergency transfer plan and provide emergency transfers, when requested, under the plan.
- Revising and establishing new program-specific regulations for implementing VAWA protections in a manner that is workable for each HUD-covered program.

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

Costs and Benefits

The benefits of HUD's rule include codifying in regulation the protections that VAWA 2013 provides applicants to and tenants of HUD programs covered by VAWA; strengthening the rights of victims of domestic violence, dating violence, sexual assault, or stalking in HUD-covered programs, including notification and confidentiality rights; and possibly minimizing the loss of housing by such victims through the bifurcation of lease provision and emergency transfer provisions. With respect to rental housing, VAWA was enacted to bring housing stability to victims of domestic violence, dating violence, sexual assault or stalking. It was determined that legislation was needed to require protections for such victims because housing providers often responded to VAWA crimes occurring in one of their rental units or on their property by evicting the tenant regardless of whether the tenant was a victim of domestic violence, dating violence, sexual assault, or stalking, and refusing to rent to such victims on the basis that violence would erupt in the victim's unit or on a housing provider's property if the individual was accepted as a tenant. To ensure that housing providers administering HUD assistance did not respond to domestic violence, dating violence, or stalking by denying or terminating assistance, VAWA 2005 brought HUD's public housing and Section 8 programs under the statute's purview, and VAWA 2013 covered the overwhelming majority of HUD programs providing rental assistance.

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

I. Background

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

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

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

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

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

Many of the comments submitted in response to the August 6, 2013, notice asked HUD to advise program participants that certain VAWA protections are in effect without the necessity of rulemaking. In response to these comments, HUD offices administering HUD-covered programs reached out to participants in their programs to advise them that the core statutory protections of VAWA—not denying or terminating assistance to, or evicting an individual solely on the basis that an individual is or has been a victim of domestic violence, dating violence, stalking, or sexual assault—were effective upon enactment and do not require notice and comment rulemaking for implementing these protections and that they should proceed to provide the basic VAWA protections.[1]

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

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

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

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

[1] See, for example, the letter to Executive Directors of public housing agencies from the Assistant Secretary for Public and Indian Housing, issued September 30, 2013, at *http://portal.hud.gov/hudportal/documents/huddoc?id=sept2013vawaltr_phas.pdf,* as well as communications from HUD's HOME Investment Partnerships Programs (HOME) at *https://www.onecpd.info/resources/documents/HOMEfires-Vol11-No1-Violence-Against-Women-Reauthorization-Act-2013.pdf,* and from HUD's Office of Special Needs Assistance Programs at *https://www.onecpd.info/news/reauthorization-of-the-violence-against-women-act-vawa/.*

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

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

II. This Final Rule

A. Overview of Changes Made at the Final Rule Stage

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

The final rule:

- Clarifies that, consistent with HUD's nondiscrimination and equal opportunity requirements, victims of domestic violence, dating violence, sexual assault, and stalking cannot be discriminated against on the basis of any protected characteristics (including race, color, religion, sex, disability, familial status, national origin, or age), and HUD programs must also be operated consistently with HUD's Equal Access Rule (HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals and families without regard to actual or perceived sexual orientation, gender identity or marital status). (See § 5.2001(a).)
- Provides that in regulations governing short-term supported housing, emergency shelters, and safe havens, these forms of shelter are subject to the core protections of VAWA that prohibit denial of admission or eviction or termination to an individual solely on the basis that the individual is a victim of domestic violence, dating violence, or stalking, or sexual assault. (See §§ 574.604(a)(2), 576.409(f), and 578.99(j)(9).)
- Revises the definition of "affiliated individual" to incorporate situations where an individual has guardianship over another individual who is not a child. (See § 5.2003.)
- Revises the definition of "domestic violence" to incorporate a definition of "spouse or intimate partner" rather than cross-reference to another definition of the term, and to eliminate the cross-reference to "crime of violence," a more restricting term. (See § 5.2003.)
- Provides that existing tenants in HUD-covered programs receive HUD's Notice of Occupancy Rights and accompanying certification form no later than one year after this rule takes effect, during the annual recertification or lease renewal process, if applicable, or through other means if there will be no annual recertification or lease renewal process for a tenant. (See § 5.2005(a)(2)(iv).)
- Retains the provision of HUD's regulations implementing VAWA 2005, for those HUD programs covered by VAWA 2005, which states that the HUD-required lease, lease addendum, or tenancy addendum must include a description of the specific protections afforded to the victims of VAWA crimes. (See § 5.2005(a)(4).)
- Clarifies that applicants may not be denied assistance and tenants may not have assistance terminated under a covered housing program for factors resulting from the fact that the applicant or tenant is or has been a victim of a VAWA crime. (See § 5.2005(b)(1).)
- Emphasizes that victims of sexual assault may qualify for an emergency transfer if they either reasonably believe there is a threat of imminent harm from further violence if they remain in their dwelling unit, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer. (See § 5.2005(e)(2)(ii).)
- Provides that emergency transfer plans must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of individuals seeking transfers or placement on waiting lists. (See § 5.2005(e)(3).)
- Provides that emergency transfer plans must allow for a tenant to transfer to a new unit when a safe unit is immediately available and the tenant would not have to apply in order to occupy the new unit (§ 5.2005(e)(5)).
- Provides that emergency transfer plans must describe policies for assisting tenants to make emergency transfers when a safe unit is not immediately available, both for situations where a tenant would not have to apply in order to occupy the new unit, and where the tenant would have to apply in order to occupy the new unit. (See § 5.2005(e)(6), § 5.2005(e)(7), and § 5.2005(e)(8)).
- Provides that the emergency transfer plans must describe policies for assisting tenants who have tenant-based rental assistance to make emergency moves with that assistance. (§ 5.2005(e)(9)).
- Adds a provision that emergency transfer plans may require documentation, as long as tenants can establish eligibility for an emergency transfer by submitting a written certification to their housing provider, and no other documentation is required for tenants who have established that they are victims of domestic violence, dating violence, sexual assault, or stalking to verify eligibility for a transfer. (See § 5.2005(e)(10).)
- Requires housing providers to make emergency transfer plans available upon request, and to make them publicly available whenever feasible. (See § 5.2005(e)(11).)
- Provides for a six-month transition period to complete an emergency transfer plan and provide emergency transfers, when requested, under such plan. (See § 5.2005(e) or applicable program regulations)
- Emphasizes that tenants and applicants may choose which of the forms of documentation listed in the rule to give to housing providers to document the occurrence of a VAWA crime. (See § 5.2007(b)(1).)
- Provides that in cases of conflicting evidence, tenants and applicants who may need to submit third-party documentation to document occurrence of a VAWA crime have 30 calendar days to submit the third-party documentation. (See § 5.2007(b)(2).)
- Provides that if a covered housing provider bifurcates a lease under VAWA, any remaining tenants who had not already established eligibility for assistance must be given either the maximum time permitted by statute, or, if there are no statutory prohibitions, at least 90 calendar days from the date of bifurcation of the lease or until expiration of the lease, depending on the covered housing program, to establish eligibility for a covered housing program, or find alternative housing (See § 5.2009(b)(2).)
- Provides that if a family in a HOME-assisted rental unit separates under § 5.2009(a), the remaining tenant(s) will retain the unit. (See § 92.359(d)(1).)
- Provides that if a family receiving HOME tenant-based rental assistance separates under § 5.2009(a), the tenant(s) who are not removed will retain the HOME tenant-based rental assistance, and the participating jurisdiction must determine whether a tenant who was removed from the unit will receive HOME tenant-based rental assistance. (See § 92.359(d)(2).)
- Establishes VAWA regulations for the Housing Trust Fund, based on the regulations for the HOME program. (See 24 CFR part 93.)
- Emphasizes that VAWA protections apply to eviction actions for tenants in

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

- Clarifies in the HOPWA regulations that the grantee or project sponsor is responsible for ensuring that the owner or manager of a facility assisted under HOPWA develops and uses a VAWA lease addendum. (See part 574.)
- Clarifies who is the covered housing provider for HUD's multifamily Section 8 project-based programs and the Section 202 and Section 811 programs, by providing that the covered housing provider is the owner for the Section 8 Housing Assistance Payments Programs for New Construction (part 880), for Section 515 Rural Rental Housing Projects (part 884), and for Special Allocations (part 886), as well as for the Section 202 and Section 811 programs (part 891) and that PHAs and owners each have certain responsibilities as covered housing providers for the Section 8 Moderate Rehabilitation Program (part 882), and the Section 8 State Housing Agencies Program for State Housing Agencies (part 883).
- Updates various section 8 and public housing VAWA 2005 regulations to broadly state that VAWA protections apply, so that all tenants and applicants, and not only those determined to be victims of VAWA crimes, receive statutorily required notification of their VAWA rights. (See parts 880, 882, 883, 884, 886, 891, 960, 966, and 982.)
- Clarifies that VAWA protections and requirements apply to mixed finance developments. (See § 905.100(g).)
- Clarifies that public housing agencies (PHAs), like other covered providers, may establish preferences for victims of dating violence, sexual assault, and stalking, in addition to domestic violence, consistent with their statutory authority. (See §§ 960.206(b)(4), 982.207(b)(4).)
- Clarifies that for the Section 8 Housing Choice Voucher and Project-Based Voucher programs, the PHA is the housing provider responsible for complying with VAWA emergency transfer provisions. (See §§ 982.53(e), 983.3(b).)

B. Summary of Public Comments and HUD Responses

As noted earlier in this preamble, the majority of the commenters expressed support for the rule, but they also presented questions and comments about specific provisions of the rule. The primary provisions of the rule on which commenters posted comments pertained to emergency transfers, lease bifurcation, documentation requirements, eligibility for and limitations on VAWA protections, the roles and responsibilities of different housing providers under different HUD programs, the notice of occupancy rights, implementation and enforcement of the rule, and confidentiality requirements. The following presents the significant issues raised by the commenters and HUD's response to the comments.

1. Applicability

a. Eligibility for VAWA Protections

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

A commenter stated that HUD's final rule's definitions of domestic violence, dating violence, sexual assault or stalking must be sufficiently clear so as not to cause survivors to be punished for ancillary crimes as a result of the abuse they have suffered or cause survivors to be blamed for the abuse. Commenters said some survivors have been evicted because they "invited" the perpetrator into the home and subsequently received an eviction notice under Crime Free Drug Free policies[3] or a Crime Free Lease Addendum.[4] Commenters said victims of VAWA crimes are disadvantaged because landlords typically do not mention domestic violence, sexual violence or stalking in the eviction notice.

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

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

[2] See *http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf.*

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

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

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

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

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

Comment: Include victims of "economic abuse" as covered by VAWA protections. Commenters stated that VAWA 2013 was meant to protect victims of economic abuse, the legislative history of the statute contains many references to the effects of economic abuse, and the final rule should clarify that VAWA protections apply to victims of economic abuse. Commenters said economic abuse includes a broad range of conduct, including but not limited to, interfering with the victim's employment, controlling how money is spent, forcing the victim to write bad checks, incurring significant debt in the victim's name, or otherwise harming the victim's financial security. Commenters stated that persons who have poor credit, no credit or an inability to access money can be denied housing, which often results in homelessness. Commenters said the proposed definition of "stalking" eliminates the harassment and intimidation considerations that arguably make economic abuse a form of stalking under current regulations, and the consequence is removing protections available to current tenants, and this runs counter to VAWA 2013, which is intended to increase not reduce protections.

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

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

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

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

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

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

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

Other commenters stated that the preamble to the proposed rule created confusion when it stated that affiliated individuals do not receive VAWA protections if they are not on the lease and that the protections of VAWA are directed to tenants. Commenters stated that specific protections, however, may extend to affiliated individuals or be limited to tenants or lawful occupants. In support of this statement, the commenters stated that no individual may be denied housing in a covered program based on the individual's status as a survivor, but the right to bifurcate the lease and preserve the subsidy is limited to tenants or lawful occupants. Commenters asked HUD to correct language in the preamble to the proposed rule that they stated incorrectly construed the protections of VAWA as applying only to those named on the lease, and added that whether an individual is a "tenant" or a "lawful occupant" is a question of State law on which HUD should not take a position, as this could conflict with State law. Commenters further stated that, as part of the dynamics of an abusive relationship, a survivor will often not be listed as a tenant on the lease but may be a lawful occupant. Commenters concluded their comments stating that, to limit protections to "tenants" or to individuals specifically named on the lease, without regard for how a lawful occupant might be characterized under State or local laws, undermines the very purpose of VAWA.

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

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

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

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

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

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

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

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

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

Housing providers should also be aware more generally of other Federal fair housing and civil rights laws that may be applicable, including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Title VI of the Civil Rights Act. For example, housing providers might violate the Fair Housing Act under a discriminatory effects theory if they have an unjustified policy of evicting victims of domestic violence, as such a policy might disproportionately harm females or individuals that have another protected characteristic.

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

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

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

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

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

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

property safe, how much the landlord is expected to expend to ensure the safety of tenants, and what responsibility the tenants have in ensuring their own safety.

HUD Response: As the commenter noted, § 5.2005(d)(3)—now designated as § 5.2005(d)(4)—is already in HUD's VAWA regulations and is in effect. HUD has no reason to eliminate this provision now, as VAWA 2013 was meant to expand, and not to retract VAWA protections. HUD agrees with the commenter that the ability and resources of the housing provider to provide alternatives to evictions will vary, just as the circumstances of the abuse and the safety needs of the victim will vary. This variation, however, does not preclude a policy that sets eviction as the last resort.

b. Covered Programs

Comment: List all program/subsidy types to which VAWA regulations apply. Commenters said HUD regulations should specifically list all programs and subsidy types to which VAWA protections apply, and not solely those listed in the statute. A commenter said this is necessary because there are many HUD programs that fall under the multifamily umbrella and, in the past, VAWA requirements for the Section 8 programs differed from other program types. Another commenter said it does not appear that VAWA applies to certain Section 202 Direct Loan Projects that do not have project-based Section 8 assistance, or to certain Section 221(d)(3)/(d)(5) Below Market Interest Rate (BMIR) projects, or to certain Section 236 projects. Commenter asked whether these programs would be included. Another commenter said there should be an easier way to explain which programs do not fall under VAWA.

HUD Response: HUD's final rule lists all HUD programs covered by VAWA 2013 in the definition of covered housing program, and addresses questions about specific programs below.

Comment: The Housing Trust Fund was not listed in VAWA as a covered program. Commenters expressed concern about HUD's coverage of the Housing Trust Fund (HTF) program, which was not specifically identified as a "covered housing program" in the VAWA statute, and, said that without specific statutory authority to apply VAWA to HTF, either a tenant or housing provider could challenge the rule and its application, which could lead to litigation expenses for all parties. Other commenters stated that HTF should be a covered program. Commenters stated that such coverage is consistent with Congressional intent, which, through VAWA 2013, sought to expand VAWA protections to all HUD programs that provide rental assistance. The commenters further stated that maintaining similarity in the regulatory treatment of HOME and HTF is efficient for program participants and appropriate because many of the HTF's program requirements are similar to those that apply to the HOME program.

HUD Response: HUD maintains the HTF program as a covered program in this final rule. HUD has authority to establish regulations for its programs where they do not conflict with other laws. Rather than conflicting with VAWA 2013, including the HTF program as a covered program aligns with the intent of the law, which expanded the protections of VAWA to HUD's programs that provide rental assistance. As noted in the preamble to the proposed rule and, as commenters have themselves said, the HTF program is very similar to the HOME program and to HUD, it is not logical to exclude the HTF program.

Rule Change: This final rule adds § 93.356 (VAWA requirements) to the HTF interim regulations, which generally applies the same VAWA requirements to HTF as apply to the HOME program at 92.359. This final rule also revises § 93.303 (Tenant protections and selection) by revising § 93.303(a) and adding § 93.303(d)(7) to mirror § 92.253 (a) and § 92.253(d)(7) of this final rule's HOME regulations. In addition, this rule revises § 93.404(c) to state that written agreements with subgrantees and eligible recipients must set forth all obligations the grantee imposes on them in order to meet the VAWA requirements under § 93.356, including notice obligations and obligations under the emergency transfer plan.

Comment: All Section 202 Direct Loan projects should be subject to VAWA protections. Commenters said the proposed rule was not clear as to why Section 202 Direct Loan projects without project-based rental assistance were excluded from VAWA protections, and recommended that HUD include these properties. Another commenter said that HUD's decision to exclude the Section 202 Direct Loan program from VAWA's coverage is based on an interpretation that is unnecessarily restrictive and violates the VAWA statute. A commenter stated VAWA 2013's plain statutory language is broad in scope, expressing no further limitation or ambiguity, and any property funded under Section 202 qualifies. Other commenters said that covering Section 202 Direct Loan properties without Section 8 contracts extends these important protections to all similar HUD-supported housing programs, which follows congressional and HUD intent.

HUD Response: HUD maintains that its interpretation provided in the proposed rule with respect to Section 202 Direct loans is correct, but includes additional information to elaborate on HUD's proposed rule statement. In the proposed rule, at 80 FR 17752, HUD stated that section 202 of the National Housing Act of 1959 authorized HUD to make long-term loans directly to multifamily housing projects and the loan proceeds are to be used to finance the construction of multifamily rental housing for persons age 62 years or older and for persons with disabilities. The Section 202 Direct Loan program ran from 1959 to 1990.[6] The purpose of the program was primarily to provide direct Federal loans for the development or substantial rehabilitation of housing for the elderly or for persons with disabilities. Amendments to Section 202 Direct Loan program in 1990, made by the Cranston-Gonzalez National Affordable Housing Act, replaced this program with capital advance programs for owners of housing designed for the elderly or residents with disabilities, and established two parallel programs for the elderly and for persons with disabilities—the Section 202 Supportive Housing for the Elderly program and the Section 811 Supportive Housing for Persons with Disabilities Program.[7] These two programs, which are rental programs, and which reflect the majority of the legacy of the Section 202 Direct Loan program, are covered by VAWA. Further, all projects that received Section 202 direct loans and receive project-based assistance under Section 8 are required to comply with VAWA protections.

However, as mentioned in the proposed rule, there have been no new Section 202 direct loans since 1990. All Section 202 direct loan projects, as with projects under other HUD programs, that received any type of direct assistance prior to VAWA 2013 are not subject to new statutory requirements on HUD programs unless there is some ongoing contractual agreement with HUD or the statute specifically speaks to retroactive application for existing projects. Therefore, unless the Section

[6] See *https://www.hudexchange.info/course-content/hud-multifamily-affordable-housing-preservation-clinics/Preservation-Clinic-Workshop-Section-202-Direct-Loan.pdf.*

[7] See Public Law 101–625, 104 Stat. 4079, approved November 28, 1990. See specifically Title VIII at 104 Stat. 4297.

202 direct loan project has an agreement or contract with HUD otherwise, such as with project-based assistance under Section 8, those direct loans entered into prior to 2013 would not be subject to VAWA requirements because VAWA did not specifically apply its requirements retroactively.

Comment: Encourage, if not require, housing providers under additional Federally-financed programs to offer VAWA protections. Commenters asked HUD to make clear that housing providers in programs not covered by HUD's VAWA regulations can offer VAWA protections, and to encourage these providers to offer VAWA protections. Commenters also urged HUD to ensure that all affordable units with HUD funds are subject to VAWA, including existing units that undergo affordable housing preservation efforts by HUD, such as the Rental Assistance Demonstration (RAD) units, Choice Neighborhood units, and multifamily units in the Rent Supplement Program. Commenters asked that the final rule's description of public housing explicitly include public housing that has been assisted by, for example, HOPE VI, Mixed Finance, Choice Neighborhoods, or converted under the RAD program. Another commenter asked that HUD generally state in its regulations that VAWA applies to affordable units that HUD preserves and, where applicable, that the VAWA obligation be set forth in any relevant Notice of Funding Availability (NOFA). Other commenters further recommended that HUD's regulations reflect HUD's authority to expand VAWA protections to other types of HUD affordable housing that may be established in the future and the agency will do so by HUD or **Federal Register** notice.

A commenter also said that the proposed regulations in 24 CFR 574.604(a)(2) and 578.99(j) are too broad, and where rental assistance is provided and there is a written agreement or a lease, VAWA should apply to short-term supported housing and McKinney-Vento Safe Havens. Another commenter asked for guidance that clearly allows senior housing providers the option to extend VAWA protections to victim residents, even if their program type was not specifically included in the statute.

HUD Response: HUD's VAWA regulations apply only to HUD-covered housing programs, but, as HUD has earlier stated in this preamble, housing providers have discretion to apply the rule's provisions to all tenants and applicants and HUD indeed encourages housing providers to provide VAWA protections to all tenants not only to those covered in HUD subsidized units. With respect to HUD's authority to expand coverage to other HUD programs not listed in the statute, HUD has such authority and the inclusion of the HTF program in this rule evidences such authority.

Tenants in units under a HUD-covered program maintain their VAWA protections where their units are converted to coverage under a new HUD program. The conversion does not eliminate their VAWA protections. With respect to RAD, tenants in converted units continue to be covered by VAWA's protections provided under HUD's Section 8 Project-Based Voucher program or Project-Based Rental Assistance Program.

Choice Neighborhoods is a development tool that uses grant funds to develop housing to address struggling neighborhoods with distressed public or HUD-assisted housing. The assistance may come from public housing, RAD or HOME funds. Therefore, tenants residing in units developed with Choice funds receive VAWA protections under the relevant rental subsidy programs where assistance comes from a HUD-covered housing program.

The Rent Supplement program provides continued assistance on active or newly expired original term contracts. Though the program is no longer active, families continue to be supported until each Rent Supplement contract expires. For the VAWA protections to apply, tenants need to be residing in a project that receives Rent Supplement payments and is also subject to VAWA, such a section 221(d)(3)/(d)(5) project or section 236 project. Once a Rent Supplement contract expires, families may receive tenant protection vouchers and are then under the Housing Choice Voucher (HCV) program (*i.e.*, the Section 8 tenant-based program), a covered housing program.

Tenants in public housing that received funding under the HOPE VI program would continue to have the same VAWA rights as other public housing residents.

To ensure tenants in mixed-finance projects receive VAWA protections, this final rule adds a new provision at 24 CFR 905.100(g) that provides that PHAs must apply the VAWA protections under part 5 for mixed finance developments.

This rule maintains the provisions in §§ 574.604(a)(2) and 578.99(j) that state the requirements in 24 CFR part 5, subpart L, that are specific to tenants or those who are applying to become tenants (such as the notice of occupancy rights for tenants and applicants, and bifurcation of leases and emergency transfer plans for tenants) do not apply to short-term supported housing and McKinney-Vento Safe Havens, as the regulations for tenants could not be applied in those contexts. However, in response to commenters' concerns, the regulations in this final rule explicitly provide that safe havens and short-term supported housing are subject to the core protections of VAWA (the prohibitions against denying admission or terminating assistance on the basis that the individual is or has been a victim of domestic violence, dating violence, stalking or sexual assault).

Rule Change: This rule includes a new provision at 24 CFR 905.100(g) for mixed finance developments in 24 CFR part 905, subpart F, which provides that public housing agencies must apply the VAWA protections in 24 CFR part 5, subpart L.

This rule clarifies, in the HOPWA regulations at 24 CFR 574.604(a)(2), and the regulations for the Continuum of Care (CoC) program at 578.99(j), that, although the requirements in 24 CFR part 5, subpart L, do not apply to short-term supported housing or safe havens, no individual may be denied admission to or removed from the short-term supported housing or safe haven on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or occupancy.

Comment: The Rural Housing Stability Assistance Program final rule should incorporate VAWA protections and obligations. Commenters stated that the proposed rule does not provide any amendments to the Rural Housing Stability Assistance Program (RHSP), and commenters urged HUD to ensure that the RHSP final rule comprehensively incorporates VAWA's protections and obligations. Commenters said that the RHSP proposed rule provided an exception for VAWA victims who needed to relocate for safety reasons by allowing victims with tenant-based assistance to move out of the county, but the requirements are inconsistent with VAWA and there is no mention of VAWA in the RHSP rule governing termination of assistance. Commenters asked HUD to make sure that the VAWA obligations and policies of the RHSP program are consistent within HUD's homeless assistance programs, as well as across all programs administered by HUD's Office of Community Planning and Development. Commenters recommended amending 24 CFR 579.418 and 579.424 to include references to VAWA.

HUD Response: HUD appreciates these comments, and notes that the VAWA Reauthorization Act of 2013 occurred prior to the publication of the RHSP proposed rule. HUD will include the applicable VAWA provisions in the RHSP final rule.

Comment: HUD's rule should cover McKinney-Vento homeless shelters. Commenters said the proposed rule did not include emergency shelters, as it limits the types of assistance to short or medium-term rental assistance and permanent or transitional housing. Commenters urged HUD to include emergency shelters in the final rule interpreting programs covered under Title IV of the McKinney Vento/Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, and to include program-specific amendments to Emergency Solutions Grants (ESG) and CoC regulations that clarify that emergency shelter is part of a VAWA covered housing program. A commenter asked HUD specifically to address, in the shelter context, the applicability of VAWA's notice of occupancy rights, and the prohibition against denial of admission or assistance and termination from participation in shelter.

Commenters stated that the plain language of VAWA does not exclude shelters, and said that "applicable assistance," which cannot be denied or terminated pursuant to VAWA, does not necessarily have to be tied to rental assistance. Commenters said admission and termination policies and practices at homeless shelters can often exclude survivors of domestic violence, dating violence, sexual assault and stalking, and victims report having to recount the violence and report being subject to a higher standard of admission and conditions of stay than other participants, such as producing orders of protection. Commenters said these victims are also denied admission if they are considered "unsafe" for the program, and in family shelters, domestic violence survivors are sometimes terminated from the program along with the perpetrator if they are abused on the property.

Commenters said Continuums of Care often choose homeless shelter programs as the main entry point into coordinated assessment, and if shelters' exclusionary practices continue without VAWA's protections, survivors may be excluded from access not only to emergency shelter, but also to other resources and housing. Commenters said such practices undermine HUD's efforts to end homelessness to exclude shelters from VAWA protection because, in many CoCs, they will be the entry point through which victims experiencing homelessness access tenant-based rental assistance, transitional housing and other HUD-funded homelessness programs.

HUD Response: HUD agrees with the commenters that the core VAWA nondiscrimination protections should apply to emergency shelters subsidized by HUD, and individuals are not to be denied shelter because they are victims of domestic violence, dating violence, sexual assault, or stalking. In this final rule, HUD adds language to the ESG program regulation to make the VAWA core protections apply to emergency shelter.

However, as HUD stated in its proposed rule, the regulatory requirements in 24 CFR part 5, including the notice of occupancy rights, apply to assistance for rental housing, which generally involves a tenant, a landlord (the individual or entity that owns and/or leases rental units) and a lease specifying the occupancy rights and obligations of the tenant. This is because, as explained elsewhere in this rule, those VAWA protections are directed to rental housing.

Rule Change: In this final rule, HUD provides in 24 CFR 576.409(f) that for emergency shelters funded under 24 CFR 576.102, no individual or family may be denied admission to or removed from the emergency shelter on the basis or as a direct result of the fact that the individual or family is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual or family otherwise qualifies for admission or occupancy.

Comment: Explain how housing providers should coordinate multiple forms of assistance for a single housing unit. Commenters stated that HUD's proposed rule did not address the ways in which multiple forms of assistance covered by VAWA requirements may be coordinated under the HTF program, in other mixed finance properties or when multiple forms of assistance apply to a given housing unit.

HUD Response: HUD provides in § 5.2001(b)(2) of this final rule that, when assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes. As explained later in this preamble, where housing is covered under multiple HUD programs, the responsible housing provider under each program will provide the required Notice of Occupancy Rights and certification form, and tenants may request emergency transfers or lease bifurcations under any applicable program, unless prohibited from doing so because of statutory constraints. For example, if a lease is bifurcated for a permanent supportive housing unit that is assisted under both HOME and the CoC Program, and the CoC Program rule would prohibit the remaining family member from continuing to reside in the unit beyond the existing lease term, because the family member does not have a disability, then the family member cannot depend on the bifurcation regulations for the HOME program to remain in the unit for longer than the existing lease term.

Rule Change: HUD revises § 5.2001(b)(2) to clarify that, when assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

2. Definitions and Terminology

a. General Terminology

Comment: Clarify that VAWA does not apply solely to women. A commenter stated that while the name of VAWA cannot be changed, references to VAWA could instead be made to a housing violence policy to encourage more individuals to seek protections.

HUD Response: HUD appreciates this comment and has repeatedly stated in its rule, documents, and in guidance that VAWA applies regardless of sex, gender identity, or sexual orientation. In the very first paragraph of the first regulatory section (24 CFR 5.2001(a)) HUD states that notwithstanding the title of the statute victims covered by VAWA protections are not limited to women. However, HUD declines to change references to VAWA out of concern that this will cause confusion as to whether HUD's regulations are associated with the statute. It is important that the public are aware that these protections are mandated by statute.

HUD emphasizes in this final rule that victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial

status, disability, or age, and HUD programs must also be operated consistently with HUD's Equal Access Rule at 24 CFR 5.105(a)(2), which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

Rule Change: In this final rule, HUD adds a provision in § 5.2001 that states that, consistent with the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a), victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age, and HUD programs must also be operated consistently with HUD's Equal Access Rule at 24 CFR 5.105(a)(2)

Comment: Use terminology that applies to all VAWA victims. In order to support housing providers in considering the needs of sexual assault victims, commenters recommended that HUD always list the four protected crimes separately (domestic violence, dating violence, sexual assault and stalking) rather than using umbrella terms like "domestic and sexual violence." Commenters stated that the self-certification form collectively refers to domestic violence, dating violence, sexual assault, and stalking as "domestic violence," but they advised that this can cause confusion for a survivor of stalking or sexual assault whose perpetrator may have been a stranger, and to ensure all survivors covered under VAWA protections are aware of their rights, "domestic violence" should not be used as a catch-all term, and each term should be used separately. Commenters further suggested that HUD use terms like "perpetrator" rather than "abuser" to fit a multiple crimes context. Commenters also said that HUD should not solely reference victims fleeing from abuse, but also those recovering from violence in order to better address the nature of trauma from the impact of sexual violence.

HUD Response: HUD appreciates these comments and agrees with the concerns expressed by the commenters. HUD has revised the certification form, notice of occupancy rights, and model emergency transfer plan to list the four protected crimes separately, and to use the term "perpetrator" in lieu of, or in addition to the term "abuser" when referencing a person who commits one of the VAWA crimes. HUD has also revised the notice of rights and model emergency transfer plan to provide resources for victims of sexual assault and stalking, in addition to resources for victims of domestic violence.

b. Affiliated Individual

Comment: The definition of "affiliated individual" and its use in the proposed rule is not clear. Commenters said HUD's proposed rule indicated that HUD's replacement of, "immediate family members," with "affiliated individual" will include any legitimate household member, whether a family member or not. Commenters said the language in the proposed rule appeared to reach beyond that as the proposed rule included "any individual, tenants, or lawful occupants." Commenters stated that inclusion of "any individual" is separate from "lawful occupant," further stating that these two classes are not identical. A commenter said that if "any individual" refers to an unauthorized occupant, then the regulations must explain what protections, if any, such individuals may receive if the individual is a victim of a VAWA crime or is an innocent household member in a household where a VAWA crime was committed. The commenter asked, for example, if those who are not tenants or lawful occupants would be afforded a reasonable time to establish eligibility for a covered housing program following a lease bifurcation. Commenters said that if the term "any individual" refers to an unauthorized occupant, the regulation should state that this individual has no rights to the unit. Another commenter said the definition of "any individual" must explicitly exclude guests or illegitimate occupants. Another commenter said the final rule should clarify that an affiliated individual can only be somebody lawfully living in the household. The commenter said that while VAWA protections apply only to lawful tenants, the rule asserts an affiliated individual may receive indirect benefits, but the final rule should clarify VAWA benefits do not apply to unreported or unauthorized members of the household.

HUD Response: Under VAWA 2013 and HUD's regulations, the term "affiliated individual" does not refer to the tenant who requests or is eligible for VAWA protections. Rather, an affiliated individual refers to a person who has a certain relationship to a tenant who is eligible for VAWA protections and remedies.

Under both VAWA 2013 and HUD's regulations, a tenant may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if that tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking. In essence, the inclusion of affiliated individual is to add a further protection for tenants by providing that a VAWA crime committed against an affiliated individual, an individual without VAWA protections, is not a basis for denying or terminating assistance to the tenant. HUD declines to change or limit the definition of "affiliated individual" to exclude "any individual." The statute provides that the term includes any individual "living in the household of the person who is eligible for VAWA protections."

Comment: HUD's language change from "in loco parentis" may not include guardianships of non-competent adults. Commenters stated that the definition of "affiliated individual" refers repeatedly to relationships with children, but the definition should include all circumstances where a household member has some form of guardianship over a non-competent household member of any age.

HUD Response: The statutory definition of "affiliated individual" includes any individual living in the household of a person, and therefore a non-competent household member would be included as an affiliated individual. However, the familial and close relationships in the first part of the definition of affiliated individual do not require that the affiliated individual live in the same household as the person seeking VAWA protections. HUD appreciates the commenter's concern that HUD's change from the statutory phrase "in loco parentis" to language regarding a relationship like that of a parent to a child may be under-inclusive. HUD has revised the definition of "affiliated individual" to include a relationship where an individual has a guardianship of another individual, regardless of age.

Rule Change: HUD revises the definition of "affiliated individual" in § 5.2003 to provide that affiliated individual, with respect to an individual, means: (A) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or (B) any individual, tenant, or lawful occupant living in the household of that individual.

c. Covered Housing Provider

Comment: Clarify which covered housing provider has which responsibilities under VAWA. Commenters stated that in sections of the proposed regulation on HUD's multifamily Section 8 project-based programs in 24 CFR parts 880, 882, 883, 884, 886, and 891, the covered housing provider is defined as either the PHA or the owner, depending on the circumstances; for example, the commenter stated, the definition provides that the PHA would be responsible for providing the notice of occupancy rights and certification form. The commenters questioned this responsibility since PHAs under these programs do not have the contact with applicants or tenants that owners have, and said this is more properly an owner's responsibility, particularly when serving a notice of eviction. A commenter said that HUD should provide copies of the notice and certification form to the owner, and then the owner must provide the notice and form when required.

Commenters also said HUD's proposed rule identifies the PHA as the entity responsible for providing the reasonable time to establish eligibility for assistance following bifurcation of a lease for HUD's multifamily Section 8 project-based programs, but § 5.2009(b) of the rule defines the time that a tenant has to establish eligibility for assistance and does not give a covered housing provider flexibility in that regard. A commenter said that, it is the owner, not the PHA that establishes eligibility, and therefore, it should be the owner, not the PHA, to provide the reasonable time to establish eligibility.

A commenter stated that the definition of "covered housing provider" in 24 CFR parts 880, 882, 884, 886, 891, 982, and 983 was proposed, in the April 1, 2015, proposed rule to be the same as in 24 CFR part 883. The commenter encouraged HUD to review the definition of covered housing provider in the context of how each of the programs is actually administered and reevaluated whether the definition is appropriate. A commenter recommended that any activity that requires an interaction with a tenant should be assigned to the owner or its manager; and a State housing agency should be responsible only for monitoring the delivery of appropriate notices and that correct policies are in place and being followed. The commenter stated that, if model forms for use by an owner are required, the State housing agency, if not HUD, could provide them.

Other commenters stated that, for the Moderate Rehabilitation Single Room Occupancy (SRO) program, the proposed rule stated that the owner is the covered housing provider, but it is unclear why the PHA is not also considered the covered housing provider since the PHA has duties in administering the program. The commenters stated that it is unclear which entity is responsible for adopting, administering, and facilitating the emergency transfer plan, which entity is responsible for maintaining confidentiality and lease bifurcation, and which entity is responsible for providing the VAWA housing rights notice and certification form. Commenters stated that confidentiality must be maintained by the entity that obtains the information about the victim, and when a lease bifurcation occurs, the owner and the PHA must coordinate to provide a reasonable time for the tenant to establish eligibility for the same covered program or another covered program.

Another commenter said that the State recipient should be the conduit and responsible party for implementation. The commenter said that, because CoCs operate distinctly across a State and PHAs have considerable local control, it is important that the implementation of VAWA be consistent and equally applied to survivors, regardless of where they may reside in a State, and the State recipient could serve in an ombudsman-type role in order to ensure that all organizations and individuals understand their roles and obligations. The commenter said State recipients should specifically be tasked with developing model notices, forms, and the emergency transfer plans in collaboration with the statewide domestic violence and sexual assault coalition(s), which then can be adopted and implemented by local CoCs. Commenters recommended that HUD's final rule clarify the duties of housing providers under Emergency Solutions Grants (ESG) and CoC programs with regard to enacting VAWA protections.

Commenters further stated that the proposed rule did not address how the various VAWA obligations will be delegated or shared among the various parties—recipient, subrecipient, owner or landlord—that may be responsible for ensuring the delivery of VAWA obligations and protections, particularly regarding evictions and establishing a reasonable time for an individual to establish eligibility or find alternative housing.

A commenter stated that proposed § 960.102 provides the definition of "covered housing provider" for public housing and states that it is the PHA, but this is not appropriate or effective in those situations where another entity owns the public housing units and the PHA manages the units, for example, in mixed finance units, HOPE VI units, or Choice Neighborhoods developments. For the public housing units that are not owned by the PHA, the commenter said the responsibilities to comply with court orders, request documentation, maintain confidentiality of documentation, determine the appropriateness of lease bifurcation, and reasonable times to provide an individual to establish program eligibility, must apply to both the PHA and the owner. The commenter said the owner, who has the lease with the tenant, must be responsible for providing the notice and certification form, determining whether to evict or terminate for reasons other than those protected by VAWA, or if there is an "actual or imminent threat," and to assist victims to remain in their unit and bear the cost of transfer, where permissible. In addition, the commenter said the PHA must adopt an emergency transfer plan with which the owner must comply, and owners should be restricted from taking any steps toward evicting or terminating a tenant until the PHA notifies the owner that the documentation from a claimed victim has not been received or conflicting claims of victimization have been resolved.

Commenters recommended that HUD amend §§ 960.102, 960.103(d), 960.203(c)(4), 966.4(e) to acknowledge situations where the public housing units are owned by a private owner and are managed by a PHA. The commenters further recommended that HUD state generally that the entity taking the action (*i.e.* denying admission, evicting, terminating assistance) is the entity responsible for providing the notice and form, and further clarify these roles in the regulation, guidance, and training.

HUD Response: HUD understands and appreciates the concerns expressed by the commenters. For several of the HUD programs added by VAWA 2013, there is more than one entity administering the assistance, and it is not always immediately obvious which entity is responsible for which actions mandated by VAWA. HUD sought to clarify which entities undertake which responsibilities but given the concerns raised by the commenters, HUD acknowledges further clarification is called for.

For HUD's multifamily Section 8 project-based programs in 24 CFR parts 880, 884, and 886, and for the Section

202 and Section 811 programs in part 891, this final rule provides that the owner is the covered housing provider for all purposes related to this rule. Unless a PHA is the owner of a project, PHAs plays no role under these programs for which they could have responsibilities pertaining to granting VAWA protections, providing notice of VAWA protections, administering emergency transfer plans, or bifurcating leases. Where PHAs are owners of projects under these programs, they will be the covered housing provider for all purposes related to this rule.

For the multifamily Section 8 programs under parts 882 and 883, however, the PHA (which would be a state agency for part 883) administers the programs. Therefore, it is the PHA that has primary oversight responsibilities under VAWA, and it is the PHA that has the contract with the owner of the housing (not HUD) and consequently the PHA must set the housing policy to be followed and must ensure that the owner and all of the owners with whom the PHA has a contract comply with the VAWA regulations and those VAWA policies that the PHA has been given discretion to determine. For these reasons, in these programs HUD maintains the provision in the proposed rule that identifies the PHA as the covered housing provider responsible for providing the notice of occupancy rights under VAWA and the certification form to tenants and applicants. In this final rule, HUD further clarifies that the PHA is responsible for providing the notice and form to owners to give to tenants and applicants. In addition, for parts 882 and 883, including the Moderate Rehabilitation SRO program, HUD further clarifies in this final rule that both the PHA and the owner are responsible for ensuring an emergency transfer plan is in place for the covered housing, but it is the owner that has responsibility for implementing the emergency transfer plan when an emergency arises, since the PHA does not have a direct relationship with the tenant. Since both PHAs and owners are covered housing providers for these programs, both PHAs and owners must adhere to this rule's basic provisions regarding denial or termination of assistance or occupancy rights and the construction of lease terms in § 5.2005(b) and (c), and the limitations of VAWA protection in § 5.2005(d) also apply to both PHAs and owners. Similarly, the documentation and confidentiality provisions in § 5.2007 of this rule also apply to both owners and PHAs.

HUD agrees with commenters that the provisions in the proposed rule that the PHA is responsible for providing the reasonable time to establish eligibility for assistance following bifurcation of a lease in the definition of covered housing provider in parts 880, 882, 883, 884, 886, and 891, as well as in § 982.53(e) and § 983.3, was unclear and unnecessary. HUD removes these provisions in this final rule. In each of these programs, this final rule clarifies that the owner is the covered housing provider that may choose to bifurcate a lease and, if the owner chooses to do so, must follow any applicable regulations relating to lease bifurcation.

For the regulations in part 982 (the housing choice voucher program) and in part 983 (the project-based voucher program), this final rule clarifies that it is the PHA that is the covered housing provider responsible for complying with the emergency transfer plan requirements in § 5.2005(e). Unlike the case with HUD's multifamily Section 8 project-based programs, PHAs do have a direct relationship with tenants in the housing choice voucher and project-based voucher program, and it is appropriate for tenants to contact the PHA about emergency transfers under VAWA, as they would contact the PHA about other matters related to administration of their housing assistance. In addition, given the relationship between the tenant and the PHA in these programs, this rule maintains the provisions in the proposed rule that the PHA is responsible for providing the notice of occupancy rights and the certification form. As is the case for HUD's multifamily Section 8 programs under parts 882 and 883, for the housing choice voucher and project-based voucher programs, both PHAs and owners are covered housing providers who must adhere to this rule's basic provisions regarding denial or termination of assistance or occupancy rights and the construction of lease terms in § 5.2005(b) and (c), and the limitations of VAWA protection in § 5.2005(d) also apply to both PHAs and owners. Similarly, the documentation and confidentiality provisions in § 5.2007 of this rule also apply to both owners and PHAs.

For the CoC and ESG programs, the proposed rule and this final rule lay out the responsibilities of recipients, subrecipients, and housing owners in § 576.407(g) (for ESG) and § 578.99(j) (for CoC).

For mixed finance units and public housing developments that received public housing assistance under the Choice Neighborhoods and HOPE VI programs' NOFAs, the PHA is the covered housing provider because these units are generally administered in the same manner as other public housing units.

For FHA multifamily programs, HUD revises the definition of covered housing provider under this rule in § 200.38(b) to remove the provision that HUD will provide guidance as to who the covered housing provider is. HUD clarifies in this rule that the covered housing provider is generally the mortgagor for FHA multifamily programs covered by VAWA. However, where an existing mortgagor/owner sells the project to a new entity "subject to" the mortgage, in which case the new entity would own the project but not be the mortgagor under the mortgage, then the owner would be the covered housing provider.

Rule Change: In this final rule, HUD has revised § 200.38(b) to remove the provision that HUD will provide guidance as to who the covered housing provider is for FHA multifamily programs administered under section 236 and under sections 221(d)(3) and (d)(5) of the National Housing Act.

Further, HUD has revised the regulations for HUD's multifamily Section 8 project-based programs in 24 CFR parts 880, 884, and 886 to specify that the owner is the covered housing provider. HUD has also revised the regulations for the Section 202 and Section 811 programs in part 891 to clarify that the owner is the covered housing provider.

HUD has revised the definition of covered housing provider in 24 CFR part 883, as well as the definition of covered housing provider in § 882.102 for Section 8 Moderate Rehabilitation Programs, other than the Single Room Occupancy Program for Homeless Individuals, to clarify that the PHA is the covered housing provider responsible for providing the notice of occupancy rights and certification form under VAWA, and that the PHA may provide this notice and form to owners, and charge an owner with distribution to tenants. HUD also revises the regulations in these parts to eliminate the provision that the PHA is the covered housing provider responsible for providing the reasonable time to establish eligibility for assistance following bifurcation of a lease, and to clarify that the PHA and owner are both responsible for ensuring that an emergency transfer plan is in place, and it is the owner that is responsible for implementing the emergency transfer plan when an emergency occurs. HUD retains the provision in § 882.802 that the owner is the covered housing

provider for the Section 8 Moderate Rehabilitation Single Room Occupancy program for Homeless Individuals.

In addition, HUD has revised regulations for the Housing Choice Voucher program, at § 982.53(e) and the project-based voucher program, at § 983.3, to remove the provision that the PHA is the covered housing provider responsible for providing the reasonable time to establish eligibility for assistance following bifurcation of a lease. HUD also revises the regulations in these parts to clarify that the PHA is responsible for complying with this rule's provisions on emergency transfer plans.

Comment: Clarify responsibility for implementing VAWA requirements when there are multiple housing providers. Similar to the above comments, commenter asked who the covered entity is if a family uses voucher assistance in otherwise covered rental housing where another entity also may be a covered housing provider. The commenter asked which entity is responsible for providing VAWA protections and implementing VAWA requirements in circumstances such as these. The commenter stated that in essence, it was asking whether each covered housing provider would have to provide notices of occupancy rights and obtain certifications. The commenter stated that the providers may implement different policies concerning, for example, the time a tenant will be given to establish program eligibility, and therefore further clarity in this area is necessary.

Another commenter stated that, if PHAs are collaborating with ESG and CoC program grantees, PHAs would still be subject to the lease requirements currently imposed by HUD with respect to the public housing and Section 8 programs, and if HUD seeks to impose different lease requirements on these programs when overlaid with ESG and CoC programs, HUD will need to provide additional guidance to the PHAs.

HUD Response: The program-specific regulations in this rule explain which housing provider has responsibility for which VAWA requirements when there are multiple housing providers within a single program. More importantly, however, the notice of occupancy rights to be given to each applicant and tenant identify the covered housing provider that will interact with the tenant.

Where housing is covered under multiple HUD programs, such as under the HOME and Section 8 Project-Based programs, the responsible housing provider under each program will provide the required notice of occupancy rights and certification form, and tenants may request emergency transfers or lease bifurcations under either program. Where there is a conflict between different program regulations, § 5.2001(b)(2) of HUD's VAWA regulation applies. As discussed earlier in this preamble, § 5.2001(b)(2) states that, where assistance is provided under more than one covered housing program and the VAWA protections or remedies under those programs conflict, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

d. Domestic Violence

Comment: Do not include a limiting definition of "crimes of violence" in the definition of "domestic violence" and provide a more expansive definition. Commenters recommended that HUD eliminate the cross-reference to 18 U.S.C. 16 in the proposed rule, as the term "crimes of violence" in 18 U.S.C. 16, is too limiting for VAWA protections. Commenters stated that, recently, the U.S. Supreme Court found in *U.S.* v. *Castleman*, 134 S. Ct. 1405 (2014), that "domestic 'violence' is not merely a type of violence; it is a term of art encompassing acts that one might not characterize as 'violent' in a nondomestic context." The commenters state that, in *Castleman*, the Supreme Court recognized that under an appropriate definition of "domestic violence," a seemingly "minor" act, in combination with other acts, whether seriously violent or merely harassing, could result in the complete victimization of an intimate partner, and that appropriate remedies should be available as a result. Some commenters urged HUD to follow the Supreme Court's discussion in *Castleman* and build upon that definition to define "domestic violence" in these regulations as a pattern of behavior involving the use or attempted use of physical, sexual, verbal, emotional, economic, or other abusive behavior by a person to harm, threaten, intimidate, harass, coerce, control, isolate, restrain, or monitor a current or former intimate partner.

A commenter stated that the definition of "domestic violence" should not be tied to 18 U.S.C. 16 because that definition excludes a great deal of domestic violence crimes under State and tribal laws, as well as common law definitions of "battery." The commenter stated that with the proposed rule's definition, there will be a great deal of uncertainty as to whether a particular conviction actually constitutes a crime under 18 U.S.C. 16.

Another commenter said that the matter of domestic violence has specific legal implications in most jurisdictions. The commenter stated that the proposed rule includes felony or misdemeanor crimes of violence in the definition, which implies formal charges filed by a prosecutor. The commenter said that in the locality in which the commenter resides, all cases initially thought to meet the test for domestic violence are further reviewed by prosecutors and are often re-classified to different charges.

HUD Response: HUD agrees that the definition of "domestic violence" should not include a cross-reference to the definition of "crimes of violence" in 18 U.S.C. 16. On further consideration, HUD agrees that the cross-reference has the consequence of making HUD's definition of "domestic violence" too limiting and could well exclude, as commenters pointed out, domestic violence crimes under tribal, State, or local laws. The term "crimes of violence" is not new to VAWA 2013. The term has been in the definition of "domestic violence" since VAWA was first enacted in 1994, and was in HUD's regulations implementing VAWA 2005, and has not previously referred to 18 U.S.C. 16. Therefore, HUD withdraws its proposal to define crimes of violence in accordance with 18 U.S.C. 16, and implements the definition of domestic violence as it appears in VAWA 2013.

Rule Change: HUD revises the definition of domestic violence to remove the reference to 18 U.S.C. 16.

Comment: The term intimate partner is too broad as defined in HUD regulations. Commenters stated that in the revised definition of "domestic violence," HUD included "intimate partner" as defined in title 18 of U.S.C. Commenters said that definition appears to bestow this status on any person who has ever cohabited or been in a romantic or intimate relationship in perpetuity, and asked HUD to indicate how long a person may have this status.

HUD Response: HUD's proposed definition of "domestic violence" tracks the statutory definition from VAWA, which, as amended by VAWA 2013, defines "domestic violence" as including the following: Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the

victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. VAWA does not limit domestic violence to those acts committed by an individual who is a current spouse or intimate partner of the victim, but rather expressly provides domestic violence is a crime of violence committed by a current or former spouse or intimate partner. As the statute does not place a time restriction on what it means to be a former spouse or intimate partner, HUD declines to do so. However, HUD is removing the proposed cross-reference to 18 U.S.C. 2266 in defining "intimate partner." The definition of "spouse or intimate partner" in 18 U.S.C. 2266(7) provides that this person includes: (i) A spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or (ii) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

On further consideration, HUD determined that a cross-reference to 18 U.S.C. 2266(7) may be confusing, as the term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, or others, and 18 U.S.C. 2266(7) defines "intimate partner" as the victim and not the abuser. As a result, the cross reference reads as if domestic violence is a crime of violence committed by the victim, rather than the perpetrator.

Rule Change: HUD revises its definition of "domestic violence" to remove the cross-reference to 18 U.S.C. 2266. In its place, HUD clarifies that the term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

e. Lawful Occupant and Tenant

Comment: Define "lawful occupant" and "tenant" and clarify how each is affected by the rule. Commenters asked for HUD to include in its final rule definitions of "lawful occupant" and "tenant." The commenters said proposed 24 CFR 5.2005(b) discusses termination of the "tenant" or "affiliated individual" and, unlike proposed § 5.2003 that addresses definitions and § 5.2009 that addresses bifurcation of leases, there is no mention of "lawful occupants." The commenters said the omission of defining "lawful occupant" and "tenant" may cause confusion as to lawful occupants' rights if crimes covered by VAWA occur. The commenters said proposed § 5.2005(d)(2) similarly omits reference to lawful occupant, and § 5.2005 (d)(3) may create confusion because this section permits a covered housing provider to "terminate assistance to or evict a tenant" if that tenant or lawful occupant presents an actual and imminent threat to others.

HUD Response: The usage of the terms "lawful occupant" and "tenant" in the proposed rule reflect their usage in VAWA 2013. VAWA 2013 does not define these terms, and HUD declines to define them in this final rule. Generally, while the term "lawful occupant" as defined by state law would be applicable in determining whether or not someone would be an affiliated individual, it would not be for lease bifurcations. The term "lawful occupant" for lease bifurcations would be whether or not the person is a lawful occupant (beneficiary or tenant, or recognized member of the household) per the program regulations of the specific HUD program. Therefore, while someone may be a "lawful occupant" under state law, if they are not on the lease or receiving assistance under the HUD program regulations they are not eligible for lease bifurcation.

f. Stalking

Comment: Provide a clearer definition of stalking. Commenters asked that there be a more detailed definition of "stalking." The commenters questioned whether the definition applies to all stalking situations, or only when the individual is being stalked by someone with whom the individual was in a 'domestic relationship'?

HUD Response: The definition of "stalking" in this rule is the same definition that is in title I of VAWA. It applies to all situations where an individual, the perpetrator, engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for their own safety or the safety of others, or suffer substantial emotional distress. Stalking is not limited to situations where the perpetrator is someone with whom the victim was in any specific type of relationship.

g. Victim

Comment: The definition of "victim" needs further clarity. Commenters said the definition of "victim" needs further clarification. The commenters said there is some confusion within the industry as to the definition of a "victim"—whether this term is defined as someone who is abused by another individual living at the property, or is abused on the property grounds, and must be known and named by the victim, or, that a tenant can be a victim regardless of whether the abuse was perpetrated by a tenant living on the property, or it was on the property grounds, and that the tenant is not required to know or name the abuser.

HUD Response: A tenant or an applicant may be a victim of domestic violence, dating violence, sexual assault, or stalking regardless of whether the act was perpetrated by a tenant living on the property, or whether the act occurred on the property grounds, or, in cases of sexual assault or stalking, whether the tenant knows the perpetrator. The rule's definitions of "domestic violence," "dating violence," "sexual assault," and "stalking" should not be read to include any additional restrictions on these acts are, or who qualifies as a victim of such acts beyond what is explicitly stated in the definitions.

3. Emergency Transfers

a. Emergency Transfer Documentation Requirements

Comment: Clearly specify emergency transfer documentation requirements, specifically documentation requirements. There were many comments on documentation requirements associated with emergency transfer plans, and the comments raised the following issues.

The VAWA statute does not apply documentation requirements to emergency transfers. Commenters stated that VAWA's documentation requirements do not apply to the emergency transfer provisions and therefore HUD should not apply any documentation requirements to emergency transfers.

Need further rulemaking to impose additional documentation requirements for emergency transfer plans. Commenters said that if HUD seeks to impose documentation requirements for emergency transfer requests beyond those described in the proposed rule, HUD must do so through additional notice and comment rulemaking. Other commenters said documentation requirements for emergency transfers should be the same as the rule's other

documentation requirements and not exceed those requirements. Commenters said requiring additional documentation requirements will expose victims and housing providers to inconsistency and confusion.

Prohibit housing providers from requiring documentation for emergency transfers beyond requirements established by HUD. Other commenters said HUD must establish the documentation requirements for transfers across all HUD-covered housing programs and not permit covered housing providers to establish documentation requirements separate from those mandated in HUD's rule. Commenters said HUD must continue to prohibit covered housing programs from requiring a victim to submit third-party proof, as this documentation cannot always be easily secured, and eligibility should be determined by whether a person in the victim's shoes would reasonably believe he or she is threatened with imminent harm from further violence.

Do not assume victims requesting emergency transfers were previously determined to be VAWA victims. Another commenter said the preamble to the proposed rule unfairly assumed that persons seeking emergency transfers have already been determined to be victims covered by VAWA's protections. The commenter said that in many cases, the first indication that a tenant is a victim of violence may be the request for an emergency transfer.

Requiring documentation in order to determine if an emergency transfer is appropriate. Some commenters said that HUD should require documentation before a landlord makes a decision about emergency transfers. Commenters said documentation should be required prior to transfer to ensure the appropriate use of resources and to ensure that tenants qualify, considering that transfers are costly and families must wait while transfers are processed for others. Other commenters said it is unclear what would happen after a transfer if the tenant did not provide sufficient documentation of the need for an emergency transfer. Another commenter expressed its support for requiring a tenant seeking a transfer to provide some form of documentation, provided the documentation is not so complex and burdensome as to deter a pro-se victim from seeking assistance. A commenter stated that, because victims have the option of signing a self-certification form, which can be done in minutes, requiring documentation prior to transfer should not cause any delay in obtaining an emergency transfer. A commenter said that third-party documentation prior to an emergency transfer is necessary unless the situation of violence is observable by a responsible entity. Commenter recommended that the specific type of third-party documentation required for an emergency transfer should be established through local and regional policy. Commenter also said that, for homeless assistance programs, documentation is vital when transferring a tenant because victims may need to be relocated to another safe place that may require documentation for when this person first became homeless in order to qualify.

A delay in emergency transfer until certain documentation is received jeopardizes the safety of the victim. Commenters said victims needing the protections of VAWA should not be required to submit documentation before a transfer. A commenter stated that the emergency transfer plan already requires the tenant to submit a written request for a transfer, and documentation beyond this requirement may be difficult to access and is vulnerable to being obtained or destroyed by the perpetrator. Commenters said that gathering the requested documentation, particularly when violence is imminent, can unduly delay the transfer process and further endanger the victim.

Allow post-transfer documentation. Other commenters asked that a tenant requesting a transfer be permitted to submit documentation at least 14 days after the transfer has been completed, so that the provider's focus is on expeditiously completing the transfer.

Require documentation beyond self-certification. Commenters stated that victims should provide documentation other than self-certification when seeking an emergency transfer. Commenters stated that documentation could include police reports, court orders, incident reports, notarized witness statements, verification from a domestic violence shelter, 911 calls, or a statement from a service provider. Some commenters stated that official government documentation should be required, while others said the documentation could be a written or oral statement from a witness.

A commenter stated that third-party documentation may help to eliminate transfer of the same situation to a new location, and that this documentation is necessary for the housing provider to document the case in detail. The commenters said that documentation other than self-certification is necessary to verify the need for an emergency transfer, as the form's provisions regarding penalties for fraud would be difficult to enforce, and some victims may attempt to use an incident of domestic violence to obtain a superior housing unit or break their current lease, even if this is unrelated to a VAWA incident. A commenter pointed to a State law allowing a tenant who is the victim of domestic violence to legally break a lease, but only with some type of third-party documentation. Commenters said requiring additional documentation is logical because housing providers will take a monetary and temporal loss for transfers. Other commenters stated that statements from legal, medical, psychological or social service providers stating their belief that a transfer will have a strong probability of reducing a recurrence of the violence should be required for emergency transfers. Another commenter stated that landlords should request a detailed statement from the victim, and then interview the victims after the transfer and obtain a written statement from regarding whether the violence stopped or the transfer benefited the resident.

Allow the housing provider to determine when and what type of documentation may be needed for emergency transfers. Commenters said that HUD should allow housing providers to determine whether documentation is necessary for emergency transfers and what documentation may be necessary. A commenter stated that many PHAs have very high occupancy rates and relocation should be reserved for individuals with the highest level of need. A commenter said that allowing somebody to submit a self-certifying form with no supporting documentation could leave PHAs susceptible to fraud. The commenter said documentation serves to protect both the housing provider and the program participants by ensuring that there are standards that guide these decisions, and HUD should allow housing providers to determine what supporting information would be sufficient. The commenter said that rather than HUD establishing documentation standards for emergency transfers that HUD allow the housing providers to use their discretion to make determinations on a case-by-case basis because the circumstances that can lead a tenant to request an emergency transfer under VAWA are highly personal and individual.

HUD Response: HUD appreciates all of the comments received on whether and how to document emergency transfer requests. HUD has considered all of these comments and has included in this final rule specific provisions on emergency transfer documentation. HUD understands that housing

providers may incur costs when transferring tenants and that other families may need available units. Therefore, for the reasons further described below, this final rule allows housing providers, at their discretion, to require that tenants requesting transfers submit a written request before a transfer occurs certifying that they meet the criteria for an emergency transfer under this rule. To minimize burden, HUD has created a model emergency transfer request. Housing providers may accept third-party documentation if that documentation is offered by tenants, but housing providers will not be allowed to require any third-party documentation in order to determine whether a tenant seeking an emergency transfer is eligible for an emergency transfer.

HUD understands that tenants seeking emergency transfers may not have already submitted to their housing provider documentation of any occurrence of domestic violence, dating violence, sexual assault, or stalking, and HUD did not intend to indicate that there is an assumption that a tenant seeking an emergency transfer has already been previously determined to be a victim of domestic violence, dating violence, sexual assault, or stalking. HUD clarifies in this final rule that housing providers may require tenants seeking emergency transfers to document an occurrence of domestic violence, dating violence, sexual assault, or stalking, in addition to documenting eligibility for an emergency transfer, consistent with the HUD requirement that individuals certify eligibility in order to establish that the tenant is a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual has not already provided documentation of that occurrence. HUD notes as part of certifying eligibility for VAWA protections an individual may provide self-certification in lieu of any other documentation to document an occurrence of a VAWA-protected incident. Because self-certification can be submitted fairly quickly, submission of a self-certification should not delay any requests for an emergency transfer.

In addition to documentation—which could be self-certification—of the occurrence of domestic violence, dating violence, sexual assault, or stalking, the final rule allows housing providers to require that tenants seeking emergency transfers provide documentation—which could be a written request—that they meet the requirements for a transfer. HUD is allowing housing providers to request this additional documentation because an individual may be a victim of violence covered by VAWA, and yet not meet the requirements for an emergency transfer that are specified in VAWA 2013. Those requirements are that the individual expressly request the transfer and either reasonably believe there is a threat of imminent harm from further violence if the tenant remains in the same dwelling unit that the tenant is currently occupying or, in the case of a tenant who is a victim of sexual assault, the tenant also qualifies for a transfer if the assault occurred on the premises during the 90-calendar-day period preceding the date of request for the transfer.

HUD appreciates commenters' concerns that third-party proof cannot always be easily obtained, that it may not be available to some tenants who qualify for emergency transfers, and the requirement to obtain third-party documentation could delay transfers, resulting in harm to tenants. It is for these reasons that the final rule stipulates that housing providers may not require third-party documentation for an emergency transfer.

As noted above, housing providers may, however, require that tenants submit a written request for an emergency transfer where they certify their need for a transfer. This is a change from the proposed rule. Although the proposed model emergency transfer plan stated that tenants should submit a written request for a transfer, the proposed rule did provide that housing providers may require this request. HUD disagrees with commenter's interpretation of VAWA 2013 that because the statute does not discuss documentation requirements for emergency transfers, HUD may not allow housing providers to require that tenants submit any documentation whatsoever.

HUD also does not agree with some of the arguments that commenters presented in favor of requiring third-party documentation for an emergency transfer. HUD does not believe that a failure to require third-party documentation would result in negating the benefits of a transfer, and leave the tenant in an endangered situation. Rather, strict confidentiality measures to prevent a perpetrator from learning the new location of the transferred tenant would help to reduce the possibility of future violence.

HUD understands that some housing providers expressed concern that there may be tenants who request an emergency transfer for the purpose of obtaining a superior housing unit or to break their current lease. This situation may occur but, for the following reasons, HUD does not agree that this justifies a third-party documentation requirement that could endanger the lives of those tenants who are victims of VAWA crimes and for whom safety and security is a real threat.

First, third-party documentation of a VAWA-protected incident would not necessarily help a housing provider determine whether a victim reasonably believes that the victim is in imminent harm from further violence without a transfer. Second, the housing provider may request that the tenant sign a written request for the transfer that states that the information in the request is accurate, and that submission of false information could jeopardize program eligibility and be the basis for denial of admission, termination of assistance, or eviction. HUD further disagrees with commenters who suggested that landlords should request a detailed statement from, and interview, victims. There are housing providers who may have experience working with victims of domestic violence, dating violence, sexual assault, or stalking, but there are also housing providers who do not. Regardless, under this rule, housing providers will not judge the merits of the claims of victims of domestic violence, dating violence, sexual assault, or stalking. HUD understands that the documentation of homelessness may be important when transferring a tenant, but this does not require third-party documentation of the need for a transfer due to domestic violence, dating violence, sexual assault, or stalking.

HUD agrees with those commenters who said that providers should be permitted to use their discretion to determine whether documentation is needed, and housing providers will not be required to request documentation from those seeking an emergency transfer due to an incident of domestic violence, dating violence, sexual assault, or stalking, just as housing providers are not required to request documentation of the VAWA-related incidence. However, as previously discussed, under this final rule, housing providers will not be allowed to require that tenants requesting an emergency transfer under VAWA submit third-party documentation to qualify for an emergency transfer. HUD understands that many PHAs have high occupancy rates, but notes that transfers are only required where there is a safe and available unit to transfer the tenant to, and, where there is a transfer, the unit from which the tenant is transferring will become available. Further, allowing housing providers to decide for themselves what documentation is sufficient for an emergency transfer could leave them more legally

vulnerable than they would be under this rule, which clearly requires covered housing providers to accept self-certification, if they require documentation.

Rule Change: This final rule revises § 5.2005(e) to specify that housing providers may, at their discretion, require tenants seeking emergency transfers to submit written requests expressly requesting the emergency transfer, in which the tenants must certify that they meet the requirements for an emergency transfer. This written request is different from any self-certification or documentation that an individual may have given, or the housing provider may ask for, to document the occurrence of domestic violence, dating violence, sexual assault, or stalking in accordance with § 5.2007. HUD has developed a model emergency transfer request that housing providers may give to tenants who ask for an emergency transfer.

This final rule also revises § 5.2007(a)(1) to remove the provision that the documentation requirements in the section are not applicable to a request made by the tenant for an emergency transfer. This provision was removed because housing providers may require tenants seeking emergency transfers to document an occurrence of domestic violence, dating violence, sexual assault, or stalking, if they have not done so already, in addition to documenting eligibility for an emergency transfer.

Comment: Housing providers that create a preference for VAWA transfers should be permitted to establish their own criteria for verification for a transfer. Commenters said that if a PHA establishes a preference for housing VAWA victims, the PHA should be permitted to establish criteria for the verification of domestic violence for purposes of honoring the preference. A commenter said many PHAs may already give a priority to victims of domestic violence who need to relocate from public housing through assistance from the HCV program and for those PHAs the documentation requirements to implement the transfer are already set forth in their Section 8 Administrative Plan. Commenters suggested that PHAs be allowed to continue to utilize the verification requirements as set forth within their Section 8 Administrative Plans[8] for preferences for victims of domestic violence necessitating said transfer.

HUD Response: HUD understands the concerns raised by the commenters in not altering requirements that are already in place for PHAs that give preference in housing to victims of domestic violence. However, providing preferences in housing to certain groups, and PHAs have authority to establish such preferences, is not the same as complying with the emergency transfer provisions of VAWA 2013. Providing preferences to certain groups may help meet emergency housing needs of these groups but do not constitute a need for an emergency transfer as is contemplated by VAWA 2013.

As previously discussed, under this final rule, covered housing providers may require in their emergency transfer plans that victims of domestic violence, dating violence, sexual assault, or stalking submit a written request to their housing provider, where the tenants certify that they meet the requirements for an emergency transfer, in addition to any self-certification or other documentation of an occurrence of domestic violence, dating violence, sexual assault or stalking. This means that if the tenant provides these self-certifications, and the covered housing provider has another safe and available unit for which the victim qualifies, the housing provider must allow the tenant to transfer. If the covered housing provider has a VAWA emergency transfer waiting list, the only documentation that a housing provider could require the tenant to submit in order to be placed on the waiting list is a written emergency transfer request, where the tenant certifies to meeting the requirements for an emergency transfer under VAWA, in addition to any self-certification or other documentation of an occurrence of domestic violence, dating violence, sexual assault or stalking, as described in § 5.2005(e)(6).

Comment: Owners and agents should maintain documentation of an emergency transfer. Commenters said owners and agents should have to maintain documentation of emergency transfers to provide records for the covered housing provider as to why a move was necessary.

HUD Response: HUD agrees that covered housing providers should maintain documentation of emergency transfer requests and the outcomes of such requests, and HUD believes that, in order to ensure compliance with the emergency transfer provisions of this rule, covered housing providers should have to report this information to HUD in the aggregate. Accordingly, in this final rule, HUD adds to the regulations governing emergency transfer plans that covered housing providers must keep a record of all emergency transfers requested, and the outcomes of such requests, and retain these records for a period of three years, or for the period of time specified in program regulations, and report them to HUD annually. HUD understands that this may entail additional costs for covered housing providers, and HUD will solicit comment on this provision through separate notice before covered housing providers must comply with this provision.

Rule Change: This final rule revises 24 CFR 5.2005 to state that the covered housing provider must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. HUD's proposed changes aligns to the record retention periods of each covered programs to the extent possible. The rule also provides that requests and outcomes of such requests must be reported to HUD annually. Further, this rule revises the following program regulations to include documentation and reporting of VAWA emergency transfer requests and outcomes: 24 CFR 91.520, which details performance report requirements for HOME participating jurisdictions and jurisdictions receiving funding under the HOPWA, ESG, and HTF programs; HOME program regulations at 24 CFR 92.508 (Recordkeeping); HTF program regulations at 24 CFR 93.407 (Recordkeeping); HOPWA regulations at 24 CFR 574.520 (Performance reports) and 24 CFR 574.530 (Recordkeeping); ESG regulations at 24 CFR 576.500 (Recordkeeping and reporting requirements); CoC regulations at 24 CFR 578.103 (Recordkeeping requirements); and Multifamily program regulations at 24 CFR 882.407 (Other Federal requirements) and § 882.804 (Other Federal requirements). The rule also includes in newly added regulations for Multifamily programs in 24 CFR 880.613, 884.226, 886.139, 886.339, and 891.190 (Emergency transfer for victims of domestic violence, dating violence sexual assault, and stalking) reporting requirements for emergency transfers requested under VAWA. All public housing agencies will be required to comply with the general reporting and recordkeeping requirements in 24 CFR 5.2005(e).

Comment: Updated documentation of need for emergency transfer may be necessary. Commenters stated that updated documentation for an emergency transfer may be necessary in cases where a period of time has passed between the date a family submitted domestic violence verification and the

[8] The requirements for the Section 8 Administrative Plan are found in 24 CFR 982.54.

date they ask for an emergency transfer. Commenters provided an example in which a family was admitted to a program based on a Federal preference for domestic violence in 1995, and in 2015 the family requests an emergency transfer under VAWA. The commenters said that it would be reasonable for the housing provider to request updated documentation in such a case.

HUD Response: In order to qualify for an emergency transfer under VAWA 2013, a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking must reasonably believe there is a threat of imminent harm from further violence. It does not matter when an initial act occurred if the current belief of a threat of imminent harm is reasonable, or, in cases of sexual assault, the assault occurred on the premises during the 90-calendar-day period preceding the transfer request. Housing providers may require that tenants who request emergency transfers under VAWA submit a written transfer request where the tenant certifies that he or she believes there is a threat of imminent harm from further violence, or that he or she was a victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the transfer request.

b. Emergency Transfer Costs

Comment: Transfers have costs. Commenters stated that emergency transfers could be costly and time-consuming for housing providers and could include costs related to utilities, packing and moving, damage repairs, painting, cleaning, inspections, lease execution and explanation and assuring housing eligibility. A commenter stated that ordinary turnover costs for the landlord, with no renovation, may include new carpet, new paint, cleaning fees, damage remediation, time involved by a project's service team, and time involved by a leasing team. The commenter further stated that rehabilitating a unit is costly, but that in all cases paperwork is minimal—a new lease and a new certification. The commenter stated that, overall, the work and cost to transfer a resident is minimal, though it is not recoverable, and asked if HUD could provide some reimbursement when an emergency transfer arises.

Other commenters said costs can be substantial. A commenter said costs also include criminal background and drug tests. Another commenter said it currently employs an entire team dedicated to processing emergency transfers for public housing tenants and HCV participants and, in addition to these personnel costs, the commenter said that it spends approximately $14,000 on preparing each public housing unit for a new occupant, and $200 in administrative costs for each HCV emergency transfer. Commenter said that if the perpetrator is not removed from the apartment before transferring the victim, subsidizing the perpetrator in one apartment and the victim in a second apartment could occur, thereby greatly increasing the transfer costs.

A commenter said that an informal poll of its PHA members finds that unit transfers cost between $500 and $5500, depending on the amount of work that needs to be undertaken upon turnover. The commenter explained that an estimate of $3000–$4000 would include painting, carpet or tile replacement, cleaning costs, lock changes, possible appliance replacement or repair, and shade replacement, and an additional $500 should be added for each additional bedroom.

Another commenter estimated that relocation of a public housing tenant through HCV assistance costs between 5 and 17 staff hours and $50 to $100 in subcontractor fees for inspections. The commenter said that, at best, relocation through the HCV program involves staff time spent issuing a voucher, reviewing the "Request for Tenancy Approval," inspection and rent reasonableness determination of a new unit, preparation of a new lease and housing assistance payments contract (HAP), and recertification of the family. The commenter added that costs may increase for a PHA due to additional inspections, since an initially chosen unit may not be affordable or appropriate, and the processing of multiple Requests for Tenancy Approval forms. The commenter further stated that, if the perpetrator is a member of the assisted household, the PHA may also be undergoing the process of terminating the perpetrator's individual assistance, which could result in hearing costs and potential legal fees.

A commenter said public housing costs include moving costs and damage caused by the tenant beyond normal wear and tear, an average turnaround time of 8 days during which time the unit is not occupied while it is being made ready for the next family, and an average cost in parts and labor of $215 plus an additional $200 for cleaning. For the HCV program, the commenter said moving costs and damage caused by the tenant and any additional costs to make the unit ready for the next occupant is born by the landlord. The commenter said that HCV staff spend about 8 hours processing moves, and the total cost of their time and the resources expended is about $200.

Another commenter said that if there are damages beyond normal wear and tear, and if the participant fails to pay those costs, landlords must not only incur these costs but face the costs of pursuing collection. This commenter said lost rent on each unit while it is vacant could amount to 60 or 90 days, which could result in the loss of Operating Fund eligibility in the subsequent year for public housing, and in the voucher program, costs include the loss of renewal funding in subsequent years for lost unit months leased (UMLs) and lost fees.

A commenter said that in the past 5 years it has spent over $339,000 on 118 emergency transfers for temporary hotel accommodations as well as moving expenses. Commenter said it has been experiencing a steady annual increase in the number of emergency transfer requests in general and in VAWA specifically.

HUD Response: HUD appreciates the information on costs provided by the commenters. HUD understands that housing providers face administrative and unit turnover costs for transfers, and where there is an increase in transfers, regardless of the reason, the costs to housing providers may rise. HUD recognizes that VAWA's provision for emergency transfers may result in an increase in transfer costs. HUD notes, however, that transfers may not be a unique occurrence for PHAs and owners and management agents, but a part of administering public and assisted housing. Further, PHAs can utilize the limited vacancy provision of 24 CFR 990.150 that allows operating subsidy to be paid for a limited number of vacant units under an annual contributions contract (ACC).

Comment: Housing providers should not be required to pay for transfers. Commenters stated that the rule should make clear that housing providers are not required to pay for transfers and either HUD or tenants should be required to pay for, or provide reimbursement for, costs. A commenter said housing providers should not be responsible for costs since this is not a reasonable accommodation covered under section 504 of the Rehabilitation Act of 1973 (Section 504). Another commenter said that a PHA would bear the cost of all paperwork and issuing vouchers and inspecting units, but other costs associated with moving into a new unit, such as application fees to owners, deposits, and moving costs, should not be allowed as they are above the statutory requirements of the HCV program. Another commenter said that

covering expenses such as utility deposits and moving costs would be devastating to small PHAs.

A commenter said that if the tenant and management agree that the tenant cannot afford transfer costs, services representatives can seek assistance from local resources, or, management could put forth the costs and allow the tenant to repay them under a payment plan. A commenter said departing residents paying costs under a repayment plan is consistent with HUD's policy with respect to other resident-initiated transfers as set forth in the Public Housing Occupancy Guidebook.[9] Another commenter said it is not aware of a situation where the housing provider would pay transfer costs, but suggested it would be beneficial to tenants to be given an extended period of time to pay off fees. A commenter suggested that, in the case of emergency transfers, any damage to the unit or unpaid rent should still be the responsibility of the departing resident, but, any financial penalties for breaking a lease could be waived by the owner based upon a confirmed instance of domestic violence, stalking or sexual assault.

Commenters suggested that HUD establish a special fee to ensure that PHAs are able to withstand the financial implications of transfers under VAWA. Others commenters said moving costs should be considered to be permissible program expenses. Commenters said HUD should reimburse covered housing providers for costs associated with these transfers and such requirement should be provided for in the rule and could be established in a PIH notice.

HUD Response: For HUD programs that have existing guidance related to paying costs of transfers, housing providers should follow that guidance and may follow any existing transfer policies and procedures they have, including those for repayment plans. Under this final rule, housing providers will not be required to bear moving costs that tenants and their household members generally pay, including application fees and deposits, in addition to costs to physically move households and their belongings.

In response to commenters who stated housing providers should not be responsible for costs since this is not a reasonable accommodation covered under Section 504, the issue of whether housing providers must pay for emergency transfers is a separate issue from reasonable accommodation requests under Section 504. Section 504 pertains to providing and paying for structural modifications that may be necessary as a reasonable accommodation for individuals with disabilities.

Comment: A specific process is needed for ESG or CoC funds to be used pay for damages caused by early lease termination. Commenters expressed support that the rule allows the use of ESG and CoC funds to pay for damages resulting from early lease terminations if the tenant meets the emergency transfer requirements under VAWA, but they expressed concern that this will deplete limited funds for homeless families. Commenters further expressed concern that owners or landlords might turn to these funds before attempting to mitigate damages caused by the lease terminations. Commenters recommended that HUD develop a process for housing providers to apply for these funds where they must document the hardship, explain why the funds are needed, and report efforts to mitigate damages.

HUD Response: In this rule HUD does not intend to restrict currently available resources that could fund emergency transfers. As a result, HUD maintains that paying for damages is an eligible cost of ESG and CoC funds, and declines to develop the process that the commenter suggested.

Comment: Housing providers should pay transfer costs. A commenter applauded HUD for including a provision that encourages covered housing providers to bear emergency transfer costs. The commenter said only about half the States have protections for victims who terminate their leases to escape from violence and recommended that HUD require that covered housing providers not penalize victims who exercise their transfer rights. The commenter suggested that covered housing providers be responsible for covering the costs of emergency transfers, such as moving costs, which are often prohibitive for survivor tenants. The commenter stated that, under the Philadelphia Housing Authority lease agreement, the housing authority agrees to pay for reasonable costs related to mandatory transfers and reasonable accommodation transfers.

HUD Response: HUD understands that moving costs may be prohibitive for some victims of domestic violence, dating violence, sexual assault, or stalking, and encourages housing providers to bear these costs where possible, or to work with victims to identify possibilities for funding transfers. Local victim service providers may be able to provide help with funding transfers. As discussed earlier in this preamble, the U.S. Department of Justice (DOJ) administers programs that provide funding for victims covered by VAWA, and the Victims Crime Fund could be used to pay for relocation expenses of these victims, or to provide other sources of support, which could free up funding to pay for moving costs.

As noted in the proposed rule, HUD's CoC regulations, in addition to containing regulations that provide for a victim of domestic violence, dating violence, sexual assault, or stalking to retain their tenant-based rental assistance and move to a different CoC geographic area, include reasonable one-time moving costs as eligible supportive services cost. (See 24 CFR 578.53(e)(2).) In addition, under this rule's HOME regulations at § 92.359 (e), HOPWA regulations at § 574.604(f), and CoC regulations at § 578.99(j), leases and occupancy agreements must include a provision that tenants may terminate their leases without penalty if they meet the conditions for an emergency transfer under this rule.

c. Model Transfer Requests

Comment: HUD should issue a model emergency transfer request. Commenters recommended that HUD create a model emergency transfer request, and that issuance of such a model would help facilitate the transfer. Another commenter said that issuance of such a model would help ensure consistency across HUD-covered programs. A commenter stated a model transfer request is important since a less experienced landlord may doubt a victim's claims. Another commenter said a model transfer request would be beneficial to housing providers as it would provide specific guidance for them on what a request should contain, and would enable them to quickly identify the type of transfer being requested, with the hope that a transfer of this nature would be prioritized over other types of requests.

Commenters said HUD should prepare a model emergency transfer request that includes the following information: The eligibility criteria for requesting the emergency transfer, the definition of a "safe and available" unit, a checklist for the required documentation the victim must provide to support the need for such a transfer, including a statement that the tenant reasonably believes he or she is imminently threatened by harm and documentation of the violence and the basis for that belief, and any conditions the tenant must meet to continue to receive VAWA protections, such as not inviting/allowing the perpetrator into

[9] See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/phguidebook*

the new unit or not revealing the location of the new unit to the perpetrator. Another commenter stated that the model should specify the location to be transferred, time of transfer, and other pertinent information for the emergency transfer.

Another commenter said the model request should allow the survivor to assert either an imminent threat of violence or a sexual assault that occurred on the premises within the last 90 days and should reflect the date on which the survivor submitted the request to transfer. Commenter said additional recommendations for inclusion in the model included: Establishment of a grievance plan when transfers are denied, or are granted but unsafe; a provision that survivors incur no costs other than their own expenses to move; a provision that transfer requests be considered mandatory; and a requirement that covered housing programs not penalize survivors who meet the emergency transfer requirements for exercising their rights. A commenter said a model request should include name of the perpetrator, if known, name of the victim(s), names of the family members who would be transferring with the victim, a brief description of why the victim would fear imminent harm or personal threat if made to remain in the unit, and/or self-identification as a sexual assault survivor.

HUD Response: HUD appreciates these comments and has created a model emergency transfer request that housing providers may use if they choose to require that tenants requesting emergency transfers submit documentation. The model emergency transfer request includes the requirements that victims of domestic violence, dating violence, sexual assault, and stalking must meet to qualify for an emergency transfer under VAWA; information about other types of documentation that those requesting a transfer may submit if the victim has such documentation and it is safe to provide; information on maintaining confidentiality of information the victim submits to the housing provider; and it requests information from victims about their households, the accused perpetrators if this is known and can be safely disclosed, and about why the victims qualify for an emergency transfer under VAWA. The model emergency transfer request also notes that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction, and has a line for the person filling out the form to sign and date it. The model emergency transfer request does not include details about a housing provider's emergency transfer policy because it is incumbent on the housing provider to provide such information in its emergency transfer plan.

Comment: A model emergency transfer request should not be mandatory. Commenters said a model transfer request form would be helpful but should not be mandatory. Commenters said this could lessen the burden on housing providers and ensure providers are using a standard product that satisfies the rule's requirements, but housing providers should be free to develop and use their own forms if they so desire, which could be tailored to the individual requirements of the covered housing provider, and any model request should be optional.

HUD Response: The model transfer request form is only a model form and housing providers are not required to use it.

Comment: Any model request should include certain aspects and should be considered documentation. Some commenters suggested that if HUD develops a model emergency transfer request form, any description of the need for a transfer by a tenant must be brief and in the tenant's own words, and have a date the request was made and the date it was granted or denied, and a description of where the tenant believes she or he will be safe or unsafe to move. Additionally, commenters said if HUD develops a model emergency transfer request form, this form should be used as documentation of the need for a transfer, and the existing documentation requirements under § 5.2007 should be supplanted by this form and this should be adopted in regulations under § 5.2005.

HUD Response: HUD agrees that the model emergency transfer request form may serve as documentation of the need for a transfer. As described earlier in this preamble § 5.2005(e) of this final rule specifies that housing providers may, at their discretion, require tenants seeking emergency transfers to submit written requests and housing providers may ask tenants who request an emergency transfer to fill out the model transfer request form. However, as also described earlier, this form will not supplant documentation requirements under § 5.2007, because the first criteria a tenant requesting an emergency transfer under VAWA must meet is that the tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. Therefore, housing providers may, but do not need to, request documentation in accordance with § 5.2007 to document the occurrence of the VAWA incident or incidents. This model transfer request form also does not ask the tenant to identify areas where he or she feels safe or unsafe, although housing providers are welcome to include that on their own forms.

Comment: There could be problems with including criteria for requesting an emergency transfer in a model request. A commenter expressed concerns about including criteria for requesting the emergency transfer within a model emergency transfer request. According to commenter, different situations could justify an emergency transfer so any language around criteria would need to be broad and give providers the flexibility to interpret the criteria based on a tenant's situation. The commenter also recommended that HUD seek out domestic violence experts for their suggestions on appropriate criteria and language to avoid language like "reasonable belief that the tenant is being threatened" which is overly restrictive and not that helpful for providers new to this issue in understanding what merits reasonable belief.

HUD Response: HUD reiterates that the model emergency transfer request is a model request and is not required to be used. The model emergency transfer request form developed by HUD asks those who request an emergency transfer under VAWA to certify that they meet the criteria for an emergency transfer under VAWA. The model form explains, consistent with the language of VAWA, that a reasonable belief that the tenant is threatened with imminent harm from further violence means that the tenant has a reason to fear that, without a transfer, the tenant would suffer violence in the very near future.

d. Transfer Plans

Comment: HUD should provide separate model emergency transfer plans for different housing programs. Commenters recommended that HUD provide separate model emergency plans for public housing, the voucher program, project-based rental assistance, and other programs in recognition of the various laws and regulations applicable to different housing programs. A commenter said that, as an alternative to formulating specific plans, there could be one plan that provides specific applications for each program.

HUD Response: HUD's emergency transfer plan contains specific elements, described in § 5.2005(e), that must be adopted by all housing providers, regardless of the HUD housing program in which they participate, in formulating their own plans. However,

housing providers have discretion as to other elements that should be included in their plans, subject to program-specific requirements that supplement the requirements in § 5.2005(e), as the plan is to be tailored to specific capabilities of the provider and any specific requirements of the HUD housing program in which they participate that may affect the ability of a housing provider to facilitate a transfer on an emergency basis. HUD program offices will provide assistance to housing providers in developing emergency transfer plans.

Comment: HUD should allow flexibility for housing providers to determine what their emergency transfer plans look like. Commenter stated that thoughtful screening and implementation are required and an emergency transfer may take different forms and timelines depending on resources and process. Another commenter expressed support for HUD providing a model emergency transfer plan for housing providers, as an example only, and recommended allowing providers the flexibility to develop or continue implementing their own plans based on local needs and resources to manage emergency transfer requests. Another commenter said the regulation should make clear that covered housing providers do not have to utilize the exact language in HUD's model plan, so long as the housing provider's plan includes all mandatory components. To ease administrative burden and to assist housing providers in implementing or amending their emergency transfer plans, commenter said the regulation should also identify mandatory and discretionary components. A commenter said providers must adopt an emergency transfer policy substantively the same as HUD's model, so a provider's plan could eliminate the irrelevant paragraph on introductory matter in HUD's model and remain substantively the same.

Another commenter said that VAWA 2013 does not require housing providers to adopt the agencies' plans and it may be that providers will write, or will have written, their own plans. Other commenters cited a Senate Committee report from 2012 that said it is the Committee's intent that emergency transfer policies should be tailored to the various types of housing programs covered by the bill, recognizing that housing providers have varying abilities to transfer occupants based on the volume and availability of dwelling units under their control.

HUD Response: As described above, HUD's model emergency transfer plan is a model plan that presents the basic elements set out in § 5.2005(e) of this rule to be included in any plan. Housing providers, however, will adopt their own plans that incorporates such other elements specific to the HUD housing program in which the housing provider participates that may need to be addressed in the emergency transfer plan.

Comment: Emergency transfer plans should provide more guidance. Commenters stated that a 2012 Senate Committee report said that the emergency transfer plans should include guidance for use in situations where it is not feasible for a housing provider to provide a transfer. The commenters said that, for example, HUD should consider including a HUD resource person in each HUD hub or HUD program center to assist tenants with alternate housing options, including, assisted housing properties with local preferences for victims of domestic violence, referral to the local PHA, and access to and use of tenant protection vouchers. Another commenter said the plan should also provide more detailed explanations of the protections afforded to victims and provide specific examples of transfers in order to help ensure conformity among housing providers when responding to emergency requests to transfer.

A commenter said HUD's model transfer plan must address the obligations for a covered housing provider that receives a request to relocate a survivor to their jurisdiction from another covered housing provider. The commenter said that, at the very least, the model transfer plan should provide guidance for how a covered housing provider should analyze the request and set forth a time frame for responding to the request.

HUD Response: HUD appreciates these suggestions, but declines to require that a housing provider address each of these suggestions in its emergency transfer plan. However, HUD encourages housing providers to consider these suggestions. Housing providers should be familiar with and, if they have not already done so, establish relationships with organizations that assist survivors of domestic violence, particularly those that offer help in locating safe housing for victims of domestic violence. HUD is fully aware of the shortage of available units assisted by HUD under all of its covered HUD programs, and these organizations can be a valuable resource in helping victims of domestic violence. HUD will provide assistance to help housing providers develop their own emergency transfer plans, and further assist in helping to identify HUD housing providers located in the same jurisdiction that may be able to assist one another in helping, even on a temporary basis, a victim of domestic violence, dating violence, sexual assault, or stalking who has been residing in or occupying housing covered by this rule.

Comment: The model transfer plan should include reasonable timeframes for tenants and providers regarding submission of documents and responding to requests. Commenters said HUD should require housing providers to give tenants a status update on their request within a reasonable amount of time. A commenter stated that, because of the urgent nature of the situation, there should be time periods set out for effecting emergency transfers. The commenters said, for example, that all transfer applications submitted because of a household member's status as a victim of domestic or sexual violence should be processed and responded to within 48 to 72 hours. A commenter said, if granted, the housing provider should be required to show the household an available unit at least 1.5 miles from the current unit and current address of the perpetrator within one week; and if the resident accepts, the housing provider must sign a lease and allow the tenant to move within 24 hours of acceptance. The commenters suggested that if a unit is not available, then the housing provider should be required to make a referral to other housing providers or the agency administering Section 8 vouchers within 48 to 72 hours of the request.

HUD Response: HUD appreciates these suggestions and emphasizes that housing providers should process emergency transfer requests as quickly as possible to protect the health and safety of those requesting emergency transfers under VAWA. The housing providers should also give tenants a status update of their request if the emergency transfer cannot be provided immediately. However, in this final rule, HUD does not mandate specific time periods for responding to emergency transfer requests, but may consider establishing timelines in future rulemaking after time to determine the effectiveness of different emergency transfer policies implemented in accordance with this rule. HUD declines to mandate that housing providers show tenants requesting an emergency transfer an available unit that is a specific distance away from the current unit as closer available units may be safe, and may be more desirable to the tenant requesting the transfer, depending on different circumstances.

Comment: The model transfer plan should include a provision explaining that tenants are not responsible for rent if they have to relocate to a shelter. A commenter suggested that the model transfer plan include language saying that, in cases where the family is in immediate danger and needs to relocate to a domestic violence shelter or other temporary housing while waiting for a housing provider to process the transfer, the tenant will not be responsible for ongoing rent so long as the tenant has removed all belongings and returned the keys to the unit. The commenter further suggested that the model plan state that, under these circumstances, the housing provider will waive any normally required notice of lease termination.

HUD Response: HUD's model emergency transfer plan outlines generally applicable requirements under VAWA and this rule. The authority to exempt a tenant, who is a victim of domestic violence, dating violence, sexual assault, or stalking from payment of rent after the tenant departs the unit or the authority to waive any required notification of lease termination is program-specific. Not all HUD programs have this authority. However, where a housing provider has such authority, the housing provider should include this information in its own emergency transfer plan. Where any requirement that may impede the emergency transfer of a victim of domestic violence is a HUD regulation, and not a statutory requirement, HUD stands ready to consider waiving the regulation for good cause shown, which would be the need to transfer a victim of domestic violence, dating violence, sexual assault, or stalking to a safe location as quickly as possible. Please see the table, set out later in this preamble, which lists the covered HUD programs and which programs have the authority to allow remaining family members to remain in the subsidized unit after the tenant who established eligibility for the unit has left.

Comment: HUD should add language for clarity to the model emergency transfer plan. Commenters recommended that HUD add language about "sexual assault" and "eligibility to all victims, regardless of sex or gender identity" to the model emergency transfer plan. Another commenter said there is a paragraph in the model emergency transfer plan that indicates that requests must be "explicit," but participants must request emergency transfers in writing and the paragraph should expressly state that the request has to be in writing. Another commenter said the plan should clarify that the size of the housing provider may affect the ability of the housing provider to execute emergency transfer requests; that is a housing provider with a small number of units may be limited in its ability to find a safe available unit.

HUD Response: HUD has revised the title of the model emergency transfer plan to read "Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking." HUD has also moved discussion of the fact that eligibility extends to all victims regardless of sex, gender identity, or sexual orientation into the main body of the document rather than only providing this information in a footnote. HUD has also inserted a footnote stating that housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age, and that HUD-assisted and HUD-insured housing programs must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

HUD declines, however, to revise the model plan in the other ways suggested by the commenters. This final rule clarifies, in § 5.2005(e), that housing providers may request that participants request emergency transfers in writing, but they are not required to do so, and housing providers may process emergency transfers requests that are not in writing as long as the tenant expressly requests the transfer. As to reference to the size of the housing provider, the model plan already indicates that the housing provider, regardless of size, cannot guarantee that a transfer request will be approved. As HUD noted earlier, HUD is aware of the limited availability of units assisted by HUD under its programs. HUD reiterates that HUD's emergency transfer plan is a model plan and that each housing provider will adopt its own plan. HUD encourages all housing providers to include as much specific information applicable to the transfer as possible, consistent with the requirements of the HUD program in which the housing provider participates.

Comment: The emergency transfer plan must incorporate strict confidentiality measures. Commenters strongly expressed support for HUD's language in the model emergency transfer plan to maintain "strict" confidentiality measures for emergency transfer. The commenters said that, at a minimum, these measures must meet the standards outlined in § 5.2007(c), including prohibitions against employee access to confidential information, entering information into shared databases, or disclosing, revealing or releasing information except for as provided in § 5.2007(c). Commenters said that inclusion of this language is necessary to ensure that the covered housing provider does not disclose the location of the dwelling unit of the tenant to a person who committed or threatened to commit an act of domestic violence, dating violence sexual assault or stalking against the tenant.

HUD Response: HUD agrees with commenters about the importance of strict confidentiality, and retains language in the model emergency transfer plan that the housing provider keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the housing provider written permission to release the information, or disclosure is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. The confidentiality required includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. HUD has added to the model emergency transfer form that tenants should see the Notice of Occupancy Rights Under the Violence Against Women Act for more information about a housing provider's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Comment: Transfer plans should be developed with the consultation of State and local experts on domestic violence, dating violence, sexual assault, and stalking. Commenters said that the emergency transfer plans and other VAWA policies are greatly improved when developed in consultation with victim advocacy experts. Commenters recommended inserting a statement in § 5.2005(e) that all plans must be developed in consultation with state and local experts.

HUD Response: HUD agrees with the commenters' suggestion and, although HUD is not mandating consultation, HUD strongly encourages housing providers to consult with victim advocacy experts in developing their emergency transfer plans. In this final rule, HUD lists outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking, as one of the efforts

covered housing providers may take to assist tenants in making emergency transfers. Please see HUD's response to an earlier comment in which HUD stressed the importance of housing providers becoming familiar and establishing relationships with victim advocacy organizations, and with becoming familiar with other housing providers, whether providing private market units, or other government-assisted units, not solely HUD-assisted, to establish a network of support which a housing provider could use to help a victim of domestic violence, dating violence, sexual assault, or stalking who needs to move quickly.

Comment: Correct error in ESG program regulation and clarify who is responsible for developing and implementing the emergency transfer plan. Commenters identified a paragraph numbering error in the proposed VAWA regulations for the ESG program, at § 576.407(g)(3)(i) (where the section is listed twice), but also stated that the second occurrence of the provision gives the recipient several options for designating which entity is responsible for developing and implementing the emergency transfer plan. The commenter recommended changing this proposed provision to say that the recipient must develop an emergency transfer plan to meet VAWA requirements and each CoC, in which subrecipients are located, must submit their own plan for approval by the recipient. The plan would be a CoC-specific plan in compliance with the recipient's plan, which provides CoC implementation detail. The commenter further said that all plans must be developed in consultation with State and local experts on domestic violence, dating violence, sexual assault, and stalking.

Another commenter asked which of HUD's housing programs must adopt an emergency transfer plan based on HUD's model plan.

HUD Response: HUD appreciates the commenter advising HUD of the error in § 576.407(g) in the proposed rule and HUD corrects this in this final rule. The final rule also makes clarifying changes to the new § 576.409(d) to clearly establish who is responsible for developing emergency transfer plans in ESG. This provision is consistent with the existing ESG requirements for developing written standards for administering ESG assistance. HUD emphasizes that all emergency transfer plans must incorporate the components listed in § 5.2005(e) of this rule, and for ESG it must also include the requirements provided under § 576.409. As discussed in § 5.2005(e) and later in this preamble, all emergency transfer plans must describe policies to assist tenants who qualify for emergency transfers under VAWA, such as any outreach activities to organizations that assist or provide resources to victims. HUD encourages all housing providers to work with victim service providers to develop emergency transfer plans, wherever feasible. Covered housing providers in each of HUD's housing programs must adopt an emergency transfer plan. Where there are multiple covered housing providers within a program, the program-specific regulations identify which housing providers are responsible for developing and carrying out emergency transfer plans.

Rule Change: HUD moves the ESG VAWA requirements from § 576.407(g) to § 576.409 and clarifies the responsibility for developing emergency transfer plans to be more consistent with existing ESG requirements on developing written standards for ESG assistance.

Comment: Emergency transfer plans should provide "approval" criteria housing providers can reference to guide as the basis for approving a request for emergency transfer. Commenters stated that HUD should provide criteria in the model emergency transfer plan for covered housing providers to reference when approving an emergency transfer, which should include factors that take into consideration a wide range of possible scenarios and that can be uniformly standardized for each specific covered housing provider. Commenters said standardized criteria will help covered housing providers to evaluate transfer requests and to demonstrate their reasonable attempt to qualify a tenant for an emergency transfer, affording them some degree of safe harbor from litigation. Commenters said HUD's model emergency transfer plan should include required criteria for requesting an emergency transfer to an "available and safe unit."

HUD Response: As previously discussed, and with this final rule, HUD presents a generally applicable model emergency transfer plan. HUD's program offices will be able to assist housing providers in covered programs that they administer with creating their own emergency transfer plans. HUD understands the requests for more specific criteria in a model transfer plan. The request made by these commenters for more specific criteria is one of several that HUD has already addressed in this preamble. VAWA 2013 brought under coverage HUD programs that are very different from each other. The housing providers under these programs are not always direct grantees, such as the case with PHAs, but may be subrecipients receiving assistance from governmental entities that received HUD assistance through formula programs. Consequently, the program requirements vary because of the varied nature of HUD programs. As HUD has further stated, although HUD is providing a general model emergency transfer plan, one designed to incorporate the key protections of VAWA 2013, housing providers not only should but are expected to design emergency transfer plans that not only incorporate the key protections of VAWA 2013, but reflect unique requirements or features of their programs. Again, HUD program staff will be available to assist covered housing providers or other grantees or recipients charged with the development of an emergency transfer plan. As to standardized criteria for evaluating transfer requests, HUD discussed earlier in this preamble that, under this final rule, housing providers may request that individuals submit written requests certifying that they meet the criteria for an emergency transfer under VAWA, as well as documentation that they qualify for VAWA protections, but cannot require victims requesting emergency transfers to provide third-party or other additional forms of documentation in order to qualify for an emergency transfer.

Comment: Transfer plans should contain more information about protection for victims. Commenters said that in order to better notify victims of their rights under VAWA, a provision should be added under the title "Emergency Transfer Request Documentation" that if a victim verbally requests an emergency transfer, the housing provider must notify the victim within 24 hours that a written request for a transfer must be submitted, and the notice to the victim should include information on how to submit a written request for a transfer and what information must be provided. Commenters said the plan should also state that third-party verification of the person's status as a victim is not required until after the transfer and only self-certification is required prior to it. Commenters also said HUD's model emergency transfer plan should include a provision that the victim may reject an offered unit that does not reduce the risk of harm and request that the housing provider offer another unit if available. Commenters further said a provision should be added to the plan stating that a housing provider may not

require a tenant to pay certain costs in order to transfer, which include but are not limited to paying off a previous balance or paying an additional security deposit if the tenant relocates to another unit from the same housing provider, and a victim should not bear the costs associated with the transfer.

HUD Response: As previously discussed in this preamble, HUD amends § 5.2005(e) of this rule, and also amends the Notice of Occupancy Rights Under VAWA that all tenants will receive, to clarify that housing providers may require written requests for emergency transfers. Housing providers should explain in their emergency transfer plans whether they will require written requests for transfers, and, if so, whether a specific form will be required or any written request will suffice. If a written request is required, HUD has developed a model form to help facilitate the submission and processing of a request. However, HUD encourages housing providers not to require written requests in exigent circumstances where an individual's health or safety is at risk. As also explained previously, housing providers may not require third-party documentation in order for a tenant to be eligible for an emergency transfer.

As commenter suggested, HUD has revised its model plan to include a statement that if a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. HUD has also revised its model plan to add a provision stating that tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section. As explained elsewhere in this preamble, however, tenants may have to pay certain costs associated with transfers.

Comment: Transfer plans should be readily available to tenants. Commenters said the covered housing program's emergency transfer plan must be publicly available and prominently displayed at the project site, so that tenants understand they have this option.

HUD Response: HUD agrees and requires housing providers to make emergency transfer plans publicly available whenever feasible, and, in all circumstances, available upon request.

Rule Change: Section 5.2005(e) is revised in this final rule to state that housing providers must make emergency transfer plans available upon request, and must make them publicly available whenever feasible.

e. Transfer Eligibility

Comment: Residents should be allowed to transfer even if their incomes are too high. Commenters stated that residents should be allowed to transfer if they are currently receiving a subsidy even if the household is receiving income in excess of published limits. The commenter said that, for example, the Tenant Rental Assistance Certification System (TRACS) allows for a transfer even if an individual no longer meets the income limit required for a new move-in, but not exceeds those limits. A commenter stated that victims should not fail to exercise their protections because they are afraid of losing their housing/subsidy.

HUD Response: This rule does not establish any new requirements for determining program eligibility, or include requirements pertaining to transfers other than the requirements with respect to emergency transfers that are implemented by this final rule. Existing program regulations govern transfers apart from emergency transfers requests by victims of domestic violence, dating violence, sexual assault or stalking.

Comment: Explain whether minors are eligible for emergency transfers. Commenters asked if a VAWA claim is made by an individual under the age of 18, whether management can transfer the victim to another unit, or whether a third party should be involved.

HUD Response: Un-emancipated minors would not be eligible to sign leases under HUD programs. Housing providers should consider contacting child welfare or child protective services, or law enforcement when a minor claims to be the victim of domestic violence, dating violence, sexual assault, or stalking.

Comment: Clarify whether housing providers may or must establish eligibility preferences for victims under VAWA, or waive program requirements. Commenters asked how VAWA emergency transfer plans impact covered housing providers' waiting lists. A commenter stated that the rule should clarify that housing providers are allowed, but not required to establish preferences for victims under VAWA, and that any preferences do not waive eligibility requirements. The commenter also stated that housing providers should be allowed to provide preferences for VAWA victims that are existing residents without providing preferences to individuals who have no relationship with the housing provider. Other commenters asked if agencies that administer vouchers would be required to give absolute priority for the next available voucher to satisfy an emergency transfer request. These commenters also asked whether, if there are no vouchers available at the time of an emergency transfer request, or the waiting list for the voucher program is closed, there would be legal ramifications or other consequences for being unable to satisfy such a request.

Another commenter said HUD should clearly specify how covered housing providers are to balance the interests of applicants and current tenants who may need VAWA protections. Some commenters said HUD should expressly state that housing providers' obligation to help tenants transfer to safe housing supersedes wait list, tenant preference, or prioritization obligations and non-emergency transfers. Commenter said the negative effects of delay in transfers include forced homelessness and seeking emergency shelter, which can affect one's employment and getting children to school.

Other commenters said that HUD should require a preference for victims who have met emergency transfer documentation requirements so that they may move to the top of the waiting list for a transfer to another property under the covered housing provider's control. Other commenters asked that HUD address the implementation of emergency transfers as they relate to other competing tenant preferences such as disability and homelessness.

Commenters said HUD should clarify that housing providers can establish a voluntary preference for the emergency transfer of VAWA-related victims, which could help facilitate a relocation that may require an effective termination at one property, and enable priority move-in at another site that may be separately owned or operated. A commenter asked that HUD articulate how housing providers may adopt a preference for VAWA.

A commenter stated that HUD's model emergency transfer plan does not clarify what the housing provider is required or allowed to do to expedite the transfer process, and requested that HUD expressly state how a PHA and owner should comply with the transfer requirement given the covered providers' obligation to observe waitlist rules. A commenter recommended that HUD expressly state whether the waitlist rules under the HOME program are violated by complying with a VAWA emergency transfer policy.

HUD Response: HUD commends these commenters who raise concerns that reflect the desire to help victims of those crimes addressed in VAWA without interfering with the housing needs of individuals and families

residing in units administered by the housing provider or on the housing provider's applicant waitlist. HUD acknowledges the difficulty of achieving the right balance. This is the reason that VAWA 2013 requires an emergency transfer plan so that covered housing providers may plan in advance, what actions to take when a victim of domestic violence, dating violence, sexual assault, or stalking needs an emergency transfer. The goal is for the plan to facilitate an emergency transfer under VAWA as expeditiously as possible. The suggestion by one commenter that housing providers establish a preference for victims that need an emergency transfer, not all victims but again those that need an emergency transfer, may be one way to achieve that goal.

Consistent with program requirements and allowances, housing providers in covered programs are allowed to establish preferences for victims of domestic violence, dating violence, sexual assault, and stalking. These preferences, if established, must be established in accordance with statutory or regulatory requirements that govern the establishment of preferences.[10] HUD notes that existing regulations for the public housing and housing choice voucher programs (in 24 CFR 960.206(b)(4) and 24 CFR 982.207(b)(4)) provide that PHAs should consider adoption of a local preference for admission of families that include victims of domestic violence. Such adoption would be an admission preference, admitting individuals as new tenants to a covered program, and not to be confused with a transfer priority list, which a housing provider could use to assist existing tenants. While HUD's final rule does not require housing providers to establish admission preferences for victims of VAWA incidents or transfer priority lists to aid existing tenants in a covered housing program to make an emergency transfer, HUD encourages housing providers to do so. Whether a housing provider chooses an admission preference or establishes a transfer priority list, or chooses not to or is unable to choose these approaches because of statutory provisions, the fact remains that a housing provider must prepare a workable emergency transfer plan; that is, if a housing provider cannot provide a tenant who needs an emergency transfer with an available safe unit immediately, the housing provider must have resources and policies that it can turn to help this tenant.

HUD further clarifies in this final rule that covered housing providers must detail in their emergency transfer plans the measure of any priority that those who qualify for an emergency transfer under VAWA will receive. Existing tenants of a housing provider who request a transfer to another unit for which they would not be required to submit an application (what this rule calls an internal emergency transfer, and an example would be where no application would be required for a public housing tenant to transfer from one building within a PHA's portfolio to another building within the PHA's portfolio) should not be placed on applicant waiting lists, as these tenants are not new applicants. Where a tenant requests a transfer to a housing unit where an application would be required (what this rule calls an external emergency transfer, and an example would be a transfer to a different program or to a unit that the housing provider does not control), each covered housing provider's emergency transfer plan must provide measures to assist these tenants. For example, under the plan a provider may have established relationships with other covered housing providers in the same jurisdiction where they share updated information on available units, or relationships with victim service providers who can assist tenants in locating, and quickly moving to, a safe and available unit.

The purpose of these clarifications is to ensure individuals who qualify for an emergency transfer under VAWA receive a meaningful opportunity to transfer as expeditiously as possible and to avoid the possibility that such individuals may, for example, be placed on the bottom of an applicant waiting list with no other measures taken to assist the individuals, counter to the intent of the emergency transfer provision. The provider, through their emergency transfer plan, must develop a plan for what actions to take when a victim of domestic violence, dating violence, sexual assault, or stalking needs an emergency transfer while balancing the needs of other eligible individuals.

HUD understands that housing providers receive requests for emergency transfers other than by those who may be victims of VAWA crimes, and therefore housing providers may maintain a list of those requesting emergency transfers. Where a housing provider maintains such a list, an individual seeking an emergency transfer under VAWA must be placed on this list or on a separate list for emergency transfers under VAWA. Such lists for providing emergency transfers must be maintained consistent with program confidentiality requirements and HUD's confidentiality requirements at § 5.2007(c). Alternatively, if there is no list, an individual requesting an emergency transfer under VAWA must, at a minimum, be given any priority as an emergency transfer requestor that is consistent with the mechanism the housing provider has in place to track emergency transfer or general transfer requests.

In cases where there are multiple individuals who need and qualify for a vacant unit, HUD strongly encourages housing providers to transfer applicants who qualify for an emergency transfer under VAWA as quickly as possible, and to prioritize between multiple individuals that need transfers when there are vacant units for which the tenant requesting the emergency transfer qualifies. Housing providers may give priority to VAWA emergency transfer requests regardless of whether the housing provider prioritizes other types of emergency transfer requests. HUD encourages consideration of the danger to the victim of a VAWA crime until a transfer can be made.

Emergency transfer obligations under VAWA do not supersede any eligibility or other occupancy requirements that may apply under a covered housing program. For example, the tenancy priority for an available accessible unit required to be accessible under HUD's Section 504 regulation must still be applied to maximize the utilization of accessible units by individuals who need the accessibility features. The objective of the emergency transfer plan is to develop a plan for how to fill an available unit cognizant of the need to transfer an individual who qualifies for an emergency transfer as quickly as possible while meeting other obligations and balancing competing needs.

As for the HOME program, owners must continue to comply with existing statutory requirements when it comes to admitting tenant but are encouraged to implement preferences in their HOME-funded projects for victims of domestic violence, dating violence, sexual assault, and stalking so to assist those needing emergency transfers. HUD will issue guidance on implementing the

[10] For example, the Quality Housing and Work Responsibility Act of 1998 repealed mandatory Federal preferences for public housing and Section 8 programs. Under HUD's regulations at 24 CFR 960.206(a)(1) and 24 CFR 982.207(a)(2), a PHA's system of local preferences must be based on local housing needs and priorities, and, in determining such needs and priorities, PHAs must use generally accepted data sources. Regarding the HOME program, housing providers must follow the procedures described in their written selection policies.

VAWA emergency transfer plan in state and local HOME programs.[11]

Rule Change: Section 5.2005(e) of this final rule requires that emergency transfer plans must describe how covered housing providers will assist tenants in making an emergency relocation to another unit where the tenant would not be a new applicant (an internal emergency transfer) when a safe unit is not immediately available for the tenant, and how covered housing providers will assist tenants in making an emergency relocation to another unit where the tenant would have to undergo an application process to reside in the new unit (an external emergency transfer) when a safe unit is not immediately available.

The rule specifies that tenants must be able to seek an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available so that the tenant has a greater opportunity to move to a safe unit as quickly as possible. For example, if a tenant is not able to immediately relocate to a safe unit because there is none available for which the tenant would not have to go through an application process, emergency transfer plans must have policies that assist the tenant in making an internal emergency transfer as expeditiously as possible, for example, by placing that tenant on an emergency transfer list, and simultaneously provide the tenant with resources or assistance to seek an external emergency transfer to a unit that may be under a different provider or different program. The rule specifies that policies for assisting tenants to make external emergency transfer include arrangements with other covered housing providers to facilitate moves. These arrangements could be those that allow housing providers to share tenant files, if the tenant provides written consent to do so and any applicable confidentiality requirements are met, in order to expedite a tenant's new application process, and arrangements where covered housing providers alert one another when a unit becomes newly available for occupancy. The rule also specifies that policies may include outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking. For example, as discussed earlier, covered housing providers could develop relationships with groups that assist victims covered by VAWA in making emergency transfers.

Section 5.2005(e)(3) of this final rule provides that, for purposes of notification to existing tenants, and overall public awareness, the emergency transfer plan must describe any measure of priority given to individuals who qualify for an emergency transfer under VAWA in relation to other categories of transfers and waiting lists. Under the final rule at 5.2005(e)(6) tenants who request and qualify for an internal emergency transfer must, at a minimum, be given any priority that housing providers may already provide to other types of emergency transfer requests. The rule also requires, in § 5.2005(e)(9), that emergency transfer plans must describe policies for tenants who have tenant-based rental assistance to make emergency moves with that assistance if this is something that the covered housing provider may encounter.

Additionally, HUD's regulations at 24 CFR 982.207(b)(4) and 960.206(b)(4) are revised to include victims of dating violence, sexual assault, and stalking, as well as victims of domestic violence, as those whose families should be considered for admission preferences.

Comment: Explain whether a victim always has to be eligible for a program in order to receive a transfer, or whether requirements could be waived. Commenters stated that it is unclear whether an emergency transfer can be provided to a victim who is not eligible for a unit or whether the VAWA transfer requirement supersedes the eligibility requirements for special populations, such as elderly or disabled. Other commenters stated that, after the first year of assistance at a PBV site, families are eligible to receive a tenant-based voucher, and asked whether the one-year requirement would be waived for VAWA. A commenter suggested that HUD allow families needing an emergency transfer under VAWA to request a voucher within the first year of assistance at the PBV development, and said PHAs could be required to create a priority on their tenant- based HCV waiting list for these transfers from a PBV development due to domestic violence. A commenter asked which of its housing resources should be prioritized for victims of domestic violence requesting an emergency transfer and requested confirmation from HUD of any waivers it may need from HUD to grant an emergency transfer request that may require tenant assignment procedures to operate outside of the agency's standard practices and policies.

HUD Response: The provisions in VAWA on emergency transfer requests do not supersede eligibility requirements for HUD housing serving specific populations, or for any HUD housing covered by VAWA 2013. Unlike VAWA 2005, VAWA 2013 did not revise the underlying statutes governing the HUD programs covered by VAWA 2013, and therefore, the eligibility requirements for each of the covered HUD programs are unchanged by VAWA 2013. Housing providers must continue to comply with the HUD program regulations regarding eligibility, as may be supplemented by guidance that aids covered housing providers in addressing specific fact situations. Although VAWA 2013 does not override the specific program requirements for the HUD programs covered by VAWA 2013, VAWA 2013 requires housing providers in each of the HUD-covered programs to develop and issue an emergency transfer plan. As discussed above, to fulfill this requirement, each housing provider must develop a plan that does its best to transfer a victim of domestic violence to a safe, available unit as quickly as possible. HUD recognizes that because of statutory requirements, a victim receiving assistance under one HUD program may not be eligible for assistance under another HUD program because of the different eligibility requirements. It is for these reasons that, under this final rule, housing providers must take measures to assist victims who may not be eligible to transfer to an available unit, such as engaging in outreach to other organizations, such as domestic advocacy organizations, faith-based organizations and State and local government entities, to measure the availability of assistance that can be provided on an emergency basis. HUD housing providers should also reach out to other housing providers, private market providers and other government-assisted providers to determine where they may be able to assist each other in domestic violence situations. While a housing provider may not have an available safe unit at a point in time when a victim of domestic violence may need one, HUD expects that housing providers' emergency transfer plans will provide for other means to help keep victims of domestic violence safe.

With respect to the comments about project-based voucher housing, commenters are correct that, after the

[11] The HOME statute at 42 U.S.C. 12755(d) permits owners of HOME-assisted rental projects to establish certain preferences for HOME-assisted units, but requires them to admit applicants in chronological order from the waiting list. Consequently, absent a specific project preference for victims of domestic violence, a victim who is not already at the top of a waiting list for a project may not be admitted to a vacant HOME-assisted unit before other eligible applicants on the waiting list. HUD encourages participating jurisdictions to implement such preferences in their HOME-funded projects, but cannot dictate that establishment of any specific preferences in HOME projects.

first year of assistance at a PBV site, families are eligible to receive a tenant-based voucher. This is a statutory provision that is not changed by HUD's VAWA regulations. HUD allows, but does not require, PHAs to establish reasonable transfer policies that do not conflict with statutory provisions, HUD occupancy regulations, or housing goals. However, this final rule does alter the family right to move provisions for project-based vouchers in 24 CFR 983.261, which provides that families will not be required to notify a PHA before they leave a unit if they are leaving because a member of the family is the victim of a VAWA crime and the move is needed to protect the health and safety of a family member, or a family member was a victim of sexual assault that occurred on the premises during the 90-calendar-day period before the family requests to move. In such a case, the family will have to notify the PHA as soon as possible after they leave the unit, and the PHA will have to offer the family assistance to a different unit, or the PHA may offer the family a housing choice voucher if the family had been in the unit for at least a year. Under this final rule, 24 CFR 983.261 also now specifies that a PHA may offer a victim tenant-based rental assistance if a family breaks up as a result of domestic violence, dating violence, sexual assault, or stalking.

With respect to prioritizing victims of domestic violence, dating violence, sexual assault, or stalking for placement in housing, HUD does not mandate that housing providers create preferences for victims of domestic violence, but encourages housing providers to provide preferences for victims of domestic violence, dating violence, sexual assault, and stalking consistent with any regulations that govern the establishment of preferences. For example, a PHA's system of local preferences must be based on local housing needs and priorities by using general accepted data sources and information obtained through the PHA Plan public comment process (24 CFR 960.206(a)(1) for public housing and 24 CFR 982.207(a)(2) for the HCV program.

Rule Change: 24 CFR 983.261 is revised in this final rule to specify that requirements that families contact PHAs in advance of terminating a lease to request comparable tenant-based rental assistance if the family wishes to move do not apply if a member of the family is the victim of a VAWA crime and the move is needed to protect the health and safety of a family member, or a family member was a victim of sexual assault that occurred on the premises during the 90-calendar-day period before the family requests to move. Under this final rule, a PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. This section is also revised to specify that if a family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA may offer the victim the opportunity for continued tenant-based rental assistance.

f. Effectiveness of Transfers

Comment: Emergency transfers may be ineffective if they are within the same property, or if victims or survivors compromise their new locations to perpetrators. Commenters stated that emergency relocation to other units within the same development may not be effective in protecting a victim, and housing providers should not transfer a victim to a unit in the same development. A commenter asked whether management could refuse to allow a victim to transfer back to the perpetrator's unit if the victim sought such transfer. Another commenter said that rather than provide transfers, it would be more effective to evaluate every victim's situation on a case-by-case basis and use domestic violence shelters where necessary.

Commenters also expressed concern about the victims themselves disclosing their new location to perpetrators. The commenters said that a victim, as well as other household members, should be required to self-certify a declaration that they will not disclose the location of a new unit to the perpetrator (if known) nor to anyone known to the victim, and that if they do disclose the new unit's location, the family will not be entitled to any additional unit transfers under the umbrella of VAWA protections. Commenters further suggested that any tenant who invites a perpetrator that the tenant knows is not permitted on property grounds into the tenant's unit should receive a lease violation notice.

HUD Response: HUD appreciates commenters' concerns, but declines to place restrictions on emergency transfers that would be contrary to the intent of VAWA 2013. VAWA provides that individuals are eligible for emergency transfers if they expressly request the transfer and reasonably believe there is a threat of imminent harm from further violence if they remain in the same dwelling unit, or, for sexual assault victims, the assault occurred on the premises during the 90-calendar-day period preceding the date of the transfer request. There are no other restrictions on eligibility that are in the statute.

HUD is not in a position to speculate on why a survivor might return to live in the perpetrator's unit, or how or why a perpetrator might come to know of a survivor's new address. Each victim's situation will be unique to the victim. If an individual reasonably believes that there is a threat of imminent harm, or if an individual has been sexually assaulted on the premises, and that individual requests a transfer, then that individual is eligible for a transfer under VAWA to an available unit that they believe to be safe.

Regarding transfers within the same property, HUD understands that a transfer to a unit within the same development in which the perpetrator resides might not be safe for victims. However, if the unit in the same development is the only one available, the victim should be allowed to consider transferring to the unit. This option should not be foreclosed to the victim. The victim is in the best position to make this decision. Accordingly, HUD does not prohibit emergency transfers within the same property, but encourage housing providers to endeavor to identify an available unit in another property.

g. Emergency Transfers for Sexual Assault

Comment: Clarify the requirements for an emergency transfer for victims of sexual assault. Commenters asked HUD to clarify whether the condition that the sexual assault occurred on the premises and happened during a 90-day period preceding the tenant request for transfer is intended to waive the requirement of reasonable belief of imminent harm for other emergency transfers. A commenter said that language in HUD's regulation should explicitly state the conditions under which a victim of sexual assault can request an emergency transfer. A commenter also asked if a victim of sexual assault expressly requests a transfer and reasonably believes that there is a threat of imminent harm, whether it matters when the sexual assault occurred.

Other commenters said HUD should rescind the specifications that the

assault must have occurred within 90 days of the emergency transfer request, and that it must have occurred on the premises in order for the victim to be provided an emergency transfer. A commenter said HUD's model emergency transfer plan appears to outline stricter guidelines for victims of sexual assault to access protections as compared to victims of domestic violence, dating violence and stalking. A commenter stated that victims of sexual violence may experience delayed or long-lasting reactions to the trauma and there are many reasons why victims may not report the sexual assault immediately.

Another commenter stated that if an individual is dragged off the premises and sexually assaulted elsewhere, that individual should be able to ask for an emergency transfer. A commenter said that, in the case of children at the very least, who may not disclose the assault for some period of time out of fear, it should not matter if the sexual assault occurred more than 90 days prior. A commenter said that it should not matter if a rape occurred off premises if the perpetrator of the rape is on the lease and the victim is a tenant.

Other commenters said that covered housing providers should be encouraged to apply a longer time frame when necessary, and, at a minimum, the language of HUD's proposed regulation at § 5.2005(e)(1)(b)(ii) should be changed so it is clear that nothing in the regulations prohibits housing providers from considering and approving transfers for victims of sexual assault when the assault occurred more than 90 days before the transfer request was made or the sexual assault did not occur on the premises. Commenters said the proposed regulatory provision, as written, may cause some confusion or be misinterpreted to suggest that moves to protect the health and safety of the family also must be within the 90-day time frame or experienced on the premises.

HUD Response: HUD's regulations on emergency transfer for victims of sexual assault mirror the provisions in VAWA 2013. The 90-day time frame is from the statute. However, the statutory provisions are the minimum requirements that covered housing providers must meet. Covered housing providers may allow more time. They are not confined to the 90-day period, and should consider additional time, as commenters suggested, given that certain victims of sexual assault may fear disclosure.

Under VAWA 2013, victims of sexual assault qualify for an emergency transfer if they either reasonably believe there is threat of imminent harm from further violence if they remain in their dwelling unit, or, the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer. Thus, emergency transfer plans must provide that victims of sexual assault will be eligible for an emergency transfer if they expressly request the transfer and they either reasonably believe there is threat of imminent harm from further violence if they remain in their unit, regardless of where or when the sexual assault occurred, or, the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer, regardless of whether they reasonably believe there is a threat of imminent harm from further violence if they remain in their unit. HUD has revised the Notice of Occupancy Rights under VAWA and the Model Emergency Transfer Plan to clarify that there are two ways that victims of sexual assault may qualify for an emergency transfer under VAWA. HUD also clarifies this in the rule.

With respect to a commenter's statement that a victim who was attacked by a perpetrator on the grounds of the covered housing provider but dragged from the property and sexually assaulted elsewhere should be considered as meeting the VAWA requirements for a sexual assault occurring on the premises, HUD finds that this situation would meet the requirement because, in essence, the start of the assault occurred on the premises.

Rule Change: Section 5.2005(e)(2)(ii)(B) is revised to clarify that in the case of a tenant who is a victim of sexual assault, the tenant qualifies for a transfer if either the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same unit that the tenant is currently occupying, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.

h. The Scope of the Transfer Provision

Comment: Clarify whether a transfer can happen between different properties and different programs, and whether such transfer would be required and how it would be achieved. Commenters asked for clarification on the meaning of "transfer"—whether a transfer means a transfer within a property, within properties that a housing provider administers, or includes properties not in the housing provider's control. A commenter asked if survivors would be able to establish eligibility across different HUD programs, different covered housing providers, different geographies, and housing programs in other agencies, or whether they would be limited to the program and housing provider where they currently reside.

Commenters asked how a transfer between properties would be coordinated and sought more guidance from HUD on transfers. Commenters asked how a PHA that administers the HCV program should effect a transfer and whether the PHA will be responsible for finding the victim a new unit. A commenter asked whether it would be acceptable for a PHA to process an expedited "move with continued assistance" (MWCA) or allow a MWCA when it would otherwise not be allowed.

Commenters asked whether it is mandatory or discretionary for PHAs to transfer a family from public housing to Section 8 housing. A commenter said that flexibility in this area would facilitate a transfer by giving PHAs the ability to transfer the household to the first unit or voucher that is available for the household's size regardless of program. A commenter also asked whether PHAs would be expected to issue a voucher to a project-based participant at risk of domestic violence.

A commenter asked what a housing provider should do if there are no units available on the current property to transfer the victim to, or there is a unit available but it does not have enough bedrooms to accommodate the victim and the victim's family.

HUD Response: In this final rule, HUD clarifies that covered housing providers must allow tenants who meet the rule's criteria for an emergency transfer to make an internal emergency transfer, which, as discussed above, is one where a tenant could reside in a new unit without having to undergo an application process, when a safe unit is immediately available. A significant obligation of every housing provider is to keep its own tenants safe, and where an existing tenant meets the eligibility requirements and would not have to undergo an application process in order to move to an available unit that is safe, the tenant must be offered the transfer to this unit.

As discussed in the proposed rule, HUD reads "under a covered housing program" to mean the covered housing provider must, at a minimum, transfer the tenant to a unit under the provider's control and assisted under the same covered program as the unit in which the tenant was residing, if a unit is available and is safe. This means housing providers may be required to transfer certain tenants to different

properties that are under the housing providers' control, provided that these properties are under the same program in which the tenant is assisted, and the properties are subject to one wait list. If there is a separate wait list for each of these properties, then the housing provider may not, depending upon program requirements, be able to easily transfer a tenant to another property.

The proposed rule stated that, in addition, covered housing providers must allow tenants who qualify for emergency transfers to transfer to a safe and available unit that is under their control and under another covered housing program, if such transfer is permissible under applicable program regulations. This means the program regulations for both the program that the tenant is leaving and the program regulations for the program the tenant would be joining allow for a transfer between programs. After further review, HUD has removed this language from the final rule, as at the present time, there are no HUD programs to which an individual could transfer from another program without applying for housing under a new program. Tenants seeking to move to a unit covered by a different program may apply for housing under the new program. However, a housing provider is not fulfilling its emergency transfer obligation if the only relief offered to a tenant is to be placed at the bottom of a waiting list for a new program. The housing provider that administered the unit in which the tenant became a victim of domestic violence must have in its emergency transfer plan a process through which the provider will assist the victim in finding alternative housing. For example, the plan could include providing the victim with names, addresses, or phone numbers of domestic advocacy organizations that stand ready to assist victims of domestic violence on an emergency basis, and a list of other housing providers, whether private market providers or other government-assisted housing providers, that may have offered their availability to be contacted by the housing provider who has a tenant who is a victim of domestic violence, and may possibly be able to offer assistance to a victim of domestic violence.

Certain HUD programs have additional specific requirements under this rule as to actions that housing providers must take to assist tenants in transferring when a safe unit is not immediately available for victims who qualify for emergency transfers under VAWA. HOME and HTF require that the participating jurisdiction (in the case of HOME) or the grantee (in the case of HTF) must provide a list of properties in the jurisdiction that include HOME or HTF-units (depending on which program the tenant is currently under) to tenants in these programs that request and qualify for external emergency transfers under VAWA. Under this rule, the list must include for each property: The property's address, contact information, the unit sizes (number of bedrooms) for the HOME or HTF-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HOME or HTF-assisted units. In addition, the participating jurisdiction or the grantee may establish a preference under the program for tenants who qualify for emergency transfers, and coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units. For the HOME program, the participating jurisdiction may provide HOME tenant-based rental assistance to tenants who qualify for emergency transfers under 24 CFR 5.2005(e). Under the ESG and CoC programs, tenants who live in assisted units and qualify for emergency transfers under VAWA but cannot make an immediate internal emergency transfer to a safe unit receive priority over all other applicants for new assistance or housing, subject to certain eligibility restrictions. Additionally, given that 24 CFR 5.2005(e)(9) provides for tenants who are receiving tenant-based rental assistance and qualify for an emergency transfer to move quickly with that assistance, the ESG and CoC program rules require the emergency transfer plan to specify what will happen with respect to the non-transferring family member(s), if the family separates in order to effect an emergency transfer. Under HUD's Section 8 programs and Section 202 and Section 811 programs, this final rule provides that covered housing providers may adopt or modify existing admission preferences or transfer waitlist priorities to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, and must review their existing inventory of units and determine when the next vacant unit may be available, and provide a list of nearby HUD subsidized rental properties to tenants who qualify for emergency transfers under VAWA.

As noted earlier in this preamble and provided in § 5.2005(e)(12), emergency transfer obligations under VAWA do not supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

Housing providers are strongly encouraged to accept emergency transfers from different housing providers, including transfers from other HUD-covered programs as long as program eligibility requirements are met, even though they are not required to do so. HUD strongly encourages housing providers who accept emergency transfer requests from other housing providers to prioritize those requests from other providers in the same manner that they prioritize VAWA emergency transfer requests that they receive from their own tenants. However, where there may be a conflict between a tenant of a housing provider needing an emergency transfer and a tenant of another housing provider needing an emergency transfer, the housing providers' first obligation is to its own tenants.

With regard to carrying out a transfer for an HCV participant, the transfer would follow current PHA policies regarding transfers. Pursuant to existing regulations, the PHA must allow the family in the tenant-based voucher program to move with continued tenant-based assistance (24 CFR 982.354(b)(4), 982.353(b)). The PHA must issue the victim a voucher allowing the victim to search for another unit in its jurisdiction, or begin the portability process if the victim wishes to move outside of the PHA's jurisdiction.

Under the PBV program, the assistance is tied to the unit as opposed, in the case of tenant-based assistance, to the family. Therefore, PBV families cannot move with their PBV assistance. However, if the victim seeks to move from the victim's unit, has been living in the PBV unit for more than one year, and has given the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease, the PHA must give the victim priority to receive the next available opportunity for continued tenant-based rental assistance (24 CFR 983.261).

In response to the comment about transferring tenants between public housing and Section 8 housing, these are different programs, with separate statutory and regulatory requirements, and in order for a tenant to receive assistance through a program in which they are not currently participating, they would have to apply for housing under the new program. However, owners may, and HUD strongly encourages owners to, assist tenants in facilitating moves to other programs. Housing providers may be able to facilitate tenant transfers between different programs and different providers by

establishing a preference for victims of domestic violence, dating violence, sexual assault, or stalking.

Rule Change: Section 5.2005 is revised to state that the emergency transfer plan must allow tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to make an internal emergency transfer under VAWA when a safe unit is immediately available. The statement regarding transfers to a unit in another covered housing program if such transfer is permissible under applicable program regulations has been removed. Additionally, as previously discussed, § 5.2005 requires that emergency transfer plans describe policies for assisting tenants in making internal and external emergency transfers when a safe unit is not immediate available.

Additionally, this rule revises HUD's HOME and HTF regulations in § 92.359 and § 93.356, respectively, to require that participating jurisdictions or grantees must provide a list of properties in the jurisdiction that include HOME or HTF-assisted units, and information about each property, to tenants who qualify for, and wish to make, an external emergency transfer under VAWA. The regulations provide additional actions the participating jurisdiction or grantee may take to comply with this rule. The rule also revises HUD's ESG and CoC regulations, in §§ 576.400(e) and 576.409 (for ESG) and §§ 578.7 and 578.99 (for CoC), to provide that families living in units assisted under these programs who qualify for emergency transfers under VAWA but cannot make an immediate internal emergency transfer must be provided with priority over all other applicants for a new unit under these programs or other assistance under these programs, subject to certain restrictions.

Under HUD's Section 8 programs and Section 202 and Section 811 programs, this final rule provides, in §§ 880.613, 882.407, 882.804, 884.226, 886.139, and 891.190, that covered housing providers may adopt or modify existing admission preferences or transfer waitlist priorities to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, and must review their existing inventory of units and determine when the next vacant unit may be available, and provide a list of nearby HUD subsidized rental properties to tenants who qualify for emergency transfers under VAWA.

Comment: Clarify that a housing provider cannot guarantee safety in a new unit, or that a perpetrator will not learn the new unit's location. Commenters stated that there is no way a housing provider can guarantee safety, and a commenter asked that references to an owner's obligation to transfer a victim to a "safe" dwelling unit be removed from the rule. Another commenter expressed concern that most HOME-funded developments are single-building, 50- to 100-unit building, and for transfers made to another unit in the same building where the victim's perpetrator continues to live, the perpetrator could very quickly learn the location of the victim's emergency transfer unit. Commenter asked HUD to make explicit acknowledgement of this scenario in the final regulation.

HUD Response: Neither the VAWA statute nor HUD's regulations require a housing provider to guarantee safety. As noted in § 5.2005 (e)(1), this rule defines a safe unit for emergency transfer purposes as one that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe. The VAWA statute specifies that the unit to which a housing provider transfers a victim, under an emergency transfer request, is to be available and safe. Accordingly, HUD is not removing reference to the unit being "safe" from the regulations. Housing providers do not have to guarantee safety, but should do their best to identify an available unit that the victim considers safe.

Rule Change: Section 5.2005(e)(1) of this final rule is revised to state that for purposes of VAWA emergency transfers, a safe unit refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe.

Comment: Units should be left vacant for a period of time. A commenter stated that units should remain vacant for a reasonable period of time after the victim has moved because the perpetrator may not know that the victim moved, thus endangering a new resident.

HUD Response: HUD declines to require housing providers to keep units vacant for a period of time after a victim has moved from a unit. Consistent with program requirements, housing providers may choose to leave units vacant if they believe that will be in the best interest of the property's residents, but HUD is not requiring housing providers take this action.

Comment: Clarify that "emergency transfer" applies only to truly emergency situations. Commenters stated that HUD's rule should be clear that an emergency transfer should be in response to an imminent danger, where removal of the victim from the victim's current residence is necessary for the victim's safety. Commenter also stated that the proposed rule referred to an emergency transfer being authorized in the case of sexual assault that occurred within 90 days of the date of the request, but a 90-day delay seems inconsistent with the common understanding of the word "emergency."

HUD Response: VAWA 2013 provides that tenants are allowed to transfer if they expressly request the transfer and reasonably believe they are threatened with imminent harm from further violence if they remain within the same dwelling unit; or in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90-calendar-day period preceding the request for transfer. This rule tracks these statutorily required conditions.

Comment: The proposed rule and notice of rights and model emergency transfer plan should guarantee the ability to transfer that is provided in VAWA 2013. Commenters stated that the rule and associated documents should be revised to require covered housing providers to transfer tenants who are victims under VAWA to another unit in any covered housing program, instead of only requiring covered housing providers to transfer such tenants to a unit under the control of the covered housing provider and assisted under the same covered program.

Commenters further stated that the permissive language in the rule, notice, and model emergency transfer plan that emergency transfers may occur if a tenant is eligible for housing in the unit to which the tenant would be transferred should be changed to mandatory language that emergency transfers shall occur if a tenant is eligible for housing. A commenter suggested that the rule should be revised to eliminate provisions that a transfer is contingent on if such transfer is permissible under applicable program regulations and that waiting lists or tenant preferences or prioritization must be considered. The commenter stated that these changes are necessary because the text, purpose, and legislative history of VAWA 2013 require that, under the statutory emergency transfer provisions, a transfer must be provided to an available and safe unit under any covered housing program. The commenter stated that the text of VAWA requires agencies to adopt a model plan that allows tenants to transfer to another available and safe unit that is assisted under "a" and not "the" covered housing program.

HUD Response: As was discussed previously in response to an earlier

comment, this rule does not require that covered housing providers transfer tenants who are victims of domestic violence to another unit in any HUD-covered housing program. A tenant who moves to a unit covered under a different housing program or a different provider would be a new applicant, and not a transferee, and certain application procedures would need to be followed. In addition, VAWA does not override the eligibility or occupancy requirements of the different covered programs. Therefore, a transfer cannot disregard the eligibility or occupancy requirements of the different covered housing programs, unless the authorities governing an individual covered program allow those eligibility and occupancy requirements to be set aside or waived under certain circumstances. The specific eligibility requirements in program-specific statutes still apply, and housing providers must comply with those requirements. HUD therefore maintains the provision in the proposed rule that emergency transfer requirements do not supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

HUD is committed to developing ways to facilitate emergency transfers among different providers and different covered housing programs, and will continually examine ways to improve the efficacy of the current policies. For example, HUD will examine the variations in eligibility requirements and strive to identify those programs that have eligibility requirements that are comparable but not identical to see if HUD can develop a "fast-track" admission process, so to speak, for facilitating a tenant of one HUD-covered program and who is a victim of a VAWA crime to quickly meet the eligibility requirements of another HUD-covered program. Further, HUD is considering developing a model "collaborative" emergency plan in which covered housing providers in a given area work together and commit to aid one another in finding available safe units for their tenants who are victims of domestic violence.

HUD encourages housing providers to assist those who qualify for emergency transfers under VAWA to expedite applications for new housing units, in situations where a new application would be required, and to explain such measures in their emergency transfer plans. To facilitate adoption of this proposal, this rule revises the standards for PHA tenant selection criteria in public housing to state that PHAs may accept and use a prior covered housing provider's determination of eligibility and tenant screening and verification information so that victims of domestic violence, dating violence, sexual assault, or stalking who qualify for emergency transfers under VAWA can move more quickly. HUD notes that portability procedures for the Housing Choice Voucher Program in 24 CFR 982.355(c)(7) already state that when a family moves under portability to an area outside the initial PHA's jurisdiction, the initial PHA must promptly notify the receiving PHA to expect the family, and the initial PHA must give the receiving PHA the most recent form HUD 50058 (Family Report) for the family, and all related verification information.

Rule Change: This rule revises 24 CFR 960.203 to include a provision that, in cases of requests for emergency transfers under VAWA, with the written consent of the victim of domestic violence, dating violence, sexual assault, or stalking, the receiving PHA may accept and use the prior covered housing provider's determination of eligibility and tenant screening and all related verification information, including form HUD 50058 (Family Report).

Comment: Housing providers should work with victims to ensure they are placed in a housing unit. Commenters said that emergency homeless shelters are not viable, long-term alternatives for re-housing domestic violence survivors, and a survivor and their affiliated individuals should be placed in a housing unit whenever possible. Commenters said if housing is not available at the time that the victim seeks to move, housing providers should demonstrate they are immediately and continually working to find new housing for survivors.

HUD Response: HUD agrees with commenter that emergency homeless shelters may provide immediate accommodation but are not long-term alternatives for rehousing anyone who needs housing. Victims who are eligible for emergency transfers should be moved to a safe housing unit if one is available as soon as possible. The requirement to transfer victims, who seek to move from their unit, does not end at a specific time, but remains until the victim, who requested the transfer, informs the housing provider that the victim no longer seeks the transfer, or the victim, no longer receives housing or housing assistance through a covered housing program.

Comment: Clarify that transfers will not be guaranteed, especially to a particular site. A commenter said language in HUD's model emergency transfer plan that the housing provider cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request should be reiterated and emphasized repeatedly so that tenants fully understand this is not a guarantee. Other commenters said plans and guidelines should not suggest that a tenant will be transferred to a specific site, and the family should accept an appropriate unit. A commenter said it has experienced residents trying to use emergency transfer procedures to get into a specific site.

HUD Response: The language in the model emergency transfer plan stating that the housing provider cannot guarantee that a transfer request will be approved or how long it will take to process is sufficient. Having said that however, because it is an emergency transfer plan required by VAWA 2013, the expectation is that housing providers address every emergency transfer request as an emergency and move as expeditiously as possible to place the victim of domestic violence in a safe unit, either one that is in the housing provider's control, or one that is made available by the network of support that HUD encourages every housing provider to establish. Protecting victims of domestic violence should be a collaborative effort of the public sector and private sector in every community.

As for the safety issue, housing providers may add in their own emergency transfer plans additional language noting the inability to guarantee the safety of a specific unit or site. It is also important to note that although housing providers may believe that they have identified a safe unit, the housing provider may not force victims of domestic violence, dating violence, sexual assault, or stalking to transfer to a site where the victim does not feel safe. Such a move would not be a transfer to a "safe" unit in accordance with VAWA 2013 and HUD's final rule.

Comment: Provide for appeals if a tenant is denied a transfer. A commenter said that when a tenant is denied a transfer under VAWA, or offered an unsafe unit, the tenant seeking the transfer must have the ability to challenge the action irrespective of the particular covered housing program. The commenter said all transfer denials should be in writing and explain the basis for the denial of the housing transfer and, if the transfer is not granted within 72 hours, the tenant can assume it has been denied and grieve or appeal the decision.

HUD Response: Tenants will be made aware of their rights regarding emergency transfers through the Notice of Occupancy Rights, and as described in § 5.2005(e), tenants will have the

right to review their housing provider's emergency transfer plan. A tenant should feel free to ask to talk to their housing provider about any provision of the emergency transfer for which the tenant may have questions. If a victim feels that there has been an unfair denial of an emergency transfer and is unable to resolve this situation with their housing provider, the victim should contact HUD.

Comment: Explain whether there are limitations to transfers. A commenter asked how often a covered housing provider must transfer a victim and whether it matters if the need for a subsequent transfer results from the victim informing the perpetrator of where the victim lives. The commenter also asked, if there are multiple victims in a household, is there is any limit to the number of transfers that must occur if different household members request transfers.

HUD Response: Housing providers may not deny transfers to a safe and available unit if the transfer is necessary because a perpetrator learned of the victim's new location, regardless of how the perpetrator learned of the location. In addition, housing providers may not limit transfers based on the number of household members who request transfers, provided the victims meet the statutory requirements for an emergency transfer.

i. Emergency Transfer Logistics

Comment: Explain how emergency transfers will work, particularly when a housing provider does not have other available and safe units or cannot afford the transfer. Commenters asked how a small PHA could transfer a victim if it does not have another safe unit and there are no other forms of assistance available. Commenters asked whether HUD has considered alternative ways to fund transfers other than tenant protection vouchers, if these are not available. Another commenter said that HUD should consider what resources it can provide to victims when housing providers are not able to accommodate a transfer request based on the availability of units under their control. Another commenter asked whether, if a PHA bifurcates a lease and offers an emergency transfer, the PHA will be penalized if it cannot grant a transfer for lack of funding.

Commenters said that it is particularly important to recognize the differing characteristics, roles and capabilities of various housing providers and property types. Commenters said that, while a PHA may be able to relocate tenants upon request, private property owners and managers are generally not in a position to transfer tenants or assist tenants in making alternative housing choices. A commenter said emergency transfer provisions should acknowledge the limitations of transfer policies and reflect the practical realities of the rental housing sector. Another commenter said that it can provide a voucher, if funding is available, to accommodate an emergency transfer request from one of its public housing units, but, due to different eligibility criteria, it cannot readily transfer public housing families to its project-based Section 8 properties.

Another commenter said that if the housing provider does not have a unit available under another covered program it administers, then the housing provider should make a referral to the appropriate agency administering HCV vouchers so that the victim may be provided with a voucher. A commenter said HUD should develop rules and procedures for the agency administering vouchers to accept referrals from covered housing providers in the agency's area to streamline the process and reduce the time in which a victim receives a tenant protection voucher. The commenter also said housing providers should make referrals to other local or regional housing providers when no appropriate units are immediately available.

A commenter asked what recourse an owner has in the event that a VAWA victim declines to move to the proposed transfer unit. Another commenter said a tenant's rejection of the proposed transfer cannot serve as a basis for good cause termination of assistance or lease termination.

HUD Response: HUD has addressed similar comments already in this preamble. HUD recognizes the challenges of finding available units in its covered housing programs. Waiting lists are long and units are not available in abundance. If there is no safe and available unit to which a victim can transfer, then the housing provider will not be able to provide an emergency transfer, but as also stated earlier in this preamble, VAWA requires each housing provider to develop and issue an emergency transfer plan. The emergency nature of such a plan must be taken seriously. HUD has acknowledged the limitation of available units in all of HUD's covered housing programs, which is why HUD has encouraged emergency transfer plans that are in consultation with and work in collaboration with other public and private organizations and entities that are dedicated to helping victims of domestic violence. HUD also encourages housing providers to reach out to other housing providers in their jurisdiction, and strive to establish a relationship in which the housing providers, whether private market providers or government-assisted providers, help one another to the extent feasible address emergency domestic violence situations. Reference to such other resources in an emergency transfer plan reflects that the plan is designed to facilitate a transfer as quickly as possible. The purpose of a lease bifurcation is to remove the perpetrator from a unit without evicting, removing, terminating assistance to, or otherwise penalizing a victim who seeks to remain in the unit. The purpose of an emergency transfer is to transfer a victim to a unit away from the perpetrator where the victim feels safe. An emergency transfer is not required as a result of a lease bifurcation.

With respect to the question of what recourse is available to an owner in the event that a VAWA victim declines to move to a proposed transfer unit, there is no HUD program where a tenant's rejection of a proposed transfer in accordance with § 5.2005(e) would serve as a basis for good cause termination of a lease.

Comment: Housing providers should consider units with different ownership for emergency transfers. Commenters said HUD must make clear to housing providers that management entities have the option of considering units with different ownership and that individual HAP contracts, or ownership distinctions, are not unmovable barriers to transfers.

HUD Response: HUD agrees with commenters and emphasizes that housing providers should consider, for emergency transfer requests, safe and available units with different ownership where such a transfer is feasible, and adheres to statutory requirements that may govern the transfer.

Comment: Housing providers should only be required to consider units that are under their control and that are part of the same housing program in which the victim participates. Commenters said allowing transfers to other housing programs would open the door to abuse as many might use this as a way to circumvent long waiting lists for their program of choice. Another commenter said various program limitations, including funding considerations, voucher availability, and fairness concerns in waiting list administration, may limit a provider's flexibility in transferring a victim from one of its programs to the other, and the rule should state that a housing provider is not required to transfer a victim to a different covered housing program it operates or administers.

HUD Response: As previously discussed, under this final rule, covered housing providers must allow tenants to transfer to units that are available and safe when the tenant may reside in the new unit without having to undergo an application process. This means that transfers will not be required to units outside of a provider's control and in a different program. However, as also previously discussed in greater depth, this final rule requires housing providers to establish procedures in their emergency transfer plan for transferring tenants who qualify for an emergency transfer under VAWA when the provider does not have a safe and available unit for which the tenant requesting the transfer can immediately transfer. HUD believes these requirements ensure that emergency transfer plans seriously consider the needs of victims of domestic violence, dating violence, sexual assault, and stalking, and have measures in place to assist such victims, while giving housing providers flexibility as to how they will be best able handle VAWA emergency transfer requests.

As provided in § 5.2005(e)(12) of this final rule, and already stated in this preamble, emergency transfer obligations do not supersede any eligibility or other occupancy requirements that may apply under a covered housing program. Housing providers are strongly encouraged to accept emergency transfers from different housing providers, as long as all program requirements that affect the transfer, those applicable to the housing provider seeking assistance and those applicable to the housing provider willing to accept the tenant, are followed.

Comment: HUD should issue tenant protection vouchers and establish policies and procedures related to tenant protection vouchers. Commenters asked that HUD issue tenant protection vouchers to assist victims of VAWA crimes. A commenter asked that these vouchers be issued with reference to PHA size and to the number of emergency transfers issued during the immediately preceding fiscal year. A commenter said such vouchers give victims the ability to transfer to a unit in another jurisdiction, where they may feel there is greater safety. A commenter said that it is unlikely other HUD-funded units will be available for emergency transfers, and HUD should provide vouchers to jurisdictions that do not have extra vouchers, although this could lead to false allegations of victimization. Other commenters asked HUD to encourage its Congressional appropriators to increase funding for tenant protection vouchers and/or to encourage a separate set-aside of vouchers for victims of VAWA crimes.

Commenters said that, under VAWA 2013, HUD is required to establish policies and procedures for how victims requesting an emergency transfer may receive tenant protection vouchers, subject to their availability. Commenters stated that the proposed rule did not provide policies and procedures for these vouchers, and said it makes sense to spell out a policy for these vouchers in the context of HUD's model emergency transfer plan.

HUD Response: The fiscal year 2016 appropriations for HUD does not provide funding specifically for tenant protection vouchers for victims of domestic violence, dating violence, sexual assault, or stalking. If future appropriations provide funding for tenant protection vouchers for victims of VAWA crimes, HUD will issue policies and procedures for the provision and use of the vouchers.

Comment: The rule should define "safe and available" and explain who determines whether a unit is safe and available. Commenters asked that HUD provide a definition of "safe" and "available." Commenter said a definition of "safe" would allow housing providers to document that they reasonably met this standard and limit their vulnerability to litigation. A commenter said that the definition of a "safe dwelling unit" should take into account the realities of tribal and rural housing agencies that cannot predict vacancies.

Commenters emphasized that a "safe" dwelling unit could be defined as a unit in a different property, stating that a unit in the same property would not be safe, and a unit in an adjacent property may not be safe. A commenter suggested a safe unit be defined as a unit in a different property that is managed by the same owner and/or managing agent or that is within the same assisted housing program. A commenter said that in some situations, transferring to a different unit within the property may be helpful, but may not be sufficient for every situation. Another commenter said the unit should be inspected to ensure that all locks are in good working order, and the tenant should be permitted, at the tenant's expense, to add additional locks. Commenters further said the definition should include that the location of the safe unit will not be disclosed to the perpetrator by either the housing provider or anyone in the victim's household.

A commenter suggested that a "safe" unit should refer to the existing definition in 24 CFR 5.703, regarding physical condition standards for HUD housing, and if the resident declines the offer to transfer because the only available unit is next door to the tenant's current unit, then HUD must take the leading role in helping the resident find new housing. Another commenter stated that any unit receiving subsidy is subject to HUD's prevailing physical inspection standards. A commenter said a "safe" unit should be defined based on objective criteria and should not impose unrealistic requirements, and housing providers should be allowed to adopt additional transfer guidelines to enhance safety (such as neighborhood restrictions).

Other commenters said that the consideration of what is a "safe" dwelling unit should be determined by the tenant who is requesting the transfer, based on the tenant's personal knowledge and reasonable belief about what areas of the city, or what developments, would be safe for the tenant. Commenters said that establishing both physical and psychological safety can be a critical factor for survivors to recover from violence they experienced.

A commenter suggested that an "available" dwelling unit can be defined as a vacant unit of appropriate unit size, located in a different apartment complex that is covered by VAWA protections and is managed by the same owner and/or managing agent. A commenter said the word "available" refers to a subsidized unit under the same program and under the control of the provider. Another commenter said the definition of "available" should encompass any units owned or managed by the housing provider even if the unit is under a different program.

Another commenter asked if "available" has a specific time period as to when the unit will be available. Other commenters said "available" means that all options must be explored for finding a safe and available unit, in and outside of the covered housing program's control or program before denying a transfer request.

Commenters said that, overall, criteria to be considered as to what is a safe and available dwelling unit are: Expressed safety concerns; availability of safe housing, as determined by these concerns, within the housing providers' control; the availability of safe housing of the same covered housing program type; and availability of safe housing of a different covered housing program type. Other commenters said that the rule's provision that available and safe dwelling units are those controlled by the provider with the same form of

assistance as the prior unit sufficiently avoid undue burdens on providers while offering domestic violence victims reasonable opportunities to transfer. A commenter said that while it is administratively easier to remain in the covered program, HUD should provide guidance and tools on how providers could look to possible units across their portfolio and also across programs to help providers understand when such moves could be feasible and allowed. A commenter asked that the rule state that a PHA may use its discretion to determine what "available and safe dwelling units" means.

Another commenter asked that, in situations where a tenant is transferred to a different unit under a different covered housing provider, which covered housing provider will be expected to fulfill the VAWA responsibility of determining a unit as "safe."

A commenter asked that Section 504-modified apartments otherwise reserved for households with a mobility-impaired individual, not be considered "available" to those seeking a transfer under VAWA.

HUD Response: HUD declines to set a specific standard for what is "safe," as the meaning of this term may vary greatly in different situations. HUD agrees with commenters who said that what is a "safe" dwelling unit should be primarily determined by the tenant-victim who is requesting the transfer, based on the tenant's personal knowledge and reasonable belief about what is safe. HUD believes that limiting "safe" to physical condition standards, as suggested by some commenters, is too limiting and is contrary to the intent of VAWA. Program regulations and policies for physical condition standards will still apply for emergency transfers, in the same manner that they apply to other housing under those programs. What is a "safe" distance from a perpetrator is one factor that housing providers and victims may consider, but HUD again declines to provide a specific definition of the term "safe" that would exclude certain units, such as those within the same property, or include other units, such as those at different properties.

Similarly, what is an "available" unit will vary in different situations. Generally, an available unit is one that is not occupied and is available to tenants given program requirements and possible considerations that may be applicable, such as eligibility requirements, unit restrictions, or term limitations. HUD will assist housing providers in identifying available units under the different HUD programs covered by VAWA.

HUD's Section 504 implementing regulations at 24 CFR part 8 describe the process by which accessible units required to be accessible under HUD's Section 504 regulation must be occupied. In order to maximize the utilization of such units by eligible individuals who require the accessibility features of the particular unit, the housing owner or manager must first offer such a unit to a current occupant of another unit of the same project or comparable projects under common control who needs the accessibility features of the vacant unit, and then to an eligible qualified individual on the waiting list needing such features. After this, the owner or manager may then offer the unit to individuals without disabilities, including individuals who need an emergency transfer under VAWA. In other words, if there remains a vacant accessible unit after engaging in this priority placement, the unit would qualify as an available unit for an emergency transfer under VAWA.

Comment: Housing owners and managers, not participating jurisdictions or State agencies, will have control over property and be in the best position to determine whether an emergency transfer is warranted. Commenters said that, in most cases, participating jurisdictions will not have control over housing for which HOME funds have been provided, and the rule needs to be clear about how a covered housing provider's control of property establishes the provider's responsibility to provide alternative housing when a transfer is needed. A commenter stated that § 92.359(e) in the proposed rule requires the participating jurisdiction to develop a VAWA lease term/addendum that must permit the tenant to terminate the lease without penalty if the participating jurisdiction "or its designee" determines that the tenant has met the conditions for an emergency transfer. The commenter said participating jurisdictions are not in a position to evaluate and make timely judgments about a tenant's eligibility for an emergency transfer and asked that participating jurisdictions be permitted to designate the owner of HOME-assisted rental housing as the entity that determines whether a tenant has met the conditions for an emergency transfer.

Commenters said HUD's interpretation of "under a covered housing program" is reasonable and fair if applied only to an owner of a property, and noted that a state housing agency administering project-based section 8 under 24 CFR part 883 does not "control" assisted units, nor does a HOME participating jurisdiction. Commenter said this notion of control should be explicitly stated in the regulatory text.

HUD Response: This final rule maintains the provisions in the proposed rule that the participating jurisdiction is the covered housing provider for purposes of developing and issuing an emergency transfer plan. The final rule also iterates that the participating jurisdiction must determine whether a tenant qualifies for an emergency transfer under the plan, as provided under the proposed rule. Individual project owners, however, will be involved in implementing the emergency transfer plan, including at a minimum transferring tenants to other units as provided in the emergency transfer plan and the written agreements required under section 92.504. The final rule includes changes to reflect this owner involvement. In this final rule, HUD removes language that was in the proposed rule's HOME regulations about the participating jurisdiction's designee. The HOME regulations do not discuss a participating jurisdiction's designee. Section 92.504(a) of the HOME regulations explains how a participating jurisdiction can carry out its program. HUD also removes language about a participating jurisdiction or its designee from the proposed HTF regulations, as the HTF regulations in 24 CFR part 93 place responsibilities on a "grantee." In this final rule, the HTF regulations for VAWA explain the responsibilities of grantees and owners, rather than participating jurisdictions, or their designees, and owners.

More generally, as explained earlier, this final rule no longer uses the term control to describe which units individuals may transfer to, and instead uses defined terms, internal emergency transfer and external emergency transfer, to describe transfer possibilities.

Rule Change: Section 92.359 of this final rule discusses VAWA responsibilities in the HOME program only for owners and participating jurisdictions. Section 93.356 of this final rule discusses VAWA responsibilities in the HTF program only for owners and grantees.

Comment: Any required recertification should only occur after a tenant has been transferred. Commenters said HUD should clarify that any required recertification, for example due to the change in household composition if the perpetrator no longer lives in the unit, should occur only after the tenant has been transferred. A commenter said that the covered

housing provider would, however, be free to change the size of the unit, if unit size eligibility is altered.

HUD Response: This rule does not impose any new requirements regarding recertification. Existing program regulations and policies govern.

Comment: Residents should be allowed to transfer without losing their subsidy. Commenters suggested that where there is no "safe and available" unit subsidized under the same covered program and under the administration of the tenant's current housing provider, but a unit is available in a separate property or in another property where the provider has made an agreement with the other property's housing owner, then the transfer should be accomplished through a negotiated "termination, or move out" and priority "move-in" at another site. A commenter said this could be accomplished using Tenant Rental Assistance Certification System (TRACS) database codes that will not require establishing new eligibility, but will enable a transfer of subsidy to another property so that the tenant will not have to risk loss of subsidy by having to meet income limits as required for a first-time eligibility determination.

HUD Response: HUD appreciates the suggestions of these commenters. Because HUD is unable to provide regulatory text that will address every feasible scenario, HUD program offices will supplement the regulatory text on how specific fact scenarios should be addressed under the requirements of the HUD-covered program at issue.

Comment: Residents requesting emergency transfer should be offered a reasonable time to establish eligibility for other programs. A commenter recommended that HUD provide a victim seeking an emergency transfer a reasonable time period, consistent with lease bifurcation provisions, to establish eligibility for other covered housing programs.

HUD Response: In this rule, HUD declines to set a time period for victims seeking emergency transfers to establish eligibility for other programs. In the case of bifurcation, the reasonable time period applies so that tenants may be protected from immediate eviction when a perpetrator leaves a unit. In the case of tenants requesting emergency transfers under VAWA, the tenant is not facing eviction, and although it may be unsafe for tenants to remain in their units, emergency transfers are subject to whether there is a safe and available unit to which the tenant may transfer. As discussed earlier in this preamble, the requirement to transfer victims who qualify for and request an emergency transfer does not end at a specific time, but remains until the victim informs the housing provider that the victim no longer seeks the transfer, or the victim no longer receives housing or assistance under a covered housing program. As also stated earlier in this preamble, tenants seeking emergency transfers may apply for housing under a new program, but emergency transfer obligations under VAWA do not supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

Comment: Tenants should generally remain responsible for rent while temporarily relocated. A commenter said it has been its practice that, for all emergency transfers, the tenant remains responsible for the rent of its unit during the period of the tenant's temporary relocation. The commenter said any mitigating circumstance to having the tenant remain responsible for the rent during temporary relocation would be addressed on a case-by-case basis to ensure that the victim does not lose eligibility for continued housing assistance.

HUD Response: HUD appreciates the commenter's suggestion on how the commenter handles emergency transfers. This final rule does not set requirements for recovery of lost rent for tenants who may be temporarily relocated. The program regulations that apply to the covered housing govern who bears the cost of lost rent.

Comment: Explain whether a housing provider can terminate assistance to a perpetrator when an emergency transfer happens. Commenters asked whether management can terminate assistance to the perpetrator. A commenter asked if termination is permitted whether the termination would take place when the emergency transfer happens or when the victim asserts a VAWA crime has been committed.

HUD Response: Housing providers that seek to terminate assistance to a perpetrator or an alleged perpetrator must ensure they are following existing program regulations and policies, including lease policies, which allow for such termination, as well as any applicable state and local laws. Housing providers should also ensure that tenants are aware that commission of crimes under VAWA may result in termination.

Comment: HUD should work with other organizations and agencies to transfer victims. Commenters stated that HUD needs to make use of available local and State resources for emergency transfer, and suggested that contacts be made with local shelters that house VAWA victims, as well as sheriffs' offices that have relationships with shelters, for advice and direction. Commenters stated that tenants should be informed of these resources and assistance should be provided to tenants to use these resources, if a tenant becomes a victim of a VAWA crime. Commenters stressed the importance of sharing the personal information of tenants only when necessary and then only to protect the victim.

HUD Response: HUD appreciates the suggestion of working with other organizations experienced in helping victims of domestic violence, dating violence, sexual assault, or stalking, to help facilitate transfers to a safe location or to provide a safe location for victims. In this final rule, HUD requires emergency transfer plans to describe policies to assist a tenant to make an emergency move when a safe unit is not immediately available for transfer, and encourages policies that include outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking. As to sharing personal information, this final rule maintains the provisions in the proposed rule that emergency transfer plans must incorporate strict confidentiality measures, and HUD's model emergency plan contains a section on confidentiality that specifies that the housing provider will keep confidential any information that the victim submits about an emergency transfer unless the victim gives the housing provider written permission to release the information or disclosure is required by law.

Comment: HUD and housing providers should take proactive steps to implement emergency transfer plans. Commenters said HUD should oversee and ensure accountability for each covered housing program's emergency transfer plan. Commenters said tenants seeking transfers may be directed differently depending on the covered housing program and covered housing provider, and suggested that HUD Regional offices could lead transfer efforts within their area, similar to efforts undertaken by HUD's Chicago Multifamily Regional Office. HUD's Chicago Regional Multifamily Office help to facilitate transfers needed by victims of domestic violence by helping to identify vacancies and striving to have the transfer occur between 48 hours and 2 weeks depending upon the victim's need and the availability of safe units.[12] Commenter said HUD

[12] See page 11 of the following PowerPoint presentation *http://nhlp.org/files/00%20Slides%20*

multifamily field offices, PHAs, or the contract administrator can assist in identifying assisted housing within different properties. Commenters also said HUD should encourage PHAs to work regionally to identify available units.

Other commenters said HUD can provide guidance to covered housing programs so that emergency transfer policies are institutionalized and implemented at all levels of the agency and survive employee turnover. Commenters said housing agencies should take measures to shorten transfer wait times, and to give survivors specific timeframes on when they can expect to be transferred. Commenters cited an example of a transfer policy that is working is from the Philadelphia Housing Authority. Commenters further suggested said that HUD encourage regional planning for emergency transfers and regional cooperative agreements or working groups between various housing providers of different housing programs and victim advocates.

HUD Response: HUD appreciates the information on how certain HUD offices and PHAs have addressed emergency transfer situations, and such information will aid HUD in development of guidance and best practices.

Comment: HUD needs to better explain how emergency transfers will work for the HCV program. A commenter said that HUD's discussion of emergency transfers in conjunction with the HCV program's portability feature oversimplifies the issues faced by the covered provider administering the HCV program and needs further explanation. The commenter said HUD conflates a tenant's use of portability (moving with assistance between jurisdictions) and moving from one housing unit to another in the same jurisdiction. The commenter said the rule indicates that a provider may not terminate assistance if a family leaves subsidized privately owned housing without notifying the PHA. The commenter asked if this means that a PHA may not terminate assistance based on the family moving out of the unit without notice to the PHA that may consider such a move as a material violation of the lease and pursue remedies such as recovering costs for reoccupying the unit from the former tenant.

HUD Response: HUD's HCV program regulations at 24 CFR 982.353(b) provide an exception to the prohibition against a family moving under portability provisions in violation of the lease. This exception provides that if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling unit in order to protect the health or safety of a household member who is or has been the a victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believes the household member to be threatened with imminent harm from further violence by remaining in the dwelling unit (or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move), and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the initial PHA and move to another jurisdiction under the HCV Program.

For example, a program participant is a victim of dating violence and moves out of the assisted dwelling unit and into an emergency shelter because the victim reasonably believes to be threatened with imminent harm from further violence by remaining in the unit. The victim fails to promptly notify the PHA of the absence in violation of the PHA's policy on absence from the unit. The PHA determines that the victim has violated PHA policy on absence from a unit. The PHA undertakes proceedings to terminate assistance and terminates the Housing Assistance Payment (HAP) contract with the owner. The program participant also notifies the PHA that the program participant is a victim of dating violence and moved out of the unit because the program participant reasonably believes to be threatened with imminent harm from further violence by remaining in the dwelling unit. The PHA makes a written request to the program participant to submit documentation about the incident or incidents of dating violence. In response to the request, a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking is submitted to the PHA. Because the absence from the unit was a result of domestic violence, dating violence, sexual assault, or stalking and the victim reasonably believed to be threatened with imminent harm from further violence by remaining in the dwelling unit, the PHA halts proceedings to terminate assistance. The PHA would then issue a new voucher allowing the program participant to search for housing. If the program participant indicates the desire to move to an area outside of the PHA's jurisdiction, the PHA follows the provisions for portability under 24 CFR 982.355. The program participant moves to the jurisdiction of another PHA with continued assistance. This move, however, does not relieve the family of any financial obligations on the original lease.

4. Documentation and Verifications

Comment: Clarify what forms are required for implementation of VAWA. Commenters requested information about forms required for non-project-based section 8 households to use VAWA. Another commenter asked whether housing providers have discretion to determine documentation requirements.

HUD Response: Except for documentation for emergency transfers, as previously discussed, documentation provisions and requirements are set out in § 5.2007 of this rule, and reflect the statutory documentation provisions in VAWA 2013. Housing providers must accept any one of the forms of documentation listed in § 5.2007, at the discretion of the victim of domestic violence, dating violence, sexual assault, or stalking. Under the statute and this rule, housing providers may accept another form of documentation provided by the applicant or the tenant, but the provider must still accept all of the other forms of documentation described in the rule. In the case of conflicting evidence, housing providers must accept one of the three forms of third-party documentation described in § 5.2007.

Comment: Certification forms should not differ for different programs. Commenters said there should be one VAWA certification form, and the exact same form should be used by both Public and Indian Housing and Multifamily Housing, because using different forms, which may expire or be changed at different times, is confusing and unnecessary.

HUD Response: HUD agrees and has created a certification form that will be used for all covered programs.

Comment: The 14-day time period should not strictly apply to all third-party documentation requirements in cases of conflicting evidence. Commenters stated that some VAWA victims may not be able to acquire the proper documentation within 14 business days. Commenters suggested there be a longer period of time for victims to be able to provide third-party documentation. A commenter said this is especially important in large cities where there is often a waiting period for supportive services. Another commenter said law enforcement, court, or

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administrative agency records can take a long time to obtain, as could medical documentation from a hospital. The commenter recommended that 60 days is a more reasonable period to obtain such documentation. Commenters said HUD should consider adding language to address what should occur when a tenant seeks requested documentation but cannot obtain the documentation due to a nonresponsive third party. A commenter said that if the tenant tries, but cannot procure the requested information, the housing provider should be instructed to make a decision based on the available evidence.

Commenters said that when victims are fleeing or have fled abuse, they can lack access to records and it can take time to understand their legal rights when information is shared. The commenters recommended that HUD allow 28 business days from the date the written request for documentation was received to obtain third-party documentation, and allow housing providers to use their discretion to extend the deadline past 28 days.

Other commenters said that the 14-day time period should also apply to third-party documents, but the covered housing provider should be able to extend this time period, particularly if the tenant demonstrates that the tenant has begun the process of obtaining the third-party documentation. A commenter suggested that the victim be required to request any extension within the initial 14-day time period. Another commenter said the time period is appropriate with the understanding that local agencies have the discretion to set a longer locally appropriate time period and that policies governing these time periods for PHAs are subject to public review and board approval as part of agencies' planning processes.

HUD Response: HUD understands that some VAWA victims may not be able to acquire third-party documentation within 14 business days. Under this final rule, tenants will have 30 days—generally the period of one rent cycle—to submit third-party documentation in cases of conflicting evidence. Housing providers may grant extensions where appropriate.

Rule Change: Section 5.2007(b)(2) of the proposed rule is revised to state that, in cases of conflicting information, covered housing providers may require an applicant or tenant to submit third-party documentation within 30 calendar days of the date of the request for the third-party documentation.

Comment: The 14-day time period should apply to third-party documentation requirements. In contrast to the above commenters, other commenters stated that 14 days is reasonable. A commenter stated that if an individual is in an unsafe situation, submission of documentation should be complete in 14 business days (or less) to ensure a prompt response to a request for relocation. Another commenter said that if this is a true emergency and the family needs to be relocated, 10 business days, excluding holidays and weekends, should be sufficient, and if there are mitigating circumstances the housing provider can allow for additional days.

HUD Response: The third-party documentation requirements are not requirements for an emergency transfer, but are requirements for documenting an occurrence of domestic violence, dating violence, sexual assault, or stalking when there is conflicting evidence.

Comment: Clarify that housing providers can require third-party certification when it is unclear whether domestic violence occurred, or who is the victim. Commenters said that HUD's implementing guidance and forms should reflect that housing providers can require third-party certification when there is not clear evidence that domestic violence incident occurred, or there is a question about which occupant is the victim.

HUD Response: This rule and HUD's Notice of Occupancy Rights that will be distributed to tenants and applicants both advise that housing providers have the right to request third-party documentation in order to resolve conflicts in situations where the housing providers have received conflicting evidence. With that exception, HUD does not read VAWA 2013 as allowing for housing providers to request third-party documentation. Housing providers should speak to the victim to try and clarify any information the housing provider believes is not clear. In accordance with VAWA 2013, HUD declines to allow housing providers to require third-party documentation of an occurrence of domestic violence, dating violence, sexual assault, or stalking in any situation except for those involving conflicting evidence.

Comment: HUD should provide clarification regarding situations where housing providers receive conflicting evidence. Commenters said that HUD should explain that the party providing third-party documentation when two parties claim VAWA protections in the same incident is not automatically deemed the victim, as perpetrators sometimes obtain a restraining order, protective order, or file a police report as forms of continued abuse, control, or retaliation. A commenter said many survivors are unable to timely access courts or law enforcement due to language barriers, disabilities, cultural norms, or safety concerns. Another commenter said that, rather than terminate the tenancy of the party who fails to provide third-party verification when conflicting evidence is received from both parties claiming VAWA protections, housing providers should use a grievance hearing or administrative review process to determine which party is the victim to be protected by VAWA.

Another commenter said HUD should clarify protocol for addressing equally compelling and competing claims, including ones with court actions pending. The commenter said that, frequently, households with competing VAWA claims also have court actions pending simultaneously and those cases may continue for years without a final resolution, and statuses that are apparently final can later change or have to be reconsidered.

Another commenter said situations in which cross-complainants submit conflicting third-party documentation, such as opposing orders of protection, create intractable situations for housing providers, which are not in a position to adjudicate family disputes or identify the primary aggressor. The commenter asked that HUD relieve PHAs of the obligation to afford VAWA protections to either complainant if documentation fails to identify a primary aggressor, or if third-party documents are themselves in conflict as to which complainant is the victim and which complainant is the perpetrator.

HUD Response: HUD appreciates the points raised by the commenters and will consider them in drafting guidance to assist housing providers who receive conflicting evidence.

Comment: Any form of third-party documentation should be acceptable in cases where there is conflicting evidence. Commenters said that, based upon the proposed list of acceptable alternative documentation, victims could encounter difficulty documenting evidence of a crime committed under VAWA in conflicting statement cases when, at the discretion of the covered housing provider, "statements or other evidence" are not accepted, and the victim is required to submit documentation from a professional or law enforcement. Commenters said that, in many cases, a victim of domestic violence, dating violence, stalking, or sexual assault does not report the incidents to law enforcement and may not utilize the assistance of a professional and, therefore, the only

form of third-party documentation available may be witness statements or other evidence which, under the proposed regulations, may not be acceptable forms of documentation if left to the discretion of the covered housing provider.

HUD Response: The list of acceptable third-party documentation provided in this rule is the list provided in VAWA 2013. The statute provides that, if a covered housing provider receives documentation that contains conflicting information, the covered housing provider may require an applicant or tenant to submit third-party documentation in one of the forms described in the statute, which are the same forms HUD describes in this rule.

Comment: Emphasize that survivors can choose which form of documentation to submit under the law, without further specifications. Commenters stated that the use of "or" in the section of VAWA 2013 that lists forms of documentation means that neither HUD nor a covered housing provider can eliminate the acceptability of one of the three listed documentation forms. Another commenter said that because many victims are reluctant to report abuse for fear of retaliations or other repercussions, self-certifications that the tenants are victims of domestic violence based solely on their own-signed attestation on a HUD-approved certification form should be recognized as an available option. Another commenter stated that, in the preamble to HUD's final rule implementing VAWA 2005, HUD asserted that victims could choose whether to submit self-certification or third-party documentation, and this still applies.

Commenters stated that PHAs and project owners are demanding Orders of Protection, Harassment orders, Trespass Orders, or police reports, contrary to HUD's directive to PHAs and project owners that third-party documentation cannot be required. Commenter said some PHAs and project owners require documentation that is "current," such as a less than 30-day old police report. Additionally, commenters said some PHAs and project owners are requiring multiple forms of proof. Commenter said the regulations must be clear on this section in order to reduce these unlawful and onerous documentation practices, as they were in 2005.

Other commenters suggested adding to proposed § 5.2007 language that provides that nothing should be construed to require a participant to provide documentation other than the self-certification form, except in the case of conflicting evidence.

HUD Response: HUD appreciates commenters pointing out that the rule could more clearly state that victims of domestic violence, dating violence, sexual assault, and stalking can choose, at their discretion, which form of documentation to submit, including self-certifications, except in the case of conflicting evidence. HUD has clarified this is § 5.2007, as well as in the housing rights notice, and the self-certification form.

Rule Change: Section 5.2007(b) of the proposed rule is revised in this final rule to state that applicants or tenants may submit, at their discretion, any one of the listed forms of documentation.

Comment: Housing providers should not have to accept self-certification. Commenters said housing providers should have discretion in determining the documentation requirements. A commenter said this is particularly the case with respect to the ability for housing providers to accept self-certification and the ability to determine when third-party documentation will be required, such as in instances when a housing authority receives conflicting information. The commenter said these documentation requirements can be maintained in the housing authority's written policies in order to ensure consistent application of documentation requirements. Other commenters stated that housing providers should be able to create their own certification form that could be used instead of the HUD-approved form.

A commenter said relying on self-certifications to qualify applicants leaves the housing provider vulnerable to penalties that may be imposed as a result HUD program audits, and the imposition of penalties causes disruptions and delays in the program, which adversely affect the program's ability to provide services to those that need them. The commenter recommended that the rule should state that responsible entities accept self-certification as a last resort. Another commenter said self-certification, even if supported by a police report, should not be mandated as sufficient proof, and that housing providers must be permitted to require third-party verification or other documentation signed by a professional from whom the victim has sought assistance directly relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. Another commenter said that the statute does not establish a hierarchy of documentation, so the rule should not limit the circumstances under which a housing provider can seek third-party documentation. A commenter said that if a program is allowed to accept self-certification then it is likely that parties will make an allegation, withdraw the allegation days later, and then make another allegation when the relationship is challenged again. The commenter said this will generate a considerable investment of time to identify alternate housing, determine eligibility, and bifurcate the lease—all to have the allegation withdrawn or proven false.

HUD Response: HUD appreciates the commenters' concerns, but HUD interprets VAWA to require that housing providers accept self-certification if that is the form that a tenant or applicant provides, except in cases involving conflicting evidence. In addition, as HUD noted in response to an earlier comment, this is not a new policy. In implementing VAWA 2005, HUD explained that victims could choose whether to submit self-certification or third-party documentation.

The statute also requires that HUD, or other appropriate housing agency covered under the law, approve the certification form. In order to avoid inconsistent requirements, HUD declines to allow housing providers to use their own certification forms in lieu of HUD's form. Under VAWA 2013 and this final rule, however, housing providers may allow victims of domestic violence, dating violence, sexual assault, or stalking to use a certification form that the housing provider has created, as long as it is clear that victims do not need to use that form and can use the HUD form instead (again, except for cases where there is conflicting evidence).

Comment: Housing providers should not have discretion to evaluate truthfulness of allegations. A commenter stated that housing providers may not have the necessary expertise and experience to evaluate whether there is a credible threat of domestic violence or other crime under VAWA that may be mitigated by a move, and training housing providers to help them gain that experience could be costly. This commenter further stated that victims may be reluctant to disclose their victimization to owners or management agents for a variety of reasons, including shame, embarrassment, or fear of retribution, and it would be more appropriate for housing providers to refer the tenants to their caseworkers to evaluate the truthfulness of the victim's allegations.

HUD Response: HUD understands and appreciates commenter's point that victims may be reluctant to disclose incidents of domestic violence, dating violence, sexual assault or stalking to

housing providers, but the rule maintains the documentation requirements that are provided in VAWA 2013. Housing providers must accept signed self-certification forms for documenting incidents of domestic violence, dating violence, sexual assault, or stalking, so they will not be evaluating the truthfulness of allegations. Similarly, as described in the section on emergency transfers, housing providers must accept a signed written statement from VAWA victims that they qualify for emergency transfers, so housing providers will not be evaluating whether a threat of domestic violence may be mitigated by a move.

Comment: Housing providers should not have to request certification in writing. A commenter said it is overly burdensome to require the housing provider to have to put in writing a request to the victim to provide certification following a request from the victim for assistance under VAWA. The commenter said to make this a requirement of housing providers may result in unintended consequences if the provider fails to document but continues to assist the victim.

HUD Response: HUD's rule follows VAWA 2013 in stating that housing providers may request documentation in writing and lay out procedures for how a housing provider may respond if it does not receive a timely response to the request.

Comment: Explain how housing providers can verify VAWA claims in light of confidentiality concerns. Commenters questioned how, considering confidentiality concerns, a housing provider could verify a claim that an individual owes money to a former housing provider (for damages to a unit, for example) for VAWA-related reasons, and not for another reason. A commenter asked what would happen if the applicant and previous management company have different stories as to whether the money was owed for a VAWA-related reason or another reason.

HUD Response: As previously stated in this preamble, HUD will provide guidance to covered housing providers as to how to determine whether domestic violence, dating violence, sexual assault, or stalking was the reason behind adverse factors that could jeopardize tenancy or participation in a HUD program.

5. Content of the Certification Form and the Notice of Occupancy Rights

a. Certification Form

Comment: The certification form should be readable and define necessary terms. Commenters said that HUD's increased use of plain language and precise regulatory language throughout the proposed certification form significantly improves readability and comprehension of the rights conveyed, as compared to the previous forms. Commenters said these improvements should be incorporated into the final version of the certification form.

In contrast, another commenter said that the certification form is not designed to be comprehensible to applicants and participants, and Microsoft Office 365 Word reports a poor Flesch Readability Ease measure. The commenter also said that the form uses the term "responsible entity" without ever indicating who or what that entity is.

HUD Response: HUD has revised the certification form to make it easier to understand. In addition, the revised certification form does not use the term "responsible entity."

Comment: The certification form should be changed in certain ways. Commenters commended HUD for abbreviating the space for descriptive text and discouraging disclosure of unnecessary details, but suggested the form should be changed in other ways. The commenters said the introductory paragraph regarding "Alternate Documentation" should be modified to explain that the victim or someone acting on behalf of the victim has the option of submitting alternative documentation instead of the certification form and, only in cases where the responsible entity receives conflicting statements, may the responsible entity require third-party documentation. Commenters said the form should also indicate that a responsible entity's request for third-party documentation must be made in writing. Additionally, commenters said the list of available alternate documentation should mirror the proposed regulatory language at § 5.2007(b)(1). Other commenters said that the form should direct responsible entities to accept self-certification as a last resort, or the form should include information on whether an individual has third-party documentation and a space to provide information on any barriers that exist to obtaining third-party documentation.

Another commenter said that the language used on the form to indicate the time period to submit documentation should mirror the proposed regulatory language. According to the commenter, the form says the deadline to submit documentation to a responsible entity is 14 days from the date that the entity submits a written request, rather than the proposed regulatory deadline of 14 days from the date that the tenant/applicant receives a written request. The commenter stated that the proposed certification form currently requests both the date and time of the incident(s), and said the request for the time is overly burdensome, as the victim may not recall it, or may be seeking certification based on a series of incidents. Similarly, other commenters said victims may not be able to recall dates, particularly if multiple events are involved. The commenters recommended that the form be revised to request date(s) and time and location of incident(s) "if known." Similarly, a commenter recommended the certification line read that it is to certify that the information provided on this form is true and correct "to the best of my knowledge and recollection."

In addition, commenters said the confidentiality clause at the end of the certification form should be amended to say that employees may not disclose, reveal, or release information, except to the extent that disclosure is consented to by the victim in a time-limited written release. The commenters said that the proposed form's inclusion of the "Public Reporting Burden" paragraph should be removed, but if this paragraph has to be on the form, it should be moved to the end of the form and the confidentiality paragraph should be moved higher on the form.

Another commenter said that the signature block should include the warning that the signatory is making such statements under penalty of perjury.

A commenter said that the certification should specially call out that the resident or participant is to take steps to ensure that the perpetrator does not learn of the new unit location, and if the victim allows the perpetrator back into the new unit then the victim may be denied a future emergency transfer if requested again.

In the interest of lessening the administrative burden on housing providers, a commenter suggested HUD allow the responsible entity to make an oral, rather than written, request for documentation. The commenter said this is especially important in emergency situations where there may not be a contact address for the victim, and when the alleged perpetrator may be put on notice of the victim's request for assistance should a written request be sent to the household.

HUD Response: HUD's revised certification form clarifies that victims may complete the certification form, or may submit third-party documentation,

for reasons described elsewhere in this preamble. In addition, the Notice of Occupancy Rights, which all tenants and applicants will receive at the same time they receive the certification form, explains that it is the tenant or applicant's choice, which form of documentation to submit, except for cases where there is conflicting evidence. HUD declines to amend the certification form to discuss that a request for third-party documentation must be in writing, since the provider may only ask for third party documentation in cases of conflicting evidence, and then the certification form would not be applicable at that point.

HUD appreciates commenters pointing out that the list of available alternate documentation in the proposed certification form differed from the types of alternate documentation described in VAWA 2013 and the proposed rule. As a result, HUD has amended this language on the certification form so that it properly reflects the statutory and regulatory text. HUD has also revised the form to clarify that the deadline to submit documentation to a responsible entity is 14 business days from the date that the tenant or applicant receives a written request. Further, HUD has revised the certification form to incorporate commenters' suggestion that victims should specify the date(s) and time(s) of incidents if known. In addition, the certification signature block is revised to say that the information provided is true and correct to the best of the knowledge and recollection of the person who fills out the form. HUD has also accepted commenters' suggestion of moving the confidentiality paragraph higher on the form and moving down the paragraph in the public reporting burden, in order to emphasize the confidentiality provisions.

HUD declines to amend the certification form to say that employees may not reveal or release information, as HUD uses the term "disclose" to encompass revealing, or releasing. Because it is standard for waivers of confidentiality provisions to be time-limited, HUD accepts the proposal to add that victims must consent to disclosure in a time-limited written release. HUD also makes this change in 24 CFR 5.2007(c)(2)(i). However, HUD declines to alter the signature block to say that the signatory is making statements under penalty of perjury. The signature block states that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction, as terminating or denying assistance are actions within HUD's jurisdiction.

HUD also will not revise the certification form to say that the resident or participant is to take steps to ensure that the perpetrator does not learn of the new unit location. This purpose of this certification form is to document incidents of domestic violence, dating violence, sexual assault, or stalking, and is not documentation for emergency transfers. The model emergency transfer plan explains that the resident is urged to take all reasonable precautions to be safe.

HUD understands commenter's rationale for the request to allow housing providers to make oral, rather than written, requests for documentation. However, the provision requiring a written request is in VAWA 2013, and such requirement provides a record for tenants and applicants and housing providers as to compliance with the documentation provisions of this rule. HUD notes that, where possible, housing providers should give written documentation requests to victims in person.

b. Notice of Occupancy Rights

Comment: The notice of occupancy rights should be more readable and accessible. Commenters said that the notice of occupancy rights in the proposed rule is inaccessible to many and should be shortened or simplified. A commenter said that Web sites that measure text readability determined that the notice required the reader to have advanced education. Commenters said the notice must use simple, direct language. Another commenter said the use of statutory language and terms is appropriate and necessary in some contexts, but inclusion of the statutory provisions can decrease the reader's ability to understand and use the information. The commenter recommended including definitions for particularly complex terms used in the notice.

Other commenters suggested that the notice use plain-language. A commenter explained that someone may not relate to the words "victim" or "perpetrator," but they may relate to this language: "if someone has harmed another person in the home, there are options available." Commenters stated that a number of sentences in the notice are lengthy, with complicated sentence structures, and they include more detail than necessary. Commenters provided examples of sentences in the notice that could be simplified, including changing: "Also attached is a HUD-approved certification form for documenting an incident of domestic violence, dating violence, sexual assault, or stalking for a tenant who seeks the protections of VAWA as provided in this notice of occupancy rights and in HUD's regulations" to "A form is attached to this notice. You can fill out this form to show that you are a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA." A commenter said simpler wording would also facilitate translation into other languages.

HUD Response: HUD appreciates commenters' suggestions and has revised the notice of occupancy rights to make it more easily readable. However, as discussed below, the notice does use the terms "abuser" and "perpetrator." HUD believes language that "somebody may have harmed another" is too vague and that the terms "abuser" and "perpetrator" are easily understandable.

Comment: The notice should use different language for accuracy and effect. Commenters said that the term "abuser" is used throughout the Notice of Occupancy Rights, but that HUD's notice needs to also include the term "perpetrator," in order to reference perpetrators of sexual assault or stalking. A commenter further said the notice should not use language that excludes victims who are not fleeing or escaping abuse, such as victims of sexual assault, and should thus use words such as "looking for help," "healing" or "recovering" in referencing their current circumstances.

Commenters also said the text of the notice itself, and not a footnote, should make it clear that despite the name of the law, VAWA protection is available regardless of sex, gender identity, sexual orientation, disability, or age. A commenter further stated that sections of the notice use the phrase "may not," such as "you may not be denied admission or denied assistance," and that changing the language to "must not" sends a stronger message about the degree to which VAWA prohibits such discrimination.

A commenter recommended that the section of the notice on removing the abuser from the household, the notice should say "HP can (rather than "may") choose to divide your lease. . ." to more clearly convey that the housing provider has the discretion to bifurcate a lease. The commenter said that the notice does not mention that the remaining tenant can try to establish eligibility for another housing program covered by VAWA, and tenants may not be aware of this option. The commenter further said the notice should be clarified to say the housing provider

may, but is not required to, ask for documentation. Another commenter stated that it did not know whether "divide" means to "bifurcate" and requested that HUD clarify. The commenter said that if "divide" does mean "bifurcate," the notice should make clear to tenants that an owner, and not a PHA, can divide the lease. A commenter said that, in the section on documenting that one has been a victim, the notice should clarify when a housing provider is exercising discretion, and ensure that tenants and applicants understand that the housing provider is not required to, but is merely allowed to, extend the 14-day time period to submit documentation.

Commenters said the notice also needs to make clear that the tenant or applicant asserting VAWA protections can choose which form of acceptable documentation to provide, except in circumstances where there is conflicting evidence. The commenter further said that in discussing the types of documentation that could be provided as a record of Federal, State, tribal, territorial, or local law enforcement agency, providing one or two examples (*e.g.*, restraining order, protective order, etc.) would be helpful.

A commenter stated that, in the section of the notice of reasons a tenant may be evicted, it should be clear that victims can be evicted or terminated if the housing provider demonstrates that the victim's continued tenancy poses an "actual and imminent threat" to other tenants or employees, and should explain what this means. The commenter suggested this section also note that eviction or termination should be pursued only when there are no other actions that could be taken to reduce or eliminate the threat.

Commenters said the notice is addressed to "all tenants and prospective tenants," and this appears to cover even eligible households that have not applied for assistance. Commenters said HUD should only require providers to notify existing participants and applicants. A commenter said the notice grossly oversimplifies the process required to remove a member from the household. The commenter said the provider and other household members must cooperate to remove a member who has some property rights to the housing or assistance, and it is not the provider alone who can divide the lease or remove the abuser from the household.

Other commenters said the form contains extraneous information. A commenter stated that the first bullet describing documentation includes a description of the information contained in the certification, but if participants and applicants receive the certification form, the notice need not describe its contents. The commenter further stated that after listing professionals who may provide documentation, the notice contains a parenthetical that says, "(collectively, "professional")," and this extra language adds nothing.

A commenter said the transfer right must be described in the proposed notice in more detail for a tenant to sufficiently be able to act on that right and to understand that this is an emergency transfer and not a traditional, slow transfer process, and the notice should explain any necessary documentation requirements. A commenter said the language should not use the term "another unit" because it gives the impression that the move is only to a unit within the existing covered housing project. The commenter said the language should state that "if you reasonably believe there is a threat of imminent harm from violence if you stay in the same unit or development where you live now, or if you are a victim of sexual assault that recently happened at your development, you have the right to ask for an emergency transfer to a different unit, including a unit in a different development, different type of affordable housing, and in a different location." The commenter said the notice should also emphasize that requests for transfers and the location of the move will be kept confidential.

Another commenter said the notice should include language that informs an applicant of the possibility of overcoming a negative rental, tenant, or criminal history if that history relates to their victimization. The commenter said this will allow a survivor to obtain and provide appropriate information to the covered housing program at the outset of the application process.

HUD Response: HUD appreciates these comments and has revised the Notice of Occupancy Rights to more accurately reflect the scope of VAWA protections. The revised notice states in the text, and not only in a footnote that the VAWA protections are not only available to women, but are available equally to all individuals. Further, the notice uses the term "perpetrator" in addition to "abuser" in order to reference perpetrators of sexual assault and stalking. The proposed notice did not use the term "fleeing" and only referred to "escaping" an abusive relationship when providing victims of domestic violence with a resource, but the revised notice no longer discusses "escaping" an abusive relationship. The revised notice now notes that after a lease bifurcation, remaining tenants can try to establish eligibility for another housing program covered by VAWA.

HUD has also revised the notice as suggested by commenters to improve clarity. The notice now explicitly states that dividing a lease means the same thing as bifurcating a lease, but the notice does not specify which housing provider would bifurcate a lease, as this differs across programs. Housing providers that issue the notice of rights should clarify who is responsible for lease bifurcation. The revised notice also clarifies that a housing provider can, but is not required to, ask for documentation, and may but is not required to, extend the deadline to submit documentation. The revised notice also states that except for cases where there is conflicting evidence, it is the choice of the victim of domestic violence, dating violence, sexual assault, or stalking which form of documentation to submit. The notice also now states that examples of reports from law enforcement agencies and courts include police reports, protective orders, and restraining orders, among others.

In response to the comment that the notice should explain when a tenant could be evicted or assistance could be terminated, the revised notice states that the VAWA protections may not apply if the housing provider can demonstrate that not evicting a tenant or terminating the tenant's assistance would present a real physical danger that would occur within an immediate time frame, and could result in death or serious bodily harm to other tenants or those who work on the property. The notice explains that housing providers should only evict tenants or terminate assistance when they cannot take other actions to reduce or eliminate the threat. Further, the revised notice is addressed to tenants and applicants, rather than tenants and prospective tenants. The revised notice also explains the criteria for requesting an emergency transfer, but it does not provide further information on emergency transfers, which vary across housing programs and providers, and instead notifies tenants that their housing provider has an emergency transfer plan that contains more information, and tenants have a right to see the plan.

There are some changes suggested by commenters that HUD did not make to the revised notice. HUD has not replaced the phrase "may not" throughout the notice to "must not." HUD maintains that "may not" sufficiently denotes that an action is prohibited. HUD also declines to replace the word "may" in the sentence that

says a housing provider "may" bifurcate a lease with the word "can," because HUD believes "may" better signifies that the housing provider has discretion whether to bifurcate a lease. The notice does not provide additional language regarding the mechanics of the bifurcation process, and the role of other household members. The notice says that the housing provider must follow Federal, State, and local eviction procedures, and that the housing provider may ask for documentation of the VAWA-covered incident(s). HUD declines to place additional responsibilities for removal of a perpetrator on a victim who has asked for that removal, as, due to household violence, the victim may be unable to provide it. Additionally, this notice includes the description of the certification form that will be attached, so that tenants and applicants know that they have a right to use that specific form. The form also retains the parenthetical that explains the use of the word "professional" later in the paragraph. Further, HUD declines to provide detail in this notice of basic protections about different ways in which somebody could be denied assistance, terminated from participation in, or be evicted from rental housing because somebody has been a victim of domestic violence, dating violence, sexual assault, or stalking.

Comment: The notice should provide more resources and information. Commenters said the notice should also include the Rape, Abuse and Incest National Network (RAINN) hotline for victims of sexual assault to supplement the hotline number already provided for victims of domestic violence. A commenter also suggested the notice include a blank space where the housing provider can insert contact information for local legal services and victim services providers. Another commenter recommended that HUD revise the notice to indicate to tenants that the notice is not an exhaustive list of tenant protections, and they are entitled to many additional protections at the state, local, and administrative level, and that they should consult their local PHA for information on rights afforded in their respective jurisdiction.

A commenter suggested that the notice encourage tenants or applicants who think they may qualify for VAWA protections to seek the assistance of a legal services attorney or victim services provider.

HUD Response: HUD's Notice of Occupancy Rights has been revised to include spaces for housing providers to fill in contact information for relevant organizations, including victim service providers or legal aid attorneys, that may be able to assist victims of domestic violence, dating violence, sexual assault, or stalking. HUD encourages housing providers to include contact information on the notice for local organizations, as these organizations may be in the best position to understand the victim's situation and available options. In addition, or where housing providers do not know of local organizations or none are available, housing providers should include national resources, such as: The National Domestic Violence Hotline, which was listed on the proposed notice and is still listed on this final notice; the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800–656–HOPE, or at *https://ohl.rainn.org/online/* for victims of sexual assault; and the National Center for Victims of Crime's Stalking Resource Center at *https://www.victimsofcrime.org/our-programs/stalking-resource-center*, for victims of stalking.

The revised notice now explicitly states that tenants and applicants may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Comment: The notice should be more specific on rights and responsibilities. Commenters said that rather than state that tenants may stay "in the unit for a period of time" until they can find alternate housing or establish eligibility under the HUD program, the notice of occupancy rights should be specific as to what this time is to ensure the victimized tenant is not left without secure housing. A commenter also stated that the notice should be clear about when a housing provider can request proof that an individual is requesting to move because of a VAWA-related incident. The commenter said that the notice states a housing provider "may" ask for proof. Another commenter said that HUD's discussion of confidentiality in the notice is overly simplified. The commenter said the notice states that information may be released if, "A law requires HP or your landlord to release the information." The commenter said this phrase includes a broad array of possible disclosures not necessarily obvious to an ordinary reader, for instance, in connection with reviews by HUD staff, audits by HUD's Inspector General, and to an independent public auditor, among other possibilities. Commenter said it may be unreasonable for HUD to develop a comprehensive list of how information may be disclosed in this notice, but the notice currently understates the potential for such disclosures.

HUD Response: HUD's Notice of Occupancy Rights describes basic VAWA protections that apply across all programs, which is why the notice states that tenants may stay in units for a period of time if a housing provider chooses to bifurcate a lease. The revised notice explains that housing providers may ask for documentation that an individual qualifies for an emergency transfer. The notice provides the criteria for qualifying for an emergency transfer, and it directs tenants to the housing provider's emergency transfer plan for further information. HUD believes that providing notice that confidential information may be released if a law requires it is sufficiently broad to alert tenants and applicants of that possibility.

Comment: HUD should create different notices for different housing programs to account for necessary variations. Commenters said HUD, and not a housing provider, is in the best position to create a series of different notices that outline how VAWA rights will apply in different housing programs. Other commenters said that permitting housing providers to customize the notice is very concerning because there is no mechanism for quality control and no way to ensure that the notices being distributed accurately reflect the VAWA protections, resulting in confusion and inconsistency. A commenter said that HUD should create different notices to prevent additional burdens on covered housing providers that would otherwise be expected to determine how VAWA 2013 protections play out in their programs. Commenters said that, to the extent that HUD wishes for there to be a local point of contact for tenants and applicants, HUD should include blanks that would allow the housing provider to add contact information, but housing providers should not be "filling in the blanks" regarding programmatic operations. Another commenter specifically recommended that HUD create two separate notices, one targeting tenant-based recipients and another that targets households with a subsidy that is tied to the unit. Commenter said the current notice refers to "rental assistance," which may be confusing to tenants subsidized by covered housing programs other than HCVs.

HUD Response: HUD's Notice of Occupancy Rights contains basic information that apply across all

programs, and the only information housing providers provide is the name of the housing provider, the relevant HUD program, and contact information for local organizations that may be able to assist victims of domestic violence, dating violence, sexual assault, and stalking. Therefore, HUD will not create notices for different housing programs. HUD has revised the notice to clarify that it applies to assistance under HUD-covered housing programs.

Comment: The notice of occupancy rights is so important that it should be reissued for public comment with any changes after the issuance of the final rule. Commenters stated that creation of the Notice of Occupancy Rights is a crucial step in the VAWA 2013 implementation process, particularly since the U.S. Department of Treasury and the U.S. Department of Agriculture will also utilize this notice in their housing programs. Commenters said that since the regulation has not yet been finalized, and changes will likely arise out of the notice and comment period, HUD should reissue the Notice for public comment after the issuance of the Final Rule.

HUD Response: The changes that HUD has made to the Notice of Occupancy Rights respond to concerns by commenters that the language in the rule should be simplified and better explain protections provided under VAWA 2013 and HUD's implementing regulations. HUD appreciates the comments and suggestions on changes to improve the Notice of Occupancy Rights, and has incorporated many of the changes. As a result, and because HUD maintains that there should be no further delay in providing tenants and applicants with the Notice of Occupancy Rights, HUD declines to seek further comment on the notice.

6. Provision of the Notice of Occupancy Rights and Certification Form

Comment: Include notice of VAWA protections in leases and other existing materials. A commenter stated that the legal rights of tenants can be ensured by attaching a copy of the statute to the tenant lease. Another commenter asked that any additions to leases about VAWA rights be written in simple, direct language and avoid legal jargon. Other commenters recommended that HUD incorporate the notification language into existing materials, such as the Tenants' Rights and Responsibilities brochure.

Other commenters said that while VAWA 2013 requires HUD to develop a notice of rights, the form of the notice is not prescribed in the statute. Commenters suggested that a separate notice is not required, and the commenters referenced a 2012 Senate Committee report saying that the Committee intended that notification be incorporated into existing standard notification documents that are provided to tenants. Commenters said that such incorporation would reduce administrative burden. A commenter said owners could be required to include language about VAWA protections in any notice of rejection or termination. The commenter said that since such notices must provide residents and applicants an opportunity to appeal eviction or termination, these notices would be an appropriate place to explain that being a victim of an act covered under VAWA would be grounds for reconsideration. According to the commenter, incorporation of VAWA protections into existing notification documents would dispense with the need for a separate document on VAWA protections.

Another commenter stated that the notification process conflicts with the Paperwork Reduction Act by requiring more paper, and adding an individual document, rather than incorporating the notice into other documents, increases the chances that a tenant will not see the notification because a housing provider may forget to provide it, or because the tenant will not read it. Commenter further stated that housing providers should not be required to provide the entire VAWA policy in tenant selection plans or in House Rules.

HUD Response: Regardless of the legislative history of VAWA 2013, the statute itself as enacted requires HUD to develop a notice of rights under VAWA and requires covered housing providers to submit that notice to a tenant or applicant at three specific times: (1) When an individual is denied residency under an assisted program; (2) when an individual is admitted to a dwelling unit assisted under the covered housing program; and (3) with any notification of eviction or termination of assistance. HUD believes that it is important to provide a separate notice of occupancy rights under VAWA to ensure applicants and residents are aware of these rights. Therefore, HUD requires that housing providers give a separate notice of housing rights to tenants at the times specified in this rule.

HUD maintains the provisions in the proposed rule that require descriptions of VAWA protections in leases, lease addendum or contracts, as specified in the regulations for the HOME, HOPWA, ESG, and CoC programs. For public housing and section 8 programs covered by VAWA 2005, this rule does not eliminate any existing notification requirements. Prior to this rule becoming effective, 24 CFR 5.2005(a)(4) provided that a 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. This final rule clarifies that this remains a requirement, and adds that a description of protections afforded to victims of sexual assault is also required.

Rule Change: This final rule maintains existing 24 CFR 5.2005(a)(4) for programs covered by VAWA prior to the 2013 reauthorization, and adds sexual assault to the list of the types of victims covered by VAWA.

Comment: HUD should not mandate including attachments with the notice of housing rights or certification form. Commenters said HUD should not require that the VAWA regulations be included with the notice of housing rights. Commenters said it is unlikely that many tenants or prospective tenants have the time or background knowledge to understand the full scope of their rights by reading the VAWA regulations and doing so may confuse or overwhelm them or cause them to ignore the entire document. Commenters suggested that, instead of providing a copy of the regulations, the notice should make the regulations available to tenants and applicants. Some commenters suggested providing a link to the regulations, perhaps in a footnote that would include the **Federal Register** citation for the final rule.

Some commenters said that requiring providers to send copies of regulations is an overly burdensome requirement that would impose considerable cost on providers for printing and mailing without adding anything to most recipients' understanding of their protections under VAWA. A commenter stated that tenants and applicants could potentially receive copies of the rule multiple times (as an applicant, if denied assistance, or if notified of termination or eviction), and there is no need to receive multiple copies of the regulations. Another commenter said including attachments of the regulations and a listing of local organizations offering assistance to victims of domestic violence is unnecessary and can lead to greater confusion for victims during a stressful time.

HUD Response: HUD agrees that housing providers should not have to include a copy of the VAWA regulations every time they give a tenant or applicant the notice of housing rights and certification form, but the

regulations should be made available to tenants and applicants who request to see the regulations. Therefore, HUD revised the Notice of Occupancy Rights to provide a link to HUD's VAWA regulations. Because not every tenant or applicant will be able to access these regulations on-line, the revised Notice of Occupancy Rights states that housing providers must make a copy of the regulations available to tenants and applicants who ask to see them. HUD also revised its model emergency transfer plan to remove the reference to an attachment of the regulations. The final model emergency transfer plan, however, maintains the reference to the attachment that lists local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, and stalking, and HUD encourages housing providers to make this list available to tenant and applicants who ask for the list.

Comment: The timing for submission of notification of occupancy rights should be changed. Commenters asked if, rather that distributing the notice of occupancy rights on three occasions, the notice could be provided to all applicants at the time they submit their original application. Other commenters said the notification process in the proposed regulations is burdensome and unnecessary because the vast majority of terminations and evictions are for reasons unrelated to VAWA. A commenter suggested that the notice be provided at the following times: When an application is rejected; at the time of entry into a covered program; and upon tenant request. Another commenter said that adding this notice and its attachments to each eviction notice adds an unwarranted due process procedure to an already overly burdened due process. The commenter sated that failure to serve such notice should not be grounds to appeal termination or eviction. Another commenter said providing the notice when an individual is provided assistance or admission is overkill because they will not be exercising VAWA rights at that time.

Other commenters said that submitting these notices to all denied applicants could be administratively prohibitive. A commenter stated that for its HOME projects, it currently administers an online housing lottery that frequently results in tens of thousands of applications, many of which are pre-determined to be ineligible based on measures like income. Commenter said that such applicants do not receive rejection letters and it would be unreasonable, impracticable, administratively burdensome, and confusing to applicants, for commenter to send these families a VAWA notice. The commenter stated that it would more reasonable to provide the VAWA notice to those applicants who have been selected by the lottery and were subsequently interviewed but found to be ineligible. The commenter asked that the final rule provide such clarification for the benefit of agencies that are responsible for marketing units of covered programs.

HUD Response: The VAWA statute itself requires the notice of occupancy rights and specifies when this notice must be submitted to tenants and applicants, and HUD has no authority to changes these statutory requirements. However, for purposes of the HOME program, the final rule clarifies that notice is not required upon any denial of HOME rental housing but rather any denial based on the owner's tenant selection policies and criteria.

Comment: Notification and certification forms should be given to existing tenants. Commenters stated that to reduce costs and time burdens to housing providers, VAWA forms should not have to be distributed to existing tenants outside of routine contacts in the year following the effective date of HUD's final rule, and some suggested that the information could be given to tenants during the annual recertification process. Commenters said that generally every existing tenant undergoes recertification during any 12-month period, and while this means some tenants would not be notified for nearly one year after the effective date of the final rule, the VAWA protections are only relevant for existing tenants in response to a notice of termination or eviction, which would trigger the legal requirement to provide the VAWA notice and form anyway. Commenters said that HUD could post VAWA rights on its Web site for interested parties to access at any time.

A commenter said that covered housing providers may not know which tenants are due a notice, or the provider may not know which program applies, so the notice should not be given to existing tenants until either recertification or lease renewal. Another commenter said that to lessen the rule's administrative and financial burden, housing providers should be permitted to provide the notice at lease renewal.

Other commenters recommended that HUD give housing providers flexibility regarding how to distribute the notices to existing tenants, in accordance with existing procedures. Other commenters emphasized that notice be given to all current tenants, regardless of whether their programs were previously covered by VAWA, because under VAWA 2005 there was no uniform notice received by all tenants and VAWA 2013 includes new housing protections. Another commenter suggested that a general mailing to all of the tenants may be the only way to reach everyone in a timely manner.

HUD Response: HUD agrees with some of the recommendations made by the commenters and under the final rule, housing providers must give all tenants the notice of occupancy rights and the certification form at annual recertification or lease renewal, or if there is no annual recertification or lease renewal, then at some other time, during the 12-month period following the effective date of this rule.

Rule Change: This final rule includes new § 5.2005(a)(2)(iv) that states that during the 12-month period following the effective date of this rule, housing providers must give tenants the notice of occupancy rights and the certification form either during the annual recertification or lease renewal process, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.

Comment: Notification should be provided annually at recertification, and at additional times. Commenters said the final rule should instruct housing providers to distribute the notice at additional times, including upon family break-up and as part of a tenant's recertification or reexamination process. Commenters said that HUD should provide in the final rule that covered housing providers have discretion to provide the notice to tenants in other contexts, such as when a tenant raises safety concerns with the housing provider, but does not explicitly reference a VAWA crime. The commenters stated that submission in this context would provide housing providers and tenants with additional time to explore housing options—such as locating a victim services provider or legal services attorney, lease bifurcation, or emergency transfers, before an eviction or termination notice for a violation has been issued.

Commenters also recommended that, at minimum, tenants should receive notice on an annual basis as a matter of course going forward to ensure distribution is not simply limited to times where the existing tenants are facing eviction or termination. A commenter suggested that HUD require housing providers to host routine information sessions, about tenants' and covered program participants' rights pursuant to VAWA and should require housing providers to review VAWA

rights at all annual program recertifications.

Another commenter stated that short notices indicating that more information is available in housing providers' offices would aid disseminating information about VAWA protections, as would posting these notices in common area locations. Commenter also stated that it should be clear that staff of the housing provider is available to review this material with tenants and to answer questions. The commenter further suggested using all available media to alert tenants of VAWA protections, and to do so in easy to understand language.

HUD Response: As discussed above, under this final rule, housing providers must give tenants the notice of occupancy rights and the certification form during either the recertification or lease renewal processes for the 12-month period following the effective date of this rule, or if there will be no recertification or lease renewal process during that 12-month period, through other means, in addition to providing the notice and form at the times specified in VAWA 2013, which times are included in HUD's VAWA regulations. HUD believes these required distribution times are sufficient to inform all tenants in a HUD-covered housing program of their rights under VAWA, and therefore the final rule does not require housing providers to give tenants the notice of occupancy rights and the certification form on other occasions. Housing providers are free and encouraged to provide the notice and form to tenants at any additional times determined to be helpful in informing tenants of their rights under VAWA. HUD also encourages housing providers to post the notice of occupancy rights under VAWA in public areas such as waiting rooms, community bulletin boards, and lobbies, where all tenants may view them. HUD further encourages, but does not require, housing providers with Web sites to post the certification form and notice of occupancy rights under VAWA online. HUD also encourages housing providers to work with tenants, and applicants, who need help understanding their rights under VAWA, either directly, or by providing information about local organizations that could help. In addition, housing providers should be able to answer any questions about emergency transfer plans that they have developed.

Comment: Notification and certification forms do not need to be submitted at recertification or to existing tenants. A commenter stated that Section 8 property managers are already required to include VAWA policies in tenant selection plans and house rules, and such a requirement could be added for other covered programs. The commenter stated that existing tenants are already aware of VAWA protections, so there should be no requirement to provide new information other than modifying house rules to incorporate new VAWA protections. Another commenter said HUD should refrain from imposing additional financial obligations onto HUD-covered housing programs beyond what is stipulated in the VAWA statute.

HUD Response: This final rule does not require housing providers to give tenants the notice of occupancy rights and certification form on an annual basis, but only to give tenants the notice and form during the 12-month period following the effective date of this rule, either during recertifications or lease renewals, or if there will be no recertification or lease renewal process during that 12-month period, through other means. This requirement will help to ensure all tenants receive notice of their rights under VAWA 2013.

Comment: HUD should translate the notice of occupancy rights and the certification form. Commenters asked who would have responsibility for translating VAWA-related documents. Many commenters requested that HUD, rather than the housing providers, translate the notice of occupancy rights and the certification form. A commenter said that forms should be translated based on project occupancy. Other commenters said that with 208,000 covered providers, it would be a huge administrative burden and cost, and potentially create confusion and inconsistency if each provider were to create its own translation of these forms. A commenter said providing translated versions of the documents will help housing providers save limited resources, and perhaps apply these resources toward other language access needs. Commenters requested translation into languages including Arabic, Bengali, Bhutanese, Chinese, Egyptian Arabic, French, French Creole, Italian, Korean, Polish, Nepalese, Russian, Spanish and Vietnamese.

Commenters said it would be very helpful if HUD translated the documents and posted them on HUD's Web site. Commenters said that HUD's translation of the notice and forms would be an important step towards ensuring that victims with limited English proficiency (LEP victims) would be aware of their rights under VAWA 2013. Commenters said they believe that HUD is in a much better position than individual housing providers to provide translations expediently, particularly for languages with smaller constituencies. Commenters said that, in some areas, housing providers would not otherwise be directed by the LEP Guidance to provide translated copies of the notice, but would instead be directed by the LEP Guidance to orally interpret the notice's contents. Commenters said that HUD has previously provided translations of forms, including the self-certification forms issued under VAWA 2005 (in 13 languages), and translated versions of the VAWA 2005 lease addendum, as well as non-VAWA-related documents.

The commenters said that centralizing translation responsibility at HUD imposes consistency and uniformity in translation, and allows for quality control, and would create a central place whereby advocates can express concerns about any inaccuracies with the translations. Commenters also said that it is important for HUD consider not only direct translation of notification/forms, but also transcreation [13] to ensure that the intended meaning resonates across cultures and languages. Another commenter said the version of the notice, as provided in the proposed rule, as written and in English, poses readability issues for those who do not read at more advanced levels. The commenter said that in translating the notice and certification form, HUD should ensure that they can be easily understood by those who read at different levels. Commenters encouraged HUD to not merely translate each word, but instead ensure the information is conveyed in a meaningful way for the average reader in other languages, which would include ensuring documents are written in plain language and are culturally competent.

Another commenter said that it believes VAWA 2013's mandate that HUD develop a notice of housing rights includes developing translated versions of the notice. Commenter said covered housing providers should not be charged with developing any version of the notice or the VAWA self-certification form, including these forms' non-English-language counterparts.

HUD Response: As HUD provided following enactment of VAWA 2005, HUD will translate the notice of housing rights and certification form and post them on HUD's Web site. HUD appreciates commenters' request on ensuring the notice of occupancy rights certification forms are understandable

[13] Transcreation refers to the process of adapting a message from one language to another while maintaining its intent, style, tone and context.

across languages and cultures. Housing providers who have LEP applicants and tenants who do not read a language that HUD has translated the form and notice into may have to provide those applicants and tenants with a notice and form translated into languages they do understand, in accordance with HUD's LEP guidance.

Comment: The rule should provide ways to ensure all individuals, regardless of language or reading ability, understand the protections of VAWA. A commenter stated that, because not all LEP applicants and tenants can read their native language, and certain LEP individuals communicate in languages that are unwritten, HUD should emphasize in the final rule the importance of providing culturally competent, sensitive interpretation of the notice when any LEP individual requires oral interpretation. Commenter asked that housing providers make available interpreters who are qualified to do sight translation and that, for languages that do not meet the HUD threshold requirement for translating vital documents, tenants be given a document stating: "This is an important document that could affect your housing rights. If you read this language, please call for further assistance." A commenter said this would allow those populations with smaller numbers to understand they need to call to receive oral interpretation of important information. Similarly, the commenter said, appropriate notification should be placed on documents indicating that sign language interpretation is available. Other commenters asked HUD to provide additional guidance for housing providers on how to provide VAWA information in a culturally competent way that would not jeopardize victims' safety or confidentiality.

HUD Response: HUD appreciates commenters' concerns about ensuring that tenants understand VAWA protections. Housing providers must comply with all applicable fair housing and civil rights laws and requirements in the implementation of VAWA requirements. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. See 24 CFR 5.105(a). For example, housing providers must provide reasonable accommodations for individuals with disabilities, such as a reasonable accommodation to any requirement that the emergency transfer request be in writing, and must help certain survivors put their request in writing, if requested or where the need for such assistance is obvious. Individuals with disabilities may request a reasonable accommodation at any time to any program rules, policies, or practices that may be necessary.

Housing providers must also ensure that communications and materials are provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and their implementing regulations. Housing providers must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed, *e.g.*, Braille, audio, large type, assistive listening devices, and sign language interpreters.

With respect to LEP obligations, providers must take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals. Please see the Department's *Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (LEP Guidance), *http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.* This final rule does not require housing providers to do more than is required by HUD's LEP guidance. However, HUD encourages housing providers to strive to ensure that all applicants and tenants have notice of their rights under VAWA.

Rule Change: In this final rule, HUD has inserted a new subsection under Subpart L at 24 CFR 5.2011 that references fair housing and civil rights statutes and requirements.

Comment: Clarify housing providers' responsibilities related to providing notice of occupancy rights and the certification form. Commenters asked whether housing authorities must provide the actual certification form in the Notice of Occupancy Rights or whether including language in the letter is sufficient. Commenters also asked whether housing providers need to document in tenant files that that they provided the required VAWA notices to tenants at the required times, or whether adopting and implementing the policy of providing the notices at admission is sufficient. Another commenter suggested the notice of occupancy rights include an "acknowledgement of receipt" section to be signed by household members age 16 and above when the notice is provided at admission, recertification, or upon the threat of eviction or termination, but obtaining a signature after being denied housing seems impractical.

A commenter said that all adult family members should be given notice of any proposed action by the housing provider due to a VAWA-related incident, and said a minimum of 30 days' notice should be provided. The commenter said that if the victim has fled the unit and given the housing provider a new address, then the provider should send notice to the new address.

Another commenter asked if there a timeframe by which HUD will be required to develop this notice, and whether covered housing providers will be required to use, distribute, and abide by this notice, or whether it will be optional.

A commenter said that HUD's proposed rule would have required covered housing providers to give the notice of occupancy rights and certification form to applicants and tenants along with "any notification of eviction or notification of termination of assistance," but many different notifications are generated in the course of holdover, licensee, and termination of tenancy proceedings. The commenter asked HUD to specify which documents constitute a "notification of eviction" or "notification of termination of assistance," and clarify that housing providers are only required to give a tenant the notice once during the course of any tenancy termination or eviction proceeding.

HUD Response: VAWA 2013 and HUD's VAWA regulations require covered housing providers to give tenants and applicants both the certification form and the notice of rights. The certification form and the notice of rights that housing providers will use are being published with this final rule. It is a statutory requirement to provide both the form and the notice of rights at the times specified in VAWA 2013 and in HUD's VAWA regulations. Housing providers that do not comply with the statutory and regulatory requirements are in violation of program requirements. Among the other times specified in this rule, housing providers are required to give the notice of rights and the certification form to tenants with any initial notification of eviction or termination of assistance. However, housing providers do not need to provide the notice and rights and certification form with subsequent notices sent for the same infraction.

HUD's final rule does not require housing providers to document in tenant files that they provided the required notice at the required times, nor does HUD's final rule require an "acknowledgement of receipt." Further, this final rule does not provide

additional notification requirements for housing providers that take actions due to a VAWA-related incident, as housing providers may not know that an incident is VAWA-related. As described elsewhere in this preamble, under VAWA 2013 and HUD's final rule, housing providers are prohibited from denying or terminating assistance to or evicting a victim protected under VAWA, solely on the basis that the tenant is a victim under VAWA. Housing providers, however, may ask tenants or applicants to provide a form of documentation specified in the statute and in this rule to show they are subject to VAWA protections.

Comment: The notice of occupancy rights should be distributed to all persons, and not just heads of households. Commenters urged HUD to distribute the notice of occupancy rights to all persons and to find various means and times at which to distribute a copy of the notice to every existing individual adult tenant, not just the head of household, to ensure the notice is not only seen by an abuser or perpetrator. Commenters suggested distributing the notice during such meetings as an in-person recertification or reexamination increases the likelihood that all adult members of the household are present and will receive copies of the notice. The commenters said that HUD's final rule should require covered housing providers to prominently post the notice in visible, regularly-used common areas where other information is made available (*e.g.*, community bulletin boards, housing authority waiting areas, laundry rooms etc.), and HUD should encourage housing providers to take advantage of other community events as opportunities to distribute the notice of occupancy rights. Another commenter suggested HUD consider allowing applicants to designate an alternate "safe address" to receive the VAWA notice.

HUD Response: HUD appreciates these suggestions and agrees with commenters that housing providers should do their best to ensure that all adult members of a household and not just the head of household receive the notice of rights and certification form. Section 5.2005 of this rule requires that the notice and certification form be provided to each applicant and to each tenant. In addition, as discussed earlier in this preamble, housing providers will be required to give the notice and form to existing tenants during the recertification and lease renewal processes for the 12-month period following the effective date of this rule. In the limited circumstances where there may be no recertification or lease renewal process for a tenant during the 12-month period following the effective date of this rule, housing providers will be required to give the notice and form to tenants through some other means within the 12-month period after this rule becomes effective.

7. Lease Bifurcation

a. Reasonable Time Periods To Establish Eligibility and Find New Housing

Comment: 90 days to establish eligibility for a program or find new housing after a lease is generally reasonable. Some commenters expressed agreement with the time periods to establish eligibility for assistance provided in the proposed rule, saying they are sufficient to establish eligibility for a covered program or find alternative housing. Other commenters stated that the time periods are reasonable but extensions should be permitted. Commenters stated that this time period should be at least 90 days, with one commenter saying it should be up to one year. Commenters stated that in areas where there are housing shortages it may take longer to find other housing, that it can be complicated to navigate the housing system, and victims may stay with their abusers for fear of losing their housing. Other commenters suggested a minimum of 90 days should be allowed with an extension of 90 days in 30-day increments, each at the discretion of the housing provider on a case-by-case basis, based on a victim's documented progress being made toward establishing eligibility to remain in the property, determining if an emergency transfer can be arranged, or finding alternative housing.

HUD Response: This final rule maintains the combined 90-day time period for establishing eligibility for a program and finding new housing, and the combined 60-day extension period. Unlike the proposed rule, this final rule does not divide the time to (1) establish eligibility for a HUD program, and (2) find new housing into 60 and 30-day time periods, nor does the final rule divide the allowable extension for establishing eligibility and finding new housing into two 30-day time periods. HUD removes the divisions so that victims have the flexibility to use the overall time period allowed to establish eligibility and find new housing in a way that most benefits the victim.

However, as explained further below, HUD clarifies in this final rule that the 90-day time period will not apply in situations where there are statutory prohibitions to its application. The 90-day period also will not apply where the lease will expire prior to termination of the 90-day period, and, as a result of the lease expiration, assistance is terminated. However, the expiration of the lease will not necessarily terminate assistance in the HOPWA program.

HUD stresses that the reasonable time period to establish eligibility following a lease bifurcation is triggered only in situations where the tenant removed from the unit is the one family member whose characteristics qualified the rest of the family to live in the unit or receive assistance. In many covered housing programs, including HOME, HTF, ESG, RHSP, and Section 221(d)(3), the reasonable time period provisions of this rule related to lease bifurcation will never be triggered because the family's eligibility is based on the characteristics of the family as a whole, not the characteristics of any one family member. Therefore, the eligibility of remaining tenants in these covered housing programs will have already been established at the time of bifurcation. For the Section 236, public housing, and Section 8 programs, which allow pro-ration of rent or assistance for certain families where eligibility has not been established for all members, the remaining tenants following a VAWA lease bifurcation might still need to establish their eligibility for the covered housing program if they have not provided documentation of satisfactory immigration status.[14]

For each covered housing program, HUD has reviewed the governing statutes and explains in the below chart why remaining tenants might not have established eligibility for a program, and in those circumstances, specifically what may impact the prescribed 90- day time period for those remaining family members to either establish eligibility for a covered housing program or to find new housing following a VAWA lease bifurcation.

[14] In some rare cases, a student status may make be an additional reason why someone would be ineligible for continued Section 8 assistance. See "Final Rule Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937" at 70 FR 77742 implementing Section 327 of HUD's Fiscal Year 2006 appropriations, Title III of Public Law 109–115, and HUD's guidance "Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance" at 71 FR 18146.

	Possible eligibility limitations	Regulatory provision	Reasonable time period to remain in unit
Sections 202/811 PRAC and SPRAC.	Age (for Section 202) and Disability (for Section 811).	24 CFR 5.2009	90 days or when the lease expires, whichever is first.
Section 202/8	Age; Immigration Status	24 CFR 5.2009	90 days or when the lease expires, whichever is first; 30 days if immigration status is an eligibility limitation.
HOPWA	HIV/AIDS	24 CFR 574.460	90 days to 1 year.
HOME		24 CFR 92.359	All residents already meet eligibility.
HTF		24 CFR 93.356	All residents already meet eligibility.
ESG		24 CFR 576.409	All residents already meet eligibility.
CoC	Qualifying Disability (for Permanent Supportive Housing); Chronically Homeless Status.	24 CFR 578.75	Until expiration of the lease.
RHSP		24 CFR 5.2009	All residents already meet eligibility.
Section 221(d)(3)/(d)(5)		24 CFR 5.2009	All residents already meet eligibility.
Section 236 (including RAP)	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Public Housing	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Section 8 HCV Voucher	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Section 8 PBV Voucher	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Section 8 PBRA and Mod Rehab/SRO.	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.

As shown in the above chart, under the Section 202 and Section 811 programs, there are requirements that the tenant be 62 or older (section 202) or disabled (section 811). Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) (section 202) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013) (section 811) require units to be leased to eligible low-income disabled persons or families. Under the Section 202 and Section 811 statutes, HUD cannot continue to subsidize a unit for remaining family members after a lease has been bifurcated if at least one of the remaining family members has not established eligibility for the program. Therefore, although this regulation provides that if a landlord chooses to bifurcate a lease under VAWA for a unit with a Project Rental Assistance Contract (PRAC) under the Section 202 or Section 811 programs, and the remaining family members have not established eligibility for the program, the landlord must provide a reasonable time period of 90 days for the remaining family members to remain in the unit, HUD will no longer be able to provide a subsidy to that unit during the time when it has not been established that an eligible individual is residing in the unit.

The above chart also provides a shorter reasonable time period in cases where the remaining tenant in a unit covered under the 202/8 program, Section 236 program, public housing, or a Section 8 assisted unit is not eligible because of immigration status. This is because Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a(d)(4)) requires that assistance under these programs be terminated after 30 days if the remaining family member has not submitted documentation evidencing a satisfactory immigration status or a pending appeal of a verification determination of the family member's immigration status.

Rule Change: This final rule revises § 5.2009(b) to combine the paragraphs and respective time periods that provide reasonable time periods for establishing eligibility for a covered housing program and finding new housing after a lease bifurcation. HUD revises this section to clarify that covered housing providers who choose to bifurcate a lease must provide remaining tenants who have not already established eligibility for the program 90 calendar days to establish eligibility for a covered housing program or find alternative housing. Further, HUD revises this section to state that this 90-calendar-day period will not be available to a remaining household member if statutory requirements of the covered program prohibit it, and that the 90-day calendar period also will not apply beyond the expiration of a lease, unless program regulations provide for a longer time period.

Comment: The time periods set out in the rule need to be changed or clarified. Some commenters said the reasonable time periods for establishing eligibility after bifurcation or finding new housing should be lengthened. Commenters recommended that the reasonable time to establish eligibility to remain in housing after bifurcation be extended to 120 days, consistent with HUD policies that allow 120 days for tenants in HUD's multifamily programs to provide information to maintain continued housing assistance. Commenters also said the extension is necessary because survivors may have poor credit, prior arrests, or a prior eviction as a result of the abuse, and may be unable to access identification documents taken by abusers. A commenter said that HUD justified using 90 days for reasons related to obtaining a social security number, but if it can take up to 90 days just to provide a single piece of information, additional time is necessary to apply for and establish eligibility for a program.

Commenters said that there are certain parts of the eligibility process that are out of the control of the housing provider as well as the household members, such as income verifications by third parties. In instances where the survivor cannot establish eligibility, commenters recommended that an additional 60 days or more be granted. Commenters cited a critical shortage of affordable and public housing as the reason for a need for a longer time period. Another commenter said that, under the HCV program, 30 calendar days to find alternative housing is not a reasonable timeframe, taking into account voucher holders' success rate and low local vacancy rates. Commenter

said that, for the HCV Program, the initial term of the voucher issued to the family to find an eligible unit is 60 days, and for HUD-Veterans Affairs Supportive Housing (HUD–VASH), it is 120 days.

A commenter said it understands the desire to establish uniform time periods to ensure that expectations are clear for both survivors and housing providers, but a system that focuses on activities and goals, rather than strict timelines, would better recognize the external and domestic violence-related barriers to housing. The commenter said that, if an explicitly-defined time limit is necessary, HUD allow housing providers to waive the requirement whenever needed.

In contrast to the above comments, other commenters said an eligibility determination can generally be completed in significantly less than 60 days, and suggested that 90 days should be established as the maximum amount of time allowed to establish eligibility. A commenter suggested that once a family is determined to be ineligible for a program, the family should be given 30 days to vacate the unit. Some commenters said the rationale for the combined 90-day time period is unclear. Another commenter asked when the victim would not be able to establish eligibility, and when a reasonable time period to find other housing would be necessary.

Other commenters suggested that it should not take long to establish eligibility for the HUD program as properties have the household's most recent certification and necessary information. A commenter said that 60 days is too long for the initial period to establish eligibility, given the current waiting lists for individuals and families already determined to be eligible and, in the interest of lessening the burden on housing providers, HUD should permit PHAs the discretion to shorten the initial period to establish eligibility up to 30 days. Other commenters said it would take more time to find new housing than it would to establish eligibility in tight housing markets, and suggested that HUD reverse the timeframes to provide remaining occupants 30 calendar days to establish eligibility and, if they cannot, 60 calendar days to find alternative housing. Commenters said that, whatever time period is granted, it should not be separated into two distinct time periods since that is confusing and the potential is high that the family will not start looking until after they are determined to not be eligible. Commenters said these time periods provided in the proposed rule appear to ignore the complexity of bifurcation of a lease under the HCV program where, in addition to establishing eligibility and locating alternative housing, a household may also need to negotiate a new lease.

A commenter requested clarification from HUD regarding the PHA's responsibilities during this initial period and whether only the tenant's eligibility needs be established, and it is not the case that the PHA must have processed the new paperwork and have either the unit ready for move-in or the assistance ready for the tenant's use within this initial period. A commenter said the burden should be on the tenant to meet their obligation to provide the required information to establish eligibility within this initial period.

Another commenter said that, in an era of greatly diminished financial resources to administer existing housing programs, housing providers should be able to choose at their discretion to provide the tenant time to establish eligibility and find new housing as the housing provider determines reasonable given housing market conditions in the area of the housing provider. In contrast to this comment, another commenter said that there should be consistency across HUD programs to provide certainty as to how much time a tenant would be given to relocate in the event of bifurcation.

HUD Response: In the final rule, HUD maintains the time period in the proposed rule of 90 days to establish eligibility for a covered housing program or find new housing, with the possibility of a 60-day extension, at the discretion of the housing provider. As discussed above, in this final rule the time periods are not separated into two different periods, and the time periods do not apply under certain programs and circumstances.

HUD declines to expand or eliminate these time periods because, under VAWA 2013, lease bifurcation is not mandatory, and HUD does not want to dissuade housing providers from considering this as an option by requiring housing providers to allow those who may be ineligible for a covered housing program—because they do not meet income or age or any other program requirement—to remain in their units for lengthy time periods. Given the high demand for housing subsidized by HUD by numerous populations, including the homeless, persons with disabilities, and the elderly, as well as other victims of crimes, HUD declines to provide for further extensions. HUD also declines to abbreviate these time periods in the interest of providing greater numbers of tenants with sufficient time to establish eligibility for a covered program, or find new housing after a lease is bifurcated. For similar reasons, HUD eliminates in this final rule the provision that housing providers may extend the reasonable time period subject to authorization under the regulations of the applicable housing program.

For the HCV program, the victim and PHA do not have to wait for an owner to bifurcate the lease for the PHA to offer continued assistance for a new unit. While the family would not have to wait for bifurcation to occur, it would have to wait for eligibility to be determined.

The period to establish eligibility and find new housing is limited to those activities, and does not include any possible additional processing or inspection time.

Rule Change: HUD removes § 5.2009(b)(1)(iii) and (b)(2)(ii) from the proposed rule, which stated that housing providers may extend the reasonable time period "subject to authorization under the regulations of the applicable housing program." HUD revises this language to state that housing providers have the option of extending the reasonable time period by up to 60 calendar days, unless prohibited by the governing statute of the covered program or unless the time period would extend beyond termination of the lease. In addition, HUD revises § 982.314 in the proposed rule to reflect this section's redesignation as § 982.354 by HUD's August 2015 Portability Rule.

Comment: Extensions to reasonable time periods should be allowed for public housing and HCV programs. Commenters stated that the preamble to the proposed rule provided little justification for withholding the discretion to extend the reasonable time period from administrators of public housing or a HCV program because all housing programs, and not just those two programs, face severe shortages of units, and housing agencies should have local discretion to extend the time in public housing and HCV programs, the same as in other assistance programs. Another commenter proposed there be an initial 30-day period to establish eligibility for public housing and section 8 programs, but, at the sole discretion of the PHA, this period may be extended for two, additional 30-day periods.

HUD Response: As discussed above, family members remaining in a unit after lease bifurcation under the HCV and Section 8 programs will often already be eligible to remain in the unit and, where an individual would be

ineligible is because of immigration status, HUD is statutorily prohibited from permitting that family member to stay in the unit beyond 30 days if satisfactory immigration status cannot be proven.

Comment: Those with tenant-based assistance should have the opportunity to remain in their housing while attempting to establish eligibility for the program and finding new housing. A commenter said that HUD stated in the preamble to the proposed rule that the reasonable time period does not apply to tenant-based assistance, but made this statement with no comprehensible justification. The commenter stated that HUD did not explain its assertion that the reasonable time period resulting from lease bifurcation may only be provided to tenants by covered housing providers that remain subject to the requirements of the other covered housing program once the eligible tenant departs the unit.

Another commenter said it does not understand why HUD, in application of VAWA rights and protections, makes the distinction between project-based assistance and tenant-based assistance. The commenter recommended that tenants be allowed to stay in their units while attempting to establish eligibility, and that there be no time period imposed on remaining tenants trying to transfer to tenant-based assistance. The commenter said its recommendation is particularly important because the evicted perpetrator who has the tenant-based assistance is entitled to due process rights, and if the abuser or perpetrator chooses to exercise these rights, the timeline of when a victim can establish eligibility for the tenant-based assistance becomes very unpredictable.

Another commenter asked HUD to identify the HUD's programs to which it refers when referencing HUD "tenant-based rental assistance" and "project-based assistance," and to clarify which programs are subject to the reasonable time period accommodation. The commenter stated that the proposed rule advised that agencies administering Section 8 voucher programs should provide the reasonable time period for a maximum period of 90 days, but then said that the reasonable time period does not apply, generally, if the only assistance provided is tenant-based rental assistance.

HUD Response: HUD agrees with commenters that those with tenant-based assistance should have the opportunity to remain in their housing while attempting to establish eligibility for a covered program or find new housing. HUD clarifies in this final rule that the reasonable time periods specified in this rule apply to tenant-based assistance.

Comment: Clarify the interaction between the reasonable time period provided in the proposed rule and reasonable time periods in different programs. A commenter stated that proposed § 5.2009(b)(1)(ii) provided that the reasonable time to establish eligibility for assistance can only be provided to remaining tenants if the governing statute of the covered program authorizes an ineligible tenant to remain in the unit without assistance. The commenter strongly urged HUD to remove this sentence from the rule because such statement is contrary to Congressional intent to require covered housing providers to give tenants who remain after a lease bifurcation the right to have "reasonable time" to establish eligibility. The commenter said that by mandating a "reasonable time" in this context, Congress chose to suspend, for a limited time, applicable program eligibility requirements so that victims do not lose housing assistance. The commenter also said it is unclear which program statutes HUD was referring to, and whether there are any statutes that authorize an ineligible person to remain in units without assistance. The commenter stated that proposed § 5.2009(b)(1)(ii) said the 60 days does not supersede any time period to establish eligibility that may already be provided by the covered housing program. The commenter expressed confusion about whether this statement referred to existing time period requirements for remaining family members to establish eligibility, in which case the longer time period applies, or whether the statement was indicating that there are programs with regulations implementing VAWA that outline their own "reasonable time" periods.

HUD Response: HUD agrees that the language in § 5.2009(b)(1)(ii) of the proposed rule was not as clear as HUD intended when HUD stated that the reasonable time to establish eligibility could only be provided to a remaining tenant if the governing statute of the covered program authorizes an ineligible tenant to remain in the unit without assistance. As discussed above, in this final rule, HUD revises § 5.2009(b) to clarify that covered housing providers who choose to bifurcate a lease must provide remaining tenants who have not already established eligibility for the program 90 calendar days to establish eligibility for a covered housing program or find alternative housing. Further, HUD revises this section to state that this 90-calendar-day period will not be available to a remaining household member if the governing statute of the covered program prohibits it, and that the 90-day calendar period also will not apply beyond the expiration of a lease, unless program regulations provide for a longer time period. See the chart and explanation earlier in this preamble that explains applicable reasonable time periods for covered housing programs.

Comment: For the CoC Program, reasonable time requirements of VAWA should apply in the scenario where the time remaining on the lease is shorter than the reasonable time to establish eligibility. Commenters said proposed § 578.75(i)(2), which addresses treatment of remaining program participants following bifurcation of a lease or eviction as a result of domestic violence, should be clarified to include transitional housing, and HUD should direct programs to use whatever period is longer—the rest of the time on the lease or the amount of time permitted by the general VAWA lease bifurcation provision—on occasions where the time left on the lease is shorter than the reasonable time allowed to establish eligibility or find new housing. Other commenters suggested striking § 578.99(j)(8), which states that HUD's generally applicable bifurcation requirements pertaining to reasonable time periods under VAWA in 24 CFR 5.2009(b) do not apply, and the reasonable time period for the CoC program is set forth in § 578.75(i)(2).

HUD Response: Section 578.75(i)(2) applies to permanent supportive housing projects, in which the qualifying member of the household must have a qualifying disability. This final rule does not change this section to include transitional housing because transitional housing does not have the same qualifying member requirement. Once determined eligible, the entire household is considered eligible under transitional housing.

This final rule does not maintain § 578.99(j)(8) of the proposed rule, which, as noted above, says that the reasonable time periods in 24 CFR 5.2009 do not apply to the CoC program, but instead drafts a separate bifurcation section at § 578.99(j)(7). However, HUD maintains that the reasonable time requirements do not apply because they would conflict with other CoC program requirements.

With the exception of permanent supportive housing projects, the eligibility of the household is based on the entire household, not just one member, so in the event of a lease bifurcation the household would retain the housing for the length of time remaining in their original period of

assistance. Once the period of assistance has ceased then the household would re-certify or re-apply. In the event of lease bifurcation in transitional housing, covered housing providers have the ability to extend the assistance beyond 24 months, on a case-by-case basis, where it is necessary to facilitate the movement to permanent housing. HUD will continue to allow covered housing providers the discretion that they currently have in assisting families when the families' circumstances change during their original period of assistance. Existing CoC regulations state that surviving members of a household living in a permanent supportive housing unit have a right to rental assistance until the lease expires.

Rule Change: HUD removes the requirement in § 578.99(j)(8) and provides for a new section on lease bifurcations at § 578.99(j)(7).

b. Bifurcation Logistics

Comment: Clarify how bifurcation applies to affiliated individuals and lawful occupants. Commenter stated that the definition of bifurcation in the regulations explains that if a VAWA act occurs, "certain tenants or lawful occupants" can be evicted while the remaining "tenants or lawful occupants" can continue to reside in the unit. Commenter said this section should specify whether the phrase "tenants or lawful occupants" includes "affiliated individuals." Commenter also requested clarification on the meaning of the terms "affiliated individual" and "other individual" in proposed § 5.2009(a)(1). A commenter asked the following questions: (1) If a member of a household is a lawful occupant and not a signatory to the lease, but is also the abuser, is "bifurcation" an appropriate remedy to terminate the abuser's occupancy rights; (2) is bifurcation an appropriate remedy if an "affiliated individual" is the abuser; (3) if a member of a household is an unauthorized occupant and is also the abuser, what actions may the covered housing provider take against the abuser; (4) if a member of a household is an unauthorized occupant and also the abuser, may the covered housing provider take action against the tenant-lease signatory for permitting an unauthorized occupant to reside in the unit without violating VAWA; (5) can a lease be bifurcated if the abuser is a tenant or lawful occupant of the unit, but the victim lives elsewhere; and (6) what remedies does an "affiliated individual" have, if any, if the affiliated individual is the victim of a VAWA act, or a non-victim household member?

HUD Response: The phrase "tenants or lawful occupants" does not include affiliated individuals who are neither tenants nor lawful occupants. Affiliated individuals are not themselves afforded protections or remedies under VAWA 2013 or HUD's VAWA regulations. Rather, a tenant may be entitled to VAWA protections and remedies because an affiliated individual of that tenant is or was a victim of domestic violence, dating violence, sexual assault, or stalking. However, an affiliated individual cannot seek remedies from the housing provider.

HUD's proposed language in § 5.2009(a)(1), which provides that a covered housing provider may bifurcate a lease in order to evict, remove, or terminate assistance to an individual who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking against an "affiliated individual or other individual," mirrors language in VAWA 2013. HUD interprets this statutory language to mean that a housing provider may bifurcate a lease to remove a member of the household who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, against any individual.

Generally speaking, a lawful occupant will not have rights to a unit under a covered housing program unless the lawful occupant is a tenant on the lease. Bifurcation is not the appropriate remedy to remove a household member who is not on the lease and who is not a tenant. There would be no need to divide the lease to remove a household member who is not on the lease. As explained elsewhere in this preamble, under VAWA, a covered housing provider may not evict or terminate assistance to a tenant solely on the basis that the tenant has an unauthorized abuser or perpetrator in the household, where the unreported household member is in the unit because he or she has committed an act of domestic violence against the tenant, and the tenant is afraid to report him or her.

Comment: HUD should outline a process for victims to establish eligibility and find new housing. Commenter said it is important for HUD to outline a process and timeframe for victims to exercise their right to establish eligibility for the current program, and the process should be modeled off of one that already exists for the multifamily programs in the recertification context. Commenter suggested the covered housing provider should immediately provide a notice to the remaining tenants stating their right to establish eligibility under the current program within a specified time period, and the time period should not start to run unless the required notice has been provided. Commenter suggested the notice describe how the tenants can apply for the program and include a deadline by which the tenants must submit the information necessary to apply for the program, with the possibility of an extension. Commenter said the housing provider should have to determine the household's eligibility for the program and issue a notice of determination well before the time period for the tenant to remain in the housing expires, and there should be an opportunity for a tenant to appeal an adverse decision. Commenter said the time period for establishing eligibility should not be tolled until an appeal decision is final. The commenter said that alternatively, for remaining tenants who do not respond to the initial notice in a timely manner, the housing provider must send a notice stating that the tenants have waived their right to establish eligibility for the current program under VAWA, but such waiver does not preclude the tenants from applying for the program in the future.

HUD Response: Because lease bifurcation is an option and housing providers are not required to bifurcate a lease, HUD declines to impose requirements, at this time, beyond those specified in § 5.2009 of this rule, as to how a bifurcation of lease process should occur. State and local laws may address lease bifurcation and, where they do address lease bifurcation, covered housing providers must follow these laws. Housing providers, however, are free to establish their own policies on steps to be taken when a lease is bifurcated, and HUD encourages housing providers to establish such policies and make these policies known to tenants.

Comment: Explain how lease bifurcation will work. A commenter requested clarification of whether the reasonable time period begins upon an owner's initiation of a lease bifurcation, the date of eviction, or another point in the bifurcation process. A commenter asked where a PHA administers an HCV program, and terminates assistance to a family member after determining that the family member committed criminal acts of physical violence against others in the household, and that family member has signed the lease, the PHA is required to bifurcate the lease. The commenter further asked whether the PHA, by the action of terminating assistance to the family member who committed domestic violence, could require the owner of the housing in which the family resides to bifurcate the

lease. Another commenter asked whether a housing provider would be able to terminate the assistance and tenancy of the abuser immediately, and whether law enforcement would need to be involved. Another commenter asked whether the housing provider would need to obtain a court order to remove a tenant from the unit and remove the tenant's name from the lease without the tenant's permission. A commenter requested that HUD clarify a PHA's specific responsibilities when a lease bifurcation is initiated by an owner, and how an owner should decide that a lease bifurcation is appropriate and that an individual can be legally evicted.

A commenter said that, given that the termination of occupancy rights must be carried out in accordance with State and/or local laws, the rule's bifurcation provision does not provide a helpful tool for housing providers to expedite dividing the family if both the victim and perpetrator have property rights to the unit and, in such cases, the housing provider could only relocate the victim to another unit and follow a separate track to evict or terminate the perpetrator in accordance with due process procedures. Commenters asked for advice on how to address a situation where the tenant and owner disagree about bifurcation of a lease.

HUD Response: As stated in § 5.2009, the reasonable time period begins on the date of bifurcation of the lease; that is, the date when bifurcation of the lease is legally effective, and not at the start of the process to bifurcate a lease.

If a PHA terminates assistance to an individual because that individual was a perpetrator of a crime under VAWA, that does not mean that an owner must bifurcate the lease if the unit has other household members. Similarly, a PHA cannot require an owner to terminate or bifurcate a lease where the PHA has terminated assistance for reasons unrelated to VAWA. Further, § 982.53 of this rule provides that the owner, and not the PHA, is the covered housing provider that may choose to bifurcate a lease.

For housing choice and project-based vouchers, if an owner bifurcates a lease, the owner must immediately notify the PHA of the change in the lease and provide a copy of all such changes to the PHA. This requirement is in 24 CFR 982.308(g) for the tenant-based voucher program and 24 CFR 983.256(e) for the project-based voucher program. With the exception of PHA-owned units, the PHA is not a party to the lease and therefore cannot bifurcate a lease agreement between an owner and a tenant. It is up to the owner to bifurcate the family's lease and to evict or remove the perpetrator from the unit. Under VAWA 2013 and as reflected in this rule, bifurcation of a lease is an option and not a requirement, so an owner would not be required to bifurcate a lease.

HUD notes that any eviction, removal, termination of occupancy rights, or termination of assistance must be undertaken in accordance with the procedures prescribed by Federal, State, or local law for termination of leases.

Comment: Clarify whether subsidies continue and who is responsible for housing costs during the reasonable time period when tenants try to establish eligibility or find other housing. Commenters asked HUD to clarify whether housing providers would continue to subsidize units for those who are found to be ineligible after a lease is bifurcated. Commenters said that if the remaining family members cannot pay the rent, the loss of rental revenue and possible eviction costs is an additional financial burden for housing providers and asked for clarity as to who pays the housing costs in this event.

Commenters said housing providers should work with victims to determine if they are eligible for a HUD program, and HUD should continue to provide housing assistance to tenants who are trying to establish eligibility for a program or find new housing. Commenters said that at the end of the eligibility period, owners or agents should prepare a recertification showing any changes in household composition or HUD assistance and, if the victim is not eligible for assistance, the termination of subsidy or tenancy should not be effective until the last day of the month following a 30-day notice period. Commenter said that not ensuring assistance for victims and their families will lead to evictions and homelessness. A commenter said housing providers should continue to pay subsidies until the reasonable time period has elapsed.

Another commenter said that tenants who remain in the units after lease bifurcation should pay the same amount of rent owed before the bifurcation, or, the minimum rents as outlined in applicable program rules, until the time periods in the regulations to establish eligibility and find other housing runs out or until the family is able to establish eligibility for a covered housing program or has found other housing. The commenter said that, for those covered housing programs that do not have minimum rents, HUD should require that the remaining tenants in these units to pay 30 percent of the remaining tenants' income while attempting to establish eligibility or while looking for new housing. The commenter also said these interim rents should include exemptions for remaining tenants who cannot pay because of the violence or abuse.

Commenters said the final rule should be clear that housing providers are not responsible for rent payments, and should not otherwise incur losses, after a lease is bifurcated. Commenters said HUD should clarify that remaining tenants are responsible for rent payments and other lease obligations during the period when individuals are trying to establish eligibility for a covered housing program or find alternative housing, or HUD should commit to continuing assistance to the unit during the reasonable time period. A commenter said HUD should continue to provide assistance for the amount shown on the tenant certification.

Another commenter said HUD should give housing providers additional financial resources commensurate with the reasonable period, and housing providers should not be forced to forgo rent, housing assistance payments, operating funds, or other funds that they would otherwise receive. A commenter said the rule should include language that housing providers are not required to provide housing and utilities free of charge during reasonable time periods.

HUD Response: HUD is able to and will continue to subsidize units or families, as appropriate under different programs, after a lease bifurcation during the time periods specified in this rule (see chart explaining applicable time periods earlier in this preamble). As previously discussed, HUD cannot continue to subsidize a Section 202 or a Section 811 unit that does not contain an individual who is not eligible for that program during the 90-calendar-day period following a lease bifurcation. HUD stresses that it is the covered housing provider's decision whether or not to bifurcate a lease under VAWA. HUD also notes that section 5.2009(c) of this rule encourages housing providers to help victims of VAWA incidents remain in their units or move to other units in a covered housing program whenever possible.

Comment: Clarify any interim rent obligations that may arise from bifurcation of a lease. Commenters offered various suggestions on how to address any interim rent obligations that may arise following bifurcation of a lease. A commenter said that rent should not be changed for remaining tenants who are eligible for assistance because any tenant in the unit should already have been determined to be

eligible. Another commenter recommended that housing providers be allowed to follow their existing policy for when a head of household or other adult is removed for any other reason when determining interim rent obligations after bifurcation. A commenter stated that after a tenancy ends, remaining tenants have to pay the lower of either (1) an amount equal to the rent of the former tenant, or (2) an amount based on the income of the current occupant(s).

Other commenters said an interim recertification should be completed during the reasonable time period and interim rent should be established based on the income of remaining family members. A commenter said that, if the remaining tenant is ineligible to receive a subsidy, the rent could be set at current market rate for a section 8 or PBV tenant and flat rent limits for public housing tenants. A commenter said that use of these rents would provide incentive for participants to resolve eligibility issues quickly and help protect providers from revenue losses.

A commenter said that while eligibility approval is pending after a lease bifurcation, HUD's rule should require that any increase in the remaining family's share of rent be effective the first day of the month following a 30-day notice of changes to the rent obligation. The commenter said this time frame is consistent with current rules governing interim rent increases for HUD Multifamily Housing and should be implemented in other Federal housing programs.

HUD Response: HUD appreciates these suggestions, but existing program regulations govern interim rent obligations, and HUD is not altering the existing requirements for purposes of implementing VAWA.

Comment: Housing providers should have some latitude in allowing victims who do not qualify for a program to remain in a unit when a lease is bifurcated. Commenters stated that if a tenant is at the threshold of being eligible for certain housing, for example, a survivor who will qualify for age-restricted housing in a year, the housing provider should be allowed to let the survivor remain in the housing. Another commenter said housing providers should be allowed to continue to provide subsidy to a victim who in ineligible for a program based on such factors as age or disability.

HUD Response: The statutes authorizing the covered housing programs determine basic program eligibility requirements. Tenants who are victims of domestic violence, dating violence, sexual assault, or stalking, will not be eligible for programs for which they would be ineligible if they had not been victims of domestic violence, dating violence, sexual assault, or stalking. HUD and housing providers do not have the discretion to depart from statutory requirements.

Comment: Housing providers should not be expected to allow an ineligible family to remain in an assisted unit or to retain assistance. A commenter said HUD should not expect a PHA to allow an ineligible family to remain in an assisted unit, or in a market rate landlord's unit receiving tenant-based assistance, especially if HUD may not cover the assistance. The commenter said that assisting an ineligible family creates a hardship and denies a unit or voucher to an eligible waiting list applicant. The commenter said that HUD does not allow PHAs to maintain any funding overages that could be used to assist an ineligible family for any period of time.

HUD Response: Under VAWA 2013 and this final rule, housing providers that exercise the option of bifurcating a lease must give remaining tenants a reasonable period of time, as specified in § 5.2009 of this rule and applicable program regulations, to remain in a unit to establish eligibility for a HUD program or find new housing. Housing providers may evict or terminate assistance to those who are unable to establish eligibility at the expiration of the applicable reasonable time period.

Comment: Procedures to certify a new head of household should impose minimal burden on the family. A commenter said that where the abuser was the eligible head of household and leaves, the housing provider's procedures for certification of a new head of household should impose minimal burden on the family. The commenter suggested that where there is only one remaining adult member of the household, there should be a presumption that that adult should be the new head of household and, where there is more than one adult, the housing provider should be required to send notice to all eligible members, have the family select the head of household, and establish procedures for when the family cannot. The commenter said that where the removal of the abuser leaves the family with no member who can qualify, a qualified person with physical custody of the children should be added to the household to become the head of household. The commenter said the rules should absolve the new head of household from responsibility for any funds owed prior to the removal of the abuser and PHAs should continue paying subsidies until the substitution of the new head of household is made. The commenters further said victims may not be aware of their rights to have rent recalculated when the abuser is removed from the household and should not have to report a change of household income, but rent should be recalculated and effective the first month after the abuser leaves.

HUD Response: HUD will not require PHAs to deviate from their current procedures to certify a new head of household. Procedures for certifying a new head of household may be similar to the procedures for any family break up or death of the head of household, or for adding a new person to the family, and must be described in the PHA's administrative plan and other policy documents.

Comment: Explain how bifurcation will work with families with mixed immigration status. Commenters requested that HUD explain or issue guidance on how to provide assistance to mixed family households where the sole household member with citizenship or eligible immigration status is the perpetrator and has been removed from the household through bifurcation. A commenter stated that, in this scenario, the remaining household members who lack eligible citizenship status would not be eligible for assistance and would risk losing their housing based on reporting the abuse. The commenter said that certain families will be able to apply for nonimmigrant status and seek temporary immigration benefits under the Immigration and Nationality Act, but might require much longer than a 90-day period to establish eligibility, and they should be given additional time. The commenter said that any extensions granted to mixed families under this section should be harmonized with § 5.518, which establishes the requirements for temporary deferral of termination of assistance for families lacking eligible immigration status, and affords eligible families an initial deferral period of up to six months. The commenters said that for those families who do not qualify for nonimmigrant status, HUD should implement procedures to waive its mixed family requirements to authorize victims without eligible immigration status to continue receiving assistance, and HUD should either waive prorated rent payment requirements for such victims, or issue special subsidies to assist them.

HUD Response: HUD appreciates commenters' concerns, but altering existing program regulations regarding

mixed families is outside of the scope of this rule.

Comment: Clarify whether section 8 assistance can be bifurcated. Commenters asked whether a housing provider can bifurcate Section 8 assistance and, if so, requested procedural guidance on how this would be done. Commenters said that, absent the ability to bifurcate assistance, PHAs would be left in an untenable position in cases where a voucher is issued to two individuals and one commits a VAWA act against the other.

HUD Response: Tenant-based Section 8 assistance cannot be bifurcated because bifurcation relates to the division of a lease, not the division of assistance. The PHA's family break-up policies will apply in situations where a household divides due to domestic violence, dating violence, sexual assault, or stalking.

Comment: Clarify that housing providers should not pressure victims to remain in unit. A commenter commended HUD for including a provision that encourages covered housing providers to assist victims, but recommended that HUD clarify that covered housing providers should only provide assistance to victims and their household members who want to remain in their units, and should not pressure those who do not feel safe in these units to remain there. The commenter said that, in these situations, the covered housing providers should be encouraged to work with the victims to find safe and affordable units elsewhere.

HUD Response: HUD agrees that covered housing providers should only provide assistance to victims and their household members who want to remain in the units, and should not pressure those who do not feel safe in these units to remain there. HUD emphasizes that bifurcation of a lease is one option of possible remedy to address a family divided by domestic violence, and HUD's final rule at § 5.2009(c) encourages covered housing providers to undertake whatever actions are permissible and feasible under their respective programs to assist individuals to remain in their unit or other units under the covered housing program. Individuals who do not feel safe in their unit may wish to request an emergency transfer if they meet the rule's criteria for requesting emergency transfer in § 5.2005(e).

Comment: Clarify that covered providers may bifurcate a lease under VAWA regardless of whether State law specifically provides for lease bifurcation. A commenter asked that HUD clarify that housing providers may bifurcate a lease under VAWA regardless of whether State law specifically provides for lease bifurcation, but that the providers must do so using processes consistent with Federal, State, and local law.

HUD Response: Section 5.2009(a)(2) of the final rule provides that bifurcation is an option as long as it is carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law for termination of assistance or leases and in accordance with any requirements under the relevant covered housing program. Where State or local laws address lease bifurcation, and these laws require bifurcation, permit bifurcation or prohibit bifurcation, and, where permitted or required, specify processes to be followed, the housing providers must follow these laws.

Comment: Clarify that housing providers are not expected to act in ways that are not accord with Federal, State and local laws. A commenter stated that housing providers cannot guarantee that a judge will grant, or a local agency will enforce, an eviction where a lease is bifurcated. Another commenter asked how a PHA that operates in a State that requires that public housing residents be evicted in court in order to terminate tenancy can only require the HUD self-certification form when initiating the bifurcation of a lease. Other commenters stated that, since bifurcation of a lease is subject to State and local laws, this may create inconsistencies in actual application.

HUD Response: As addressed in the response to the preceding comment, § 5.2009(a)(2) of the final rule provides that bifurcation must be carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law. Where a PHA operates in a State where public housing residents must be evicted in court, then the PHA must follow that procedure, but that does not change the fact that in order to establish eligibility for VAWA protections, the PHA must accept self-certification, unless there are conflicting certifications. HUD recognizes that this means that there will be differences in how bifurcation operates in different States or localities.

Comment: There should be a database or other online management tool to assist individuals in locating new housing. A commenter stated that an individual who is seeking to bifurcate a lease and look for alternative housing would benefit from being able to search for housing options on a government Web site.

HUD Response: HUD's Web page, entitled Rental Assistance, at the following Web site *http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance* provides nationwide information on how to find affordable rental housing.

Comment: Do not mandate requirements to help remaining tenants stay in housing after bifurcation, but offer guidance. A commenter said HUD should not mandate a specific set of requirements that covered housing providers must take to help remaining tenants stay in housing, as these may be burdensome and costly depending on the housing provider's internal and community resources. The commenter, however, supported HUD providing guidance to housing providers, including recommendations on a quick response plan for eligibility determinations of remaining tenants, and coordinating with community resources to prioritize these families for rapid re-housing and other programs.

HUD Response: Unless discussed elsewhere in the preamble, the only provisions on bifurcation in HUD's final rule are those required by statute. As provided throughout this section of the preamble that addresses the issues raised by commenters, HUD intends to supplement its VAWA regulations with program guidance.

Comment: After bifurcation, housing providers should take steps to ensure perpetrators are kept away from the victim's unit. Commenters said that when a lease is bifurcated the owner or agent should work with the local police and legal system to ensure, to the extent possible, that the perpetrator is not allowed on property grounds, with limited exceptions. A commenter said that once the lease has been bifurcated, unit locks should be changed immediately.

HUD Response: As has also been stated through this section of the preamble that addresses issues raised by commenters, HUD strongly supports covered housing providers taking whatever actions they can to keep victims safe.

Comment: Advise how housing providers can rehouse both victims and offenders. A commenter stated that in determining bifurcation policies, there should be consideration of how housing providers can rapidly house the household in question including both victim and offender, where the offender is not incarcerated or otherwise apprehended for their involvement in a crime. The commenter suggested offering referrals to the offender when alternate living arrangements are not feasible, such as a referral to a community shelter service. Another commenter stated that after evicting an

abuser, a housing provider has the right to reject any future application where the abuser is part of the household, including adding an abuser to an existing household on the property.

HUD Response: As discussed in this preamble, victims of VAWA incidents in HUD-covered housing will generally be provided a reasonable time to establish eligibility for housing in their current units after a lease bifurcation. HUD appreciates commenters' suggestion for rehousing everyone in a household after a lease bifurcation, but declines in this rule to require housing providers to take specific steps for rehousing household members after a lease bifurcation. HUD does not wish to discourage housing providers from choosing to bifurcate leases where it is appropriate to do so.

This rule does not adopt a policy that, after evicting an abuser, a housing provider has the right to reject any future application where that abuser is part of this household, as this may be prohibited by State, local, and Federal laws, as well as HUD program requirements, and is outside the scope of this rulemaking.

8. Implementation and Enforcement

Comment: Strong enforcement of the rule is important considering the strong connection between VAWA crimes and homelessness. Commenters said that 92 percent of homeless women report having experienced severe physical or sexual violence at some point in their lives, and upwards of 50 percent of all homeless women report that domestic violence was the immediate cause of their homelessness. Another commenter cited statistics that 28 percent of families reported to be homeless because of domestic violence. Other commenters further stated that nearly 1 in 5 women has been the victim of an attempted or completed rape, and over 80 percent of women who were victimized experienced significant impacts such as post-traumatic stress disorder, injury, and missed time at work or school. Commenters said economic insecurity and the trauma that often follows sexual assault make it difficult, if not impossible, for many victims to access safe, affordable housing options. Commenters stated that when survivors have access to safe and affordable housing, such access reduces their risk of homelessness, which reduces their risk of future violence. A commenter said that that women and men who experience housing insecurity reported a higher prevalence of sexual violence, physical violence, and stalking.

HUD Response: HUD agrees with the commenters regarding the connection between VAWA-related crimes and homelessness. Such connection underscores the importance of HUD and its housing providers taking all actions, consistent with VAWA 2013, to protect victims of domestic violence, dating violence, sexual assault, and stalking, and to house them in the safest locations possible. Further, HUD strongly encourages housing providers to take actions beyond the minimum required by VAWA 2013, where possible and consistent with Federal, State, and local laws.

To ensure implementation, HUD is requiring that covered housing provider keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. HUD is also providing in the "Notice of Occupancy Rights" contact information for individuals to report a covered housing provider that fails to comply with this regulation.

Comment: Provide clear and robust guidance and technical assistance to housing providers. Commenters stated that HUD must give housing providers clear and robust guidance so that VAWA is fully and correctly implemented. Another commenter said that housing providers should be aided by manuals that cover the emergency transfer process and applicable time frames, and with manuals to connect victims with counseling, legal aid, and other services to bolster social work efforts. Other commenters said that HUD should work closely with DOJ to develop VAWA guidance for HUD staff, including staff of HUD's Office of Fair Housing and Equal Opportunity (FHEO), for housing providers, and for housing judges and legal aid.

A commenter said HUD staff and housing providers should be required to participate in annual training to ensure compliance with VAWA. Another commenter urged HUD to consider significant technical assistance to PHAs around domestic violence and the VAWA regulations—including education on financial abuse, as this may manifest itself as "nonpayment of rent" for housing providers, notification of housing rights under VAWA, and translating forms and notices into other languages.

A commenter said HUD will also need to provide program-specific guidance, as implementation of certain provisions will vary between programs. The commenter said, for example, HOME grantees and LIHTC owners may need to add language to their tenant selection plans to handle transfer requests and allow a domestic violence survivor to have access to an available unit. The commenter said HUD will also need to provide clear guidance to each field office on how VAWA 2013 should be implemented across the various HUD programs, especially in regards to unit transfers, and provide a path for escalation if there are unclear or confusing situations.

HUD Response: HUD appreciates the commenters emphasizing the importance of guidance and technical assistance to aid covered housing providers in implementing VAWA, and, as HUD has already stated in the preamble, HUD intends to provide such.

Comment: HUD and housing providers should collaborate with others in implementing VAWA. A commenter stated that HUD should work with law enforcement and justice officials to determine the best remedy for a victim and a remedy that is consistent with the needs and wishes of the victim through a shared informational database. The commenter emphasized the importance of a collaborative approach to client case management issues and stated that information data bases could be an important tool, where individuals consent to the sharing of information. Another commenter said that owners and agents should be strongly encouraged to develop a resource folder of sources within a 15-mile radius of the property providing help and counseling services to victims of domestic violence, dating violence, sexual assault and stalking. Commenters said covered housing providers should work with local law enforcement to take all legal means to ensure that the perpetrator does not come onto the property grounds, including getting a restraining order.

A commenter says there should not be separate duplicative requirements for LIHTCs, administered by the Department of Treasury, as HUD's HCV and PBV programs often coexist with the LIHTCs.

Another commenter said that many of the multifamily developments funded with HOME funds and expected to be funded with HTF funds are also constructed or operated with resources from other Federal agencies. Commenters urged HUD to coordinate with these agencies so that, within statutory limits, a development is not subjected to inconsistent VAWA 2013 compliance requirements.

Commenters asked that HUD clarify that communities need to include the full participation of domestic violence and sexual assault experts in their

Continuums of Care, and HUD or the State recipient should monitor how PHAs and CoCs have partnered with these experts. Commenters said HUD should release further guidance directing communities to ensure that the safety needs of survivors are met and that survivors can have preference in allocating housing resources. Commenters expressed concern that housing assessment tools that under-assess the housing needs of survivors can reduce the number of survivors prioritized for housing.

HUD Response: HUD agrees with commenters on the importance of working with housing providers and other agencies to implement VAWA effectively. With respect to establishing databases, HUD cautions that VAWA 2013 and HUD's regulations prohibit entering VAWA-related information documenting or certifying to the occurrence of a VAWA-related incident into shared databases for confidentiality reasons, although this will not apply if the disclosure is requested or consented to in a time-limited written release by the individual who submitted the documentation.

Comment: Victims of domestic violence should be supported with portable housing funding. A commenter stated that the importance of housing individuals in violence-free environments requires a new approach to community housing that precludes housing families in low-income neighborhoods. Commenter stated that victims of violence should be supported with portable housing funding that can be applied to market rents to prevent the development of crime-riddled low-income neighborhoods. Another commenter said housing programs should attach assistance to the tenant rather than the unit in order for the tenant to obtain continued, unbroken assistance in HUD programs. This commenter said this is important for lesbian, gay, bisexual, or transgender (LGBT) persons who are uniquely vulnerable to limitations on where they may live and find work.

HUD Response: HUD agrees that tenant-based assistance may provide certain victims of domestic violence, dating violence, sexual assault, or stalking with more options for transferring to a different unit than project-based assistance provides. However, as noted earlier in this preamble, the fiscal year 2016 appropriations for HUD does not provide funding specifically for tenant protection vouchers for victims of domestic violence, dating violence, sexual assault, or stalking.

Comment: Issue guidance for housing providers working with LGBT victims of domestic violence, dating violence, sexual assault, and stalking. Commenters said guidance is necessary to ensure that people working with LGBT victims are equipped with the knowledge and cultural competence to fully implement VAWA protections. Commenters said LGBT victims have often been denied access to domestic violence services, due to misconceptions. A commenter stated that transgender survivors of domestic violence are four times as likely to suffer harassment and intimidation by law enforcement officers, and these numbers were even higher for transgender women and transgender people of color. The commenter said that it is for these reasons that many LGBT survivors are less likely to seek help from the authorities or claim the protections that VAWA has to offer.

Another commenter expressed appreciation for the inclusion of LGBT persons within the description of individuals covered by the statute in § 5.2001 and throughout the accompanying appendix. The commenter said that, in order to ensure that LGBT victims receive the full protection intended by the statute, housing providers implementing these regulations must be able to recognize LGBT victims seeking assistance, or facing termination on the basis of criminal activity linked to a domestic violence incident, as victims may be arrested alongside their abusers. The commenter said housing providers should receive adequate training to recognize such abuse and to ensure victims are eligible for an emergency transfer and are not unnecessarily denied housing.

HUD Response: HUD emphasizes that housing providers must provide LGBT victims of domestic violence, dating violence, sexual assault, and stalking, with the protections and remedies that VAWA 2013 directs be provided to all tenants and applicants. Failure to do so not only violates VAWA 2013 and HUD's regulations, but also may violate HUD's 2012 Equal Access Rule, which requires that HUD-assisted and HUD-insured housing are made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

Comment: Provide clear guidance regarding confidentiality measures. Commenters said that HUD, in consultation with confidentiality and victim advocacy experts, should provide very direct and clear guidance, regulations, training, protocols and policies that help all entities maintain confidentiality within their practices, and HUD should also establish a complaint process for alleged breaches of confidentiality. Commenters said that CoCs that utilize Homeless Management Information Systems (HMIS)/shared databases for their admissions and distribution of resources often exclude victims of violence from accessing the housing resources because the survivor is being served by a victim service program barred from entering information into HMIS or because the survivor chooses to not have their information entered in HMIS for safety reasons. Commenters said service providers entering information into HMIS are not asking the appropriate questions regarding domestic violence prior to entering information into the shared database, and victims are often confused about what information they are "required" to provide and fear they won't receive these vital housing supports if they refuse to give this information. A commenter said confidentiality regulations must be cross-referenced in the governing regulations of the housing provider.

HUD Response: Confidentiality measures will be discussed in guidance on VAWA. HUD takes seriously any complaints regarding alleged breaches of confidentiality in violation of VAWA, and violations of the confidentiality provisions of this rule are program violations that could jeopardize the receipt of HUD funding.

Comment: Provide mechanisms for review for victims who believe their VAWA rights have been violated. Commenters said victims who have been denied, terminated, or evicted from housing currently do not have a federal administrative remedy for VAWA violations, leaving many with no recourse in cases where they have been improperly denied their housing rights under VAWA. A commenter stated that many covered housing providers have not complied with VAWA's requirements to address violence in their planning documents, permit survivors to move with their vouchers to a new jurisdiction for safety reasons, and provide notice to subsidized tenants regarding their VAWA rights. Commenters asked that HUD formalize mechanisms for enforcing VAWA rights so that such rights are available to all who need them, and urged HUD to provide additional guidance for specific programs on the available review mechanisms.

Commenters said formalized administrative remedies are required for several reasons. Commenters said that HUD's Office of FHEO's regional offices will only investigate VAWA violations

that sufficiently present an allegation of discrimination under the Fair Housing Act. Commenters said there is no publicly available information regarding which staff at HUD, either in headquarters or the regional offices, will handle VAWA requests. Commenters further said there are instances where local HUD offices and housing authorities do not recognize the application of VAWA.

Commenters recommended that a special assistant or advisor within the Office of the Secretary be named who would oversee coordination of VAWA implementation, including with programs not covered by HUD, and resolution of complaints of VAWA violations, and staff persons within each program covered by VAWA should be designated in HUD headquarters to respond to questions and issues with VAWA implementation and to address complaints of VAWA violations, in conjunction with regional offices. Commenters asked that the names and contact information for these staff be made public.

HUD Response: The "For Further Information" section of this rule identifies points of contact in the covered HUD programs. Additionally, HUD intends to identify points of contact in HUD's regional and field offices.

Comment: HUD should coordinate investigation of VAWA violations with Fair Housing Act violations. Commenters recommended that HUD create a mechanism to ensure that complaints regarding a VAWA violation or a Fair Housing Act violation based on domestic violence, dating violence, sexual assault, or stalking are screened for violations of both laws in order to ensure that survivors receive all of the legal relief to which they are entitled. Commenters said a potential model would be the joint review process established by the HUD Offices of FHEO and PIH in cases relating to public housing demolition and disposition. The commenters stated that because members of the public who experience violation of federal housing law most often pursue their grievances through the fair housing process, all FHEO investigators should receive training on the intersection of VAWA 2013 and the Fair Housing Act. Commenters also recommended that HUD's Office of FHEO receive and investigate complaints of VAWA violations, as it is the component of HUD that regularly receives and investigates complaints from the public.

HUD Response: HUD appreciates the commenters' suggestions. Because of the variation in program requirements and the need for familiarity with these requirements, each HUD program office that administers a covered housing program will oversee enforcement of VAWA and all HUD staff in these offices—at Headquarters and in HUD's Regional and Field Offices will be trained on VAWA's requirements. HUD's Office of FHEO will be involved in complaints where complaints also involve violations of the Fair Housing Act.

Comment: Ensure immigrant victims are able to utilize VAWA protections and access emergency shelters and transitional housing. A commenter stated that the likelihood that an immigrant or LEP woman will become a victim of domestic violence or sexual assault falls in the range of 30 percent to 52 percent, and immigrant victims face additional difficulties than other victims, such as potential dependence on an abuser because of immigration status. The commenters said immigrants, LEP individuals, and certain racial and ethnic minorities have received services from transitional housing programs at lower rates than white and African American victims, and a large number of immigrant domestic and sexual violence victims have been turned away from these programs.

The commenter said that one reason why immigrant victims have had difficulties accessing transitional housing services is because several programs have imposed means testing as a way to evaluate eligibility, even though this is not required by HUD or other Federal law. The commenter said this is problematic for immigrant victims because they may be incapable of producing the required documentation, such as the ability to secure work or proof of legal employment. The commenter recommended that HUD include a provision in the implementing regulations for VAWA 2013 that prohibits all means-testing from programs that provide short term emergency shelter and transitional housing programs for up to 2 years. The commenter said access to emergency shelter and up to 2 years of transitional housing is essential for immigrant victims because it can take up to 2 years for an immigrant crime victim to prepare, file, and receive an adjudication that provides work authorization. The commenter said this inclusion would reflect VAWA 2013's new anti-discrimination protections.

The commenter asked that HUD require all HUD-funded emergency shelter and transitional housing programs to be open to all victims of domestic violence, dating violence, sexual assault, stalking, human trafficking, child abuse, elder abuse and other U visa criminal activity without regard to the victim's immigration status.[15] The commenter said that, in 2001, HUD issued a policy letter implementing the Attorney General's Order regarding Programs Necessary to Protect Life and Safety, which stated that HUD-funded programs that provide emergency shelter and transitional housing for up to 2 years, are to make these services equally available to all needy persons, including individuals who are not 'qualified aliens' without verification of citizenship, nationality or immigration status.[16] The commenter asked that this letter be updated to: Extend applicability to all Federal agencies funding emergency shelter and transitional housing, and not just HUD; to reflect the full range of VAWA, T[17] and U visa crimes covered by VAWA and the Trafficking Victims Protection Act; to impose any credible evidence standards, where no specific documents to types of documentation should be required to support a crime victim's application for emergency shelter or transitional housing; and to incorporate federal anti-discrimination law requirements.

The commenter also recommended that HUD and other Federal agencies establish grant conditions for transitional housing programs that require compliance with Federal anti-discrimination laws and nondiscrimination against victims

[15] A U visa is a nonimmigrant status visa set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes. See *http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status.*

[16] See *http://www.vawnet.org/Assoc_Files_VAWnet/ImmigrantAccess.pdf.*

[17] The T Nonimmigrant Status (T visa) is a set aside for those who are or have been victims of human trafficking, protects victims of human trafficking and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking. See *http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status.*

defined as underserved by VAWA. The commenter said that HUD and other Federal agencies that fund transitional housing could require grant recipients to revise their admission and eligibility policies to incorporate best practices for promoting greater access to transitional housing for victims of VAWA crimes, or provide additional points in competitive grant processes for recipients that have adopted such best practices. The commenter further said that all programs receiving Federal funding for transitional housing should be required to report to their funder the extent to which they are providing services to immigrant, LEP, individual racial and ethnic minority, and other underserved victims.

HUD Response: HUD appreciates these comments and notes that HUD, HHS and DOJ recently updated its guidance regarding Programs Necessary to Protect Life and Safety on August 5, 2016.[18] HUD will also review the other proposals and consider them for guidance or future rulemaking.

Comment: HUD should classify VAWA victims as "chronically homeless." A commenter stated that HUD should classify victims of domestic violence, dating violence, sexual assault, stalking, human trafficking, child abuse, elder abuse, and other U visa listed crimes as "chronically homeless." The commenter said that, because of the high likelihood that domestic violence and other life-threatening crimes can cause homelessness, these individuals and families should automatically qualify as chronically homelessness and be eligible for transitional housing programs and not be required to provide income eligibility documentation in order to receive services. The commenter said that HUD's final VAWA rule should consider extending the chronically homeless definition to this category of immigrant and LEP crime victims even if they have not at the time of application to the transitional housing program left their abusive home for a safe haven or emergency shelter.

HUD Response: HUD published its final rule on Defining Chronically Homeless on December 4, 2015, at 80 FR 75791. This final rule results from four years of careful consideration of public comments and discussions with experts on how "chronically homeless" should be defined based on the statutory definition of "chronically homeless" in the McKinney-Vento Homeless Assistance Act. Public comments were solicited in response to a December 5, 2011 interim rule establishing regulations for Emergency Solutions Grants Program (see 76 FR 75954), in the Continuum of Care Continuum of Care Program interim rule, published July 31, 2012 (77 FR 45422), from a May 30, 2012 convening with nationally recognized experts, which was described in the Rural Housing Stability Assistance Program proposed rule, and the March 27, 2013 proposed rule establishing regulations for the Rural Housing Stability Assistance Program (see 78 FR 18726). The final rule defining "chronically homeless" explains the rationale for HUD's definition.

Comment: Instruct grantees to update documents to account for VAWA protections. A commenter said HUD should instruct PHAs to amend planning documents, leases, and house rules to incorporate a model emergency transfer policy. The commenter said HUD should also instruct owners of Sections 221d3, 236, 202 and 811 properties and project-based Section 8 properties to revise their tenant selection plans and review all tenant leases to ensure they contain language regarding VAWA protections. Commenters said that HUD should require State and local governments to revise their consolidated plans to address the VAWA emergency transfer policy obligations as they relate to HOME properties. Commenters further said that HUD should urge recipients of HUD financing to work with the entity responsible for developing Qualified Allocation Plans[19] to include a plan that allows for emergency transfers between housing types. Another commenter said the final rule should require HUD funding recipients to include steps taken to implement VAWA 2013's protections in consolidated plans and PHA annual and five-year plans.

HUD Response: As described earlier in this preamble, under this final rule, descriptions of VAWA protections will be required in lease terms or addenda or contracts, as specified in the regulations for the HOME, HOPWA, ESG, CoC, and public housing and section 8 programs. Owners would only be required to revise their tenant selection plans in relation to this rule if there are changes to the plans resulting from this rule.

HUD's final rule does not require PHAs to amend their documents, or require State and local governments to revise their consolidated plans, to address emergency transfer obligations. HUD notes that the HOME regulations require participating jurisdiction to have written policies and procedures that address several program requirements (for example, underwriting and subsidy layering or rehabilitation standards) while not requiring submission of those policies and procedures to HUD the participation jurisdiction will need to comply with the new requirements. HUD reviews all of its grantees to ensure compliance with its regulations, and such reviews will include compliance with these new VAWA regulations. VAWA emergency transfer policies may be reviewed during onsite monitoring of the HOME program by staff of HUD's Office of Community Planning and Development (CPD) in the Field Offices. As described earlier in this preamble, this final rule provides that emergency transfer plans must be made publicly available, whenever feasible, and always available upon request.

Comment: HUD should update its guidance and documents to reflect VAWA protections, and should update regulations when necessary. Commenters said once HUD has developed an emergency transfer policy, the relevant handbooks and guidebooks should be revised and a HUD notice applicable to all of the programs issued. The commenter said HUD should develop lease language applicable to all of the programs and require that recipients of HUD funds adopt such leases that reference the transfer policy. A commenter recommended that HUD amend the applicable rules relating to lease provisions for each of the HUD-covered programs and urged that HUD set forth specifically the regulatory language that is required to incorporate VAWA's protections and requirements into the leases and to publish the required VAWA lease addenda. In addition, the commenter asked that translations of these leases and lease addenda continue to be provided by HUD. A commenter said HUD should be careful to add or include VAWA provisions whenever changes to programs are made.

HUD Response: HUD will update existing guidance to reflect new VAWA provisions. As noted in response to the preceding comment and earlier in this

[18] See *https://www.justice.gov/ovw/file/883641/download.*

[19] A Qualified Allocation Plan (QAP) is a federally mandated planning requirement that states annually use to explain the basis upon which they distribute their LIHTC allocations. Based on their QAP, states establish preferences and set-asides within their tax credit competitions so as to target the credits towards specific places (such as rural areas) or types of people (such as elderly households). Analysis of State Qualified Allocation Plans for the Low-Income Housing Tax Credit Program examines how those preferences and set-asides were used and changed based on content analysis of 1990 and 2000 Qualified Allocation Plans from nearly every state along with discussions with the staff that prepared the plans. See *https://www.huduser.gov/portal/publications/hsgfin/analysis_of_sqa_plans.html.*

preamble, under this final rule, descriptions of VAWA protections will be required in lease terms or addenda or contracts, as specified in the regulations for the HOME, HOPWA, ESG, CoC, and public housing and section 8 programs.

9. Costs and Burden

Comment: Housing providers should have some means of recuperating costs for damages to property associated with a VAWA-related incident. A commenter stated that if damages to a unit are caused by an instance of VAWA violence, the housing provider should be authorized to use reserves for replacement or residual receipts to repair such damage if charging the resident is not appropriate or if a resident does not pay.

HUD Response: Means of recuperating costs for damages will vary depending on the HUD-covered program. HUD notes that under CoC program regulations, at 24 CFR 578.51(j), recipients and subrecipients may use grant funds in an amount not to exceed one month's rent to pay for any damage to housing due to the action of a program participant.

Comment: Changes to existing regulations will result in increased burden for housing providers. Commenters stated that, previously, VAWA protections had to be incorporated into the Housing Choice Voucher Administrative Plan, the Public Housing Admissions and Continued Occupancy Plan, and the public housing lease. Commenters said that altering these plans or the public housing lease to reflect updated definitions and requirements involves providing adequate public notice and board approval, and changes in the public housing lease also require that every household in public housing sign a new revised lease.

Commenters expressed concern that HUD is publishing new regulations in a time of historically low funding, and said that it would be difficult to comply with new requirements. Commenters said that language in the proposed rule suggests that the added cost to the housing provider is primarily paperwork, but the costs of administering the notification and documentation requirements will be significant, and there will be costs in evaluating how resident's needs must then be addressed, and then taking steps to address those needs. The commenters said providers must establish an organizational framework to ensure compliance with HUD's VAWA regulations, including the creation of a document management system, adoption of policies, and the training of staff, and the costs of these activities are in addition to emergency transfer costs. Commenters asked HUD to consider how requirements to implement VAWA could be made more efficient and effective. A commenter said HUD's estimates of burden hours should take into account the impact on the housing providers that must take various steps following receipt of these forms.

A commenter said that, according to HUD's estimates, these new regulations will impact over 208,000 covered housing providers implementing assisted rental housing programs, and will impose an additional administrative burden on those institutions of 4,392,189 hours annually, which amount to almost 2,112 full time equivalents each year. The commenters said that, since no new funding is available, as a result of VAWA's reauthorization and the new requirements imposed, housing providers' human resources will require a substantial reallocation of personnel to assure procedural compliance with VAWA and such reallocation will be at the expense of core assisted housing management tasks at a time when funding for assisted housing programs is under extreme pressure. The commenter said housing agencies already must make difficult decisions allocating human resources among competing critical tasks, and this proposed rule will add to those difficulties.

HUD Response: HUD is cognizant of the constraints within which program participants must operate in the current budgetary environment, and in this rule has sought to minimize burdens on housing providers while implementing VAWA 2013. HUD notes that PHAs are required to include any changes in the ACOP in the Annual Plan, and even Qualified PHAs [20] that only submit five-year plans must still hold annual public hearings.

Comment: Clarify whether housing providers bear the costs for transfers. A commenter said that language in proposed § 5.2009(c) stating, ". . . and for the covered housing provider to bear the costs of any transfer, where permissible," is problematic, creates uncertainty and risk of litigation, and should be deleted, even though the language appears to be non-binding. The commenters said that the term "covered housing provider" is not defined for this section and could be construed to mean a State entity. Commenter said that a mandate to have the State pay for costs associated with transfers is not supported by statute, would be contrary to Executive Order 13132, and could be unconstitutional. Commenters further said that "costs of transfer" is not defined, and this phrase could mean many things.

HUD Response: The commenter is correct that § 5.2009(c) is non-binding. The section says that covered housing providers are encouraged to take whatever actions are permissible and feasible, including bearing the costs of transfers. As previously stated in this preamble, housing providers will not be required to bear the costs of transfers, but HUD maintains § 5.2009(c) in the final rule to encourage housing providers to take whatever actions they feasibly can to assist victims of domestic violence, dating violence, sexual assault, and stalking.

Comment: HUD should clarify the obligations of small entities. A commenter said HUD provided only a cursory discussion of the rule's impact on small entities, and a passing acknowledgement that small providers may be unable to carry out emergency transfer plans or bifurcation of leases. The commenter said this concept should be highlighted in the preamble of the appropriate section and also covered in the regulations. The commenter also said that if HUD refuses to translate the required certification forms, the cost of providing translations would fall disproportionately on small entities, a potential violation of the Regulatory Flexibility Act.

A commenter said the rule's definition of "covered housing provider" should clarify that small providers may be exempt from certain requirements due to infeasibility, or at the very least acknowledge that there are limitations based on the size of the covered provider. In contrast, another commenter was concerned about language in the proposed rule that states small entities "are not required to carry out" bifurcation and emergency transfers "that may be more burdensome, and, indeed may not be feasible given the fewer number of units generally managed by small entities" Commenters were concerned that this

[20] The Housing and Economic Recovery Act (HERA), Title VII, Small Public Housing Authorities Paperwork Reduction Act exempted qualified PHAs from the requirement to prepare and submit an annual plan. A Qualified PHA is a PHA that: (1) Has a combined unit total of 550 or less public housing units and section 8 vouchers, and (2) is not designated troubled under section 6(j)(2) of the 1937 Act, the Public Housing Assessment System (PHAS), as a troubled public housing agency during the prior 12 months, and (3) does not have a failing score under the Section 8 Management Assessment Program (SEMAP) during the prior 12 months. Although HERA exempts qualified PHAs from the requirement to prepare and submit and annual plan, qualified PHAs must carry out certain other annual requirements, including an annual public hearing. See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha/qualified.*

language conflicts with the statute, which does not exempt any covered housing provider from bifurcating leases or carrying out transfers based on their size. The commenters said that, depending on the situation, a small housing provider could be required to carry out a lease bifurcation, even though doing so is technically discretionary (*e.g.*, in cases where there is a permanent protective order that excludes the abuser from the premises). Other commenters said they do not believe that "small entity" housing providers should automatically be excused of any emergency transfer obligation and should, at a minimum be required to examine whether there are safe and available transfer options in their portfolios that could be offered to survivors. The commenters said HUD must also include a definition of a small entity.

HUD Response: As HUD noted in the proposed rule, VAWA 2013 does not allow for covered housing providers who could be considered to be small entities to provide fewer protections than covered entities that are larger. HUD's assertion in the proposed rule that bifurcation is not a mandate under VAWA 2013 or under these regulations does not preclude the possibility that any provider, including a small entity, may be required to bifurcate a lease in certain circumstances under State or local laws. In addition, the fact that tenant transfers under the emergency transfer plan are contingent upon whether there are safe and available units to which victims of domestic violence, dating violence, sexual assault, or stalking may transfer, and smaller housing providers that own or manage fewer properties may not have the same abilities to transfer victims, does not mean that smaller housing providers are excused from emergency transfer obligations. Small housing providers must transfer tenants who meet the criteria for an emergency transfer when there is a safe and available unit to which they could transfer the tenant, and must describe in their emergency transfer plans policies to assist a tenant to make an emergency move when a safe unit is not immediately available for a transfer. As small entities are not statutorily exempt from any VAWA protections, HUD declines to define them for purposes of this rule.

With respect to the issue of translation of documents, as noted earlier in this preamble, HUD has stated that it will provide versions of the certification form and notice of housing rights in different languages.

10. Other Requirements and Protections for Victims and Survivors

Comment: The rule and notification provided to tenants and applicants should provide that individuals can terminate a lease for VAWA-related reasons. A commenter suggested that a housing provider should be allowed to waive requirements for 30-day notices to vacate where victims have provided documentation to certify their status as a victim and want to move to escape abuse. This commenter also suggested permitting housing providers to waive requirements for a review of landlord history where contacting a previous landlord could put a survivor at risk by exposing the survivor's current location.

HUD Response: HUD's final rule maintains the provisions in the proposed rule at §§ 92.359(e), 574.604(f), and 578.99(j), and adds a provision for the Housing Trust Fund at 93.359(e), that a VAWA lease term/addendum must provide that the tenant may terminate the lease without penalty if a determination is made that the tenant has met the conditions for an emergency transfer under this rule.

Comment: Clarify that housing providers should work with LEP victims to ensure they understand their rights under VAWA. A commenter stated that, in the preamble to the proposed rule, HUD said its LEP guidance "contains a four-part individualized assessment for recipients to use to determine the extent of their obligations . . ." The commenter said that, though this is an accurate description of the guidance, such language could encourage housing providers to do only what they determine is the minimum required. The commenter said HUD should insert additional language that states that, in situations involving domestic violence, dating violence, sexual assault, and stalking, housing providers should do their best, given current resources, to work with LEP victims to ensure that they are apprised of their VAWA protections, even if those attempts go beyond steps generally included in the recipient's language access plan. The commenters urged HUD to emphasize that housing providers are to use qualified, trained, and professional interpreters when interpreting information concerning VAWA protections to LEP applicants and tenants. Commenters further said that it should be clear that covered housing providers have to orally communicate with LEP individuals in their language, either through bilingual staff or interpreters. A commenter said this is extremely important because LEP victims will likely have follow-up questions, require assistance with filling out forms, and/or need help accessing other rights and remedies. The commenter also said that housing providers should be strongly discouraged from using friends or family members to interpret, absent an emergency; and alleged perpetrators and minor children should be completely prohibited from interpreting. Commenters said that the final rule should require housing providers to update existing language access plans to include provisions for specifically serving LEP victims and their families.

HUD Response: Executive Order 13166 directs all federal agencies to ensure that programs receiving Federal financial assistance provide meaningful access to LEP persons. To ensure compliance with this direction, DOJ's LEP Guidance four-factor analysis applies to the programs and activities of Federal agencies.[21] HUD's LEP guidance complies with Executive Order 13166, and is consistent with the DOJ LEP Guidance.[22] Therefore, HUD cannot require recipients to go beyond that which is required by law. The HUD-issued LEP guidance does require that recipients take reasonable steps to ensure meaningful access to LEP persons. This may include providing oral interpretation services, hiring bilingual staff, and providing notices to staff and served populations of the availability of LEP services.

HUD does require all recipients to provide the appropriate language assistance to the populations that they serve, and adequately serve LEP persons without delay. As the population needs and capacity of each recipient differs, the four-factor analysis is intended to be flexible to balance the need to ensure meaningful access by LEP persons, while not imposing an undue burden on recipients, which includes small businesses, small local governments and small nonprofit organizations. HUD does encourage that LEP persons utilize the language assistance services expressly offered to them by the HUD recipients, rather than family or acquaintances.

Comment: VAWA protections should serve mixed status immigrant families. A commenter asked that HUD extend VAWA protections to mixed-status immigrant families, and noted that mixed-status LGBT immigrant families are less likely to report unauthorized family members, and survivors of domestic violence, dating violence,

[21] See *http://www.lep.gov/guidance/guidance_DOJ_Guidance.html.*

[22] See *https://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf.*

sexual assault, and stalking may not seek appropriate action if they fear a negative immigration result.

HUD Response: VAWA protections apply to tenants in mixed status immigrant families as they apply to other tenants.

Comment: Abusive parties should be responsible for VAWA-related costs. A commenter suggested that the abusive party in a household be held responsible for the full amount of back rent, if any, and for the current and upcoming rent so that the victim can move on to other housing or remain in the home with a clean record.

HUD Response: HUD appreciates this suggestion but would need to study its feasibility and effects before creating such a policy.

Comment: Clarify that VAWA 2013 provides the same or greater protections than previously existed. A commenter said proposed § 5.2011 should be amended to clarify that VAWA 2013 provides the same or greater protections to survivors than those that existed at the time of enactment of the first VAWA statute.

HUD Response: HUD agrees that VAWA 2013 provides expanded protections to victims of domestic violence, dating violence, sexual assault, and stalking, but HUD declines to add this statement in the regulatory text.

11. Limitations of VAWA Protections

Comment: Explain the change that VAWA protections do not apply for lease violations "unrelated to" an act of domestic violence to VAWA protections do not apply for lease violations "not premised on" an act of domestic violence. A commenter asked why HUD made this change in terminology in the proposed rule, stating that the change substantially limits the reach of VAWA protections by removing from such protection those lease violations or incidents that may be in some way related to domestic violence, and instead requires that VAWA protections be premised on an actual act of domestic violence, dating violence, sexual assault, or stalking.

HUD Response: VAWA 2013 uses the phrase "not premised on" to clarify that VAWA protections do not limit the authority of housing providers to evict or terminate assistance to a tenant for any violation of a lease "not premised on" the act of violence in question. The change in HUD's proposed rule tracks the statutory change by providing in § 5.2005 that nothing in the section limits any authority of a covered housing provider to evict or terminate assistance to a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant.

HUD disagrees that the new language limits VAWA protections. The term "premised" better conveys that there must be a connection between the alleged violation and the domestic violence to trigger the protections of VAWA. In contrast, the term "unrelated" made it more difficult for a covered housing provider to determine whether a tenant's lease violation was related to an act of violence necessitating VAWA protections. "Premised" is more exact, less discretionary, and less open to misinterpretation. The term provides covered housing providers with uniform guidance to protect victims of domestic violence, while continuing to administer their program.

Comment: There is inconsistency when VAWA protections will or will not apply and clarification is needed. A commenter stated that HUD's proposed rule seems to apply a different standard of applicability of the VAWA protections in defining those instances where the housing provider is prohibited from denying or terminating assistance, and the exceptions where the PHA or housing provider may deny or terminate assistance. The commenter stated that proposed § 5.2005(b) says that the VAWA protections apply to victims of domestic violence (applicants) and criminal activity "directly related to" domestic violence (tenants); but proposed § 5.2005(d)(2) now says the VAWA protections do not apply to any violation that is not "premised on" an act of domestic violence. The commenter stated that, in deciding whether the VAWA protections apply, housing providers must determine whether the underlying act was "directly related" to domestic violence, or "premised on an act" of domestic violence, but the act could be directly related to domestic violence without being premised on an act of domestic violence.

HUD Response: The usage of the terms "not premised on" and "directly related" in the proposed rule reflect the usage of these terms in VAWA 2013. HUD disagrees that the usage of these terms create a conflict in terminology. As noted in response to the preceding comment, HUD interprets "premised on" to mean that a logical nexus must exist between the alleged violation and the domestic violence. Therefore, the term "not premised on" means that there is not a logical nexus between an alleged violation and domestic violence.

12. Confidentiality

Comment: Provide technical assistance on maintaining the privacy of VAWA documentation. Commenters emphasized the importance of maintaining confidentiality and privacy with respect to a victim of a VAWA crime, as the most dangerous time for a victim of domestic violence is when the victim takes steps to leave a relationship with the abuser. Commenters said many victims are stalked for years after having escaped from their partners, and the severity of this "separation violence" often compels the victim to stay in abusive relationships rather than risk greater injury. Commenters said victims need assurances of confidentiality in order to believe they can safely access their rights and supportive options, and asked HUD to stress the importance of confidentiality to housing providers. Commenters said that, as the transfer processes begins to be used, it is extremely important that all owners, managers, landlords, and PHAs understand their confidentiality obligations.

Another commenter said it would be helpful for HUD to provide technical assistance on matters such as: How to maintain an auditable trail while also protecting the privacy of details of a tenant's status; whether VAWA documentation should be retained separately from the tenant file, and if so how actions such as transfers should be documented in the tenant file (for example, listed as VAWA or "emergency circumstances" more broadly); and how to maintain privacy in electronic records, including the new address for the household, and establishing safeguards for information accessible to agency staff.

HUD Response: HUD understands the importance of maintaining confidentiality under VAWA and thanks commenters for these comments and will take steps to ensure that housing providers understand their obligations with respect to maintaining confidentiality.

Comment: All entities should be required to maintain confidentiality. A commenter said that, at various points, the conforming regulations for the covered housing programs state that confidentiality must be maintained by the entity that obtains the information from the victim. The commenters said this language must be expanded so that confidentiality is guaranteed even if a victim gives the information to the wrong party or a housing provider mistakenly gains access to this information. Commenters recommended that HUD's VAWA regulations state that

any entity that receives the information concerning the victim's status as a victim should be required to maintain confidentiality under VAWA.

HUD Response: HUD believes that the confidentiality provisions in VAWA 2013 and in this rule sufficiently protect information that individuals might otherwise not share with their housing providers, out of fear of disclosure, and HUD thus declines to change the confidentiality provisions in the rule as commenter suggested.

Comment: Clarify how VAWA's confidentiality protections will apply to shared databases. Commenters commended HUD for saying, in proposed § 5.2007(c)(2) that covered housing providers shall not enter information into any shared databases. Other commenters stated that, as coordinated access becomes a core component of the housing process in Continuums of Care, there has been a move to utilize shared databases/HMIS. Commenters said HUD should clarify, in the regulations, that covered housing providers shall not enter confidential information under VAWA into shared databases, including HMIS. A commenter expressed concerns about the reduced access to homelessness services for survivors who receive services from the domestic violence program and do not enter the survivor's information into an HMIS/shared database. The commenter recommended including a provision in the regulation that states a covered housing provider cannot deny a survivor access to services for refusing to permit the inclusion of confidential information in a shared database.

Other commenters recommended clarifying, in proposed § 5.2007(c)(2), that all methods of information sharing are prohibited, and cross referencing this prohibition in the Notice of Occupancy Rights. Commenters said § 5.2007(c)(2) should be revised to say that covered housing providers shall not disclose, or "reveal or release" such (confidential) information. Commenter recommended revising § 5.2007(c)(2)(i) to say that such information could be disclosed when requested or consented to "by an individual in an informed, written, and reasonably time-limited release."

In contrast to these commenters, a commenter said that the prohibition against entering "any" information submitted by the tenant to the covered housing provider into a shared database raises practical operating concerns. Commenters said that while maintaining confidentiality is important, covered housing providers must be able to demonstrate compliance with occupancy requirements, including documenting requests for unit transfers, for example. A commenter said many housing providers make use of software programs to manage tenant information, and, presumably, a simple notation of "VAWA" entered into a database field to denote the reason for a unit transfer request would not violate the victim's confidentiality, and such documentation should be re-considered by HUD.

HUD Response: Housing providers must comply with any existing confidentiality provisions that apply to them, in addition to confidentiality provisions provided under this rule and any relevant guidance issued in accordance with this rule.

HUD declines to amend the Notice of Occupancy Rights and these regulations to broadly state that all methods of information sharing are prohibited and to say that covered housing providers shall not reveal of release (in addition to disclosing) confidential information. However, as discussed above, HUD has revised 24 CFR 5.2007(c)(2)(i) to state that disclosure must be requested or consented to in writing by the individual in a time-limited release. As discussed above, HUD believes that the confidentiality provisions in VAWA 2013 and in this rule sufficiently protect information that individuals might otherwise not share with their housing providers, out of fear of disclosure. As discussed earlier in this preamble, HUD uses the term "disclose" to encompass revealing or releasing.

Rule Change: HUD has revised 24 CFR 5.2007(c)(2)(i) to state that disclosure must be requested or consented to in writing by the individual in a time-limited release.

Comment: Disclosure of confidential information may be necessary under certain circumstances. A commenter stated that the confidentiality provisions in the rule should be revised to permit disclosure of the fact that the individual is a victim of domestic violence to law enforcement and other government or social services agencies, as necessary, in order to secure the protections set forth in the proposed rule. Another commenter said blanket statements about total non-disclosure are not realistically tenable, and perhaps some redacted version of the VAWA-related need for an emergency transfer or negotiated "termination," and some certification about non-disclosure of the new location can and should be placed in the tenant file. The commenter suggested that this should be the topic of a facilitated stakeholder discussion to more clearly identify and explore options and recommendations from housing providers, victim advocates and others.

A commenter said that, because HOME-grantees are responsible for ensuring HOME-funded developments are complying with all program requirements, HUD must clarify how the housing provider can responsibly share information about a VAWA claim with its regulatory oversight agency without violating any confidentiality concerns. Another commenter said it is common practice for housing providers to document in their business system requests and actions taken for administrative purposes, and covered housing providers may also consult with sources of third-party documentation regarding VAWA incidents, including but not limited to police, court officials and/or medical/social service providers. The commenter said the documentation of such incidences in business systems or communications with third-party verification sources should not be considered a violation of the confidentiality provision.

HUD Response: This final rule maintains the confidentiality provisions from VAWA 2013. Of the exceptions to the confidentiality provisions that were enumerated in VAWA 2013, there is no specific exception for disclosure to law enforcement or government agencies. However, where disclosure of that fact that somebody is a victim of a VAWA crime is necessary to secure VAWA protections, the individual requesting VAWA protections may consent to the disclosure.

Comment: Clarify the scope of VAWA's confidentiality provisions. A commenter asked whether the HCV's prohibition from disclosing information about the specific covered act, which prompted the move, applies to the owner of the property being vacated. Another commenter said it is unclear why HUD is proposing to elevate confidentiality of VAWA information above that of Enterprise Income Verification (EIV), which is arguably of equal importance, and this raises liability concerns for covered providers who may make an unintentional error.

HUD Response: VAWA's confidentiality provisions apply to covered housing providers, which, for the HCV program, include both the PHA and the owner. This rule's confidentiality provisions are mandated by VAWA 2013 and do not conflict with EIV system.

Comment: Explain where a housing provider must keep VAWA-related documents. A commenter asked whether VAWA documents have to be kept in a separate location, outside of a

manager's office, or have the information maintained in a file separate from a resident's file.

HUD Response: This rule does not require housing providers to maintain VAWA-related documents in a particular location. Housing providers, using the resources they have, should determine the best strategy for maintaining confidentiality in accordance with VAWA 2013.

Comment: Programs should honor and keep confidential a tenant's different name or gender identity marker. A commenter expressed concern that individuals or covered housing providers may not understand the importance of an LGBT individual's necessity for privacy when dealing with gender identity markers or the individual's name change. The commenter stated that disclosure may lead to possible harm, more trauma, and a reluctance to seek help if the survivor believes that they will be "outed." The commenter said disclosure by family members, the perpetrator, or others should be limited by the survivor's right to confidentiality, and housing providers should not be able to share information provided by parties who are not the tenant seeking protections.

HUD Response: The rule's confidentiality provisions are those provided in VAWA 2013, and are designed to protect information that any tenant or applicant shares with housing providers in order to obtain VAWA protections and remedies. All such information is subject to very strict confidentiality requirements.

Comment: Confidentiality provisions should be included in program-specific regulations. A commenter said recordkeeping is an essential element in ensuring confidentiality, and confidentiality and documentation regulations should be built into existing regulations for covered housing programs. The commenter said that, without the cross-references, the housing providers could maintain recordkeeping and information entering, storage, and disclosure practices that are built into their practices.

A commenter said existing regulations require PHAs to provide available information to a landlord regarding the prior residence of a tenant and information regarding prior tenancy history, and this can threaten the health and safety of an individual or family that is fleeing violence or abuse. The commenters recommended changing HCV and PBV regulations on tenant screening at § 982.307(b)(4) and § 983.255(d) to say that the PHA shall maintain the confidentiality of any information provided by the applicant relating to domestic violence, dating violence, sexual assault, or stalking, and if the applicant is a victim, the PHA shall not provide any information to an owner or landlord regarding current or prior landlords, addresses, or tenancy history subject to 24 CFR 5.2007(c).

The commenter recommended that § 91.325(c)(3) of HUD's existing regulations be changed to say that the State will develop and implement procedures to ensure the confidentiality of records pertaining to any individual who is a victim of family violence, domestic violence, dating violence, sexual assault or stalking under any project assisted under the ESG program, including those who have received VAWA protections. The commenter also recommended amending § 578.103(b) to say that all records containing protected information of those who apply for Continuum of Care assistance will be kept confidential and that VAWA-related information will not be entered into shared databases, and to reference VAWA regulations in part 5 and the VAWA statute, and to reference VAWA regulations and the statute in §§ 580.31(g), 579.304, and 579.504 of HUD's regulations.

HUD Response: HUD declines to revise the regulations to broadly state that if an applicant is a victim of domestic violence, dating violence, sexual assault or stalking, a PHA shall not provide any information to an owner or landlord regarding current or prior landlords, addresses, or tenancy history. This prohibition could limit a PHA from providing other landlords and owners with relevant and necessary information about a tenancy that is unrelated to a VAWA crime. Sections 982.307(b)(4) and 983.255(d) of this rule state that the VAWA protections apply in cases involving a victim of domestic violence, dating violence, sexual assault, or stalking for tenant screening in the HCV and PBV programs.

Section 91.325(c)(3), pertaining to certifications for the ESG program, and the parallel provision in § 91.225, implement a certification requirement in the McKinney-Vento Act that is separate from VAWA protections. The ESG and CoC program rules at §§ 576.409 and 578.99(j), respectively, contain provisions about the applicability of VAWA's general confidentiality requirements in § 5.2007, and provide that the recipient or subrecipient can limit receipt of documentation by an owner to protect an individual's confidentiality. HUD declines to include additional confidentiality provisions for the ESG and CoC programs, as described by the commenter.

13. Program-Specific Concerns

a. Community Planning and Development (CPD) Programs

Comment: Documentation and transfer requirements for the CoC and RHSP programs should be consistent with general VAWA requirements. Commenters said the preamble states that CoC regulations currently provide for transfer of tenant-based rental assistance for a family fleeing domestic violence, dating violence, sexual assault, or stalking at § 578.51(c)(3) and documentation requirements at § 578.103, and a similar option is provided in the Rural Housing Stability Assistance program at § 579.216(c)(2). The commenters stated that, as these regulations pre-date the passage of VAWA, it is important that they be amended to reflect the transfer and documentation requirements in VAWA, and HUD should ensure that the requirements are consistent to improve compliance and provide greater protection for survivors.

Commenters said the documentation requirements in the CoC and RHSP rules far exceed the VAWA standard and will likely further endanger victims. Commenters said this rule should not maintain different and more demanding documentation requirements for "original incidence" and "reasonable belief of imminent threat of further domestic violence," but rather should simply allow a victim to attest to the violence or assault. Specifically, commenters requested that §§ 578.51, 578.103, 579.216, and 579.504 be amended to reference VAWA requirements.

The commenters said that once these documents are collected it is essential that records are kept confidential, not included in shared databases, and any records to establish status as a victim should be noted in files by employees and then destroyed or returned to the victim.

HUD Response: Section 578.7 of this rule provides that CoCs must develop an emergency transfer plan to coordinate emergency transfers within the geographic area. Existing regulations, as cited by the commenters, allow for the transfer of tenant based assistance to a separate geographic area. HUD maintains these provisions for moving with tenant based rental assistance as a separate, but complementary, option that is available to victims who are at imminent risk of future harm. In some situations, it may be easier to move an existing voucher than to invoke the emergency transfer track, and HUD wishes to maintain this flexibility.

As explained earlier in this preamble, the 2013 reauthorization of VAWA occurred prior to the publication of the RHSP proposed rule and HUD will include applicable VAWA provisions on the RHSP final rule.

Comment: The ESG and CoC regulations should provide that recipients and subrecipients must establish a written policy that allows victims to seek their assistance, and HUD should draft such model policy. Commenters pointed to the "optional policy" in the proposed CoC and ESG regulations regarding how a survivor might prevent a landlord from taking unlawful actions against the survivor, and asked HUD to draft a model policy to maintain consistency. Commenters recommended amending §§ 576.407(g)(4) and 578.99(j)(5) to say that recipients or subrecipients "must," and not "may", establish a written policy that allows program participants (the individual beneficiary) to seek the recipient's assistance in invoking VAWA protections, and adding that nothing in this policy prohibits the participant from seeking legal counsel.

HUD Response: This final rule maintains the option for recipients and subrecipients in ESG and CoC to limit receipt of documentation by an owner to protect an individual's confidentiality. See §§ 576.409 and 578.99. However, HUD no longer includes regulatory language discussing the "optional policy" because whether the recipient or subrecipient establishes such a policy, the program participant would not be prohibited from asking for the recipient's or subrecipient's help to ensure owners comply with the VAWA requirements that are incorporated into their contractual agreements. Establishing such a policy is not a requirement in other HUD-covered programs involving intermediary parties, and requiring such a policy could result in administrative confusion for providers administering multiple types of HUD assistance.

To assist tenants, HUD adds to the "Notice of Occupancy Rights" a provision notifying tenants that if a covered housing provider fails to comply with the requirements in the notice, or the tenant needs assistance, the tenant can contact any applicable intermediary or HUD.

Comment: VAWA incidents must be considered when determining whether a program participant is in compliance with RHSP and CoC regulations. A commenter said that, in both the RHSP and CoC program, participants must be in compliance with the program in order to have the option to transfer their assistance to another community. The commenter said it is important for HUD to provide guidance and training on the reasons why someone might seem out of compliance with a program, as the actions of perpetrators can cause a victim to seem out of "program compliance." The commenters said that for example many perpetrators control finances, which could cause victims to miss rent payments, and abusers may also damage property and exert other controls over the victim that result in violations of program rules.

HUD Response: HUD thanks commenters for these suggestions and will take them into account for guidance and training to program participants.

Comment: Clarify whether additional lease requirements apply when tenant-based rental assistance is used for homelessness prevention under the ESG and CoC programs. Commenters recommended that in instances where the lease would be amended to reflect the rental assistance, the same VAWA amendments that are in the leases and rental agreements at proposed §§ 576.106(e) and (g) and § 578.99(j)(6) should apply. Commenters said that in instances where no changes are made to the lease, recipients and subrecipients should include the notice of VAWA rights in communication with the participant and in any communication to the landlord or owner. Commenters further stated that in §§ 576.106 and 578.99(j)(6), HUD should clarify that owners and landlords may continue to include the VAWA protections after the assistance has ended, as this will benefit survivors and also keep consistency across owners' properties.

Another commenter recommended that there be a lease requirement that the perpetrator cannot be listed on the new lease, and if there is a restraining order placed on the perpetrator by the victim, the victim should be required to honor that restraining order. The commenter also said the lease should require that the unit must not be substandard housing.

Other commenters said they do not support including additional lease requirements, as this can discourage private landlord participation in programs and have the unintended effect of making it more difficult for all families, and not just victims, to find housing. A commenter stated that, for ESG tenant-based rental assistance, the subrecipient is currently not responsible for reviewing the lease between the program participant and the owner, and, structurally, it makes more sense to have conditions of ESG program participation in the rental assistance agreement, as HUD has outlined in proposed § 576.106(e), and not require provisions in a lease. The commenter said that, alternatively, HUD could elect to not require either the rental assistance agreement or the lease to contain VAWA 2013 requirements where there is only short-term assistance, which would be in alignment with requirements in the HOPWA program where per proposed § 574.330, VAWA does not apply to short-term housing.

HUD Response: If a participant is receiving ongoing homelessness prevention in an existing unit, the rental agreement between the landlord and the recipient or subrecipient will contain the required VAWA provisions. In instances where a participant is receiving homelessness prevention in a new unit or a new lease will be executed, then the VAWA protections will be incorporated with the lease and the participant will be covered by both the rental agreement and a lease and the recipient will have the option of extending the VAWA protections after the provision of assistance ends. However, HUD will not require the recipient to have to extend the provisions after the assistance ends. Some landlords are reluctant to work with individuals and families that are homeless or formerly homeless and imposing additional lease requirements as a condition of accepting our funds that then continue after HUD funds are made available makes it more difficult to recruit landlords.

HUD declines to impose additional lease requirements, including that the perpetrator cannot be listed on the new lease and victims must honor restraining orders.

Comment: It is unclear how certain VAWA requirements would apply to ESG assistance. Commenters said that, in the case of homeless prevention, funds are used to maintain persons in their rental housing, such persons are already under a lease agreement, and it is not clear how VAWA provisions apply in this instance or how violations would be handled. Commenters said that providing notice to recipients of ESG rental assistance should be limited to the period for which the assistance is provided, and the requirement to create an emergency transfer plan should not apply to short term ESG assistance.

Another commenter said that it administers ESG funding for shelter operations, rapid re-housing and homeless prevention. The commenter said that, in the case of the rapid re-housing, it processes payments to owners and will assume responsibility for providing the recipient with a copy of the agreements with private owners who will provide permanent housing for

the participant. The commenter said that it has no problem requiring the owner to advise when a notice to vacate is issued during the term of the agreement, but there is no mention of a penalty if the private owner fails to provide this notice and, since payment will have been made by then, there would be no recourse to the commenter.

HUD Response: If a tenant requests homelessness prevention assistance for a new unit, then VAWA protections would be included in the new lease they are signing. The tenant lease will also supplement the ESG recipient rental agreement in this case. In a scenario where a new lease must be executed, then the recipient or subrecipient is required to put the requirements into the lease. The recipient or subrecipient has the option of writing the lease in such a way so that those extra requirements expire when the ESG assistance ends. In a homelessness prevention assistance scenario, the protections are in the rental assistance agreement so they would cease to apply when the rental assistance agreement ends, which is when the assistance ends. However, the recipient or subrecipient has the option of writing the lease so that the protections continue to apply even after the assistance ends.

This rule's requirements, including the emergency transfer requirements, apply to both short-term and medium-term ESG rental assistance. Even short-term rental assistance is assistance that would trigger the requirements of this rule.

Comment: Clarify whether tenants in HOME-assisted units are covered by VAWA. Commenters said the notice of occupancy rights refers only to tenants who are receiving rental assistance, but the commenters expressed belief that tenants in HOME-assisted units (who are not receiving rental assistance) are also covered by VAWA protections. The commenters encouraged HUD to review the proposed rule through the eyes of a HOME-grantee to ensure that all provisions apply appropriately when the federal assistance is used solely for development assistance.

HUD Response: Section 5.2001(b)(1) of this rule explains that, for project-based assistance, the assistance may consist of such assistance as operating assistance, development assistance, and mortgage interest rate subsidy. Further, the revisions to the HOME regulations state that the VAWA requirements apply to "all HOME tenant based rental assistance and rental housing assisted with HOME funds." Under the HOME program, rental housing assisted with HOME funds is rental housing that has been newly constructed or acquired or rehabbed with HOME funds. Therefore, when HOME assistance is provided "solely for development assistance," VAWA would apply. HUD has revised the Notice of Occupancy Rights and the model emergency transfer plan to clarify that the VAWA rights, rules and remedies apply to HUD assistance generally for covered programs.

Comment: Confirm that HOME-funded rental projects begun prior to the effective date of the rule are not subject to the rule, and provide time to implement requirements. A commenter asked for confirmation that § 92.359(b) exempts HOME-funded rental projects begun prior to the effective date of HUD's final rule from the rule's requirements. Another commenter asked that HUD provide an implementation period of at least four months to draft loan, grant, and covenant documents, policies, lease addendums, and other necessary documents.

HUD Response: Section 92.359(b) provides that compliance with the regulations set forth in this rule is required for any tenant-based rental assistance or rental housing project for which the date of the HOME funding commitment is on or after the effective date of this rule. However, as HUD has stated several times, in publicly issued documents since 2013, and in the preamble to the proposed rule and in the preamble to this final rule, basic statutory core protections of VAWA were effective upon enactment of VAWA 2013. HUD has made clear that regulations are not needed to make these core statutory protections applicable, and the core requirements do apply to HOME funding commitments made prior to the effective date of this rule. Therefore, HUD has amended § 92.359 to make clear the application of the core protections at the time the statute passed.

As discussed in the **DATES** section of this rule and overview of changes, the compliance date for completing an emergency transfer plan, under § 5.2005(e) or applicable program regulations, and then providing emergency transfers under the emergency transfer plan is no later than May 15, 2017.

Rule Change: HUD has revised 24 CFR 92.359 to provide that the core statutory protections of VAWA applied upon enactment of VAWA 2013, and compliance with the VAWA requirements that require regulations apply to tenant-based rental assistance or rental housing project for which the date of the HOME funding commitment is made on or after the effective date of this rule.

Comment: Remove proposed effective dates for CPD programs. Commenters urged HUD to remove the proposed effective dates for VAWA compliance that appear in the proposed rules for the programs administered by the Office of Community Planning and Development (CPD) that restrict VAWA implementation to applicants and tenants in future assisted units or with future tenant-based contracts and rental assistance. A commenter said that HUD does not explain why any HUD program would require such effective dates, and there is no indication that Congress anticipated or directed HUD to implement VAWA 2013 only for future tenants and applicants, especially since HUD implemented VAWA 2005 for all applicants and tenants in existing as well as future assisted units.

The commenter said the proposed CPD effective dates are contrary to current HUD policy, as HUD has already reached out to participants in the HUD programs to advise them that the basic protections of VAWA were currently in effect, and do not require notice and comment rulemaking for compliance. The commenter said that in December 2013, HUD advised housing providers with HOME funds to comply with the basic VAWA protections, so it is contradictory for HUD to indicate in the Proposed Rule that VAWA only applies to units funded by the HOME program prospectively.

HUD Response: As HUD noted in response to the preceding comment, the core statutory protections of VAWA applied upon enactment of VAWA 2013, to all covered HUD programs without the necessity of rulemaking. The HOME Program is different than many other covered programs in that: (1) HOME funds the construction or rehabilitation of housing and does not provide ongoing operating or rental assistance; and (2) HUD does not have a contractual relationship with the housing provider—the HOME written agreement is executed by the housing provider and the HOME participating jurisdiction. The HOME agreement reflects the regulations in effect at the time HOME funds are committed to the project. There is not now and never was a requirement that HOME written agreements require project owners to comply with "HOME regulations as they may be amended." HUD cannot require participating jurisdictions to amend existing HOME agreements and participating jurisdictions would have no power to compel project owners to agree to amendments. In 2013, HUD made comprehensive changes to the

HOME regulations. Those changes are only applicable to projects to which HOME funds were committed after the effective date of the rule. The applicability of the VAWA in HOME is consistent with HUD's regulatory authority. The remaining VAWA requirements apply prospectively to all HOME rental housing for which a commitment of HOME funds is made (meaning, the required written agreement is executed) after the regulation becomes effective. While HUD recognizes that, except for the core statutory protections of VAWA HOME-assisted rental housing is not subject to the regulatory requirements unless included in the written agreement with the participating jurisdiction, HUD strongly encourages owners of HOME-assisted rental housing to comply with the regulations to the maximum extent feasible.

For similar reasons, except for the core statutory protections of VAWA, compliance with the VAWA requirements are not required for HOPWA projects with funding commitments earlier than the effective date of this rule, CoC grants awarded prior to the effective date of this rule, or ESG rental assistance agreements that are not executed or renewed after the effective date of this rule.

Rule Change: HUD has revised 24 CFR 574.604, 576.106, 576.409, and 578,99 to state that the core statutory protections of VAWA applied upon enactment of VAWA 2013, and compliance with the VAWA requirements that required regulations apply prospectively to HOPWA funding commitments, CoC awards, and ESG rental assistance agreements.

Comment: Clarify applicability of certain VAWA provisions to the HOME program. A commenter said that in order to make clear that VAWA applies in the context of evictions in the HOME program, HUD should add a reference to VAWA in current § 92.253(c), which provides that there must be good cause for tenancy terminations. The commenter recommended that HUD state that an owner's tenant selection policies may not deny a family admission to the HOME program solely on the basis of criminal activity directly relating to domestic violence. In addition, the commenter stated that proposed § 92.359(c)(2) provides that the entity administering the HOME tenant-based assistance program must provide the tenant with the VAWA rights notice when "the entity learns that the tenant's housing owner intends to provide the tenant with notification of eviction." The commenter recommended that HUD's final rule add the requirement that the owner provide to the family the VAWA rights notice along with the eviction notice. The commenter said it would be simpler and more efficient to impose the notice obligation on both the owner and the entity administering the program.

The commenter also said HUD's proposed regulations for lease bifurcation in the HOME program must be amended to ensure that victims' protections after lease bifurcations are consistent. The commenter said HUD does not explain why the general "reasonable time" provisions in 24 CFR part 5 do not apply to the HOME program and why the different system in proposed § 92.359(d) is necessary. The commenter said that by allowing participating jurisdictions to craft their own bifurcation policies, victims in the HOME program can have different lease bifurcation rights, and this will cause great confusion among victims. The commenter said proposed § 92.359(d) does not reflect VAWA's requirement that tenants who remain after bifurcations be provided with a "reasonable time" to establish eligibility for the existing program or for other covered housing programs, and this latter requirement must be added to the HOME regulations. In addition, commenters said that while proposed § 92.359(d)(2) mentions that remaining tenants who cannot establish eligibility for HOME project-based assistance are entitled to at least 60 days to find other housing, this additional time to find other housing is not available for HOME tenant-based assistance. The commenter also suggested adding language to the HOME regulations similar to what exists for the HCV program—the housing provider must ensure that the victim retains the assistance.

The commenter said it is unclear why HUD included proposed § 92.359(d)(1)(iii), and recommended its deletion. The commenters advised that it did not understand why the VAWA protections for the remaining tenants would differ if the existing assistance were tenant-based versus project-based. In addition, the commenter cited proposed § 92.359(e) and urged that HUD, and not the participating jurisdiction, develop the VAWA lease addendum, as this may be the only opportunity for tenants to become aware of their housing responsibilities and rights under the law and is important for quality control. The commenter said the basic elements of the lease addendum can be modeled after the VAWA 2005 lease addenda for the Section 8 housing programs, and this could serve as a template for other programs newly covered by VAWA. The commenter said that issues that must be decided locally can be identified and the unique information left blank to be completed by the appropriate covered housing provider. The commenter also commended HUD for allowing victims who receive emergency transfers to terminate their leases without penalty, and recommended that this provision be expanded for the HOME program to permit a victim in VAWA-covered housing to terminate the lease upon a 30-day written notice, except this 30-day notice would not be required in emergency transfer situations.

In addition, the commenter said proposed § 92.359(e) states that the owner must notify the entity administering HOME tenant-based program prior to starting a lease bifurcation, but the commenter is concerned this will cause unnecessary delay. The commenter recommended the provision say that when HOME tenant-based rental assistance is provided, the lease term/addendum must require the owner to notify the entity administering the HOME tenant-based rental assistance when the owner bifurcates a lease and in non-lease bifurcation circumstances before the owner provides notification of eviction to the tenant.

HUD Response: It is unnecessary to add a reference to § 92.253(c) to make it clear that VAWA applies to terminations of tenancy, as § 92.359 of this rule clearly specifies that VAWA requirements apply to HOME tenant-based rental assistance (TBRA) and rental housing assisted with HOME funds. Similarly, it is unnecessary to specify that an owner's tenant selection policies may not deny a family admission to the HOME program solely on the basis of criminal activity directly relating to domestic violence because § 92.253(d)(7) includes this in stating that tenant selection policies must comply with VAWA requirements.

Further, because a housing owner must notify the participating jurisdiction prior to initiating an eviction, the participating jurisdiction will be able to provide the notice in a timely manner and HUD believes it is unnecessary to require that the housing owner also provide the notice along with the eviction notice.

This final rule revises § 92.359 to reflect the fact that, for both HOME-assisted rental projects and HOME TBRA, it is unnecessary for the participating jurisdiction to establish or implement a policy that specifies the reasonable time period for a remaining tenant to establish eligibility. The entire household must be qualified to reside in a HOME-assisted unit or to receive

HOME TBRA, so any members of the household are already determined to be eligible. Further, being over income is not a permitted basis for eviction under the HOME program. The owner will review the household's income as usual at recertification. Thus, there is no need to establish a reasonable time period for remaining tenants to establish eligibility for the housing if a lease is bifurcated. HUD agrees with commenter that § 92.359(d)(1)(iii) in the proposed rule should be deleted and has done so in this final rule. Similar to the provision in § 982.315, regarding family break-up in the housing choice voucher program, which states that the housing provider must ensure that the victim retains assistance, § 92.359(d)(2) of this rule provides that if a tenant receiving HOME tenant-based rental assistance is removed from the lease through the bifurcation, any remaining tenant(s) are eligible to retain the HOME tenant-based rental assistance.

HUD declines to implement commenters' suggestions regarding the VAWA lease term/addendum. The requirement in § 92.359(e) that a participating jurisdiction must develop the lease term/addendum is consistent with HOME regulations, but this rule specifies what the lease term/addendum must include. Further, HUD declines to include a section in this rule permitting a victim in VAWA-covered housing to terminate the lease upon a 30-day written notice, which would not be required in emergency transfer situations. Such a provision may conflict with State and local law and HUD will not implement it at this time without seeking further comment. In addition, this final rule does not revise the provision in the proposed rule that the owner must notify the participating jurisdiction prior to starting a lease bifurcation. The participating jurisdiction is responsible for compliance with the HOME requirements and, given this oversight role, a housing provider cannot initiate such changes without prior notification to the participating jurisdiction.

Rule Change: This final rule revises § 92.359(d) to provide that if a family living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit, and if a family who is receiving HOME tenant-based rental assistance separates under 24 CFR 5.2009(a), the remaining tenant(s) will retain the HOME tenant-based rental assistance and the participating jurisdiction must determine whether the tenant that was removed from the unit will receive HOME tenant-based rental assistance.

Comment: Clarify applicability of certain VAWA requirements to the HOPWA program. A commenter cited proposed § 574.604(c), pertaining to protections for victims of domestic violence, dating violence, sexual assault, and stalking, and said that when authorizing the HOPWA program, Congress emphasized the similarity to Section 8 and commanded that the HOPWA program "shall be provided in the manner provided under [U.S.C.] 1437f." The commenter said that, therefore, as with the Section 8 program, VAWA must be immediately applicable to all current and future HOPWA units and tenant-based assistance, and proposed § 574.604(c) should be removed.

The commenter said proposed § 574.604(f) provides that the HOPWA facility or housing owner is obligated to develop the lease addendum, but urged HUD to develop the required basic elements of the lease addendum for the HOPWA program. In addition, the commenter said proposed § 5.2005(c) must be cross-referenced in proposed § 574.604(f). Commenters recommended that this section permit a victim in VAWA-covered housing to terminate the lease upon a 30-day written notice, which would not be required in emergency transfer situations.

The commenters said proposed §§ 574.604(b)(1)(i)(B) and 574.604(b)(2)(i)(B) must be amended to ensure that the responsible entity provides the VAWA rights notice and the self-certification form at all three mandated junctures, and the "or" in this paragraph should be substituted with "and."

The commenter also said current HOPWA program regulations permit the owner to terminate a "participant's assistance . . . only in the most severe cases," and this should be expanded with a reference to the obligation to comply with VAWA, and the current limitations on eligibility should be expanded to prohibit a denial of assistance to a VAWA victim. The commenter suggested amending § 574.310 to include these references to VAWA.

The commenter said language regarding admissions/eligibility for VAWA victims should be added to either the definition of an "eligible person" at § 574.3 or a new section in § 574.310.

HUD Response: HUD disagrees that the requirements of this rule should be applied retroactively. As stated in the proposed rule, VAWA 2005 provided VAWA protections for victims under HUD's public housing and Section 8 programs. Those protections were only expanded to the HOPWA program when Congress enacted VAWA 2013. This was the case notwithstanding the provision in the HOPWA statute, which provides that rental assistance under HOPWA "shall be provided to the extent practicable in the manner provided under section 8 of the United States Housing Act of 1937." (42 U.S.C. 12908(a)(1)). Nothing in VAWA 2013 suggests that Congress intended these VAWA protections to be applied retroactively by HUD. Accordingly, HUD is retaining the proposed regulation at § 574.604(c).

This final rule amends § 574.604(c) to clarify that, for competitive grants, VAWA requirements apply to awards made on or after this rule becomes effective. The proposed rule stated that VAWA requirements are incorporated in the annual notice of funding availability and made applicable through the grant agreement or Renewal Memorandum, but the VAWA requirements are incorporated into the program's regulatory framework and will apply to competitive grants awarded on or after the rule's effective date because the grant agreement will subject the award to the entirety of 24 CFR part 574 in effect at the time of the award. The requirements do not need to be in the NOFA or made applicable through the Renewal Memorandum to apply to competitive awards.

HUD appreciates the commenter's suggestion regarding basic elements of a lease addendum, and HUD is taking these suggestions under consideration. In this final rule, HUD clarifies that, consistent with other HOPWA requirements for grantees and project sponsors, the grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager adds the VAWA lease term/addendum to leases for HOPWA-assisted units and eligible persons receiving HOPWA tenant-based rental assistance. Further, HUD agrees that including a cross-reference to § 5.2005(c) in § 574.604(f) adds clarity to the rule, and accepts the commenter's recommended change. However, as discussed in relation to the HOME program, HUD declines to include a section in this rule permitting a victim in VAWA-covered housing to terminate the lease upon a 30-day written notice, which would not be required in emergency transfer situations. Such a provision may conflict with state and local law and HUD will not implement it at this time without seeking further comment.

HUD appreciates commenter's suggestion of amending §§ 574.604(b)(1)(i)(B) and 574.604(b)(2)(i)(B) to ensure that the

housing provider provides the VAWA rights notice and the self-certification form at all junctures mandated by VAWA 2013. This final rule revises these two sections to say that the housing providers must provide the notice of occupancy rights and the certification form at the times listed in paragraph (d) of the section, and revises paragraph (d) to state that the grantee is responsible for ensuring that the notice of occupancy rights and certification form is provided to each person in a HOPWA-assisted unit or receiving HOPWA assistance at each of the times listed in the statute, as well as during the 12-month period following the date that this rule becomes effective, either during annual recertification or lease renewal, or if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means. This is consistent with the general notification requirements in part 5 of this final rule.

HUD accepts commenter's suggestion to amend § 574.310 to include references to VAWA protections.

Eligibility of HOPWA program participants is governed by HOPWA's program statute. HOPWA assistance is limited to an "eligible person" which the statute defines as "a person with acquired immunodeficiency syndrome or a related disease and the family of such person." 42 U.S.C. 12902(12). HUD is not authorized to expand program eligibility to VAWA victims, as the commenter suggests. VAWA victims are eligible for assistance under the program if they can also meet the definition of an "eligible person." However, HUD has provided some relief to victims in cases where the abuser is the person with HIV/AIDS. Section 574.460 allows victims in those cases a grace period to continue to receive HOPWA assistance, and an opportunity to demonstrate program eligibility.

Rule Change: This final rule revises § 574.604(f) from the proposed rule to include a cross-reference to § 5.2005(c), in addition to the reference to § 5.2005(b). This rule also amends § 574.310 to include references to VAWA protections. HUD also revises proposed § 574.460 and § 574.604, at this final rule stage, to include dating violence, sexual assault, and stalking. HUD also revises these sections to more closely track the VAWA provisions in 24 CFR part 5, subpart L, for consistency with other HOPWA program regulations in 24 CFR part 574 and other regulations of other program covered by this rule, and for clarity. For example, this final rule clarifies the following with respect to the HOPWA program: That the grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager develops and uses a VAWA lease addendum; that the reasonable grace period begins at the date of bifurcation of the lease rather than the date of eviction of the person with AIDS, and that housing assistance and supportive services under the HOPWA program shall continue for the remaining persons residing in the unit during the grace period; that the grantee must develop the emergency transfer plan; that persons in HOPWA-assisted units or receiving HOPWA assistance must be given the notice of occupancy rights and accompanying certification form during the 12-month period following the date that this rule becomes effective, as well as at each of the times required by statute; and that the grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager is made aware of the option to bifurcate a lease. Additionally, this rule revises proposed § 574.604(c) to state that, for competitive grants, VAWA requirements apply to awards made on or after the date that this rule becomes effective.

b. Public Housing and Voucher Programs

Comment: VAWA regulations for public housing and voucher programs should mirror and reference the generally applicable regulations and those that apply to other programs. A commenter said the public housing and housing choice voucher regulations refer to criminal activity "related to" domestic violence" and said HUD should include "directly," in its discussion, as the generally applicable regulations refer to criminal activity "directly related" to VAWA incidents. The commenter said HUD must describe how VAWA protections apply to tenuous allegations of domestic violence.

A commenter said that the language concerning lease requirements in HUD's regulations in 24 CFR part 966 applies VAWA protections if a "current or future tenant" is or becomes a victim of domestic violence, but HUD must explain its inclusion of future tenants here, as this section concerns requirements for leases with existing tenants. Commenters asked if the term "future tenants" refers to a different set of households than "applicants." A commenter said the proposed VAWA provisions applicable to public housing tenant leases is limited to an individual who becomes a victim, but stated that VAWA requires covered housing providers to provide the VAWA notice and self-certification form to all applicants and tenants at three junctures, regardless of whether that tenant is a victim or an affiliated member of a victim.

A commenter said that under the current regulations, a PHA may exclude certain tenants from a grievance hearing because of criminal activity, but such exclusion should not apply to victims of domestic violence, dating violence, sexual assault and stalking, and § 966.51 should be amended to reflect this.

A commenter recommended that HUD add language to § 983.253 (Leasing of contract units) to clarify that owners cannot discriminate against VAWA victims and their affiliated individuals.

For the HCV program, a commenter recommended changing § 982.202(d) to include that the PHA admission policy must state the system of admission preferences that the PHA uses, including preferences for victims of domestic violence, dating violence, sexual assault, or stalking. The commenter said the current HCV lease and tenancy rules and § 982.308 must be amended to reference the VAWA protections and any notice of eviction shall include a notice of occupancy rights and self-certification form, and that the notice and form are required as attachments to the lease.

HUD Response: HUD agrees with commenters that the program regulations should reflect the general VAWA regulations in part 5. HUD recognizes that the proposed regulations do not adequately reflect the notification requirements in part 5, in that they limit the responsibility to comply with part 5 protections to cases where domestic violence, dating violence, sexual assault, or stalking is involved or claimed to be involved, and the notice of VAWA rights must be provided to all tenants and applicants at the times described in this statute and rule. Therefore, this final rule revises § 880.504(f), 880.607(c)(5), 882.511(g), 883.605, 884.216(c), 884.223(f), 886.128, 886.132, 886.328, 886.329(f), 891.575(f), 891.610(c), 891.630(c), 960.103(d), 966.4(a)(1)(vi), 982.53(e), 982.201(a), and 982.553(e) to generally note that the VAWA regulations in 24 CFR part 5, subpart L apply. HUD will provide assistance to housing providers to aid in determining whether criminal activity is directly related to a VAWA crime. In addition, HUD adds a paragraph to § 983.253 to clarify that VAWA regulations apply to the leasing of contract units in the project-based voucher program.

This final rule does not revise § 966.51 as a commenter suggested. If a tenant is excluded from a grievance hearing, under § 966.51, that tenant is

still entitled to a due process determination and the opportunity for a hearing in court.

This rule also does not amend § 982.202(d), as § 982.207(b)(4) already states that PHAs should consider whether to adopt a local preference for admission of families that include victims of domestic violence. This final rule does, however, amend § 982.207(b)(4) (on preferences for victims of domestic violence in the housing choice voucher program), as well as § 960.206(b)(4) (on preferences for victims of domestic violence in public housing) to clarify that preferences may be established not only for victims of domestic violence, but also for victims of dating violence, sexual assault, or stalking.

It is unnecessary to amend § 982.308 as a commenter suggested because, as explained earlier in this preamble, this final rule maintains existing 24 CFR 5.2005(a)(4), which says that the HUD-required lease, lease addendum, or tenancy addendum must include a description of specific protections for victims of VAWA crimes, for programs covered by VAWA prior to the 2013 reauthorization. Further, § 982.53(e) specifies that the PHA must apply VAWA protections, which includes the provision of the notice of VAWA rights and certification form with notification of eviction.

Rule Change: Sections 880.504(f), 880.607(c)(5), 882.511(g), 883.605, 884.216(c), 884.223(f), 886.128, 886.132, 886.328, 886.329(f), 891.575(f), 891.610(c), 891.630(c), 960.103(d), 966.4(a)(1)(vi), 982.53(e), and 982.553(e) are revised to generally state that 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

This final rule adds § 983.253(a)(4), which says that in selecting tenants, an owner must comply with HUD's regulations in 24 CFR part 5, subpart L (Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

This rule amends § 982.207(b)(4) (preferences for victims of domestic violence in the housing choice voucher program), as well as § 960.206(b)(4) (on preferences for victims of domestic violence in public housing) to clarify that preferences may be established not only for victims of domestic violence, but also for victims of dating violence, sexual assault, or stalking.

Comment: Portability requirements should not be overly restrictive for victims of sexual assault. A commenter said the HUD rules on portability of vouchers allow a victim of sexual assault to be protected if the assault occurred within the prior 90 days and on the project premises. The commenter said this requirement is too restrictive because the presence or proximity of an offender can cause continued or new safety concerns for the victim after 90 days and PHAs should be encouraged to apply a longer time frame when necessary. The commenter recommended amending § 982.353 to say it does not prohibit a PHA or owner from increasing the protections for victims of sexual assault by increasing the time period within which the sexual assault occurred or expanding the location within which the sexual assault occurred.

HUD Response: Section 982.314(b)(4) of the proposed rule, which as described earlier, has been redesignated as § 982.354(b)(4) following publication of HUD's August, 2015 Portability Rule at 80 FR 50564, follows the transfer provisions in VAWA 2013 and this rule. The provision applies to victims of sexual assault if they either reasonably believe they are threatened with imminent harm from further violence if they remain in the unit, or if the sexual assault occurred on the premises during the 90-calendar-day period preceding the family's move or request to move. Therefore, victims of sexual assault who have safety concerns might be able to move under this provision even if the sexual assault occurred more than 90 days before the move or the request to move.

Rule Change: HUD revises redesignated § 982.354(b)(4) in this final rule to clarify that the provision applies if the family or a member of the family, is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

Comment: Certain public housing and voucher program regulations are unclear. A commenter said proposed §§ 982.314, 982.315, and 982.353 are overly complicated in that housing providers may need to determine if a move is necessary to protect health and safety; if a family believed that the move was for that purpose; and if family members believed that they were in imminent threat of harm, and housing providers need guidance on this. Another commenter questioned the use of the words "applicable" and "allegedly" in proposed § 960.103(d), and said that use of the word "allegedly" raises issues about whether acts should first be proven. A commenter asked HUD to distinguish more clearly a PHA's responsibilities under tenant-based and project-based rental assistance programs.

HUD Response: As noted earlier in this preamble, this final rule revises § 960.103(d), which no longer includes the words "applicable" or "allegedly." Covered housing providers must consider tenants and applicants to be victims of domestic violence, dating violence, sexual assault, or stalking if they submit documentation in accordance with § 5.2007 of this rule. In addition, as stated earlier in this preamble, HUD will provide guidance on the responsibilities of housing providers in different HUD programs where necessary.

Comment: The rule may discourage owners from participating in the HCV program. A commenter said proposed §§ 982.53, 982.310, 982.314 contain clarifications as to which responsibilities for compliance rest with the PHA and which ones rest with the owner. The commenter said that while the burden is on the PHA, the impact on the owner may still reduce the number of participating owners.

HUD Response: HUD has sought to minimize the burden on owners participating in the HCV program while still adhering to the requirements of VAWA.

Comment: Ensure regulatory policies are incorporated in PHA documents. A commenter stated that proposed § 982.315(a)(2) states in part that the PHA must ensure that the victim retains assistance. The commenter said this language should be mandatory in administrative plans and other policies.

HUD Response: PHAs may incorporate the language of § 982.315(a)(2) or similar language into their administrative plans. PHAs must comply with all HCV program requirements whether or not they are specified in their administrative plans, and HUD does not mandate that all applicable regulations are included in plans.

Comment: The regulations should incorporate proposed guidance on VAWA in the HUD–VASH program. Commenters said HUD should incorporate into the proposed regulations the guidance it has issued in its Q&As on the HUD–VASH program; specifically, that in cases where the VASH voucher recipient has been terminated for committing a VAWA act, the remaining victim should be issued

a Section 8 voucher if one is available, or, if one is not available, should be authorized to continue utilizing the VASH voucher up until the voucher's turnover.

HUD Response: Guidance is generally not appropriate for regulatory text. The regulatory text is to advise what actions are required. As HUD has stated throughout the preamble, HUD intends to supplement its VAWA regulations with guidance.

c. FHA Programs

Comment: Ensure that VAWA protections apply to all parts of the Section 236 and 221(d)(3) and (d)(5) BMIR programs. A commenter said the program regulations for the Section 236 program do not explicitly cross reference to the regulations in 24 CFR part 200, and recommended that in 24 CFR 236.1, HUD insert a cross-reference to proposed § 200.38. The commenter also said the eviction rules in 24 CFR part 247 that are explicitly made applicable to the Section 236, 221(d)(3) & (d)(5) BMIR, and 202 programs by § 247.2 must be amended to include VAWA protections, particularly the primary rule governing good cause for eviction at 24 CFR 247.3.

HUD Response: Section 200.38 explicitly provides that VAWA applies to the Section 236 program and the cross-reference in § 236.1 is unnecessary. For greater clarity, however, this rule adds a provision in § 247.1 that notes that covered housing providers are subject to VAWA requirements. HUD also notes that while VAWA applies to Section 221(d)(3)/221(d)(5) and Section 236, these programs are no longer active programs (*i.e.* no new grants are being distributed). However, there may be a few of such projects still in existence and a number of section 236 projects enter new contracts with HUD when they decouple their Interest Reduction Payment (IRP), enter into a five-year use agreement extension required in an IRP decoupling, or choice to participate in RAD. Many 221(d)(3)/(d)(5) and 236 projects also receive Section 8 funding. In the case that a project is participating in RAD or receives Section 8 funding, the requirements for those programs would govern the treatment of tenants for purposes of VAWA. In cases where there is no Section 8 funding, and a 236 project is entering into a new contract with HUD, the owner must ensure that VAWA requirements are being followed.

Rule Change: Section 247.1 (Applicability) is revised to include a paragraph explaining that landlords of subsidized projects that are listed as covered housing programs in 24 CFR 5.2003 must comply with 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

d. Multifamily Programs

Comment: Section 811 regulations should allow for continued assistance in the event of a VAWA incident. A commenter said that, for Section 811, HUD should provide a period of stability for those households that have experienced domestic violence and should amend its regulations and guidance to state that if the qualifying tenant leaves the unit, the owner can continue to receive the assistance for the remaining members of the household during the requalification period. The commenter said this approach would align with the change that HUD proposed to make for HOPWA program, where previously continuance of assistance was only allowed in the case of the death of the qualified tenant.

HUD Response: The HOPWA program allows for tenants to retain assistance under certain circumstances when the qualifying tenant no longer resides in the unit, but, as explained earlier in this preamble, the Section 811 program does not provide that flexibility.

Comment: Integrate VAWA into the program-specific regulations. A commenter recommended changing the program-specific regulations at 24 CFR parts 880, 882, 883, 884, 886, and 891 so that the VAWA requirements are fully implemented in all the programs.

HUD Response: The references to 24 CFR part 5, subpart L, in these regulations ensure that VAWA requirements are implemented in specific programs.

Comment: Clarify VAWA protections in project-based section 8 regulations and lease addenda. A commenter said that for all project-based section 8 programs, HUD should identify correctly who the covered housing provider(s) are, and the VAWA lease addenda for these programs should include copies of the VAWA rights notice and certification form, as well as language informing tenants that they must be given the notice and form at the three junctures required by the statute.

HUD Response: This final rule revises the definition of covered housing provider for the project-based section 8 programs. As also discussed earlier in the preamble, this final rule maintains existing 24 CFR 5.2005(a)(4) for programs covered by VAWA prior to the 2013 reauthorization, which include the project-based section 8 regulations. This provision states that 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 24 CFR part 5, subpart L.

e. Cross-Cutting Program Comments

Comment: The "family break up" rule set forth in the HCV and HOME regulations should be included in the rules for all of the HUD-covered housing programs. A commenter said the most critical aspect of the HCV "family break up" rule is that it clearly states that if the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the housing provider must ensure that the victim retains the assistance. The commenter said the factors to be considered in the event of family breakup in making the decision to allocate assistance should be included in VAWA rules for all HUD-covered housing programs. The commenter said the HOME rule at proposed § 92.359 permits the housing provider to determine that after a family breakup, both newly formed families could receive assistance.

HUD Response: HUD agrees that clear standards would help to expedite allocation of a family's TBRA and preserve that assistance for the victim when a family receiving TBRA separates during an emergency transfer. Therefore, this final rule provides that, where applicable, the emergency transfer plan must describe policies for a tenant who has tenant-based rental assistance and qualifies for an emergency transfer to move quickly with that assistance. The program rules for the ESG and CoC programs are also amended to ensure that the emergency transfer plan addresses what happens with respect to any family member(s) excluded from the emergency transfer. The final rule further specifies that when a family receiving TBRA splits via bifurcation the family's TBRA will continue for the family member(s) who qualified for the VAWA remedy.

For HOME, this rule, similar to ESG and CoC program language, clarifies that if a family living in a HOME-assisted rental unit separates under the rule's bifurcation provisions, the remaining tenant(s) are eligible to remain in the HOME-assisted unit, and if a family who is receiving HOME tenant-based rental assistance separates under the rule's bifurcation provisions, the remaining tenant(s) will retain the HOME tenant-based rental assistance and the participating jurisdiction must determine whether the tenant that was removed from the unit will receive HOME tenant-based rental assistance.

Rule Change: HUD changes the emergency transfer provision in 24 CFR 5.2005(e)(9) to provide that, where applicable, the emergency transfer plan must describe policies for a tenant who has tenant-based rental assistance and qualifies for an emergency transfer to move quickly with that assistance. HUD also makes related changes to the ESG and CoC regulations to both protect the victim's housing or assistance and address what happens to the non-transferring family member(s) when a family separates in those programs at §§ 576.409(d)–(e) and 578.99(j)(7)–(8).

Comment: Ensure consistent VAWA occupancy requirements and rights. A Commenter said the proposed rules conforming VAWA to the individual programs fairly consistently address the applicability of VAWA at admission, eviction, and termination, but there is less consistency to the applicability of VAWA to occupancy rights. The commenter recommended that HUD ensure that language concerning occupancy requirements and rights under VAWA is consistent.

HUD Response: HUD appreciates commenter's concern and has maintained consistency across program requirements where possible, while trying to afford victims of domestic violence, dating violence, sexual assault, and stalking, with the greatest level of protections possible under both VAWA and particular program requirements.

Comment: Provided that in the event of conflict with other regulations, VAWA regulations control. A commenter asked HUD to adopt an overarching policy statement indicating that any interpretation of a covered housing program's regulations should include a presumption that the VAWA regulations govern in the event of conflict. The commenter said many HUD programs have regulations with multiple or overlapping provisions relating to admission, selection, and occupancy rights, eviction and termination, and HUD's proposed VAWA rule did not apply VAWA requirements to all. The commenter said that to ensure that VAWA is fully implemented in all aspects of these programs; each program regulation should have a clause stating that in the event of conflict, the VAWA regulations shall control.

HUD Response: Unlike VAWA 2005, which amended the laws for public housing and Section 8 programs, VAWA 2013 did not amend the statutory authority for any housing program, and therefore HUD is unable to include the language the commenters recommend.

III. Paperwork Reduction Act

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) for review and approval.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled, "Regulatory Planning and Review"). This rule was determined to be a "significant regulatory action," as defined in section 3(f) of the order but not economically significant, as provided in section 3(f)(1) of the order. In accordance with the Executive order, HUD has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting primarily from the statute's documentation requirements.

Need for Regulatory Action

This regulatory action is required to conform the provisions of HUD's VAWA regulations to those of title VI of VAWA 2013, codified at 42 U.S.C. 14043e *et seq.* The 2013 statutory changes both expand the HUD programs to which VAWA applies and expand the scope of the VAWA protections. Therefore, this regulatory action is necessary for HUD's regulations to reflect and implement the full protection and coverage of VAWA.

The importance of having HUD's VAWA regulations updated cannot be overstated. The expansion of VAWA 2013 to other HUD rental assistance programs emphasizes the importance of protecting victims of domestic violence, dating violence, sexual assault, and stalking, in all HUD housing offering rental assistance. By having all covered housing providers be aware of the protections of VAWA and the actions that they must take to provide such protections if needed, HUD signals to all tenants in the covered housing programs that HUD is an active part of the national response to prevent domestic violence, dating violence, sexual assault, and stalking.

In addition to expanding the applicability of VAWA to HUD programs beyond HUD's Section 8 and public housing programs, VAWA 2013 expands the protections provided to victims of domestic violence, dating violence, sexual assault, and stalking, which must be incorporated in HUD's codified regulations. For example, under VAWA 2013, victims of sexual assault are specifically protected under VAWA for the first time in HUD-covered programs. Another example is the statutory replacement of the term "immediate family member" with the term "affiliated individual." Where HUD's current VAWA regulations provided that a non-perpetrator tenant would be protected from being evicted or denied housing because of acts of domestic violence, dating violence, or stalking committed against a family member (see current 24 CFR 5.2005(c)(2)), under VAWA 2013, the same protections apply to a non-perpetrator tenant because of acts of domestic violence, dating violence, sexual assault, or stalking committed against an "affiliated individual." The replacement of "immediate family member" with "affiliated individual" reflects differing domestic arrangements and must be incorporated in HUD's regulations.

VAWA 2013 also increases protection for victims of domestic violence, dating violence, sexual assault, and stalking by requiring HUD to develop a model emergency transfer plan to guide covered housing providers in the development and adoption of their own emergency transfer plans. VAWA also changes the procedures for the notification to tenants and applicants of their occupancy rights under VAWA. Prior to VAWA 2013, public housing agencies administering HUD's public housing and Section 8 assistance were responsible for the development and issuance of such notification to tenants. Under VAWA 2013, HUD must develop the notice. Thus, HUD's VAWA regulations must reflect that HUD will prescribe the notice of occupancy rights to be distributed by covered housing providers.

In addition, certain provisions of VAWA 2013, particularly those pertaining to emergency transfer plans and lease bifurcations, require further clarification in order to be implemented in HUD programs. For example, this regulatory action is needed to explain whether and what documentation requirements may apply in the case of emergency transfers, and what a reasonable time period for a tenant to establish eligibility for housing under a covered housing program, or to find new housing, after a lease bifurcation would be.

Costs and Benefits

As noted in the Executive Summary of this preamble, this rule provides several benefits, including expanding

the protections of VAWA to applicants and tenants beyond those in HUD's public housing and Section 8 programs; strengthening the rights, including confidentiality rights, of victims of domestic violence, dating violence, sexual assault, and stalking in HUD-covered programs; and possibly minimizing the loss of housing by such victims through the bifurcation of lease and emergency transfer plan provisions. The notice of occupancy rights to be distributed to all applicants and tenants signals the concern of HUD and the covered housing provider about the serious consequences of domestic violence, dating violence, sexual assault, and stalking on the individual tenant victim and, at times, the victim's family or individuals affiliated to the victim, and confirms the protections to be afforded to the tenant victim if such violence occurs. The notice of occupancy rights is presented with the goal of helping applicants and tenants understand their occupancy rights under VAWA. Awareness of such rights is an important benefit.

The costs of the regulations, as also noted earlier in this preamble, are primarily paperwork costs. These are the costs of providing notice to applicants and tenants of their occupancy rights under VAWA, the preparation of an emergency transfer plan, and documenting the incident or incidents of domestic violence, dating violence, sexual assault, and stalking. The costs, however, are minimized to some extent by the fact that VAWA 2013 requires HUD to prepare the notice of occupancy rights, the certification form, and the model emergency transfer plan. In addition, as discussed in the preamble, costs to covered housing providers will be minimized because HUD will translate the notice of occupancy rights and certification form into the most popularly spoken languages in the United States, and HUD has prepared a model transfer request form that housing providers and tenants requesting emergency transfer may use.

In addition to the costs related to these documents, which HUD submits is not significant given HUD's role in creating the documents, there may be a cost with respect to a tenant claiming the protections of VAWA and a covered housing provider responding to such incident. This cost will vary, however, depending on the incidence of claims in a given year and the nature and complexity of the situation. The costs will also depend on the supply and demand for the available and safe units in the situation of an emergency transfer request. HUD's covered housing providers did not confront such "movement" costs under VAWA 2005, so it remains to be seen, through implementation of VAWA 2013, if the transfer to a safe and available unit can be realized in most situations in which such a request is made, and the costs a housing provider may face as a result.

The reporting and recordkeeping matrix that accompanies HUD's Paperwork Reduction Act statement, provided above, provides HUD's estimate of the workload associated with the reporting and recordkeeping requirements.

The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the telephone number above via TTY by calling the Federal Relay Service, toll-free, at 800–877–8339.

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule implements the protections of VAWA 2013 in all HUD-covered housing programs. These protections are statutory and statutorily directed to be implemented. The statute does not allow for covered housing providers who are, or may qualify as small entities to not provide such protections to its applicants or tenants or provide fewer protections than covered entities that are larger entities. However, with respect to processes that may be found to be burdensome to small covered housing providers—such as bifurcation of the lease and the emergency transfer plan—bifurcation of the lease is a statutory option not a mandate, and transferring a tenant under the emergency transfer plan is contingent upon whether a housing provider has a safe and available unit to which a victim of domestic violence, dating violence, sexual assault, or stalking can transfer may seek transfer. Therefore, small entities are not required to carry out the bifurcation option, and emergency transfers may not be feasible given the fewer number of units generally managed by smaller entities.

Environmental Impact

This rule involves a policy document that sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3) this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order. The scope of this rule is limited to HUD-covered housing programs, as such term is defined in the rule.

Unfunded Mandates Reform Act

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.103, 14.135, 14.157, 14.181, 14.195, 14.231, 14.267, 14.268, 14.239, 14.241, 14.850, 14.856, and 14.871.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social

security, Unemployment compensation, Wages.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping, Social Security, Unemployment compensation, Wages.

24 CFR Part 247

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

24 CFR Part 574

Community facilities, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 578

Community development, Community facilities, Grant programs—housing and community development, Grant program—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 880

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

24 CFR Part 882

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

24 CFR Part 883

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

24 CFR Part 884

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

24 CFR Part 886

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

24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 905

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

24 CFR Part 960

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

24 CFR Part 966

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

24 CFR Part 982

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

24 CFR Part 983

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

Accordingly, for the reasons stated in the preamble, and in accordance with HUD's authority in 42 U.S.C. 3535(d), HUD amends 24 CFR parts 5, 92, 93, 200, 247, 574, 576, 578, 880, 882, 883, 884, 886, 891, 905, 960, 966, 982, and 983, as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and 42 U.S.C. 14043e *et seq.*, Sec. 601, Pub. L. 113–4, 127 Stat. 101.

■ 2. Revise Subpart L to read as follows:

Subpart L—Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Sec.
5.2001 Applicability.
5.2003 Definitions.
5.2005 VAWA protections.
5.2007 Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking.
5.2009 Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking.
5.2011 Effect on other laws.

Subpart L—Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

§ 5.2001 Applicability.

(a) This subpart addresses the protections for victims of domestic violence, dating violence, sexual assault, or stalking who are applying for, or are the beneficiaries of, assistance under a HUD program covered by the Violence Against Women Act (VAWA), as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e *et seq.*) ("covered housing program," as defined in § 5.2003). Notwithstanding the title of the statute, protections are not limited to women but cover victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation. Consistent with the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a), victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD programs must also be operated consistently with HUD's Equal Access Rule at § 5.105(a)(2), which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

(b)(1) The applicable assistance provided under a covered housing program generally consists of two types of assistance (one or both may be provided): Tenant-based rental assistance, which is rental assistance that is provided to the tenant; and project-based assistance, which is assistance that attaches to the unit in which the tenant resides. For project-based assistance, the assistance may consist of such assistance as operating assistance, development assistance, and mortgage interest rate subsidy.

(2) The regulations in this subpart are supplemented by the specific regulations for the HUD-covered housing programs listed in § 5.2003. The program-specific regulations address how certain VAWA requirements are to be implemented and whether they can be implemented (for example, reasonable time to establish eligibility for assistance as provided in § 5.2009(b)) for the applicable covered housing program, given the statutory and regulatory framework for the program. When there is conflict between the regulations of this subpart and the program-specific regulations, the program-specific regulations govern. Where assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

§ 5.2003 Definitions.

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

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

Affiliated individual, with respect to an individual, means:

(1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or

(2) Any individual, tenant, or lawful occupant living in the household of that individual.

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

Covered housing program consists of the following HUD programs:

(1) Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.

(2) Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.

(3) Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 *et seq.*), with implementing regulations at 24 CFR part 574.

(4) HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 *et seq.*), with implementing regulations at 24 CFR part 92.

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

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

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

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

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

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

Dating violence means violence committed by a person:

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

interaction between the persons involved in the relationship.

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

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

(1) Fear for the person's individual safety or the safety of others; or

(2) Suffer substantial emotional distress.

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

§ 5.2005 VAWA protections.

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

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

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

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

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

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

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

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

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

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

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

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

(4) For the Housing Choice Voucher program under 24 CFR part 982, the project-based voucher program under 24 CFR part 983, the public housing admission and occupancy requirements under 24 CFR part 960, and renewed funding or leases of the Section 8 project-based program under 24 CFR parts 880, 882, 883, 884, 886, as well as project-based section 8 provided in connection with housing under part 891, the HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, sexual assault, or stalking, as provided in this subpart.

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

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

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

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

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

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

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

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

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

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

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

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

(4) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section should be utilized

by a covered housing provider only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

(e) *Emergency transfer plan.* Each covered housing provider, as identified in the program-specific regulations for the covered housing program, shall adopt an emergency transfer plan, no later than June 14, 2017 based on HUD's model emergency transfer plan, in accordance with the following:

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

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

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

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

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

(i) The tenant expressly requests the transfer; and

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

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

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

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

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

(6) The emergency transfer plan must describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available, and these policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.

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

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

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

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

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

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

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

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

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

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

(12) The covered housing provider must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. Requests and outcomes of such requests must be reported to HUD annually.

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

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

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

(2)(i) If an applicant or tenant does not provide the documentation requested under paragraph (a)(1) of this section within 14 business days after the date that the tenant receives a request in writing for such documentation from

the covered housing provider, nothing in § 5.2005 or § 5.2009, which addresses the protections of VAWA, may be construed to limit the authority of the covered housing provider to:

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

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

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

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

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

(b) *Permissible documentation and submission requirements.* (1) In response to a written request to the applicant or tenant from the covered housing provider, as provided in paragraph (a) of this section, the applicant or tenant may submit, as documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking, any one of the following forms of documentation, where it is at the discretion of the tenant or applicant which one of the following forms of documentation to submit:

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

(ii) A document:

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

(B) Signed by the applicant or tenant; and

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

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

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

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

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

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

(1) The covered housing provider shall not allow any individual administering assistance on behalf of the covered housing provider or any persons within their employ (*e.g.*, contractors) or in the employ of the covered housing provider to have access to confidential information unless explicitly authorized by the covered housing provider for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

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

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

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

(iii) Otherwise required by applicable law.

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

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

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

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

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

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

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

(2) *Reasonable time to establish eligibility assistance or find alternative housing.* (i) If a covered housing provider exercises the option to bifurcate a lease as provided in paragraph (a) of this section, and the individual who was evicted or for whom assistance was terminated was the eligible tenant under the covered housing program, the covered housing provider shall provide to any remaining tenant or tenants that were not already eligible a period of 90 calendar days from the date of bifurcation of the lease to:

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

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

(C) Find alternative housing.

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

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

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

§ 5.2011 Effect on other laws.

(a) 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, sexual assault, or stalking.

(b) All applicable fair housing and civil rights statutes and requirements apply in the implementation of VAWA requirements. See § 5.105(a).

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

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

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

■ 4. In § 91.520, revise paragraphs (e), (f), (g), and (h) to read as follows:

§ 91.520 Performance reports.

* * * * *

(e) *HOME.* For HOME participating jurisdictions, the report shall include the results of on-site inspections of affordable rental housing assisted under the program to determine compliance with housing codes and other applicable regulations, an assessment of the jurisdiction's affirmative marketing actions and outreach to minority-owned and women-owned businesses, data on the amount and use of program income for projects, including the number of projects and owner and tenant characteristics, and data on emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 92.359, pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

(f) *HOPWA.* For jurisdictions receiving funding under the Housing Opportunities for Persons With AIDS program, the report must include the number of individuals assisted and the types of assistance provided, as well as data on emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

(g) *ESG.* For jurisdictions receiving funding under the ESG program provided in 24 CFR part 576, the report, in a form prescribed by HUD, must include the number of persons assisted, the types of assistance provided, the project or program outcomes data measured under the performance standards developed in consultation with the Continuum(s) of Care, and data on emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 576.409, pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

(h) *HTF.* For jurisdictions receiving HTF funds, the report must describe the HTF program's accomplishments, and the extent to which the jurisdiction complied with its approved HTF allocation plan and the requirements of 24 CFR part 93, as well as data on emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 93.356, pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 5. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

■ 6. In § 92.253, paragraph (a) is revised, the word "and" is removed from the end of paragraph (d)(5), the period is removed and "; and" is added at the end of paragraph (d)(6), and paragraph (d)(7) is added to read as follows:

§ 92.253 Tenant protections and selection.

(a) *Lease.* There must be a written lease between the tenant and the owner of rental housing assisted with HOME funds that is for a period of not less than 1 year, unless by mutual agreement between the tenant and the owner a shorter period is specified. The lease must incorporate the VAWA lease term/addendum required under § 92.359(e), except as otherwise provided by § 92.359(b).

* * * * *

(d) * * *

(7) Comply with the VAWA requirements prescribed in § 92.359.

■ 7. Section 92.359 is added to subpart H to read as follows:

§ 92.359 VAWA requirements.

(a) *General.* (1) The Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, apply to all HOME tenant-based rental assistance and rental housing assisted with HOME funds, as supplemented by this section.

(2) For the HOME program, the "covered housing provider," as this term is used in HUD's regulations in 24 CFR part 5, subpart L, refers to:

(i) The housing owner for the purposes of 24 CFR 5.2005(d)(1), (d)(3), and (d)(4) and § 5.2009(a); and

(ii) The participating jurisdiction and the owner for purposes of 24 CFR 5.2005(d)(2), 5.2005(e), and 5.2007, except as otherwise provided in paragraph (g) of this section.

(b) *Effective date.* The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction solely because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking became applicable upon enactment of VAWA 2013 on March 7, 2013. Compliance with the VAWA regulatory requirements under this section and 24 CFR part 5, subpart L, are

required for any tenant-based rental assistance or rental housing project for which the date of the HOME funding commitment is on or after *December 16, 2016.*

(c) *Notification requirements.* The participating jurisdiction must provide a notice and certification form that meet the requirements of 24 CFR 5.2005(a) to the owner of HOME-assisted rental housing.

(1) *For HOME-assisted units.* The owner of HOME-assisted rental housing must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for a HOME-assisted unit at the time the applicant is admitted to a HOME-assisted unit, or denied admission to a HOME-assisted unit based on the owner's tenant selection policies and criteria. The owner of HOME-assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HOME-assisted unit.

(2) *For HOME tenant-based rental assistance.* The participating jurisdiction must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for HOME tenant-based rental assistance when the applicant's HOME tenant-based rental assistance is approved or denied. The participating jurisdiction must also provide the notice and certification form described in 24 CFR 5.2005(a) to a tenant receiving HOME tenant-based rental assistance when the participating jurisdiction provides the tenant with notification of termination of the HOME tenant-based rental assistance, and when the participating jurisdiction learns that the tenant's housing owner intends to provide the tenant with notification of eviction.

(d) *Bifurcation of lease requirements.* For the purposes of this part, the following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):

(1) If a family living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit.

(2) If a family who is receiving HOME tenant-based rental assistance separates under 24 CFR 5.2009(a), the remaining tenant(s) will retain the HOME tenant-based rental assistance. The participating jurisdiction must determine whether the tenant that was removed from the unit will receive HOME tenant-based rental assistance.

(e) *VAWA lease term/addendum.* The participating jurisdiction must develop a VAWA lease term/addendum to incorporate all requirements that apply to the owner or lease under 24 CFR part 5, subpart L, and this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if the participating jurisdiction determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). When HOME tenant-based rental assistance is provided, the lease term/addendum must require the owner to notify the participating jurisdiction before the owner bifurcates the lease or provides notification of eviction to the tenant. If HOME tenant-based rental assistance is the only assistance provided (*i.e.*, the unit is not receiving project-based assistance under a covered housing program, as defined in 24 CFR 5.2003), the VAWA lease term/addendum may be written to expire at the end of the rental assistance period.

(f) *Period of applicability.* For HOME-assisted rental housing, the requirements of this section shall apply to the owner of the housing for the duration of the affordability period. For HOME tenant-based rental assistance, the requirements of this section shall apply to the owner of the tenant's housing for the period for which the rental assistance is provided.

(g) *Emergency Transfer Plan.* (1) The participating jurisdiction must develop and implement an emergency transfer plan and must make the determination of whether a tenant qualifies under the plan. The plan must meet the requirements in 24 CFR 5.2005(e), as supplemented by this section.

(2) For the purposes of § 5.2005(e)(7), the required policies must specify that for tenants who qualify for an emergency transfer and who wish to make an external emergency transfer when a safe unit is not immediately available, the participating jurisdiction must provide a list of properties in the jurisdiction that include HOME-assisted units. The list must include the following information for each property: The property's address, contact information, the unit sizes (number of bedrooms) for the HOME-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HOME-assisted units. In addition, the participating jurisdiction may:

(i) Establish a preference under the participating jurisdiction's HOME program for tenants who qualify for emergency transfers under 24 CFR 5.2005(e);

(ii) Provide HOME tenant-based rental assistance to tenants who qualify for emergency transfers under 24 CFR 5.2005(e); or

(iii) Coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units.

■ 8. Section 92.504(c) is amended by adding a sentence to the end of paragraphs (c)(1)(vi) and (c)(2)(iv), adding paragraph (c)(3)(v)(F), and adding a sentence to the end of paragraph (c)(4)(ii), to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

* * * * *

(c) * * *

(1) * * *

(vi) * * * If HOME funds are provided for development of rental housing or provision of tenant-based rental assistance, the agreement must set forth all obligations the State imposes on the State recipient in order to meet the VAWA requirements under § 92.359, including notice obligations and any obligations with respect to the emergency transfer plan (including whether the State recipient must develop its own plan or follow the State's plan).

* * * * *

(2) * * *

(iv) * * * If HOME funds are being provided to develop rental housing or provide tenant-based rental assistance, the agreement must set forth all obligations the participating jurisdiction imposes on the subrecipient in order to meet the VAWA requirements under § 92.359, including notice obligations and obligations under the emergency transfer plan.

* * * * *

(3) * * *

(v) * * *

(F) If HOME funds are being provided to develop rental housing, the agreement must set forth all obligations the participating jurisdiction imposes on the owner in order to meet the VAWA requirements under § 92.359, including the owner's notice obligations and owner obligations under the emergency transfer plan.

* * * * *

(4) * * *

(ii) * * * If applicable to the work under the contract, the agreement must set forth all obligations the participating jurisdiction imposes on the contractor in order to meet the VAWA requirements under § 92.359, including any notice obligations and any obligations under the emergency transfer plan.

* * * * *

■ 9. In § 92.508, paragraph (a)(7)(x) is added to read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(7) * * *

(x) Records of emergency transfers requested under 24 CFR 5.2005(e) and 92.359 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of those requests.

* * * * *

PART 93—HOUSING TRUST FUND

■ 10. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12 U.S.C. 4568.

■ 11. In § 93.303, paragraph (a) is revised, paragraph (d)(5) is amended by removing the "and" at the end, paragraph (d)(6) is amended by removing the period and adding "; and" in its place, and paragraph (d)(7) is added to read as follows:

§ 93.303 Tenant protections and selection.

(a) *Lease.* There must be a written lease between the tenant and the owner of rental housing assisted with HTF funds that is for a period of not less than one year, unless by mutual agreement between the tenant and the owner a shorter period is specified. The lease must incorporate the VAWA lease term/addendum required under § 93.356(d).

* * * * *

(d) * * *

(7) Comply with the VAWA requirements prescribed in § 93.356.

■ 12. Section 93.356 is added to subpart H to read as follows:

§ 93.356 VAWA requirements.

(a) *General.* (1) The Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, apply to all rental housing assisted with HTF funds, as provided in this section.

(2) For the HTF program, the "covered housing provider," as this term is used in HUD's regulations in 24 CFR part 5, subpart L, refers to:

(i) The owner of HTF-assisted rental housing for the purposes of 24 CFR 5.2005(d)(1), (2), (3), and (4) and 5.2009(a); and

(ii) The owner and the grantee for purposes of 24 CFR 5.2005(e) and 5.2007, except as otherwise provided in paragraph (f) of this section.

(b) *Notification requirements.* The grantee must provide a notice and certification form that meet the requirements of 24 CFR 5.2005(a) to the owner of HTF-assisted rental housing. The owner of HTF-assisted rental housing must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for a HTF-assisted unit at the time the applicant is admitted to an HTF-assisted unit, or denied admission to a HTF-assisted unit based on the owner's tenant selection policies and criteria. The owner of HTF-assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HTF-assisted unit.

(c) *Bifurcation of lease requirements.* For purposes of this part, the requirements of 24 CFR 5.2009(b) do not apply. If a family who lives in a HTF-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HTF-assisted unit.

(d) *VAWA lease term/addendum.* The grantee must develop a VAWA lease term/addendum to incorporate all requirements that apply to the owner or lease of HTF-assisted rental housing under 24 CFR part 5, subpart L, and this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if the grantee determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e).

(e) *Period of applicability.* The requirements of this section shall apply to the owner of the HTF-assisted rental housing for the duration of the affordability period.

(f) *Emergency transfer plan.* The grantee must develop and implement an emergency transfer plan and must make the determination of whether a tenant qualifies for an emergency transfer under the plan. The plan must meet the requirements in 24 CFR 5.2005(e), where, for the purposes of § 5.2005(e)(7), the required policies must specify that for tenants who qualify for an emergency transfer and who wish to make an external emergency transfer when a safe unit is not immediately available, the grantee must provide a list of properties in the jurisdiction that include HTF-assisted units. The list must include the following information for each property: The property's address, contact information, the unit sizes (number of bedrooms) for the HTF-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HTF-assisted units. In addition, the grantee may:

(1) Establish a preference under the grantee's HTF program for tenants who qualify for emergency transfers under 24 CFR 5.2005(e); and

(2) Coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units.

■ 13. In § 93.404, paragraphs (c)(1)(vi) and (c)(2)(vi) are revised to read as follows:

§ 93.404 Grantee responsibilities; written agreements; onsite inspections; financial oversight.

* * * * *

(c) * * *

(1) * * *

(vi) *Other program requirements.* The agreement must require the subgrantee to carry out each project in compliance with all Federal laws and regulations described in §§ 93.350 through 93.356. The agreement must set forth all obligations the grantee imposes on the subgrantee in order to meet the VAWA requirements under § 93.356, including notice obligations and obligations under the emergency transfer plan.

* * * * *

(2) * * *

(vi) *Other program requirements.* The agreement must require the eligible recipient to carry out each project in compliance with all Federal laws and regulations described in §§ 93.350 through 93.356. The agreement must set forth all obligations the grantee imposes on the recipient in order to meet the VAWA requirements under § 93.356, including notice obligations and obligations under the emergency transfer plan.

* * * * *

■ 14. In § 93.407, add paragraph (a)(5)(ix) to read as follows:

§ 93.407 Recordkeeping.

(a) General. * * *

(5) * * *

(ix) Documentation on emergency transfers requested under 24 CFR 5.2005(e) and § 93.356 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 15. The authority citation for Part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21 and 42 U.S.C. 3535(d).

■ 16. Add § 200.38 to read as follows:

§ 200.38 Protections for victims of domestic violence.

(a) The requirements for protection for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to programs administered under section 236 and under sections 221(d)(3) and (d)(5) of the National Housing Act, as follows:

(1) Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221. The Section 221(d)(3) BMIR program insured and subsidized mortgage loans to facilitate new construction or substantial rehabilitation of multifamily rental cooperative housing for low- and moderate-income families. The program is no longer active, but Section 221(d)(3) BMIR properties that remain in existence are covered by VAWA. Coverage of section 221(d)(3) and (d)(5) BMIR housing does not include section 221(d)(3) and (d)(5) BMIR projects that refinance under section 223(a)(7) or 223(f) of the National Housing Act where the interest rate is no longer determined under section 221(d)(5).

(2) Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z–1), with implementing regulations at 24 CFR part 236. Coverage of the section 236 program includes not only those projects with FHA-insured project mortgages under section 236(j), but also non-FHA-insured projects that receive interest reduction payments ("IRP") under section 236(b) and formerly insured section 236 projects that continue to receive interest reduction payments through a "decoupled" IRP contract under section 236(e)(2). Coverage also includes projects that receive rental assistance payments authorized under section 236(f)(2).

(b) For the programs administered under paragraph (a) of this section, "covered housing provider" as such term is used in 24 CFR part 5, subpart L, refers to the mortgagor, or owner, as applicable.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

■ 17. The authority citation for part 247 continues to read as follows:

Authority: 12 U.S.C. 1701q, 1701s, 1715b, 1715*l*, and 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

■ 18. In § 247.1, redesignate the undesignated paragraph as paragraph (a) and add paragraph (b) to read as follows:

§ 247.1 Applicability.

* * * * *

(b) Landlords of subsidized projects that have been assisted under a covered housing program listed in 24 CFR 5.2003 must comply with 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), as described in § 200.38.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 19. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 20. In § 574.310, revise paragraph (e)(2)(i) to read as follows:

§ 574.310 General standards for eligible housing activities.

* * * * *

(e) * * *

(2) * * * (i) *Basis.* Assistance to participants who reside in housing programs assisted under this part may be terminated if the participant violates program requirements or conditions of occupancy, subject to the VAWA protections in 24 CFR 5.2005(b) and 24 CFR 5.2005(c). Grantees must ensure that supportive services are provided, so that a participant's assistance is terminated only in the most severe cases.

* * * * *

■ 21. Add § 574.460 to subpart E to read as follows:

§ 574.460 Remaining participants following bifurcation of a lease or eviction as a result of domestic violence, dating violence, sexual assault, or stalking.

When a covered housing provider exercises the option to bifurcate a lease, as provided in 24 CFR 5.2009(a), in order to evict, remove, terminate occupancy rights, or terminate assistance to a person with AIDS or related diseases that receives rental assistance or resides in rental housing assisted under the HOPWA program for engaging in criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking, the covered housing provider shall provide the remaining persons residing in the unit a reasonable grace period to establish eligibility to receive HOPWA assistance or find alternative housing. The grantee or project sponsor shall set the reasonable grace period, which shall be no less than 90 calendar days, and not more than one year, from the date of the bifurcation of the lease. Housing assistance and supportive services under the HOPWA program shall continue for the remaining persons residing in the unit during the grace period. The grantee or project sponsor shall notify the remaining persons residing in the unit of the duration of the reasonable grace period and may assist them with information on other available housing programs and with moving expenses.

■ 22. Revise § 574.520(b) to read as follows:

§ 574.520 Performance reports.

* * * * *

(b) *Competitive grants.* A grantee shall submit to HUD annually a report describing the use of the amounts received, including the number of individuals assisted, the types of assistance provided, data on emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests, and any other information that HUD may require. Annual reports are required until all grant funds are expended.

■ 23. Add § 574.530(c) to read as follows:

§ 574.530 Recordkeeping.

* * * * *

(c) Data on emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

■ 24. Add § 574.604 to read as follows:

§ 574.604 Protections for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) *General*—(1) *Applicability of VAWA requirements.* Except as provided in paragraph (a)(2) of this section, the Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), apply to housing assisted with HOPWA grant funds for acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing; new construction; and operating costs, as provided in § 574.300. The requirements set forth in 24 CFR part 5, subpart L, also apply to project-based and tenant-based rental assistance, as provided in §§ 574.300 and 574.320,

and community residences, as provided in § 574.340.

(2) Limited applicability of VAWA requirements. The VAWA requirements set forth in 24 CFR part 5, subpart L do not apply to short-term supported housing, as provided in § 574.330, except that no individual may be denied admission to or removed from the short-term supported housing on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or occupancy.

(3) The terms "affiliated individual," "dating violence," "domestic violence," "sexual assault," and "stalking" are defined in 24 CFR 5.2003.

(b) *Covered housing provider.* As used in this part, the term, "covered housing provider," which is defined in 24 CFR 5.2003, refers to the HOPWA grantee, project sponsor, or housing or facility owner, or manager, as described in this section.

(1)(i) For housing assisted with HOPWA grant funds for acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing; new construction; operating costs; community residences; and project-based rental assistance, the HOPWA grantee is responsible for ensuring that each project sponsor undertakes the following actions (or, if administering the HOPWA assistance directly, the grantee shall undertake the following actions):

(A) Sets a policy for determining the "reasonable grace period" for remaining persons residing in the unit to establish eligibility for HOPWA assistance or find alternative housing, which period shall be no less than 90 calendar days nor more than one year from the date of bifurcation of a lease, consistent with 24 CFR 574.460;

(B) Provides notice of occupancy rights and the certification form at the times listed in paragraph (d) of this section;

(C) Adopts and administers an emergency transfer plan, as developed by the grantee in accordance with 24 CFR 5.2005(e) of this section, and facilitates emergency transfers; and

(D) Maintains the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant's housing location consistent with § 574.440 and 24 CFR 5.2007(c).

(ii)(A) If a tenant seeks VAWA protections, set forth in 24 CFR part 5, subpart L, the tenant must submit such request through the project sponsor (or the grantee if the grantee is directly administering HOPWA assistance). Grantees and project sponsors will work with the housing or facility owner or manager to facilitate protections on the tenant's behalf. Project sponsors must follow the documentation specifications in 24 CFR 5.2007, including the confidentiality requirements in 24 CFR 5.2007(c).

(B) The grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager develops and uses a HOPWA lease addendum with VAWA protections and is made aware of the option to bifurcate a lease in accordance with § 574.460 and 24 CFR 5.2009.

(2)(i) For tenant-based rental assistance, the HOPWA grantee is responsible for ensuring that each project sponsor providing tenant-based rental assistance undertakes the following actions (or, if administering the HOPWA assistance directly, the grantee shall undertake the following actions):

(A) Sets policy for determining the "reasonable grace period" for remaining persons residing in the unit to establish eligibility for HOPWA assistance or find alternative housing, which period shall be no less than 90 calendar days and no more than one year from the date of bifurcation of a lease, consistent with 24 CFR 574.460;

(B) Provides notice of occupancy rights and the certification form at the times listed in paragraph (d) of this section;

(C) Adopts and administers an emergency transfer plan, as developed by the grantee in accordance with 24 CFR 5.2005(e) of this section, and facilitates emergency transfers; and

(D) Maintains the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant's housing location consistent with § 574.440 and 24 CFR 5.2007(c).

(ii)(A) If a tenant seeks VAWA protections set forth in 24 CFR part 5, subpart L, the tenant must submit such request through the project sponsor (or the grantee if the grantee is directly administering HOPWA assistance). The project sponsor will work with the housing owner or manager to facilitate protections on the tenant's behalf. Project sponsors must follow the documentation specifications in 24 CFR 5.2007, including the confidentiality requirements in 24 CFR 5.2007(c). The project sponsor (or the grantee if the grantee is directly administering HOPWA assistance) is also responsible for determining on a case-by-case basis whether to provide new tenant-based rental assistance to a remaining tenant if lease bifurcation or an emergency transfer results in division of the household.

(B) The grantee or project sponsor is responsible for ensuring that the housing owner or manager develops and uses a HOPWA lease addendum with VAWA protections and is made aware of the option to bifurcate a lease in accordance with § 574.460 and 24 CFR 5.2009.

(c) *Effective date.* The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking applied upon enactment of VAWA 2013 on March 7, 2013. For formula grants, compliance with the VAWA regulatory requirements under this section and 24 CFR part 5, subpart L, are required for any project covered under § 574.604(a) for which the date of the HOPWA funding commitment is made on or after *December 16, 2016.* For competitive grants, compliance with the VAWA regulatory requirements under this section and 24 CFR part 5, subpart L, are required for awards made on or after *December 16, 2016.*

(d) *Notification requirements.* (1) As provided in paragraph (b) of this section, the grantee is responsible for ensuring that the notice of occupancy rights and certification form described in 24 CFR 5.2005(a) is provided to each person receiving project-based or tenant-based rental assistance under HOPWA or residing in rental housing assisted under the eligible activities described in § 574.604(a) at the following times:

(i) At the time the person is denied rental assistance or admission to a HOPWA-assisted unit;

(ii) At the time the person is admitted to a HOPWA-assisted unit or is provided rental assistance;

(iii) With any notification of eviction from the HOPWA-assisted unit or notification of termination of rental assistance; and

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

(2) The grantee is responsible for ensuring that, for each tenant receiving HOPWA tenant-based rental assistance, the owner or manager of the tenant's housing unit commits to provide the notice of occupancy rights and certification form described in 24 CFR 5.2005 with any notification of eviction

that the owner or manager provides to the tenant during the period for which the tenant is receiving HOPWA tenant-based rental assistance. This commitment, as well as the confidentiality requirements under 24 CFR 5.2007(c), must be set forth in the VAWA lease term/addendum required under paragraph (f) of this section.

(e) *Definition of reasonable time.* For the purpose of 24 CFR 5.2009(b), the reasonable time to establish eligibility or find alternative housing following bifurcation of a lease is the reasonable grace period described in § 574.460.

(f) *VAWA lease term/addendum.* As provided in paragraph (b) of this section, the grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager, as applicable, develops and uses a VAWA lease term/addendum to incorporate all requirements that apply to the housing or facility owner or manager under 24 CFR part 5, subpart L, and this section, including the prohibited bases for eviction under 24 CFR 5.2005(b), the provisions regarding construction of lease terms and terms of assistance under 24 CFR 5.2005(c), and the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant's housing location consistent with 24 CFR 5.2007(c). The VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if a determination is made that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). The grantee or project sponsor is responsible for ensuring that the housing or facility owner, or manager, as applicable, adds the VAWA lease term/addendum to the leases for all HOPWA-assisted units and the leases for all eligible persons receiving HOPWA tenant-based rental assistance.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 25. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

■ 26. In § 576.105, add paragraph (a)(7) to read as follows:

§ 576.105 Housing relocation and stabilization services.

(a) * * *

(7) If a program participant receiving short- or medium-term rental assistance under § 576.106 meets the conditions for an emergency transfer under 24 CFR 5.2005(e), ESG funds may be used to pay amounts owed for breaking a lease to effect an emergency transfer. These costs are not subject to the 24-month limit on rental assistance under § 576.106.

* * * * *

■ 27. In § 576.106, paragraphs (e) and (g) are revised to read as follows:

§ 576.106 Short-term and medium-term rental assistance.

* * * * *

(e) *Rental assistance agreement.* The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit or any complaint used under State or local law to commence an eviction action against the program participant. Each rental assistance agreement that is executed or renewed on or after *December 16, 2016* must include all protections that apply to tenants and applicants under 24 CFR part 5, subpart L, as supplemented by § 576.409, except for the emergency transfer plan requirements under 24 CFR 5.2005(e) and 576.409(d). If the housing is not assisted under another "covered housing program", as defined in 24 CFR 5.2003, the agreement may provide that the owner's obligations under 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), expire at the end of the rental assistance period.

* * * * *

(g) *Lease.* Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of 1 year. Each lease executed on or after *December 16, 2016* must include a lease provision or incorporate a lease addendum that includes all requirements that apply to tenants, the owner or lease under 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), as supplemented by 24 CFR 576.409, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). If the housing is not assisted under another "covered housing program," as defined in 24 CFR 5.2003, the lease provision or lease addendum may be written to expire at the end of the rental assistance period.

* * * * *

■ 28. In § 576.400, revise paragraph (e)(3)(vi) to read as follows:

§ 576.400 Area-wide systems coordination requirements.

* * * * *

(e) * * *

(3) * * *

(vi) Policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which eligible families and individuals will receive rapid re-housing assistance (these policies must include the emergency transfer priority required under § 576.409);

* * * * *

■ 29. Add § 576.409 to subpart E to read as follows:

§ 576.409 Protection for victims of domestic violence, dating violence, sexual assault, or stalking.

(a) *Applicability of VAWA protections.* The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction solely because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking applied upon enactment of VAWA 2013 on March 7, 2013. The VAWA regulatory requirements under 24 CFR part 5, subpart L, as supplemented by this section, apply to all eligibility and termination decisions that are made with respect to ESG rental assistance on or after *December 16, 2016.* The recipient must ensure that the requirements under 24 CFR part 5, subpart L, are included or incorporated into rental assistance agreements and leases as provided in § 576.106(e) and (g).

(b) *Covered housing provider.* For the ESG program, "covered housing provider," as such term is used in HUD's regulations in 24 CFR part 5, subpart L, refers to:

(1) The recipient or subrecipient that administers the rental assistance for the purposes of 24 CFR 5.2005(e);

(2) The housing owner for the purposes of 24 CFR 5.2005(d)(1), (d)(3), and (d)(4) and 5.2009(a);

(3) The housing owner and the recipient or subrecipient that administers the rental assistance for the purposes of 24 CFR 5.2005(d)(2); and

(4) The housing owner and the recipient or subrecipient that administers the rental assistance for the purposes of 24 CFR 5.2007. However, the recipient or subrecipient may limit documentation requests under 24 CFR 5.2007 to only the recipient or subrecipient, provided that:

(i) This limitation is made clear in both the notice described under 24 CFR 5.2005(a)(1) and the rental assistance agreement;

(ii) The entity designated to receive documentation requests determines whether the program participant is entitled to protection under VAWA and immediately advise the program participant of the determination; and

(iii) If the program participant is entitled to protection, the entity designated to receive documentation requests must notify the owner in writing that the program participant is entitled to protection under VAWA and work with the owner on the program participant's behalf. Any further sharing or disclosure of the program participant's information will be subject to the requirements in 24 CFR 5.2007.

(c) *Notification.* As provided under 24 CFR 5.2005(a) each recipient or subrecipient that determines eligibility for or administers ESG rental assistance is responsible for ensuring that the notice and certification form described under 24 CFR 5.2005(a)(1) is provided to each applicant for ESG rental assistance and each program participant receiving ESG rental assistance at each of the following times:

(1) When an individual or family is denied ESG rental assistance;

(2) When an individual or family's application for a unit receiving project-based rental assistance is denied;

(3) When a program participant begins receiving ESG rental assistance;

(4) When a program participant is notified of termination of ESG rental assistance; and

(5) When a program participant receives notification of eviction.

(d) *Emergency transfer plan.* (1) The recipient must develop the emergency transfer plan under 24 CFR 5.2005(e) or, if the recipient is a state, require its subrecipients that administer ESG rental assistance to develop the emergency transfer plan(s) required under 24 CFR 5.2005(e). If the state's subrecipients are required to develop the plan(s), the recipient must specify whether an emergency transfer plan is to be developed for:

(i) The state as a whole;

(ii) Each area within the state that is covered by a Continuum of Care; or

(iii) Each subrecipient that administers ESG rental assistance.

(2) Once the applicable plan is developed in accordance with this section, the recipient and each subrecipient that administers ESG rental assistance must implement the plan in accordance with 24 CFR 5.2005(e).

(3) Each emergency transfer plan must meet the requirements in 24 CFR 5.2005(e) and include the following program requirements:

(i) For families living in units receiving project-based rental assistance (assisted units), the required policies must provide that if a program participant qualifies for an emergency transfer, but a safe unit is not immediately available for an internal emergency transfer, that program participant shall have priority over all other applicants for tenant-based rental assistance, utility assistance, and units for which project-based rental assistance is provided.

(ii) For families receiving tenant-based rental assistance, the required policies must specify what will happen with respect to the non-transferring family member(s), if the family separates in order to effect an emergency transfer.

(e) *Bifurcation.* For the purposes of this part, the following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):

(1) When a family receiving tenant-based rental assistance separates under 24 CFR 5.2009(a), the family's tenant-based rental assistance and utility assistance, if any, shall continue for the family member(s) who are not evicted or removed.

(2) If a family living in a unit receiving project-based rental assistance separates under 24 CFR 5.2009(a), the family member(s) who are not evicted or removed can remain in the assisted unit without interruption to the rental assistance or utility assistance provided for the unit.

(f) *Emergency shelters.* The following requirements apply to emergency shelters funded under § 576.102:

(1) No individual or family may be denied admission to or removed from the emergency shelter on the basis or as a direct result of the fact that the individual or family is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual or family otherwise qualifies for admission or occupancy.

(2) The terms "affiliated individual," "dating violence," "domestic violence," "sexual assault," and "stalking" are defined in 24 CFR 5.2003.

■ 30. In § 576.500, revise the introductory text of paragraph (s) and add paragraph (s)(5) to read as follows:

§ 576.500 Recordkeeping and reporting requirements.

* * * * *

(s) *Other Federal requirements.* The recipient and its subrecipients must document their compliance with the Federal requirements in § 576.407 and § 576.409, as applicable, including:

* * * * *

(5) Data on emergency transfers requested under § 576.409, pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

* * * * *

PART 578—CONTINUUM OF CARE PROGRAM

■ 31. The authority citation for part 578 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

■ 32. In § 578.7, paragraphs (a)(9)(ii), (iii) and (v) are revised and paragraph (d) is added to read as follows:

§ 578.7 Responsibilities of the Continuum of Care.

(a) * * *

(9) * * *

(ii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance (these policies must include the emergency transfer priority required under § 578.99(j)(8));

(iii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance (these policies must include the emergency transfer priority required under § 578.99(j)(8));

* * * * *

(v) Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance (these policies must include the emergency transfer priority required under § 578.99(j)(8)); and

* * * * *

(d) *VAWA emergency transfer plan.* The Continuum of Care must develop the emergency transfer plan for the

Continuum of Care that meets the requirements under § 578.99(j)(8).

■ 33. In § 578.51, add paragraph (m) to read as follows:

§ 578.51 Rental assistance.

* * * * *

(m) *VAWA emergency transfer plan costs.* Recipients and subrecipients of grants for tenant-based rental assistance may use grant funds to pay amounts owed for breaking the lease if the family qualifies for an emergency transfer under the emergency transfer plan established under § 578.99(j)(8).

■ 34. In § 578.75, add paragraph (j) to read as follows:

§ 578.75 General operations.

* * * * *

(j) *Remaining program participants following bifurcation of a lease or eviction as a result of domestic violence.* For permanent supportive housing projects, members of any household who were living in a unit assisted under this part at the time of a qualifying member's eviction from the unit because the qualifying member was found to have engaged in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's eviction.

■ 35. In § 578.99, add paragraph (j) to read as follows:

§ 578.99 Applicability of other Federal requirements.

* * * * *

(j) *Protections for victims of domestic violence, dating violence, sexual assault, or stalking*—(1) *General.* The requirements set forth in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), implementing the requirements of VAWA apply to all permanent housing and transitional housing for which Continuum of Care program funds are used for acquisition, rehabilitation, new construction, leasing, rental assistance, or operating costs. The requirements also apply where funds are used for homelessness prevention, but only where the funds are used to provide short- and/or medium-term rental assistance. Safe havens are subject only to the requirements in paragraph (j)(9) of this section.

(2) *Definition of covered housing provider.* For the Continuum of Care program, "covered housing provider," as such term is used in HUD's regulations in 24 CFR part 5, subpart L refers to:

(i) The owner or landlord, which may be the recipient or subrecipient, for purposes of 24 CFR 5.2005(d)(1) and 5.2009(a);

(ii) The recipient, subrecipient, and owner or landlord for purposes of 24 CFR 5.2005(d)(2) through (d)(4); and

(iii) The recipient, subrecipient, and owner or landlord for purposes of 24 CFR 5.2007. However, the recipient or subrecipient may limit documentation requests under § 5.2007 to only the recipient or subrecipient, provided that:

(i) This limitation is made clear in both the notice described under 24 CFR 5.2005(a)(1) and the rental assistance agreement;

(ii) The entity designated to receive documentation requests determines whether the program participant is entitled to protection under VAWA and immediately advise the program participant of the determination; and

(iii) If the program participant is entitled to protection, the entity designated to receive documentation requests must notify the owner in writing that the program participant is entitled to protection under VAWA and work with the owner on the program participant's behalf. Any further sharing or disclosure of the program participant's information will be subject to the requirements in 24 CFR 5.2007.

(3) *Effective date.* The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction solely because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking, applied upon enactment of VAWA 2013 on March 7, 2013. Compliance with the VAWA regulatory requirements under this section and at 24 CFR part 5, subpart L, is required for grants awarded pursuant to NOFAs published on or after December 16, 2016.

(4) *Notification requirements.* (i) The recipient or subrecipient must provide each individual or family applying for permanent housing and transitional housing and each program participant the notice and the certification form described in 24 CFR 5.2005 at each of the following times:

(A) When an individual or family is denied permanent housing or transitional housing;

(B) When a program participant is admitted to permanent housing or transitional housing;

(C) When a program participant receives notification of eviction; and

(D) When a program participant is notified of termination of assistance.

(ii) When grant funds are used for rental assistance, the recipient or subrecipient must ensure that the owner or manager of the housing provides the notice and certification form described in 24 CFR 5.2005(a) to the program participant with any notification of eviction. This commitment and the confidentiality requirements under 24 CFR 5.2007(c) must be set forth in a contract with the owner or landlord.

(5) *Contract, lease, and occupancy agreement provisions.* (i) Recipients and subrecipients must include in any contracts and leases between the recipient or subrecipient, and an owner or landlord of the housing:

(A) The requirement to comply with 24 CFR part 5, subpart L; and

(B) Where the owner or landlord of the housing will have a lease with a program participant, the requirement to include a lease provision that include all requirements that apply to tenants, the owner or the lease under 24 CFR part 5, subpart L, as supplemented by this part, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c).

(ii) The recipient or subrecipient must include in any lease, sublease, and occupancy agreement with the program participant a provision that include all requirements that apply to tenants, the owner or the lease under 24 CFR part 5, subpart L, as supplemented by this part, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). The lease, sublease, and occupancy agreement may specify that the protections under 24 CFR part 5, subpart L, apply only during the period of assistance under the Continuum of Care Program. The period of assistance for housing where grant funds were used for acquisition, construction, or rehabilitation is 15 years from the date of initial occupancy or date of initial service provision.

(iii) Except for tenant-based rental assistance, recipients and subrecipients must require that any lease, sublease, or occupancy agreement with a program participant permits the program participant to terminate the lease, sublease, or occupancy agreement without penalty if the recipient or subrecipient determines that the program participant qualifies for an emergency transfer under the emergency transfer plan established under paragraph (j)(8) of this section.

(iv) For tenant-based rental assistance, the recipient or subrecipient must enter into a contract with the owner or landlord of the housing that:

(A) Requires the owner or landlord of the housing to comply with the provisions of 24 CFR part 5, subpart L; and

(B) Requires the owner or landlord of the housing to include a lease provision that include all requirements that apply to tenants, the owner or the lease under 24 CFR part 5, subpart L, as supplemented by this part, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.005(b) and (c). The lease may specify that the protections under 24 CFR part 5, subpart L, only apply while the program participant receives tenant-based rental assistance under the Continuum of Care Program.

(6) *Transition.* (i) The recipient or subrecipient must ensure that the requirements set forth in paragraph (j)(5) of this section apply to any contracts, leases, subleases, or occupancy agreements entered into, or renewed, following the expiration of an existing term, on or after the effective date in paragraph (j)(2) of this section. This obligation includes any contracts, leases, subleases, and occupancy agreements that will automatically renew on or after the effective date in paragraph (j)(3) of this section.

(ii) For leases for tenant-based rental assistance existing prior to the effective date in paragraph (j)(2) of this section, recipients and subrecipients must enter into a contract under paragraph (j)(6)(iv) of this section before the next renewal of the lease.

(7) *Bifurcation.* For the purposes of this part, the following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):

(i) If a family who is receiving tenant-based rental assistance under this part separates under 24 CFR 5.2009(a), the family's tenant-based rental assistance and any utility assistance shall continue for the family member(s) who are not evicted or removed.

(ii) If a family living in permanent supportive housing separates under 24 CFR 5.2009(a), and the family's eligibility for the housing was based on the evicted individual's disability or chronically homeless status, the remaining tenants may stay in the project as provided under § 578.75(i)(2). Otherwise, if a family living in a project funded under this part separates under 24 CFR 5.2009(a), the remaining tenant(s) will be eligible to remain in the project.

(8) *Emergency transfer plan.* The Continuum of Care must develop an emergency transfer plan for the Continuum of Care, and recipients and subrecipients in the Continuum of Care must follow that plan. The plan must comply with 24 CFR 5.2005(e) and include the following program requirements:

(i) For families receiving tenant-based rental assistance, the plan must specify what will happen with respect to the non-transferring family member(s), if the family separates in order to effect an emergency transfer.

(ii) For families living in units that are otherwise assisted under this part (assisted units), the required policies must provide that for program participants who qualify for an emergency transfer but a safe unit is not immediately available for an internal emergency transfer, the individual or family shall have priority over all other applicants for rental assistance, transitional housing, and permanent supportive housing projects funded under this part, provided that: The individual or family meets all eligibility criteria required by Federal law or regulation or HUD NOFA; and the individual or family meets any additional criteria or preferences established in accordance with § 578.93(b)(1), (4), (6), or (7). The individual or family shall not be required to meet any other eligibility criteria or preferences for the project. The individual or family shall retain their original homeless or chronically homeless status for the purposes of the transfer.

(9) *Protections with respect to safe havens.* The following requirements apply to safe havens funded under this part:

(i) No individual may be denied admission to or removed from the safe haven on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or occupancy.

(iii) The terms "affiliated individual," "dating violence," "domestic violence," "sexual assault," and "stalking" are defined in 24 CFR 5.2003.

■ 36. In § 578.103, revise the heading of paragraph (a)(6), redesignate paragraphs (a)(6)(i) and (ii) as paragraphs (a)(6)(i)(A) and (B), respectively, redesignate paragraph (a)(6) introductory text as (a)(6)(i) introductory text, and add new paragraph (a)(6)(ii) to read as follows:

§ 578.103 Recordkeeping requirements.

(a) * * *

(6) *Moves for victims of domestic violence, dating violence, sexual assault, and stalking.* * * *

(ii) Data on emergency transfers requested under 24 CFR 5.2005(e) and § 578.99, pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

* * * * *

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

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

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

■ 38. In § 880.201, a definition of "*covered housing provider*" is added in alphabetical order to read as follows:

§ 880.201 Definitions.

* * * * *

Covered housing provider. For the Section 8 Housing Assistance Payment Program for New Construction, "covered housing provider," as such term is used in HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner.

* * * * *

■ 39. Revise § 880.504(f) to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(f) *Protections for victims of domestic violence, dating violence, sexual assault, or stalking.* The regulations of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), apply to this section.

■ 40. In § 880.607, revise paragraph (c)(5) to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(c) * * *

(5) In actions or potential actions to terminate tenancy, the owner shall follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

* * * * *

■ 41. Add § 880.613 to subpart F to read as follows:

§ 880.613 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new,

and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

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

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

■ 43. In § 882.102(b), a definition of "*covered housing provider*" is added in alphabetical order to read as follows:

§ 882.102 Definitions.

* * * * *

(b) * * *

Covered housing provider. For the Section 8 Moderate Rehabilitation Programs, as provided in subparts A, D, and E of this part, "covered housing provider," as such term is used in HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a), though the PHA may provide this notice and form to owners, and charge owners with distributing the notice and form to tenants. In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while both the PHA and owner are both responsible for ensuring that an emergency transfer plan is in place in accordance with 24 CFR 5.2005(e), and the owner is responsible for implementing the emergency transfer plan when an emergency occurs.

* * * * *

■ 44. Revise § 882.407 to read as follows:

§ 882.407 Other Federal requirements.

(a) The moderate rehabilitation program is subject to applicable Federal requirements in 24 CFR 5.105 and to the requirements for protection for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, or stalking, covered housing providers have discretion to adopt and modify any existing admission preferences or transfer waitlist priorities for victims of domestic violence, dating violence, sexual assault, or stalking.

(c) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e), and when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, and stalking who qualifies for an emergency transfer, covered housing providers must, at a minimum:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, the covered housing provider must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

■ 45. Revise § 882.511(g) to read as follows:

§ 882.511 Lease and termination of tenancy.

* * * * *

(g) In actions or potential actions to terminate tenancy, the owner shall follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

■ 46. In § 882.514(c), revise the fourth sentence, to read as follows:

§ 882.514 Family participation.

* * * * *

(c) *Owner selection of families.* * * * However, the owner must not deny program assistance or admission to an applicant based on the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant otherwise qualifies for assistance or admission. * * *

* * * * *

■ 47. In § 882.802, a definition of "*covered housing provider*" is added, in alphabetical order, to read as follows:

§ 882.802 Definitions.

* * * * *

Covered housing provider. For the Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals, "covered housing provider," as such term is used in HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner.

* * * * *

■ 48. In § 882.804, paragraph (a) is revised, paragraphs (b) and (c) are redesignated as paragraphs (e) and (f), respectively, and new paragraphs (b), (c), and (d) are added to read as follows:

§ 882.804 Other Federal requirements.

(a) Participation in this program requires compliance with the Federal requirements set forth in 24 CFR 5.105, with the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), and with the regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, or stalking, covered housing providers have discretion to adopt and modify any existing admission preferences or transfer waitlist priorities for victims of domestic violence, dating violence, sexual assault, or stalking.

(c) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e), and when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, and stalking who qualifies for an emergency transfer, covered housing providers must, at a minimum:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, the covered housing provider must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

* * * * *

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

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

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

■ 50. In § 883.302, a definition of "*covered housing provider*" is added, in alphabetical order, to read as follows:

§ 883.302 Definitions.

* * * * *

Covered housing provider. For the Section 8 Housing Assistance Payments Programs—State Housing Agencies, "covered housing provider," as such term is used in HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the HFA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a), though the PHA may provide this notice and form to owners, and charge owners with distributing the notice and form to tenants. In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while both the PHA and owner are both responsible for ensuring that an emergency transfer plan is in place in accordance with 24 CFR 5.2005(e), and the owner is responsible for implementing the emergency transfer plan when an emergency occurs.

* * * * *

■ 51. Revise § 883.605 to read as follows:

§ 883.605 Leasing to eligible families.

The provisions of 24 CFR 880.504 apply to this section, including reference at 24 CFR 880.504(f) to the requirements of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), subject to the requirements of § 883.105.

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

■ 52. The authority citation for part 884 continues to read as follows:

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

■ 53. In § 884.102, a definition of "*covered housing provider*" is added, in alphabetical order, to read as follows:

§ 884.102 Definitions.

* * * * *

Covered housing provider. For the Section 8 Housing Assistance Payments Programs, New Construction Set-Aside for Section 515 Rural Rental Housing, "covered housing provider," as such term is used in HUD's regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner

* * * * *

■ 54. Revise § 884.216(c) to read as follows:

§ 884.216 Termination of tenancy.

* * * * *

(c) In actions or potential actions to terminate tenancy, the owner shall follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

■ 55. Revise § 884.223(f) to read as follows:

§ 884.223 Leasing to eligible families.

* * * * *

(f) The regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

■ 56. Add § 884.226 to subpart B to read as follows:

§ 884.226 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

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

■ 57. The authority citation for part 886 continues to read as follows:

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

■ 58. In § 886.102, a definition of "*covered housing provider*" is added, in alphabetical order, to read as follows:

§ 886.102 Definitions.

* * * * *

Covered housing provider. For the Section 8 Housing Assistance Payments Programs—Special Allocations, subpart A of this part, "covered housing provider," as such term is used in HUD's regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) refers to the owner.

* * * * *

■ 59. Revise § 886.128 to read as follows:

§ 886.128 Termination of tenancy.

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR parts 247 and 5 shall apply. The provisions of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence,

Sexual Assault, or Stalking), apply to this section. The provisions of 24 CFR part 5, subpart E, of this title concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance, also shall apply.

■ 60. Revise § 886.132 to read as follows:

§ 886.132 Tenant selection.

Subpart F of 24 CFR part 5 governs selection of tenants and occupancy requirements applicable under this subpart A of part 886. Subpart L of 24 CFR part 5 (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies to this section.

■ 61. Add § 886.139 to subpart A to read as follows:

§ 886.139 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must: (1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

■ 62. In § 886.302, a definition of "*covered housing provider*" is added, in the alphabetical order to read as follows:

§ 886.302 Definitions

* * * * *

Covered housing provider. For the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects, under subpart C of this part, "covered housing provider," as such term is used in HUD's regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner.

* * * * *

■ 63. Revise § 886.328 to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR part 247 and 24 CFR part 5 shall apply. The provisions of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section. The provisions of 24 CFR part 5, subpart E, concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance, also shall apply.

■ 64. Revise § 886.329(f) to read as follows:

§ 886.329 Leasing to eligible families.

* * * * *

(f) The regulations of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

■ 65. Add § 886.339 to subpart C to read as follows:

§ 886.339 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

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

■ 66. The authority citation for part 891 continues to read as follows:

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

■ 67. In § 891.105 a definition of "*covered housing provider*" is added, in alphabetical order, to read as follows:

§ 891.105 Definitions.

* * * * *

Covered housing provider. For the Supportive Housing for the Elderly and Persons with Disabilities Program, "covered housing provider," as such term is used in HUD's regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner (as defined in §§ 891.205 and 891.305).

* * * * *

■ 68. Add § 891.190 to subpart A to read as follows:

§ 891.190 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating

violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

■ 69. Revise § 891.575(f) to read as follows:

§ 891.575 Leasing to eligible families.

* * * * *

(f) The regulations of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

■ 70. Revise § 891.610(c) to read as follows:

§ 891.610 Selection and admission of tenants.

* * * * *

(c) *Determination of eligibility and selection of tenants.* The borrower is responsible for determining whether applicants are eligible for admission and for selection of families. To be eligible for admission, an applicant must be an elderly or handicapped family as defined in § 891.505; meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirement for Social Security numbers and sign and submit consent forms for obtaining wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and, if applying for an assisted unit, be eligible for admission under subpart F of 24 CFR part 5, which governs selection of tenants and occupancy requirements. The provisions of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

* * * * *

■ 71. Revise § 891.630(c) to read as follows:

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

* * * * *

(c) In actions or potential actions to terminate tenancy, the owner shall follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

■ 72. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, 42 U.S.C. 1437z–7, and 3535(d).

■ 73. In § 905.100, add paragraph (g) to read as follows:

§ 905.100 Purpose, general description, and other requirements.

* * * * *

(g) *Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking.* Public housing agencies must apply the Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, to mixed finance developments covered under § 905.604.

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

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

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

■ 75. In § 960.102(b) a definition of "*covered housing provider*" is added in alphabetical order to read as follows:

§ 960.102 Definitions.

* * * * *

(b) * * *

Covered housing provider. For HUD's public housing program, "covered housing provider," as such term is in used HUD's regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), is the PHA.

* * * * *

■ 76. In § 960.103, revise the section heading and paragraph (d) to read as follows:

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

* * * * *

(d) *Protection for victims of domestic violence, dating violence, sexual assault, or stalking.* The PHA must apply the requirements in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

■ 77. In § 960.200, revise paragraph (b)(8) to read as follows:

§ 960.200 Purpose.

* * * * *

(b) * * *

(8) Protection for victims of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

■ 78. In § 960.203, revise paragraph (c)(4) to read as follows:

§ 960.203 Standards for PHA tenant selection criteria.

* * * * *

(c) * * *

(4) PHA tenant selection criteria are subject to 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). In cases of requests for emergency transfers under VAWA, with the written consent of the victim of domestic violence, dating violence, sexual assault, or stalking, the receiving PHA may accept and use the prior covered housing provider's determination of eligibility and tenant screening and all related verification information, including form HUD 50058 (Family Report).

* * * * *

■ 79. In § 960.206, revise paragraph (b)(4) to read as follows:

§ 960.206 Waiting List: Local preferences in admission to public housing program.

* * * * *

(b) * * *

(4) *Preference for victims of domestic violence, dating violence, sexual assault, or stalking.* The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence, dating violence, sexual assault, or stalking.

* * * * *

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

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

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

■ 81. In § 966.4, revise paragraphs (a)(1)(vi) and (e)(9) to read as follows:

§ 966.4 Lease requirements.

* * * * *

(a) * * *

(1) * * *

(vi) HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply.

* * * * *

(e) * * *

(9) To consider lease bifurcation, as provided in 24 CFR 5.2009, in circumstances involving domestic violence, dating violence, sexual assault, or stalking addressed in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), provided that, if a PHA chooses to bifurcate a lease, no assistance will be given for an individual who does not meet public housing eligibility and 24 CFR 5.508(h)(2) applies to submission of evidence of citizenship or eligible immigration status.

* * * * *

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

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

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

■ 83. In § 982.53, revise the section heading and paragraph (e) to read as follows:

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

* * * * *

(e) *Protection for victims of domestic violence, dating violence, sexual assault, or stalking.* The PHA must apply the requirements in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). For purposes of compliance with HUD's regulations in 24 CFR part 5, subpart L, the covered housing provider is the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the Notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a). In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while the PHA is the covered housing provider responsible for complying with emergency transfer plan provisions at 24 CFR 5.2005(e).

■ 84. In § 982.201, revise paragraph (a) to read as follows:

§ 982.201 Eligibility and targeting.

(a) *When applicant is eligible: General.* The PHA may admit only eligible families to the program. To be eligible, an applicant must be a "family;" must be income-eligible in accordance with paragraph (b) of this section and 24 CFR part 5, subpart F; and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5, subpart E. If the applicant is a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

* * * * *

■ 85. In § 982.202, revise paragraph (d) to read as follows:

§ 982.202 How applicants are selected: General requirements.

* * * * *

(d) *Admission policy.* The PHA must admit applicants for participation in accordance with HUD regulations and other requirements, including, but not limited to, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and with PHA policies stated in the PHA administrative plan and the PHA plan. The PHA admission policy must state the system of admission preferences that the PHA uses to select applicants from the waiting list, including any residency preference or other local preference.

■ 86. In § 982.207, revise paragraph (b)(4) to read as follows:

§ 982.207 Waiting List: Local preferences in admission to program.

* * * * *

(b) * * *

(4) *Preference for victims of domestic violence, dating violence, sexual assault, or stalking.* The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence, dating violence, sexual assault, or stalking.

* * * * *

■ 87. In § 982.307, revise paragraph (b)(4) to read as follows:

§ 982.307 Tenant screening.

* * * * *

(b) * * *

(4) In cases involving a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

■ 88. In § 982.310, revise paragraph (h)(4) to read as follows:

§ 982.310 Owner termination of tenancy.

* * * * *

(h) * * *

(4) *Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking.* The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions of 24 CFR 5.105, and with the provisions for protection of victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

■ 89. In § 982.315, revise paragraphs (a)(2) and (b) to read as follows:

§ 982.315 Family break-up.

(a) * * *

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

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

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

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

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

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

(5) Other factors specified by the PHA.

* * * * *

■ 90. In § 982.353, revise paragraph (b) and add paragraph (c)(4) to read as follows:

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

* * * * *

(b) *Portability: Assistance outside the initial PHA jurisdiction.* Subject to paragraph (c) of this section, and to § 982.552 and § 982.553, a voucher-holder or participant family has the right to receive tenant-based voucher assistance, in accordance with requirements of this part, to lease a unit outside the initial PHA jurisdiction, anywhere in the United States, in the jurisdiction of a PHA with a tenant-based program under this part. 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 as provided for in this subsection. 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, sexual assault, or stalking and who reasonably believes him- or herself to be threatened with imminent harm from further violence by remaining in the dwelling unit (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move), and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the initial PHA and move to another jurisdiction under the Housing Choice Voucher Program.

(c) * * *

(4) Paragraph (c) of this section does not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or any family member who has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

* * * * *

■ 91. In § 982.354, revise paragraph (b)(4), remove "and" from the end of paragraph (c)(2)(i), remove the period and add "; and" in its place at the end of paragraph (c)(2)(ii), and add paragraph (c)(2)(iii) to read as follows:

§ 982.354 Move with continued tenant-based assistance.

* * * * *

(b) * * *

(4) The family or a member of the family, is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move is not required to believe that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit.

(c) * * *

(2) * * *

(iii) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, 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, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

* * * * *

■ 92. In § 982.452, revise the second sentence of paragraph (b)(1) to read as follows:

§ 982.452 Owner responsibilities.

* * * * *

(b) * * *

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

* * * * *

■ 93. In § 982.551, revise paragraphs (e) and (l) to read as follows:

§ 982.551 Obligations of participant.

* * * * *

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

* * * * *

(l) *Crime by household members.* The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553). Under 24 CFR 5.2005(b)(2), criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household, or any guest or other person under the tenant's control, shall not be cause for termination of tenancy, occupancy rights, or assistance of the victim, if the tenant or an affiliated individual of the tenant, as defined in 24 CFR 5.2003, is the victim.

* * * * *

■ 94. In § 982.552, revise paragraph (c)(2)(v) to read as follows:

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

* * * * *

(c) * * *

(2) * * *

(v) *Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking.* The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105, and with the requirements of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

* * * * *

■ 95. In § 982.553, revise paragraph (e) to read as follows:

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

* * * * *

(e) The requirements in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

■ 96. In § 982.637, revise paragraphs (a)(2) and (3) to read as follows:

§ 982.637 Homeownership option: Move with continued tenant-based assistance.

(a) * * *

(2) The PHA may not commence continued tenant-based assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home.

However, when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move), such family or family member may be assisted with continued tenant-based assistance even if such family or family member owns any title or other interest in the prior home.

(3) The PHA may establish policies that prohibit more than one move by the family during any one-year period. However, these policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, 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, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

* * * * *

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

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

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

■ 98. In § 983.3(b), add the definition of "*covered housing provider,*" in alphabetical order, to read as follows:

§ 983.3 PBV definitions.

* * * * *

(b) * * *

Covered housing provider. For Project-Based Voucher (PBV) program, "covered housing provider," as such term is used in HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) refers to the PHA or owner (as defined in 24 CFR 982.4), as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a). In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while the PHA is the covered housing provider responsible for complying with emergency transfer plan provisions at 24 CFR 5.2005(e).

* * * * *

■ 99. In § 983.4, remove the paragraph "*Protection for victims of domestic violence, dating violence or stalking*" and add a paragraph "*Protection for victims of domestic violence, dating violence, sexual assault, or stalking*" in alphabetical order to read as follows:

§ 983.4 Cross-reference to other Federal requirements.

* * * * *

Protection for victims of domestic violence, dating violence, sexual assault, or stalking. See 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). For purposes of compliance with HUD's regulations in 24 CFR part 5, subpart L, the covered housing provider is the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L.

* * * * *

■ 100. In § 983.251, revise paragraph (a)(3) to read as follows:

§ 983.251 How participants are selected.

(a) * * *

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

* * * * *

■ 101. In § 983.253, add paragraphs (a)(4) and (c) to read as follows:

§ 983.253 Leasing of contract units.

(a) * * *

(4) The owner must comply with 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

* * * * *

(c) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to tenant screening.

■ 102. In § 983.255, revise paragraph (d) to read as follows:

§ 983.255 Tenant screening.

* * * * *

(d) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to tenant screening.

■ 103. In § 983.257, revise the last sentence of paragraph (a) to read as follows:

§ 983.257 Owner termination of tenancy and eviction.

(a) * * * 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies to this part.

* * * * *

■ 104. In § 983.261, add paragraphs (c)(1) and (2) to read as follows:

§ 983.261 Family right to move.

* * * * *

(c) * * *

(1) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, 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, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

(2) If a family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, the PHA may offer the victim the opportunity for continued tenant-based rental assistance.

* * * * *

Dated: October 20, 2016.

Julián Castro,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A

[Insert Name of Housing Provider[23]]

Notice of Occupancy Rights Under the Violence Against Women Act[24]

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.[25] The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that [*insert name of program or rental assistance*] is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA."

Protections for Applicants

If you otherwise qualify for assistance under [*insert name of program or rental assistance*], you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Protections for Tenants

If you are receiving assistance under [*insert name of program or rental assistance*], you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under [*insert name of program or rental assistance*] solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

Removing the Abuser or Perpetrator From the Household

HP may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If HP chooses to remove the abuser or perpetrator, HP may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, HP must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, HP must follow Federal, State, and local eviction procedures. In order to divide a lease, HP may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, HP may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, HP may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.

(2) You expressly request the emergency transfer. Your housing provider may choose to require that you submit a form, or may accept another written or oral request.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

HP will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

HP's emergency transfer plan provides further information on emergency transfers, and HP must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

HP can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from HP must be in writing, and HP must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. HP may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to HP as documentation. It is your choice which of the following to submit if HP asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by HP with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that HP has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, HP does not have to provide you with the protections contained in this notice.

If HP receives conflicting evidence that an incident of domestic violence, dating

[23] The notice uses HP for housing provider but the housing provider should insert its name where HP is used. HUD's program-specific regulations identify the individual or entity responsible for providing the notice of occupancy rights.

[24] Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

[25] Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), HP has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, HP does not have to provide you with the protections contained in this notice.

Confidentiality

HP must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

HP must not allow any individual administering assistance or other services on behalf of HP (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

HP must not enter your information into any shared database or disclose your information to any other entity or individual. HP, however, may disclose the information provided if:

- You give written permission to HP to release the information on a time limited basis.
- HP needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires HP or your landlord to release the information.

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

Reasons a Tenant Eligible for Occupancy Rights Under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, HP cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if HP can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1) Would occur within an immediate time frame, and

2) Could result in death or serious bodily harm to other tenants or those who work on the property.

If HP can demonstrate the above, HP should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance With The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[insert HUD field office]**.

For Additional Information

You may view a copy of HUD's final VAWA rule at **[insert Federal Register link]**.

Additionally, HP must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact ***[insert name of program or rental assistance contact information able to answer questions on VAWA]***.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1–800–799–7233 or, for persons with hearing impairments, 1–800–787–3224 (TTY). You may also contact **[Insert contact information for relevant local organizations]**.

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at *https://www.victimsofcrime.org/our-programs/stalking-resource-center*.

For help regarding sexual assault, you may contact **[Insert contact information for relevant organizations]**.

Victims of stalking seeking help may contact **[Insert contact information for relevant organizations]**.

Attachment: Certification form HUD–XXXXX [form approved for this program to be included]

Appendix B

[Insert name of covered housing provider]

Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Emergency Transfers

[Insert name of covered housing provider *(acronym HP for purposes of this model plan)*] is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),[26] HP allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.[27] The ability of HP to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether HP has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the Federal agency that oversees that ***[insert name of program or rental assistance here]*** is in compliance with VAWA.

Eligibility for Emergency Transfers

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L is eligible for an emergency transfer, if: The tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant shall notify HP's management office and submit a written request for a transfer to ***[HP to insert location]***. HP will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under HP's program; OR

[26] Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking.

[27] Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

Confidentiality

HP will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives HP written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence Against Women Act For All Tenants for more information about HP's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

HP cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. HP will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. HP may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If HP has no safe and available units for which a tenant who needs an emergency is eligible, HP will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, HP will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Safety and Security of Tenants

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1–800–799–7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1–800–787–3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800–656–HOPE, or visit the online hotline at *https://ohl.rainn.org/online/*.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at *https://www.victimsofcrime.org/our-programs/stalking-resource-center*.

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

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Appendix C

CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, AND ALTERNATE DOCUMENTATION

U.S. Department of Housing and Urban Development

OMB Approval No. XXXX-XXX
Exp. XX/XX/2XXXX

Purpose of Form: The Violence Against Women Act ("VAWA") protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

(1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.

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

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

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

1. **Date the written request is received by victim:** _____

2. **Name of victim:** _____

3. **Your name (if different from victim's):** _____

4. **Name(s) of other family member(s) listed on the lease:** _____

_____

5. **Residence of victim:** _____

6. **Name of the accused perpetrator (if known and can be safely disclosed):** _____

_____

7. **Relationship of the accused perpetrator to the victim:** _____

8. **Date(s) and times(s) of incident(s) (if known):** _____

_____

10. **Location of incident(s):** _____

In your own words, briefly describe the incident(s):

_____

_____

_____

_____

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

Appendix D--Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking

Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

The requirements you must meet are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-XXXXX, or any one of the other types of documentation listed on that Form.

(2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-caalendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database.

Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER

1. Name of victim requesting an emergency transfer: _____

2. Your name (if different from victim's)_____

3. Name(s) of other family member(s) listed on the lease:_____

_____

4. Name(s) of other family member(s) who would transfer with the victim:_____

_____

5. Address of location from which the victim seeks to transfer: _____

6. Address or phone number for contacting the victim:_____

7. Name of the accused perpetrator (if known and can be safely disclosed):_____

8. Relationship of the accused perpetrator to the victim:_____

9. Date(s), Time(s) and location(s) of incident(s):_____

_____

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. _____

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.

_____

_____

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: _____

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____Signed on (Date) _____

[FR Doc. 2016–25888 Filed 11–15–16; 8:45 am]
BILLING CODE C

Notice 88-80
1988-30 I.R.B. 28

NOTICE 88-80

LOW-INCOME HOUSING TAX CREDIT -- DETERMINATION OF INCOME FOR PURPOSES

OF SECTION 42(g)(1)

July 25, 1988

The purpose of this Notice is to inform taxpayers that regulations to be issued under section 42(g)(1) of the Internal Revenue Code of 1986 (the 'Code ') (relating to the determination of a qualified low-income housing project) will provide that the income of individuals and area median gross income (adjusted for family size) are to be made in a manner consistent with the determination of annual income and the estimates for median family income under section 8 of the United States Housing Act of 1937 (H.U.D. section 8).

For purposes of H.U.D. section 8, annual income is defined under 24 CFR 813.106 (1987). HUD section 8 median family income estimates (i.e., area median gross income estimates) are based on decennial Census data updated with bureau of the Census P-60 income data and Department of Commerce County Business Patterns employment and earnings data. The determination of annual income and median family income estimates are based on definitions of income that include some items of income that are not included in a taxpayer's gross income for purposes of computing Federal Income Tax liability. Thus, the income of individuals and area median gross income (adjusted for family size) for purposes of section 42(g)(1) of the Code will NOT be made by reference to items of income used in determining gross income for purposes of computing Federal Income Tax liability.

This document serves as an 'administrative pronouncement' as that term is described in section 1.661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

The principal author of this Notice is Christopher J. Wilson of the Legislation and Regulations Division. For further information regarding this Notice contact Mr. Wilson on (202) 566-4336 (not a toll-free call).

Internal Revenue Service
Notice 88-80

Notice 88-91, 1988-2 CB 414--IRC Sec(s).42

Low-Income Housing Tax Credit--Additional Certification Requirements

The purpose of this Notice is to inform owners of low-income housing that buildings that have been or will be allocated a low-income housing tax credit under section 42 of the Internal Revenue Code of 1986 (the "Code") must be assigned a building identification number (BIN). Buildings described in section 42(h)(4) of the Code (relating to buildings financed by tax-exempt bonds subject to the volume cap under section 146) must also receive a BIN from the applicable housing credit agency whether or not a separate housing credit allocation is required.

Section 42(1) of the Code requires owners of qualified low income buildings and housing credit agencies to provide certain information to the Secretary. Forms 8586 and 8609 were developed, in part, to satisfy these requirements. Form 8586 is used by owners of qualified low-income buildings to claim the low-income housing credit. Form 8609 is used to obtain a housing credit allocation and serves as an annual statement from the building owner to the Secretary that the building continues to qualify as a qualified low-income building.

Forms 8586 and 8609 will be revised to provide the Service with information needed to identify buildings and transfers and to monitor compliance with the low-income housing tax credit requirements. The BIN is essential for this monitoring process. At the time a credit is allocated to a building, that building must be assigned a BIN by the applicable housing credit agency. BINs must be assigned retroactively to buildings that previously were allocated a tax credit during 1987 or 1988. The retroactive assignment of a BIN will not require any building owner to file an amended return. However, the revised Forms must be attached to the owner's next- filed Federal income tax return and all subsequent income tax returns in accordance with the instructions on the Forms. In addition, all owners of buildings that have been allocated a low-income housing tax credit

(including owners of buildings subject to the rules of section 42(h)(4)) must complete the revised Form 8609, including Part II of revised Form 8609, the first year certification requirement.

The BIN will consist of a two character state designation (identical to a postal state abbreviation) followed by a two digit designation representing the year the credit is allocated, and a five digit numbering designation. For example, the identification number for one of 25 buildings allocated a credit in 1987 by the Connecticut Housing Finance Authority (the only housing credit allocating agency in the state) might read CT-87-00023. The BIN will be assigned by the <Page 415> housing credit agency that is authorized to make the credit allocation and will be applicable throughout the building's 15-year compliance period. The BIN must be entered on all forms requesting a BIN.

Rehabilitation expenditures treated as a separate new building under section 42(e) of the Code will not be required to have a separate BIN if the building to which the rehabilitation expenditures were made has a BIN. In this case, the BIN used for such expenditures shall be the BIN previously assigned to the building.

It is imperative that agencies in states with multiple housing credit agencies coordinate to ensure that each building receiving a low-income housing credit allocation have a separate and distinct BIN. It is suggested that the state housing authority having primary oversight for administration of the tax credit act as a clearing house to avoid duplication of BINs.

Housing credit agencies will be provided revised Forms 8609 and 8586. In the case of a building to which a credit was allocated previously (including buildings described in section 42(h)(4) of the Code), the housing credit agency must supply the building owners with revised Forms by completing Part I of revised Form 8609 (including the assignment of a BIN) and forwarding the Form (along with revised Form 8586) to the owner. The suggested letter in Part II of this Notice may be used by the housing credit agency to accompany both revised

Forms. The suggested letter explains the purpose of the new Forms and the responsibilities of the building owner.

A revised Form 8609 is required for *each* building eligible for a credit. Accordingly, housing credit agencies that have provided credits on a Form 8609 to a low-income housing project consisting of more than one building must reallocate those credits among the buildings in the project and provide a separate Form 8609 for each building. In no event may reallocation of credits to all buildings in a project be less than or exceed the amount of credits previously allocated to the project. In addition, the credit may only be taken to the extent of a building's qualified basis.

Final regulations will provide that the term "qualified low-income building" includes residential rental property that is either an apartment building, a single family dwelling, a townhouse, a row-house, a duplex, or a condominium. A qualified low-income building does not include residential rental property owned or leased by a cooperative housing corporation or a tenant-stockholder, as those terms are defined under section 216(b)(1) and (2) of the Code.

Part II. SUGGESTED LETTER FOR USE BY STATE HOUSING AGENCIES TO NOTIFY OWNERS OF LOW-INCOME HOUSING OF NEW BUILDING IDENTIFICATION NUMBER REQUIREMENT AND CHANGES TO FORMS 8609 AND 8586.

[The following is suggested language that may be used by agencies when notifying building owners of the building identification number (BIN) assigned to such owner.]

The Internal Revenue Service (the "Service") has amended Form 8609 (Low-Income Housing Credit Allocation Certification) and Form 8586 (Low-Income Housing Credit) to monitor compliance with the low-income housing tax credit requirements. Buildings receiving a credit allocation must be assigned a building

identification number (BIN). A BIN must also be assigned to buildings described in section 42(h)(4) of the Internal Revenue Code of 1986 (the "Code") (relating to buildings financed by tax- exempt bonds subject to the volume cap under section 146), whether or not a separate housing credit allocation is required. Rehabilitation expenditures treated as a separate new building under section 42(e) of the Code will *not* be required to have a separate BIN if a BIN is assigned to the building to which the rehabilitation expenditures have been made. In this case, the BIN used for such expenditures shall be the BIN assigned to the building.

Buildings that have previously been allocated a credit (including buildings subject to the rules of 42(h)(4)) are required to have a BIN assigned retroactively. This number shall apply to the building throughout the building's compliance period and must be reported by you on all forms for which a BIN is requested.

Attached are copies of revised Forms 8609 and 8586. We have completed Part I of revised Form 8609 and have assigned a BIN to your building. This will be the building's permanent identification number for purposes of filing any forms with the Service. The retroactive assignment of a BIN will not require you to file an amended return. However, the revised Forms must be attached to your next-filed Federal income tax return and all subsequent income tax returns in accordance with the instructions on the Forms. In addition, you must complete the revised Forms 8609 and 8586, including Part II of revised Form 8609, the first year certification requirement even if Part II of old Form 8609 has previously been completed. If you are subject to the rules of section 42(h)(4) you must also complete the revised Forms, including Part II of revised Form 8609. If you have received an allocation but have not filed a tax return, you should replace the old Forms 8609 and 8586 with completed revised Forms 8609 and 8586 and include such Forms with your next-filed Federal income tax return.

A Form 8609 (and BIN) is required for *each* building that is eligible for the credit. If you previously received a single Form 8609 for a low-income housing project consisting of more than one building, we are sending you a separate revised Form 8609 for each building in the project. Credits previously allocated to the project have been reallocated to the buildings in the project based upon the information we received from you when applying for a credit allocation. Regardless of the amount of credit real- located to each building, credits may only be taken to the extent of a building's qualified basis.

Part III. ADMINISTRATIVE PRONOUNCEMENT

This document serves as an "administrative pronouncement" as that term is described in section 1.6661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

The collection of information contained in this Notice has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0988. The estimated average burden associated with the collection of information in this Notice is 44 minutes per respondent.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Washington, D.C. 20224, Attention: IRS Reports Clearance Officer TR:FP; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, <Page 416> Attention: Desk Officer for Internal Revenue Service.

Notice 88-166, 1988-2 CB 449--IRC Sec(s).42

PLACED IN SERVICE

For purposes of section 42, the term "placed in service" has two definitions–one for building sand one for rehabilitation expenditures that are treated as a separate new building (section42(e)(4)(A)). The placed-in-service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function, i.e., the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law. In general, a transfer of the building results in a new placed-in-service date if, on the date of the transfer, the building is occupied or ready for occupancy.

Under section 42(e)(4)(A) of the Code, rehabilitation expenditures that are treated as a separate new building are placed in service at the close of any 24-month period, over which such expenditures are aggregated. The placed-in-service date of section 42(e)(4)(A) applies even if the building is occupied during the rehabilitation period.

A building may be placed in service even if the rental units in the building are not currently occupied by low-income tenants.

This document serves as an "administrative pronouncement" as that term is described in 1.661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

Notice 89-6, 1989-1 CB 625--IRC Sec(s).42

Low-Income Housing Tax Credit--Utility Allowance Requirements, Determination of General Public Use, and Provision of Services

The purpose of this Notice is to inform taxpayers that regulations under section 42 of the Internal Revenue Code of 1986 (the "Code") relating to the Low-Income Housing Tax Credit will provide that--

1. Department of Housing and Urban Development (HUD) regulated buildings shall use HUD utility allowances for purposes of section 42(g)(2) of the Code. Other housing shall use the utility rates or schedules provided for the relevant area by the applicable Public Housing Authority (PHA). Special rules apply to buildings or tenants receiving Farmers Home Administration (FmHA) housing assistance.

2. Residential rental units will be considered to be "for use by the general public" if housing is provided in a manner consistent with federal housing policy governing nondiscrimination as determined under HUD rules and regulations.

3. Any services may be provided to low-income tenants in connection with their occupancy of residential rental units. However, the cost of any services that are required to be paid by a tenant as a condition of occupancy generally must be included in gross rent for purposes of applying the gross rent limitation of section 42(g)(2) of the Code.

UTILITY ALLOWANCES.

In order to qualify as a "rent-restricted unit" within the meaning of section <Page 626> 42(g) of the Code, the gross rent for such unit must not exceed 30 percent of the applicable income limitation. Failure to qualify as a rent restricted unit may result in ineligibility for the section 42 credit, reduction in the amount of the credit, and/or recapture of previously allowed credits. For this purpose, gross rent

includes the cost of any utilities, other than telephone. If any utilities are paid directly by the tenant, section 42(g)(2)(B)(ii) requires the inclusion in gross rent of a utility allowance determined by the Secretary, after taking into account the procedures under section 8 of the United States Housing Act of 1937.

Regulations will provide that the owner of a HUD-regulated building--a building whose rents and utility allowances are reviewed by HUD on an annual basis—must use HUD utility allowances. For other buildings occupied by one or more tenants receiving HUD rental assistance payments ("HUD tenant assistance"), an owner must use the applicable Public Housing Authority (PHA) utility allowances established for the Section 8 Existing Housing Program. A building owner must apply FmHA utility allowances to any rent-restricted unit in a building where either the building or any tenant receives FmHA housing assistance. If a building is both HUD-regulated and FmHA assisted, then FmHA utility allowances must be used. Similarly, all low-income tenants receiving HUD rental assistance are subject to FmHA utility allowances where the building or any other tenant in the building receives FmHA assistance. For example, a low-income building receiving assistance under FmHA section 515 shall use Exhibit A-5 of FmHA Instruction 1944-E (or a successor method of determining utility allowances), regardless of whether the building is HUD regulated or any low-income tenant in the building receives HUD rental assistance. These rules will apply only for the purposes of section 42(g), and will not apply to the use of utility allowances by HUD or FmHA for their own internal purposes.

Regulations will also provide that a building owner must use the applicable Public Housing Authority (PHA) utility allowance for a building where there is neither (1) HUD tenant assistance, nor (2) an applicable HUD or FmHA utility allowance. In these cases, any interested party (e.g., a low-income tenant, building owner, or state housing authority) may obtain a letter from a local utility company providing the estimated cost of that utility for each unit of similar size and construction for the geographic area in which the low-income building is located. An interested

party may obtain a letter from the local utility company at any time during the building's 15-year compliance period. Costs incurred in this process must be borne by the initiating party. The interested party must furnish a copy of the letter to the owner of the building and should retain the original. If the utility estimates provided by the local utility companies differ from the utility allowances provided by the PHA, the utility company estimates shall be used in calculating the gross rent limitation. If the utility estimates provided by the local utility companies are higher for one or more rent- restricted units, the building owner must adjust the rents of any rent- restricted unit where failure to do so would result in a violation of the gross rent limitation of section 42(g)(2). Finally, if at any time during the building's 15-year compliance period the building or a low-income tenant (1) becomes subject to HUD or FmHA utility allowances, or (2) receives HUD tenant assistance, all rent-restricted units in the building become subject to the appropriate HUD, FmHA, or PHA utility allowance.

A building owner who is required to use either HUD, FmHA, or PHA utility allowances must use such allowances to compute gross rents of rent-restricted units paid more than 90 days after the date of publication of this Notice in the Internal Revenue Bulletin. These allowances shall apply throughout the building's 15-year compliance period and shall be updated at the time rents are revised. A building owner who must apply a new utility allowance during the 15-year compliance period because a building or tenant receives HUD or FmHA assistance, or because local utility company estimates become applicable, must use such new utility allowances to compute gross rents of rent-restricted units paid 90 days after the date of occupancy of the federally-assisted tenant or 90 days from the post date of the last utility company estimate. These utility allowances shall also be updated when rents are revised.

In all cases, rent paid for occupancy after the deadline for applying the correct utility allowance must reflect the correct utility allowance. If application of the correct utility allowance results in a violation of the gross rent limitation of section

42(g)(2) for any low- income tenant, then the building owner must adjust that tenant's rent to claim a credit for the unit occupied by that tenant.

GENERAL PUBLIC USE REQUIREMENT.

The legislative history of section 42 of the Code provides that "Residential rental units must be for use by the general public. ... Residential rental units are not for use by the general public, for example, if the units are provided only for members of a social organization or provided by an employer for its employees." H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-95 (the "Conf. Rep."), 1986-3 (Vol. 4) C.B. 95. Regulations will provide that the term "for use by the general public" shall be determined in a manner consistent with HUD housing policy governing non- discrimination as evidenced by HUD rules and regulations. See HUD Handbook 4350.3 (or its successor). Accordingly, owners of residential rental units that give preferences to certain classes of tenants (e.g., the homeless, disabled and/or handicapped) will not violate the general public use requirement if such preferences would not violate any HUD policy governing non-discrimination expressed in the HUD handbook. However, if residential rental units are restricted to a class of residents that would violate HUD housing policy (e.g., residential rental units provided solely for members of a social organization or by an employer for its employees) then the building in which these units are located will be ineligible for the credit.

PROVISION OF SERVICES.

Regulations will provide that, solely for purposes of section 42 of the Code, the furnishing to tenants of services other than housing (whether or not such services are significant) will not prevent property from qualifying as residential rental property. Regulations will also provide that, with the exception of certain federally-assisted projects for the elderly and handicapped (see below), any charges for services that are not optional to low-income tenants must be included in gross rent for purposes of section 42(g)(2)(A). A service is optional if payment

for the service is not required as a condition of occupancy. Thus, in certain circumstances, a retirement-type facility may qualify under section 42 as residential rental property, notwithstanding **<Page 627>** that significant services other than housing are furnished to tenants. However, if continual nursing, medical, or psychiatric care is provided, it will be presumed that such services are mandatory. Such is generally the case with hospitals, nursing homes, sanitariums, and lifecare facilities.

For example, assume that meals and other services are provided to low- income tenants in a retirement home. Assume also that the cost of these services, when combined with rent and utility allowances, exceeds the 30 percent gross rent limitation. If any low-income tenants are required to pay for these services as a condition of occupancy, then the units occupied by these tenants are not rent-restricted units and are not included in qualified basis. However, if payment for these services is optional, then these units are rent-restricted units and are includible in qualified basis assuming that the gross rent limitation is otherwise satisfied. Where multiple services are provided, a building owner must decide which services are mandatory and included in the 30 percent gross rent limitation. All other services must be provided on an optional basis.

The cost of services must be included in the 30 percent gross rent limitation even if federal or state law requires that services be offered to tenants by project owners. A limited exception to this rule applies to existing federally-assisted projects for the elderly and handicapped that are authorized by 24 CFR 278 to provide a mandatory meals program. In these projects, mandatory meal charges will not be included in gross rent for purposes of section 42(g)(2)(A) if the provisions of 24 CFR 278 are otherwise complied with.

This document serves as an "administrative pronouncement" as that term is described in section 1.6661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

Part III-Administrative, Procedural, and Miscellaneous

Relief from Certain Low-Income Housing Credit Requirements Due to Hurricane Katrina

Notice 2005-69

The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects in the United States as a result of the devastation caused by Hurricane Katrina. This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42-13(a) of the Income Tax Regulations.

BACKGROUND

On August 29, 2005, the President declared major disasters for the States of Alabama, Louisiana, and Mississippi as a result of Hurricane Katrina. These declarations were made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Title 42 U.S.C. 5121-5206 (2000 and Supp. II 2002). Subsequently, the Federal Emergency Management Agency (FEMA) designated jurisdictions for Individual Assistance.

State housing credit agencies throughout the United States have requested that the Service allow owners of low-income housing credit projects to provide temporary housing in vacant units to individuals who resided in jurisdictions designated for Individual Assistance in Alabama, Louisiana, and Mississippi and who have been displaced because their residences were destroyed or damaged as a result of the devastation caused by Hurricane Katrina

(displaced individuals). State housing credit agencies have further requested that the temporary housing of the displaced individuals in low-income units without regard to income not cause the owners to lose low-income housing credits. Based upon these requests and because of the widespread damage to housing caused by Hurricane Katrina, the Service has determined that any housing credit agency of a state or a possession of the United States (state housing credit agency) may provide approval to project owners in their respective state or possession to provide temporary emergency housing for displaced individuals in accordance with this notice.

I. SUSPENSION OF INCOME LIMITATIONS

The Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 42 for certain qualified low-income projects. The suspension will apply to low-income housing projects approved by the state housing credit agency, in which vacant units are rented to displaced individuals. The state housing credit agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2006 (temporary housing period).

II. STATUS OF UNITS

A. Units in the first year of the credit period

A displaced individual temporarily occupying a unit during the first year of the credit period under § 42(f)(1) will be deemed a qualified low-income tenant for purposes of determining the project's qualified basis under § 42(c)(1), and for meeting the project's 20-50 test or 40-60 test as elected by the project owner

under § 42(g)(1). After the end of the temporary housing period established by the state housing credit agency (not to extend beyond September 30, 2006), a displaced individual will no longer be deemed a qualified low-income tenant.

B. Vacant units after the first year of the credit period

During the temporary housing period established by a state housing credit agency, the status of a vacant unit (that is, market-rate or low-income for purposes of § 42 or never previously occupied) after the first year of the credit period that becomes temporarily occupied by a displaced individual remains the same as the unit's status before the displaced individual moves in. Displaced individuals temporarily occupying vacant units will not be treated as low-income tenants under § 42(i)(3)(A)(ii) (a low-income unit that was vacant before the effective date of this notice will continue to be treated as a vacant low-income unit even if it houses a displaced individual, a market rate unit that was vacant before the effective date of this notice will continue to be treated as a vacant market rate unit even if it houses a displaced individual, and a unit that was never previously occupied before the effective date of this notice will continue to be treated as a unit that has never been previously occupied even if it houses a displaced individual). Thus, the fact that a vacant unit becomes occupied by a displaced individual will not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis, nor will it affect the 20-50 test or 40-60 test of § 42(g)(1). If the income of occupants in low-income units exceeds 140 percent of the applicable income limitation, the temporary occupancy of a unit by a displaced individual will not cause application

of the available unit rule under § 42(g)(2)(D)(ii). In addition, the project owner is not required during the temporary housing period to make attempts to rent to low-income individuals the low-income units housing displaced individuals.

III. SUSPENSION OF NON-TRANSIENT REQUIREMENTS

The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to any unit providing temporary housing to a displaced individual during the temporary housing period determined by the state housing credit agency in accordance with section I of this notice.

IV. OTHER REQUIREMENTS

All other rules and requirements of § 42 will continue to apply during the temporary housing period established by the state housing credit agency. After the end of the temporary housing period, the applicable income limitations contained in § 42(g)(1), the available unit rule under § 42(g)(2)(D)(ii), the non-transient requirement of § 42(i)(3)(B)(i), and the requirement to make reasonable attempts to rent vacant units to low-income individuals shall resume. If a project owner offers to rent to a displaced individual after the end of the temporary housing period, a displaced individual must be certified under the requirements of § 42(i)(3)(A)(ii) and § 1.42-5(b) and (c) to be a qualified low-income tenant. To qualify for the relief in this notice, the project owner must additionally meet all of the following requirements:

(1) Major Disaster Area

The displaced individual must have resided in an Alabama, Louisiana, or

Mississippi jurisdiction designated for Individual Assistance by FEMA as a result of Hurricane Katrina.

(2) Approval of State Housing Credit Agency

The project owner must obtain approval from the state housing credit agency for the relief described in this notice. The state housing credit agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2006.

(3) Certifications and Recordkeeping

To comply with the requirements of § 1.42-5, project owners are required to maintain and certify certain information concerning each displaced individual temporarily housed in the project, specifically: name, address of damaged residence, social security number, and a statement signed under penalties of perjury by the displaced individual that, because of damage to the individual's residence in an Alabama, Louisiana, or Mississippi jurisdiction designated for Individual Assistance by FEMA as a result of Hurricane Katrina, the individual requires temporary housing. The owner must list the project on the National Emergency Resource Registry (NERR) maintained by the Department of Homeland Security. The NERR assists coordination efforts between resources that are needed and resources that are available. The web site for listing the project is: www.SWERN.gov.

The owner must also certify the date the displaced individual began temporary occupancy and the date the project will discontinue providing temporary housing as established by the state housing credit agency. The

certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the state housing credit agency.

(4) Rent Restrictions

Rents for the low-income units housing displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under § 42(g)(2).

(5) Protection of Existing Tenants

Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

EFFECTIVE DATE

This notice is effective August 29, 2005 (the date of the President's major disaster declarations as a result of Hurricane Katrina).

PAPERWORK REDUCTION ACT

Pursuant to 5 CFR 1320.18(d), the Office of Management and Budget has waived the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) with respect to the recordkeeping requirements contained in this notice.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this notice is Jack Malgeri of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. Malgeri on (202) 622-3040 (not a toll free call).

Part III-Administrative, Procedural, and Miscellaneous

Relief from Certain Low-Income Housing Credit Requirements Due to Hurricane Rita

Notice 2006-11

The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Reve nue Code for low-income housing credit projects in the United States as a result of the devastation caused by Hurricane Rita. This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42-13(a) of the Income Tax Regulations. BACKGROUND

On September 24, 2005, the President declared major disasters for the states of Louisiana and Texas as a result of Hurricane Rita. These declarations were made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Title 42 U.S.C. 5121-5206 (2000 and Supp. II 2002). Subsequently, the Federal Emergency Management Agency (FEMA) designated jurisdictions for Individual Assistance.

The states of Louisiana and Texas have requested that the Service grant relief similar to Notice 2005-69, 2005-40 I.R.B. 622 (applying to Hurricane Katrina which temporarily suspended certain requirements under § 42 of the Internal Revenue Code) to allow owners of low-income housing credit projects throughout the United States to provide temporary housing in vacant units to individuals who resided in jurisdictions designated for Individual Assistance in Louisiana and Texas and who have been displaced because their residences were destroyed or damaged as a result of the devastation caused by Hurricane Rita. The states of

Louisiana and Texas have further requested that the temporary housing of the displaced individuals in low-income units without regard to income not cause the owners to lose low-income housing credits.

Based upon these requests a nd because of the widespread damage to housing caused by Hurricane Rita, the Service has determined that any housing credit agency of a state or a possession of the United States (state housing credit agency) may provide approval to project owners in their respective state or possession to provide temporary emergency housing for individuals displaced by Hurricane Rita (displaced individuals) in accordance with this notice.

I. SUSPENSION OF INCOME LIMITATIONS

The Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 42 for certain qualified low-income projects. The suspension will apply to low-income housing projects approved by the state housing credit agency, in which vacant units are rented to displaced individuals. The state housing credit agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2006 (temporary housing period).

II. STATUS OF UNITS

A. Units in the first year of the credit period

A displaced individual temporarily occupying a unit during the first year of the credit period under § 42(f)(1) will be deemed a qualified low-income tenant for purposes of determining the project's qualified basis under § 42(c)(1), and for meeting the project's 20-50 test or 40-60 test as elected by the

project owner under § 42(g)(1). After the end of the temporary housing period established by the state housing credit agency (not to extend beyond September 30, 2006), a displaced individual will no longer be deemed a qualified low-income tenant.

B. Vacant units after the first year of the credit period

During the temporary housing period established by a state housing credit agency, the status of a vacant unit (that is, market-rate or low-income for purposes of § 42 or never previously occupied) after the first year of the credit period that becomes temporarily occupied by a displaced individual remains the same as the unit's status before the displaced individual moves in. Displaced individuals temporarily occupying vacant units will not be treated as low-income tenants under § 42(i)(3)(A)(ii) (a low-income unit that was vacant before the effective date of this notice will continue to be treated as a vacant low-income unit even if it houses a displaced individual, a market rate unit that was vacant before the effective date of this notice will continue to be treated as a vacant market rate unit even if it houses a displaced individual, and a unit that was never previously occupied before the effective date of this notice will continue to be treated as a unit that has never been previously occupied even if it houses a displaced individual). Thus, the fact that a vacant unit becomes occupied by a displaced individual will not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis, nor will it affect the 20-50 test or 40-60 test of § 42(g)(1). If the income of occupants in low-income units exceeds 140 percent of the applicable income limitation, the

temporary occupancy of a unit by a displaced individual will not cause application of the available unit rule under § 42(g)(2)(D)(ii). In addition, the project owner is not required during the temporary housing period to make attempts to rent to low-income individuals the low-income units housing displaced individuals.

III. SUSPENSION OF NON-TRANSIENT REQUIREMENTS

The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to a ny unit providing temporary housing to a displaced individual during the temporary housing period determined by the state housing credit agency in accordance with section I of this notice.

IV. OTHER REQUIREMENTS

All other rules and requirements of § 42 will continue to apply during the temporary housing period established by the state housing credit agency. After the end of the temporary housing period, the applicable income limitations contained in § 42(g)(1), the available unit rule under § 42(g)(2)(D)(ii), the non-transient requirement of § 42(i)(3)(B)(i), and the requirement to make reasonable attempts to rent vacant units to low-income individuals shall resume. If a project owner offers to rent to a displaced individual after the end of the temporary housing period, a displaced individual must be certified under the requirements of § 42(i)(3)(A)(ii) and § 1.42-5(b) and (c) to be a qualified low-income tenant. To qualify for the relief in this notice, the project owner must additionally meet all of the following requirements:

(1) Major Disaster Area

The displaced individual must have resided in a Louisiana or Texas

jurisdiction designated for Individual Assistance by FEMA as a result of Hurricane Rita.

(2) Approval of State Housing Credit Agency

Project owners must obtain approval from their state housing credit agency to obtain the relief described in this notice. The state housing credit agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2006.

(3) Certifications and Recordkeeping

To comply with the requirements of § 1.42-5, project owners are required to maintain and certify certain information concerning each displaced individual temporarily housed in the project, specifically: name, address of damaged residence, social security number, and a statement signed under penalties of perjury by the displaced individual that, because of damage to the individual's residence in a Louisiana or Texas jurisdiction designated for Individual Assistance by FEMA as a result of Hurricane Rita, the individual requires temporary housing. The owner must list the project on the FEMA registry for assistance under "Locate or List Rental Properties". The web address for listing the project is: www.fema.gov.

The owner must also certify the date the displaced individual began temporary occupancy and the date the project will discontinue providing temporary housing as established by the state housing credit agency. The certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the

state housing credit agency.

(4) Rent Restrictions

Rents for the low-income units housing displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under § 42(g)(2).

(5) Protection of Existing Tenants

Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals. EFFECTIVE DATE

This notice is effective September 24, 2005 (the date of the President's major disaster declarations as a result of Hurricane Rita). PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1997.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this notice is in the section titled "OTHER REQUIREMENTS" and "(3) Certifications and Recordkeeping". This information is required to enable the Service to verify whether individuals are displaced as a result of Hurricane Rita and thus warrant temporary housing in vacant low-income housing credit units. The collection of information is required to obtain a

benefit. The likely respondents are individuals, businesses, and nonprofit institutions.

The estimated total annual recordkeeping burden is 1,250 hours.

The estimated annual burden per recordkeeper is approximately 15 minutes. The estimated number of recordkeepers is 5,000.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103. DRAFTING INFORMATION

The principal author of this notice is Jack Malgeri of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. Malgeri on (202) 622-3040 (not a toll free call).

REVENUE RULE 90-60

1990-2 C.B. 3, 1990-30 I.R.B. 4.

Internal Revenue Service
Revenue Ruling

LOW-INCOME HOUSING CREDIT; SATISFACTORY BOND

Published: July 3, 1990

Section 42. - Low-Income Housing Credit
Low-income housing credit; satisfactory bond. Guidance is provided on the amount of bond considered satisfactory by the Secretary and the period of the bond required by the Secretary under section 42(j)(6) of the Code. Also monthly 'bond factor' amounts to be used by taxpayers who dispose of low-income housing buildings or interests therein, during calendar years 1987, 1988, 1989, and the first seven months of calendar year 1990 are announced.

Section 42(a) of the Internal Revenue Code allows a 10-year tax credit for investment in qualified low-income buildings placed in service after December 31, 1986. Section 7108 of the Revenue Reconciliation Act of 1989, 1990-11 I.R.B. 11, 16, extended the credit and amended certain provisions of section 42. The amount of the low-income housing credit for any tax year in the credit period is an amount equal to the product of the applicable percentage and the qualified basis of each qualified low-income building.

If, at the close of any tax year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than the amount of the qualified basis at the close of the preceding tax year, section 42(j)(1) of the Code provides that the taxpayer's tax for the tax year shall be increased by the credit recapture amount under section 42(j)(2). However, under section 42(j)(6), a taxpayer that disposes of a qualified low-income building or an interest therein may defer or avoid recapture by furnishing a bond to the Secretary in an amount satisfactory to, and for the period required by, the Secretary if it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the building's compliance period.

The taxpayer's obligation under the bond must be secured by a surety, and the company acting as surety on the bond must hold a Certificate of Authority from the Department of the Treasury, Financial Management Service. These companies are listed in Treasury Department Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.

The purpose of the bond is to secure the taxpayer's liability for credit recapture under section 42(j) of the Code with respect to the taxpayer's disposition of an interest in a qualified low-income building during the compliance period. If a taxpayer furnishes a bond under section 42(j)(6) with respect to the disposition of an interest in a qualified low-income building, the taxpayer will be treated, solely for purposes of applying section 42(j) with respect to the disposition, as if the taxpayer had not disposed of the interest. Instead, the taxpayer's recapture (if any) with respect to the disposed-of interest will be determined under the rules of section 42(j) by deeming the taxpayer to continue to own the disposed-of interest and by determining the qualified basis for the deemed interest in accordance with the rules of section 42(c). The taxpayer will not, however, be treated as claiming any additional low-income housing credit with respect to the disposed-of interest for any period following the disposition.

If the qualified basis with respect to the taxpayer's deemed interest in a qualified low-income building decreases after a disposition of the taxpayer's interest in the qualified low-income building, the bond may be forfeited in whole or in part. If a bond is forfeited only in part (i.e., the taxpayer's qualified basis in the deemed interest decreases, but is not eliminated), the nonforfeited portion of the bond remains subject

to forfeiture in the event of subsequent decreases in qualified basis with respect to the taxpayer's deemed interest. For example, the Government could call a portion of a bond during the bond's term due to a decrease in qualified basis with respect to the taxpayer's deemed interest and could later call an additional portion of the bond due to a further decrease in qualified basis with respect to the taxpayer's deemed interest. Forfeiture could also result if the building ceases to be a qualified low-income building because such a cessation reduces to zero the qualified basis with respect to the taxpayer's deemed interest in the building.

In the event of a decrease in qualified basis, the amount of the bond forfeited generally will be (i) the credit recapture amount computed under section 42(j) of the Code with respect to the deemed interest (including interest at the overpayment rate through the date the return is due, without regard to extensions, for the year in which the event giving rise to forfeiture occurs), plus (ii) interest accruing on such amount as described under section 6621(a)(2) from the date the return is due, without regard to extensions, for the year in which the event giving rise to forfeiture occurs, through the date the Government collects the proceeds of the bond. It is the responsibility of the taxpayer to provide any documentation necessary to compute the credit recapture amount under section 42(j).

The Secretary has determined that a bond furnished under section 42(j)(6) of the Code must be maintained for a period that ends no sooner than the date that is 58 months after the last day of the compliance period for the building. Each calendar month, the Secretary will publish in the Internal Revenue Bulletin a table of 'bond factor' amounts for dispositions occurring during the calendar month. In general, taxpayers can ascertain the minimum bond that the Secretary considers satisfactory for qualified low-income buildings or interests therein that are disposed of during that calendar month by using the bond factor amount that corresponds to the month of disposition and the first year of the building's credit period - either the year the building was placed in service or the succeeding calendar year if the section 42(f)(1) election was made.

The minimum required bond amount is generally the product of (1) the total credits that the taxpayer has claimed (as well as any additional credits the taxpayer anticipates claiming for any year or portion thereof preceding the date of disposition), (2) the appropriate bond factor amount pertaining to the month in the compliance period which the disposition occurred and the first year of the building's credit period, and (3) the percentage of the taxpayer's total interest in the qualified low-income building disposed of by the taxpayer, taking into account the de minimis rule. described below. (It is not necessary for the taxpayer to calculate the amount of credits claimed on an accelerated basis, as the bond factor amount takes this into account.) The term 'total credits' includes any carrybacks and carryforwards that have been deferred. However, the term 'total credits' does not include credit amounts previously recaptured, credit amounts with respect to which a bond was previously posted by the taxpayer, or credits taken on additions to qualified basis that are not subject to recapture because they are not claimed on an accelerated basis. In the event a taxpayer that has furnished a bond files an amended return claiming credits in excess of those included in the calculation of the bond factor amount, that taxpayer is subject to recapture with regard to the excess credits claimed unless the taxpayer furnishes an additional bond with respect to such excess credits.

For administrative convenience, the Service intends to issue regulations adopting a de minimis rule pursuant to which a taxpayer who is a partner in a partnership owning an interest in a qualified low-income building (other than a partnership described in section 42(j)(5)(B) of the Code) may elect to avoid or defer recapture by reason of dispositions of interests in the partnership without furnishing a bond until the taxpayer has, in the aggregate, disposed of more than 33-1/3 percent of that taxpayer's greatest total interest in the qualified low-income building through the partnership at any point in time. Once dispositions aggregate more than 33-1/3 percent, the de minimis rule will no longer be available and further deferral with respect to those dispositions will be possible only if the taxpayer furnishes a bond. The taxpayer that defers recapture by reason of the disposition of an interest under the de minimis rule will remain subject to

recapture under section 42(j) with respect to that interest. Regulations containing the de minimis rule will be forthcoming and may modify the rules set forth above.

After the publication of this revenue ruling, the previous 50 percent de minimis rule mentioned in the instructions to Schedule A of Form 8609 is no longer available. A taxpayer, other than a taxpayer in a partnership relying on the 33-1/3 percent de minimis rule, may avoid or defer recapture with respect to a disposition of an interest in a qualified low-income building only if the taxpayer furnishes a bond with respect to such disposition.

However, in the case of taxpayers (other than taxpayers in partnerships relying on the 33-1/3 percent de minimis rule) that disposed of less than 50 percent of their interest (direct or indirect) in a qualified low-income building before the publication of this ruling but have neither furnished a bond nor paid recapture with respect to such dispositions, a special rule applies. Those taxpayers may continue to defer recapture by reason of their prior dispositions, without furnishing a bond with respect to those dispositions, until the date they dispose of any additional interest, direct or indirect, in the qualified low-income building. This rule is intended to apply to those taxpayers who previously relied on the 50 percent de minimis rule mentioned in the instructions to Schedule A of Form 8609. For purposes of this rule, a written binding contract to dispose of an interest in a qualified low- income building is deemed to constitute a disposition as of the date the contract is entered into.

Taxpayers that disposed of 50 percent or more of their interest (direct or indirect) in a qualified low-income building before the publication of this revenue ruling but have neither furnished a bond nor paid recapture with respect to such dispositions may continue to defer recapture by reason of their prior dispositions only by furnishing a bond securing their liability for recapture with respect to those dispositions. This bond must be furnished in accordance with the provisions of this revenue ruling within 6 months after publication of this revenue ruling.

The bond factor amounts for calculating a disposition bond under section 42(j)(6) of the Code for dispositions occurring during calendar years 1987, 1988, 1989 and the first seven months of 1990 are contained in the accompanying table.

Rev. Rul. 90-60
MONTHLY BOND FACTOR AMOUNTS FOR DISPOSITIONS EXPRESSED AS A PERCENTAGE OF TOTAL CREDITS

Calendar Year Building Placed in Service or, if Section42(f)(1) Election Was Made, the Succeeding Calendar Year				
Month of Disposition	1987	1988	1989	1990
Jan '87	150.72%			
Feb '87	150.72			
Mar '87	150.72			
Apr '87	150.72			
May '87	150.72			
Jun '87	150.72			
Jul '87	150.72			
Aug '87	150.72			
Sep '87	150.72			

Oct '87	150.72			
Nov '87	150.72			
Dec '87	150.72			
Jan '88	149.68	151.51		
Feb '88	148.78	151.51		
Mar '88	148.00	151.51		
Apr '88	147.32	151.51		
May '88	146.72	151.51		
Jun '88	146.18	151.51		
Jul '88	145.70	151.51		
Aug '88	145.27	151.51		
Sep '88	144.88	151.51		
Oct '88	144.53	151.51		
Nov '88	144.21	151.51		
Dec '88	143.81	151.51		
Jan '89	143.09	150.35	150.76	
Feb '89	142.34	149.36	150.76	
Mar '89	141.64	148.49	150.76	
Apr '89	140.98	147.74	150.76	
May '89	140.38	147.07	150.76	
Jun '89	139.81	146.48	150.76	
Jul '89	139.29	145.95	150.76	
Aug '89	138.79	145.47	150.76	
Sep '89	138.33	145.04	150.76	
Oct '89	137.89	144.65	150.76	
Nov '89	137.47	144.29	150.76	
Dec '89	137.08	143.96	150.76	
Jan '90	136.40	143.14	149.65	150.76
Feb '90	135.75	142.38	148.71	150.76
Mar '90	135.13	141.68	147.89	150.76
Apr '90	134.54	141.03	147.17	150.76
May '90	133.99	140.42	146.54	150.76
Jun '90	133.46	139.86	145.97	150.76
Jul '90	132.95	139.33	145.47	150.76

The Service will provide additional guidance concerning procedural aspects of furnishing and forfeiting bonds under section 42(j)(6) of the Code, including guidance with respect to the time, Place, and form in which bonds are to be furnished. Furthermore, regulations will be forthcoming to explain the proper calculation of qualified basis and credit amounts subject to recapture under section 42(j). The Service solicits suggestions for alternative methods of satisfying the requirements in section 42(j)(6).

DRAFTING INFORMATION

The principal author of this revenue ruling is Donna M. Young of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Ms. Young on (202) 377-6349 (not a toll-free call).

Rev. Rul. 90-60, 1990-2 C.B. 3, 1990-30 I.R.B. 4.

REVENUE RULE 90-89

1990-2 C.B. 8, 1990-44 I.R.B. 6.

Internal Revenue Service
Revenue Ruling

LOW-INCOME HOUSING CREDIT; MINIMUM SET-ASIDE REQUIREMENTS

Published: October 29, 1990

(See Also Section 142.)

Low-income housing credit; minimum set-aside requirements. For purposes of determining whether a building meets the minimum set-aside requirements of section 42(g)(1) of the Code, the combined income of all occupants of an apartment, whether or not legally related, is compared to the appropriate percentage of the median family income for a family with the same number of members.

ISSUE

For purposes of determining whether a building meets the minimum set-aside requirements of section 42(g)(1) of the Internal Revenue Code, how is the appropriate percentage of the area median gross income determined for occupants of an apartment when those occupants are not legally related?

FACTS

The owner of a newly constructed building wants to qualify the building for the low-income housing credit under section 42(a) of the Code. The owner has elected to qualify under the 40-60 minimum set-aside requirement of section 42(g)(1)(B), under which 40 percent or more of the building's aggregate residential rental units must be occupied by individuals with incomes of 60 percent or less of the area median gross income.

A and B are unrelated individuals who want to rent a two-bedroom apartment in the building. A and B each has income that does not exceed 60 percent of the area median gross income for one individual. However, A and B's combined income exceeds 60 percent of the area median gross income for a two-individual family.

LAW AND ANALYSIS

Section 38(a) of the Code provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low- income housing credit determined under section 42(a).

Section 42(a) of the Code provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any tax year in the credit period shall be an amount equal to the 'applicable percentage' of the qualified basis of each qualified low-income building.

Section 42(c)(2) of the Code defines the term 'qualified low-income building' as any building: (A) that is part of a qualified low-income housing project at all times during the period (i) beginning on the first day in the compliance period on which the building is part of such a project, and (ii) ending on the last day of the compliance period with respect to the building, and (B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

Section 42(g)(1) of the Code defines the term 'qualified low-income housing project' as any project for residential rental property if the project meets the requirements of subparagraphs (A) and (B), whichever the taxpayers elects. The election is irrevocable. The project meets the requirements of section 42(g)(1)(A) if 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income. The project meets the requirements of section 42(g)(1)(B) if 40 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. This rule is known as the 'minimum set-aside' requirement. 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-92 (1986), 1986-3 (Vol. 4) C.B. 92.

Section 42(g)(4) of the Code provides, in part, that section 142(d)(2)(B) applies for purposes of determining whether any project is a low- income housing project and whether any unit is a low-income unit. Section 142(d)(2)(B) states that the income of individuals and area median gross income shall be determined in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if the program is terminated, under the program as in effect immediately before such termination). Determinations of area median gross income under the preceding sentence are adjusted for family size. The determination of an individual's or family's income for purposes of section 8 of the Housing Act of 1937 may differ materially from that individual's or family's income for federal income tax purposes.

In order to satisfy the minimum set-aside requirements of section 42(g)(1) of the Code, a specified percentage of apartments in a low-income housing project must be occupied by low-income tenants who meet the income limits of section 42(g)(1). Under sections 42(g)(1) and 142(d)(2)(B), tenants are considered low- income by reference to the area median gross income as adjusted for family size. These sections require that the income of all individuals in a family that share an apartment be aggregated and compared to the area median gross income for a family of the same size to determine if the minimum set-aside requirement is satisfied. Similarly, the income of all unrelated individuals who share an apartment should be aggregated and compared to the area median gross income for a family of the same size to determine if the minimum set- aside requirement is satisfied.

In this case, if A and B rent the apartment, that apartment does not count towards satisfying the minimum set-aside requirement of section 42(g)(1)(B) because A and B's combined income exceeds 60 percent of the area median gross income for a two-individual family.

HOLDING

For purposes of determining whether a building meets the minimum set-aside requirements of section 42(g)(1) of the Code, the combined income of all occupants of an apartment, whether or not legally related, is compared to the appropriate percentage of the median family income for a family with the number of members.

DRAFTING INFORMATION

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Rev. Rul. 90-89, 1990-2 C.B. 8, 1990-44 I.R.B. 6.

REVENUE RULE 91-38

1991-2 C.B. 3, 1991-26 I.R.B. 5.

Internal Revenue Service
Revenue Ruling

LOW-INCOME HOUSING CREDIT

Published: July 1, 1991

Section 42 Low-Income Housing Credit

(See Also Sections 38, 167; 1.167(k)-1.)

LOW-INCOME HOUSING CREDIT. This ruling answers 12 frequently asked questions about the low-income housing credit provisions of section 42 of the Code.

PURPOSE

This revenue ruling answers certain questions about the low-income housing credit provided for in section 42 of the Internal Revenue Code.

LAW

Section 38(a) of the Code provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low- income housing credit determined under section 42(a). The low-income housing credit that may be claimed in any year is subject to the general business tax credit limitation of section 38(c).

Section 42(a) of the Code, added by section 252 of the Tax Reform Act of 1986 (the "1986 Act"), 1986-3 (Vol. 1) C.B. 106, provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any tax year in the credit period shall be an amount equal to the "applicable percentage" of the qualified basis of each qualified low-income building.

Credit Period

Section 42(f)(1) of the Code, as amended by section 1002(1)(2)(B) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), 1988-3 C.B. 1, 34, defines the credit period of any building as the period of 10 tax years beginning with the tax year in which the building is placed in service, or at the taxpayer's irrevocable election, the succeeding tax year, but in either case only if the building is qualified low-income building as of the close of the first year of the credit period.

For purposes of calculating the credit allowable for the first tax year of the credit period, section 42(f)(2) of the Code reduces the credit by applying the following first-year convention: the fraction used to determine qualified basis at the end of the first year is the sum of applicable fractions determined at the end of each full month the building was in service during that year, divided by 12. In the first tax year following the credit period, a taxpayer may recover any reduction in credit caused by applying the first-year convention during the first year of the credit period.

Applicable Percentage

In the case of any qualified low-income building placed in service by the taxpayer after 1987, section 42(b)(2)(A) of the Code provides that the term "applicable percentage" means the appropriate percentage prescribed by the Secretary for the earlier of (i) the

month in which the building is placed in service, or (ii) at the election of the taxpayer (I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to the building (which is binding on the agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to the building, or (II) in the case of any building to which section 42(h)(4)(B) applies, the month in which the tax-exempt obligations are issued. Section 42(b)(2)(B) provides that the percentages prescribed by the Secretary for any month shall be percentages that will yield over a 10-year period amounts of credit that have a present value equal to: (i) 70 percent of the qualified basis, in the case of new buildings that are not federally subsidized for the tax year (70 percent present value credit), and (ii) 30 percent of the qualified basis, in the case of new buildings that are federally subsidized for the tax year and existing buildings (30 percent present value credit). The appropriate credit percentages for each month are published monthly in the revenue ruling containing the applicable federal rates.

Section 42(i)(2)(A) of the Code provides, in part, that for purposes of section 42(b)(1), a new building shall be treated as federally subsidized for any tax year if, at any time during the tax year or any prior tax year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103, or any below market federal loan (as defined in section 42(i)(2)(D)), the proceeds of which are or were used (directly or indirectly) with respect to the building or its operation.

Under section 42(b)(1) of the Code, for any qualified low-income building placed in service by the taxpayer during 1987, the applicable percentage for new buildings not federally subsidized is 9 percent and the applicable percentage for existing or federally subsidized buildings is 4 percent.

After calendar year 1989, existing buildings that receive moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937, 42 U.S.C. 1437f (1988), at any time during the credit period, generally are not eligible for an allocation of credit. See section 7108(h)(5) of the Revenue Reconciliation Act of 1989 (the "1989 Act"), 1990-1 C.B. 214, 222. The provisions of the 1989 Act generally are effective for buildings allocated housing credit dollar amounts after calendar year 1989. If no allocation is necessary by reason of section 42(h)(4) of the Code because the building is substantially financed with certain tax-exempt obligations, the provisions are generally effective for buildings placed in service after December 31, 1989.

The Revenue Reconciliation Act of 1990 (the "1990 Act"), (Pub. L. No. 101- 508), provides a limited exception from the exclusion of buildings receiving moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937. Beginning with allocations made after 1990, buildings receiving assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of enactment of the 1990 Act) may be eligible for an allocation of credit.

Rehabilitation Expenditures

Under section 42(e)(3)(A) of the Code as in effect prior to the 1989 Act, rehabilitation expenditures paid incurred by the taxpayer with respect to any building could be treated as a separate new building only if the qualified basis attributable to rehabilitation expenditures incurred during any 24-month period, when divided by the number of low-income units in the building, was $2,000 or more. For calendar years after 1989, rehabilitation expenditures with respect to a building may be treated as a separate new building eligible for the credit under section 42(e)(3)(A) only if (i) the expenditures are allocable to one or more low-income units or substantially benefit such units, and (ii) the amount of such expenditures during any 24-month period meets the greater of the following requirements: (I) the amount is not less than 10 percent of the adjusted basis of the building, or (II) the qualified basis attributable to such expenditures, when divided by the number of low-income units in the building, is $3,000 or more. Under section 42(e)(2)(B), as in effect both before and after the 1989 Act, the term "rehabilitation expenditures" does not include the cost of acquisition of any building.

Former section 42(d)(5)(C) of the Code, which was added by TAMRA, and which is now section 42(d)(5)(B), provides that the eligible basis of any building shall not include any portion of the building's adjusted basis attributable to amounts with respect to which an election is made under section 167(k). The election under section 167(k) is an election to depreciate rehabilitation expenditures incurred with respect to low-income rental housing after July 24, 1969, and before January 1, 1987, under a straight line method using a useful life of 60 months. If no election is made under section 167(k), rehabilitation expenditures incurred by a taxpayer with respect to a low-income rental housing building may be included in the building's eligible basis. Section 1.167(k)-1(b)(1) of the Income Tax Regulations provides rules governing when a taxpayer will be treated as having paid or incurred rehabilitation expenditures.

Under section 1.167(k)-1(b)(1) of the regulations, a taxpayer generally is treated as having paid or incurred rehabilitation expenditures if the rehabilitation is performed by or for the taxpayer or in accordance with the taxpayer's specifications, or if the taxpayer acquires the property attributable to the expenditures (or an interest therein) before the property is placed in service. Section 1.167(k)-1(b)(2) provides that the amount of rehabilitation expenditures treated as paid or incurred by the taxpayer is the lesser of (i) the rehabilitation expenditures paid or incurred before the date on which the taxpayer acquired an interest in the property attributable to the expenditures, or (ii) the taxpayer's cost or other basis for the property attributable to the rehabilitation expenditures paid or incurred before such date. Rehabilitation expenditures treated as having been paid or incurred by the taxpayer are deemed to have been paid or incurred on the date on which the expenditures were actually paid or incurred, determined in accordance with the method of accounting used by the person that actually paid or incurred the expenditures.

A taxpayer acquiring a building from a governmental unit may elect, under section 42(e)(3)(B) of the Code, to meet only the requirement that the qualified basis attributable to the rehabilitation expenditures incurred with respect to the building will be $3,000 or more when divided by the number of low-income units in the building. A taxpayer making this election may claim only the 30 percent present value credit on those expenditures.

Section 42(e)(4)(A) of the Code provides, in part, that expenditures treated as a separate new building under section 42(e) are considered placed in service at the close of the 24-month period during which the expenditures were incurred. According to section 42(e)(4)(B), the applicable fraction for the rehabilitation expenditures is the applicable fraction for the building with respect to which the expenditures were incurred.

Qualified Basis

Section 42(c)(1)(A) of the Code defines the qualified basis of any qualified low-income building for any tax year as an amount equal to (i) the "applicable fraction" (determined as of the close of the tax year) of (ii) the eligible basis of the building (determined under section 42(d)). Under section 42(c)(1)(B), the "applicable fraction" is the smaller of the unit fraction (the number of low-income units divided by the number of all residential rental units) or the floor space fraction (the floor space of the low-income units divided by the floor space of all residential rental units).

In general, the eligible basis of a building under section 42(d) of the Code is its adjusted basis at the close of the first tax year of the credit period. However, a number of limitations apply. For example, if an existing building does not meet the requirements of section 42(d)(2)(B) (as described below), its eligible basis is zero under section 42(d)(2)(A)(ii). In addition, under section 42(e)(5), rehabilitation expenditures that a taxpayer elects to treat as a separate new building under section 42(e) may not be considered part of the eligible basis of an existing building under section 42(d)(2)(A)(i).

Requirements for Existing Buildings

Section 42(d)(2)(A) and (B) of the Code provides that the eligible basis of an existing building will be zero unless the building meets the following requirements: (i) the building is acquired by purchase (as defined in section 179(d)(2)); (ii) there is a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of (I) the date the building was last placed in service, or (II) the date of the building's most recent nonqualified substantial improvement (as defined in section 42(d)(2)(D)(i)); and (iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time the building was previously placed in service. Furthermore, existing buildings are eligible for a credit allocation after calendar year 1989 only if a credit is allowable by reason of substantial rehabilitation of the building under section 42(e).

In determining when a building was last placed in service for purposes of satisfying the requirement in section 42(d)(2)(B)(ii) of the Code, section 42(d)(2)(D)(ii) provides that certain placements in service are not taken into account. The 1990 Act provides that as of November 5, 1990 (the date of its enactment), any placement in service of a single-family residence by any individual who owned and used the residence for no other purpose than as a principal residence is not taken into account for purposes of determining whether the 10-year requirement is met. See section 42(d)(2)(D)(ii)(V).

Transfers During the Compliance Period

Section 42(d)(7)(A) and (B) of the Code provides, in general, that the requirements of section 42(d)(2)(B) do not apply if a taxpayer acquires an existing building (or interest therein) for which a credit was allowed to any prior owner under section 42(a) and the taxpayer acquires the building (or interest therein) before the end of the building's compliance period. In that case, section 42(d)(7)(A)(ii) provides that the credit allowable to the taxpayer for any period after the acquisition is equal to the amount of credit that would have been allowable for that period to the prior owner had the owner not disposed of the building (or interest therein).

In general, a transfer of the property results in a new placed in service date if, on the date of the transfer the property is ready and available for its intended purpose. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II- 91 (1986), 1986-3 (Vol. 4) C.B. 91. However, if section 42(d)(7) of the Code applies to a transfer of the property, the fact that the transfer results in a new placed in service date does not jeopardize the purchaser's eligibility to claim the low-income housing credit, because the requirements of section 42(d)(2)(B) do not apply. According to section 42(f)(4), the credit will be allocated among the parties on the basis of the number of days the building (or interest) was held by each.

Definition of a Qualified Low-Income Housing Project

Under section 42(g)(1) of the Code, a "qualified low-income housing project" is any project for residential rental use that meets one of the following requirements: (A) 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income, as adjusted for family size, or (B) 40 percent or more of the residential units in the project are both rent- restricted and occupied by individuals whose income is 60 percent or less of area median gross income, as adjusted for family size. Once the taxpayer elects which requirement the project will meet, the election is irrevocable.

For buildings not subject to the amendments of the 1989 Act, section 42(g)(2)(A) of the Code provides that a unit is rent-restricted if the gross rent (defined in section 42(g)(2)(B)) that is paid for the unit does not exceed 30 percent of the income limits applicable to the occupants under section 42(g)(1). For buildings subject to the amendments of the 1989 Act, a residential rental unit is rent-restricted if the gross rent with respect to the unit does not exceed 30 percent of the imputed income limitation applicable to the unit under section 42(g)(2)(C). Furthermore, section 42(g)(2)(A) provides that for buildings subject to the amendments of the 1989 Act, the amount of the income limitation for any period shall not be less than the limitation applicable for the

earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

Under section 42(i)(3)(B) of the Code, low-income units must be suitable for occupancy and used other than on a transient basis. Additionally, section 42(i)(3)(C) provides that no unit in a building that has four or fewer residential rental units shall be treated as a low-income unit if the owner of the units is (i) the occupant of a residential unit in the building, or (ii) is related to an occupant of a unit (as "related" is defined in section 42(d)(2)(D)(iii)). However, for calendar years after 1989, if a building is acquired or rehabilitated under a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in section 42(h)(5)(C)), the owner-occupant restriction of section 42(i)(3)(C) is inapplicable. In this case, the applicable fraction shall not exceed 80 percent of the unit fraction and any unit that is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

Recapture of Credit

According to section 42(j)(1) and (2) of the Code, if at the close of any tax year in the compliance period the building's qualified basis with respect to the taxpayer is less than the basis as of the close of the preceding tax year, then the taxpayer is liable for additional tax in an amount equal to the accelerated portion of credits allowed in earlier years with respect to the reduction in qualified basis, plus interest. The accelerated portion of the credit under section 42(j)(3) is the excess of (A) the aggregate credit allowed for those years for that basis, over (B) the aggregate credit that would be allowable for those years for that basis if the aggregate credit that would have been allowable for the entire compliance period were allowable ratably over 15 years, rather than 10 years.

If a building fails to remain part of a qualified low-income housing project (for example, because of non-compliance with the minimum set-aside requirement or the rent restrictions or other requirements imposed on the units constituting the set-aside) during the building's 15-year compliance period, the taxpayer or taxpayers that owned the building (or interests therein) must repay the entire accelerated portion of the credit, with interest, for all prior years. Generally, any change in ownership of a building during the building's compliance period is also a recapture event. See 2 H.R. Conf. Rep. No. 841, at II-96.

Section 42(j)(6) of the Code permits the taxpayer to avoid recapture upon disposition of the building or an interest therein by furnishing a bond to the Secretary in an amount satisfactory to the Secretary and for the period required by the Secretary, if the building is reasonably expected to continue to be operated as a qualified low-income building. Furthermore, for partnerships consisting of 35 or more partners, unless the partnership elects otherwise, no change in ownership will be deemed to occur if within a 12-month period at least 50 percent (in value) of the original ownership is unchanged. See 2 H.R. Conf. Rep. No. 841, at II-96, and H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. II-83 (1988), 1988-3 C.B. 473, 573. A de minimis rule may apply to certain dispositions of interests in partnerships (other than large partnerships described in section 42(j)(5)) that own buildings for which a credit was claimed. See Rev. Rul. 90-60, 1990-2 C.B. 3, for additional information.

Allocation of Credit by Housing Credit Agencies

Under section 42(h)(1) of the Code, a taxpayer may not claim a credit on a qualified low-income building in excess of the housing credit dollar amount allocated to the building by the state or local housing agency in whose jurisdiction the building is located. However, under section 42(h)(4) a taxpayer need not obtain a credit allocation for the portion of a building's eligible basis financed by an obligation which is subject to the volume cap of section 146 and the interest on which is exempt from tax under section 103. Prior to the 1989 Act, if such an obligation financed 70 percent or more of the aggregate basis of the building and the land on which it was located, the entire building was

exempt from the limits of section 42(h)(1). Under the 1989 Act, buildings placed in service after calendar year 1989 are exempt from the limits of section 42(h)(1) if 50 percent or more of the aggregate basis of the building and the land on which it is located are financed with such tax-exempt obligations.

Section 42(h)(2)(A) of the Code provides that the housing credit dollar amount allocated to a building for any calendar year applies to the building for all tax years in its compliance period that end during or after the year of allocation. However, under section 42(h)(1)(B), as amended by TAMRA, an allocation is taken into account only if it occurs not later than the close of the calendar year in which the building is placed in service, unless one of the exceptions in section 42(h)(1)(C), (D), (E), or (F) apply. Under section 42(h)(2)(B), the allocation reduces the credit agency's allocable housing credit dollar amount only for the year of the allocation.

QUESTIONS AND ANSWERS

A. DETERMINATION OF CREDIT PERIOD ISSUES

QUESTION 1.

How do taxpayers make the election under section 42(f)(1) of the Code to defer the start of the credit period?

ANSWER 1.

The building owner may elect under section 42(f)(1) of the Code to begin the credit period (and the compliance period) the year after the building is placed in service by checking the appropriate box on line 5a in Part II of Form 8609, Low-Income Housing Credit Allocation Certification. Form 8609 must be attached to the owner's federal income tax return for each year of the 15-year compliance period, which begins with the first year of the credit period. If the owner does not claim a low-income housing credit on its timely filed federal income tax return (taking any extensions into account) for the year in which the building is placed in service, or fails to timely file its federal income tax return for that year, the owner is deemed to have made the irrevocable election to begin the credit period (and the compliance period) the succeeding tax year. In the case of buildings held by flow-through entities, only the entity may file a Form 8609 to make the election under section 42(f)(1). Only one election may be made per building. If there are multiple owners that are not members of a flow-through entity, and each owner files a Form 8609 with respect to a building, all of the Form 8609s for that building must be consistent with regard to whether the election is made. Unless all the owners of a particular building make the section 42(f)(1) election, the credit period and compliance period for that building will begin with the year in which the building is placed in service. Once made, an election under section 42(f)(1) is binding on the owner and all successors in interest.

QUESTION 2.

X, a calendar year corporation, was created on June 1, 1987. On July 1, 1987, X placed in service a qualified low-income building. If X chooses not to defer the beginning of the credit period under section 42(f)(1) of the Code, when does the credit period for the building begin?

ANSWER 2.

A building's credit period is the period of 10 years (120 months) beginning with the first day of the tax year in which the building is placed in service, or the succeeding tax year if the election under section 42(f)(1) of the Code is made. The tax year that a building is placed in service is determined, at the time of placement in service, by the tax year of the owner who placed the building in service and is not affected by

subsequent changes in the tax year of that owner or by the introduction of subsequent owners with different tax years.

Each building has only one credit period. For purposes of section 42(f) of the Code, when the first tax year of the credit period is a short tax year, the credit period begins 12 months before the end of the short tax year. In other words, the credit period begins on what would have been the first day of the tax year, had the tax year not been a short tax year.

Because X came into existence on June 1, 1987, X had a short tax year for calendar year 1987. Because X did not elect to defer the start of the credit period to the succeeding year, which would have been its first full tax year, the building's credit period began 12 months before the end of X's short tax year. Therefore, the credit period began January 1, 1987, rather than the first day of the short tax year, June 1, 1987. The credit for the first year of the credit period is computed according to the first-year convention in section 42(f)(2) of the Code.

B. CREDIT COMPUTATION ISSUES

QUESTION 3.

X, a calendar year corporation, placed a newly constructed qualified low-income building in service on February 1, 1987. X received a $90,000 housing credit allocation for 1987 from the state Y housing credit agency based upon the 9 percent applicable credit percentage and had a qualified basis in the building as of December 31, 1987, of $1,000,000. X did not elect to defer the start of the credit period under section 42(f)(1) of the Code. For calendar year 1987, X claimed a credit using the first-year convention of section 42(f)(2).

During calendar year 1988 (the second year of the credit period), because of a change in annual accounting period permitted under section 442 of the Code, X made a short-period return for the 8-month period beginning January 1, 1988, and ending August 31, 1988. May X claim any low-income housing credit on its short-period return?

ANSWER 3.

Yes. As Answer 2 explains, the building's credit period is determined, at the time of placement in service, by reference to the tax year of the owner who placed the building in service, and is not affected by subsequent changes in the owner's tax year. The amount of credit that a particular owner may claim on its return for a tax year is determined on the last day of that owner's tax year. Because X was a calendar year taxpayer and did not elect to defer the start of the credit period, the building's credit period begins January 1, 1987, and ends December 31, 1996.

In accordance with section 42(a) of the Code, the amount of credit that X may claim on the short-period return is an amount equal to the product of the applicable percentage of 9 percent and 8/12 of the building's qualified basis as of August 31, 1988. X is entitled to only 8/12 of the applicable percentage of the qualified basis on the last day of the short-period tax year because the short period includes only 8 months. If the qualified basis was $1,000,000 on August 31, 1988, X would be allowed to claim a credit on its short-period return of $60,000 [(.09) x (8/12 x $1,000,000)]. Assuming X retains ownership of the building, continues to comply with the requirements of section 42 of the Code and remains on an August 31 tax year, for each succeeding tax year in the credit period the credit is based upon the qualified basis as of August 31 of that tax year. If the qualified basis on August 31, 1989, is $1,000,000, X may claim a credit of $90,000 [(the applicable percentage, .09) x ($1,000,000)] on its federal income tax return for the tax year ending August 31, 1989.

The last 4 months in the credit period (September 1996 through December 1996) are included in X's tax year beginning September 1, 1996, and ending August 31, 1997. The credit for those 4 months is based upon 4/12 of the qualified basis as of August 31,

1997. The credit for X's tax year ending August 31, 1997, consists of the credit for the last 4 months of the credit period plus the disallowed first year credit amount that is carried over to the 11th year under section 42(f)(2)(B) of the Code. See Question and Answer 5 below.

C. AVAILABILITY OF CREDIT TO SUBSEQUENT PURCHASERS

QUESTION 4.

What is the meaning of the word "allowed" as used in section 42(d)(7)(B)(i) of the Code, which permits a subsequent owner to step into the shoes of a prior owner and claim a credit on a qualified low-income building, but only if the credit was "allowed" to a prior owner?

ANSWER 4.

For purposes of section 42(d)(7)(B)(i) of the Code, the term "allowed" may also mean "allowable." If a qualified low-income building is acquired during the building's compliance period, section 42(d)(7)(B)(i) requires that a credit must have been allowed to a prior owner of the building if the new owner is to continue claiming the credit. In this manner, credits may be transferred to the new purchaser of a building (or interest therein) during the period for which the property is eligible to receive the credit, with the new purchaser "stepping into the shoes" of the seller as to credit percentage, basis, and liability for compliance and recapture. See 2 H.R. Conf. Rep. No. 841, at II- 87. The purchaser's basis upon acquisition of the building (or interest therein) for section 42 purposes equals the eligible basis of the building (or interest therein) whether the purchase price is greater or less than that basis.

A credit need not actually have been claimed by a prior owner in order for a subsequent owner to claim the credit under section 42(d)(7) of the Code. If a taxpayer transfers a qualified low-income building (or an interest therein) before actually claiming a credit, but after having received an allocation or having qualified for the credit without an allocation (as provided in this ruling) under section 42(h)(4)(B), the credit will be considered allowed to the prior owner for purposes of section 42(d)(7)(B)(i). However, in order to be treated as having been allowed a credit, a prior owner must have actually received a low-income housing credit allocation for the building from a state housing credit agency before the transfer or must have actually qualified for the credit under section 42(h)(4)(B).

A state credit agency makes an allocation after reviewing the application submitted by the building owner and determining that the building will probably qualify as a qualified low-income building. A state credit agency may issue a reservation of a credit amount or a binding commitment to allocate credit in a later year as a preliminary step to issuing a credit allocation but, unlike a credit allocation, a reservation or a binding commitment may be revoked (for example, if specified conditions are not met by the building owner). Therefore, if a taxpayer transfers a qualified low-income building (or an interest therein) after the state agency reserves a low-income credit for that building but before the agency actually allocates that credit to that building, the credit will not be considered allowed to the prior owner within the meaning of section 42(d)(7)(B)(i) of the Code. If the credit is not considered allowed to the prior owner but the building has not been placed in service so that there is no violation of the 10-year rule in section 42(d)(2)(B)(ii) (and if the requirements of section 42 are otherwise met), the purchaser may apply to the state housing credit agency for an allocation of credit.

If a taxpayer receives an allocation with respect to a new building during the construction period of the building, as may be the case where the taxpayer expects to use the 10 percent carryover allocation rule in section 42(h)(1)(E) of the Code, and transfers the building (or an interest therein) before the building is placed in service, the purchaser will take an eligible basis in the building (or interest therein) equal to the transferor's eligible basis in the building (or interest) at the time of transfer,

whether the purchase price is greater or less than that basis. Because the property has not yet been placed in service, the eligible basis of the building has not yet been determined. The purchaser's eligible basis is determined at the end of the first tax year of the credit period. That eligible basis consists of both the transferor's eligible basis at the time of transfer and any additional costs incurred by the purchaser after the transfer, to the extent includible in eligible basis.

In the case of buildings placed in service after 1989 and financed with tax- exempt bonds issued after 1989, if a credit allocation is not necessary because the building meets the requirements of section 42(h)(4)(B) of the Code, the credit will be considered allowed to the prior owner for purposes of section 42(d)(7)(B)(i) when the following conditions are met: (1) the tax-exempt obligations have been issued; (2) the building has met the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located as required by section 42(m)(1)(D); (3) the governmental unit issuing the bonds has determined the credit dollar amount necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period as required by section 42(m)(2)(D); and (4) the state housing credit agency has assigned a building identification number (B.I.N.) to the building as is customarily done when an allocation of credit is made by the state housing credit agency.

In the case of buildings financed with tax-exempt bonds issued before 1990, if a credit allocation is not necessary because the building meets the requirements of section 42(h)(4)(B) of the Code, the credit will be considered allowed to the prior owner for purposes of section 42(d)(7)(B)(i) when the following conditions are met: (1) the tax-exempt obligations have been issued; and (2) the state housing credit agency has assigned a B.I.N. to the building as is customarily done when an allocation of credit is made by the state housing credit agency.

QUESTION 5.

On March 1, 1987, developer D, a calendar-year taxpayer, placed in service a newly completed qualified low-income building. The building consisted of 10 units, all of which were expected to be occupied by low-income tenants. The qualified basis of the building was $100,000. D received a $9,000 housing credit dollar amount allocation for 1987 from the state housing credit agency based upon the 9 percent applicable percentage for newly constructed non- federally-subsidized buildings. D chose not to make the election under section 42(f)(1) of the Code to defer the start of the credit period. On July 20, 1987, D sold the building to T, whose tax year ends August 31. At the time of sale, D had not yet claimed any credit with respect to the building for the period preceding the transfer. Table 1 shows the number of units in the building that were occupied by low-income tenants at the close of each full month between March 1, 1987, and December 31, 1987, the close of the tax year during which the building was placed in service.

Rev. Rul. 91-38, Table 1

Month	Number of Occupied Low-income Units	Total Number of Units
March	2	10
April	2	10
May	2	10
June	2	10
July	4	10
August	6	10
Sept.	7	10

Oct.	9	10
Nov.	10	10
Dec.	10	10

Is T eligible for the low-income housing credit under section 42 of the Code?

ANSWER 5.

Yes. Although D had not claimed any of the low-income housing credit prior to the transfer, D received a housing credit dollar amount allocation before the sale of the property, and D would have been allowed to claim a credit if D had retained ownership of the property and had complied with the requirements of section 42 of the Code. Therefore, under section 42(d)(7), T may "step into the shoes" of D and may claim the tax credit that would have been allowable to D for the period after the acquisition, provided that T complies with the requirements of section 42. See Question and Answer 4.

The building's credit period is determined by reference to the tax year (at the time of placement in service) of D, the owner who placed the building in service, and is not affected by differing tax years of succeeding owners. However, the amount of credit that a particular owner may claim on a return for a tax year is determined on the last day of that owner's tax year. Had D, a calendar-year taxpayer, chosen to make the election under section 42(f)(1) of the Code to defer the start of the credit period, T would have calculated the credit as of January 1, 1988, the first day of the first year of the building's credit period, even though T owned the building prior to the start of the credit period.

For purposes of section 42(f)(4) of the Code, the owner who has held the property for the longest period during the month in which a transfer occurs is deemed to have held the property for the entire month and may claim a credit accordingly. In cases in which the transferor and transferee have held the property for the same amount of time during the month of the transfer, the transferor is deemed to have held the property for the entire month and the transferee's ownership of the property is deemed to begin the first day of the following month. In this example, for purposes of calculating the credit that T is entitled to claim, T does not immediately "step into the shoes" of D when the transfer occurs on July 20, 1987. Instead, because D held the property for more than half of the month of July, T may not begin claiming the credit that would have been allowable to D until August 1, 1987. Thereafter, T may claim the credit that would have been allowable to D until the end of the credit period (assuming T retains ownership of the property and the requirements of section 42 of the Code are otherwise met).

Because D, the taxpayer that placed the building in service, was a calendar year taxpayer and because D chose not to make the election under section 42(f)(1) of the Code to defer the start of the credit period, the building's credit period begins the first day of calendar year 1987 (January 1, 1987) and continues for 120 months (until December 31, 1996). The first year of the building's credit period is the period from January 1, 1987, through December 31, 1987.

Under section 42(f)(2) of the Code, the applicable fraction used for determining the credit with respect to any building for the first tax year of the credit period is 1/12 of the sum of the applicable fractions determined under section 42(c)(1) as of the close of each full month of that year during which the building was in service. The sum of the applicable fractions determined under section 42(c)(1) for the period between March 1, 1987 (the date the building was placed in service), and July 31, 1987 (the date through which D is deemed to have owned the property), is 2/10 + 2/10 + 2/10 + 2/10 + 4/10, for a total of twelve-tenths (12/10), which when divided by 12, yields 1/10 or 0.1. Under section 42(f)(2), the credit amount that pertains to the portion of the tax year from March 1, 1987, to July 31, 1987, is $900 (the applicable fraction of 0.1 times the eligible basis of $100,000 times the applicable percentage of .09). Whether D may claim

this credit amount will be determined under section 42(j) (relating to recapture of the credit and the posting of a bond). See Rev. Rul. 90-60, 1990-2 C.B. 3, for additional information on recapture of the credit and the posting of a bond. T is not entitled to claim this credit amount because T may claim the credit only for the period after T acquires the property. However, during the month that T owns the property during its tax year ending August 31, 1987, the applicable fraction is 6/10. Therefore, T may claim a credit on its federal income tax return for the tax year ending August 31, 1987, in the amount of $450 (the applicable fraction of 0.05 or (6/10 times 1/12) times the eligible basis of $100,000 times the applicable percentage of .09).

The credit for the first 4 months of T's succeeding tax year, which begins September 1, 1987, and ends August 31, 1988, still must be determined according to the first-year convention in section 42(f)(2) of the Code. This is because those months are still part of the first year of the building's credit period. The sum of the monthly applicable fractions determined under section 42(c)(1) for the period from September 1, 1987, to December 31, 1987, is 36/10 or 3.6, which, when divided by 12 and multiplied by the eligible basis of $100,000 and the applicable percentage of .09, yields a credit amount of $2,700.

If on August 31, 1988, in T's succeeding tax year, the applicable fraction under section 42(c)(1) of the Code is 10/10 or 1.0, then T's qualified basis at the end of that tax year is $100,000 (1.0 times $100,000 of eligible basis). The credit for the remaining 8 months in T's tax year beginning September 1, 1987, and ending August 31, 1988, is $6,000 (8/12 times $100,000 of qualified basis times the applicable percentage of .09). T's total credit amount for the tax year beginning September 1, 1987, and ending August 31, 1988, is $8,700 ($2,700 + $6,000).

For each of T's succeeding tax years in the credit period, the credit is based upon the qualified basis as of the last day of T's tax year (August 31). The last 4 months in the credit period (September 1996 through December 1996) are included in T's tax year beginning September 1, 1996, and ending August 31, 1997. The credit for those 4 months is based upon 4/12 of the qualified basis as of August 31, 1997. The credit for T's tax year ending August 31, 1997, consists of the credit for the last 4 months of the credit period plus the disallowed first-year credit amount that is carried over to the 11th year under section 42(f)(2)(B) of the Code.

The disallowed first-year credit amount is calculated in the following manner: if the first-year convention of section 42(f)(2) of the Code had not applied to the calculation of the credit for the first year of the building's credit period, the credit amount would have been $9,000 based upon an applicable fraction for that building of 10/10 as of December 31, 1987, multiplied by the eligible basis on that date of $100,000, multiplied by the applicable percentage of .09. However, because of the first-year convention of section 42(f)(2), the allowable credit with respect to the building for the first tax year in the credit period was only $4,050 ($900 allowable to D for the period prior to T's acquisition of the building + $450 allowable to T for its tax year ending August 31, 1987, + $2,700 for the period between September 1, 1987, and December 31, 1987, allowable to T for part of its tax year ending August 31, 1988). Therefore, the carryover credit amount is $4,950 (the difference between $9,000 and $4,050).

This carryover credit is allowable for the first tax year ending after December 31, 1996, the date the credit period ends. Accordingly, for T's tax year ending August 31, 1997, T calculates the credit for the last 4 months of the credit period (the period between August 31, 1996, and December 31, 1996), and adds to this the carryover credit. For T's tax year ending August 31, 1997, T may claim $3,000 for the 4 month period between September 1, 1996, and December 31, 1996, plus the carryover amount of $4,950, for a total credit in that year of $7,950.

D. REHABILITATION EXPENDITURES ISSUES

QUESTION 6:

If a taxpayer begins the rehabilitation of an existing building in January 1987 and completes the rehabilitation in December 1987, less than 24 months after the rehabilitation began, must the taxpayer wait until December 1988, a 24-month period, before the rehabilitation expenditures are treated as placed in service under section 42(e)(4)(A) of the Code?

ANSWER 6.

No. Under section 42(e)(3)(A) of the Code, a taxpayer may aggregate all rehabilitation expenditures incurred during any 24-month period for purposes of meeting the minimum expenditures requirement of section 42(e)(3)(A). Although section 42(e)(4)(A) treats the expenditures aggregated under section 42(e)(3)(A) as placed in service at the close of the 24-month period permitted for aggregating such expenditures, if the rehabilitation is completed and the minimum expenditures requirement of section 42(e)(3)(A) is met in less than 24 months, the expenditures may be treated as placed in service at the close of that period; however, in no event may the aggregation period exceed 24 months. Therefore, rehabilitation expenditures are treated as placed in service at the close of the 24-month or shorter aggregation period in which the rehabilitation is completed and the expenditures requirement of section 42(e)(3)(A) is met. Only those rehabilitation expenditures subject to the amendments made by section 201(a) of the 1986 Act (requiring 27.5 year depreciation of residential rental property) are eligible for the low-income housing credit under section 42. Expenditures incurred prior to 1987 and not placed in service prior to 1987 may be eligible for the credit, if the expenditures are subject to the amendments made by section 201(a) of the 1986 Act. See section 42(c)(2)(B).

QUESTION 7.

During the period from March 1, 1987, through December 31, 1987, A, the owner of an existing building, incurred substantial rehabilitation expenditures in amounts that met or exceeded the minimum expenditures requirement of section 42(e)(3)(A) of the Code. These expenditures were not federally subsidized. On January 1, 1988, A sold the building to B. On that date, the building did not meet the requirements for an existing building under section 42(d)(2)(B) (in particular, the 10-year requirement of section 42(d)(2)(B)(ii)); however, B bought the property before the rehabilitation expenditures were placed in service. May B receive a housing credit dollar amount in 1988 based upon the 9 percent applicable percentage (the 70 percent present value credit) for the rehabilitation expenditures?

ANSWER 7.

Yes. Because A had not received a housing credit dollar amount allocation for the rehabilitation expenditures A had incurred before selling the property to B, no credit was "allowed" to A as a prior owner and, therefore, the rules of section 42(d)(7) of the Code do not apply. See Question and Answer 4. However, section 1.167(k)-1(b)(1) of the regulations provides rules governing when a taxpayer is treated as having paid or incurred rehabilitation expenditures. Although the election under section 167(k) of the Code may no longer be made with respect to rehabilitation expenditures on a low-income rental housing building, rules similar to those of section 1.167(k)-1(b)(1) will generally still apply in determining when rehabilitation expenditures are treated as paid or incurred by the taxpayer under section 42. Because B acquired the property attributable to the rehabilitation expenditures before such property was placed in service, section 1.167(k)-1(b)(1) treats B as having paid or incurred the expenditures to the extent of the lesser of the rehabilitation expenditures paid or incurred before B's acquisition or B's cost or other basis attributable to the rehabilitation expenditures. Accordingly, for purposes of section 42, B's basis in the rehabilitation expenditures is the lesser of A's basis in the rehabilitation expenditures at the time of transfer (in general, A's actual cost paid or incurred for the rehabilitation expenses prior to January 1, 1988), or B's cost or other basis for the property attributable to the rehabilitation expenditures paid or incurred before that date. When B places the rehabilitated property in service, that property's original use is considered to begin with B.

If A had placed the rehabilitation expenditures in service for depreciation purposes before selling the building to B, B would not be treated as having paid or incurred the expenditures under section 42 of the Code or section 1.167(k)-1(b)(1) of the regulations because B would have acquired the the property attributable to the rehabilitation expenditures after that property was placed in service. In order for B to be eligible to receive a housing credit dollar amount for the cost of acquiring the building, the building would have to meet the requirements for an existing building under section 42(d)(2)(B) of the Code (including the requirement that there be a period of at least 10 years between the date of the building's acquisition and the later of (I) the date the building was last placed in service, or (II) the date of the most recent nonqualified substantial improvement of the building as defined in section 42(d)(2)(D)).

QUESTION 8.

Assume the same facts as in Question 7, except that A incurred rehabilitation expenditures that did not equal or exceed the minimum prescribed by section 42(e)(3)(A) of the Code. Is B eligible to receive an allocation of credit with regard to the rehabilitation expenditures that A incurred?

ANSWER 8.

Yes. Section 1.167(k)-1(b)(1) of the regulations treats B as having paid or incurred the expenditures, and a similar rule will be applied for purposes of section 42 of the Code. Under section 42(e)(5), B may elect to treat A's expenditures either as (a) part of the eligible basis of an existing building that meets the requirements of section 42(d)(2)(B), or (b) part of a series of expenditures treated as a separate new building under section 42(e).

(a) If the existing building that B purchased met the requirements of section 42(d)(2)(B) of the Code, B could include the rehabilitation expenditures in the building's eligible basis under section 42(d)(2)(A)(i) but only to the extent the cost of the expenditures is not already reflected in the purchase price for the building. B would be eligible to receive an allocation of credit, based upon the 30 percent present value credit for existing buildings, with respect to the building's entire eligible basis. However, see Note, below.

(b) Alternatively, regardless of whether the building meets the requirements of section 42(d)(2)(B) of the Code, B may continue to make rehabilitation expenditures and may count the expenditures made by A toward the amount prescribed by section 42(e)(3). Because the expenditures were not federally subsidized, once the aggregate rehabilitation expenditures meet the requirements of section 42(e), B would be eligible to receive an allocation of credit, based upon the 70 percent present value credit for new buildings, with respect to the eligible basis attributable to the aggregate rehabilitation expenditures.

NOTE: Under section 7108(d)(1) of the 1989 Act, generally effective for allocations of credit after December 31, 1989, an existing building is not eligible for the credit unless an allocation of credit is allowable by reason of substantial rehabilitation of the building under section 42(e) of the Code. Therefore, the rehabilitation expenditures would have to equal at least the minimum amount prescribed by section 42(e)(3)(A) if the building is to be eligible for any credit.

E. 10-YEAR OWNERSHIP REQUIREMENT FOR EXISTING BUILDINGS

QUESTION 9.

Section 42(d)(2)(B)(ii)(I) of the Code requires that there be a minimum of 10 years between the date a taxpayer acquires an existing building and the date the building was last placed in service. Does this requirement apply only if the building was last placed in service as residential rental property?

ANSWER 9.

No. Except as provided in section 42(d)(2)(D)(ii) of the Code, for purposes of section 42(d)(2)(B)(ii)(I), there must be a minimum of 10 years between the date a taxpayer acquires an existing building and the date the building was last placed in service for any purpose, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity.

F. QUALIFIED RESIDENTIAL RENTAL PROPERTY

QUESTION 10.

If a taxpayer owned a home and used it as a personal residence can the taxpayer in 1987 convert the property into residential rental property for low- income housing and claim a tax credit for an existing building under section 42(d) of the Code without substantially rehabilitating the building as described in section 42(e)?

ANSWER 10.

No. In this situation, the taxpayer previously placed the building in service as a personal residence. Under section 42(d)(2)(A)(ii) and (B)(iii) of the Code, an existing building has an eligible basis of zero if it was previously placed in service by the taxpayer or by any person who was a related person (as defined in section 42(d)(2)(D)(iii)) with regard to the taxpayer as of the time the building was previously placed in service. This is the case regardless of whether the taxpayer placed the building in service as a personal residence more than 10 years ago (i.e., regardless of whether the 10-year requirement of section 42(d)(2)(B)(ii) is met).

However, if the taxpayer converts the property into residential rental property for low-income housing and, in so doing, incurs substantial rehabilitation expenditures in the amount prescribed by section 42(e)(3) of the Code, the taxpayer may treat the rehabilitation expenditures as a separate new building under section 42(e)(1). Because the requirements of section 42(d)(2)(B) do not apply to new buildings, the taxpayer would be eligible for a low-income housing credit allocation based on the qualified basis attributable to the aggregate rehabilitation expenditures.

QUESTION 11.

Taxpayer A bought a newly-constructed, single-family home in 1979 and placed it in service as residential rental property. The property was residential rental property from 1979 to 1985, when A sold the property to B who used it solely as a personal residence from 1985 to 1991. In 1991, if C purchases the property, substantially rehabilitates the property, and converts it into residential rental property for low-income housing, may C receive a tax credit for acquisition and rehabilitation of an existing building under section 42(d) of the Code?

ANSWER 11.

Yes. Although there has only been a period of 6 years between the date C acquired the property and the date the property was last placed in service by B, section 42(d)(2)(D)(ii)(V) of the Code, as added by the 1990 Act, provides that for allocations of credit made after 1990, there shall not be taken into account, in determining when a building was last placed in service, any placement in service of a single-family residence by any individual who owned and used such residence for no other purpose than as a principal residence. Under this provision, B's placement in service is not taken into account for purposes of the 10-year requirement of section 42(d)(2)(B)(ii). Therefore, there has been at least 10 years between the date C acquired the property in 1991, and the date the building was last placed in service by A in 1979 as residential rental property. Assuming the building meets the other requirements of section 42(d)(2)(B) applicable to existing buildings (including the requirement that a credit is

allowable to the building for substantial rehabilitation under section 42(e), unless the exception in section 42(f)(5)(B) applies), C may be eligible to receive a housing credit dollar amount for acquisition and rehabilitation of the single-family home.

G. RENT-RESTRICTED RESIDENTIAL RENTAL UNIT

QUESTION 12.

Must the cost of meals provided in a common dining facility of a low- income project be included in gross rent under section 42(g)(2)(A) of the Code?

ANSWER 12.

Section 42(g)(2)(A) of the Code provides that a residential rental unit is rent-restricted if the gross rent (defined in section 42(g)(2)(B)) that is paid for the unit does not exceed 30 percent of the income limits applicable to the tenants under section 42(g)(1).

Notice 89-6, 1989-1 C.B. 625, provides that the furnishing of services other than housing (whether or not such services are significant) will not prevent property from qualifying as residential rental property. However, any charges for services that are not optional to low-income tenants must be included in gross rent for purposes of section 42(g)(2)(A) of the Code. A service is optional if payment for the service is not required as a condition of occupancy.

In the case of a qualified low-income building with a common dining facility, if a practical alternative exists for tenants to obtain meals other than from the dining facility, and if payment for the meals in the facility is not required as a condition of occupancy, the cost of the meals will not be included in gross rent for purposes of section 42(g)(2)(A) of the Code.

The requirement that a practical alternative exists for tenants to obtain meals other than from the dining facility shall apply to projects receiving allocations of housing credit dollar amounts after calendar year 1991, and for projects not subject to the allocation limits, the requirement shall apply to projects placed in service after calendar year 1991.

EFFECTIVE DATE

The Internal Revenue Service may issue regulations addressing some of the points covered by this ruling. To the extent the regulations are inconsistent with the guidance provided by this ruling, the regulations will have prospective effect. Taxpayers may therefore rely on the provisions of this ruling until further guidance is published.

DRAFTING INFORMATION

The principal author of this revenue ruling is Donna Young of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Ms. Young on (202) 377-6349 (not a toll-free call).

Rev. Rul. 91-38, 1991-2 C.B. 3, 1991-26 I.R.B. 5.

REVENUE RULE 92-61

1992-2 C.B. 7, 1992-32 I.R.B. 4.

Internal Revenue Service
Revenue Ruling

FULL-TIME RESIDENT MANAGER IN BUILDING ELIGIBLE FOR LOW-INCOME HOUSING CREDIT

Published: August 10, 1992

Section 42. Low-Income Housing Credit

(See Also Sections 103, 142; 1.103-8.)

Full-time resident manager in building eligible for low-income housing credit. The adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B) for purposes of determining the building's qualified basis.

ISSUE

If a unit in a qualified low-income building is occupied by a full-time resident manager, is the adjusted basis of that unit included in the building's eligible basis under section 42(d)(1) of the Internal Revenue Code and is that unit included in the applicable fraction under section 42(c)(1)(B) for determining the qualified basis of the building?

FACTS

At the beginning of 1990, LP, a limited partnership with a calendar tax year, placed in service a newly constructed apartment building that qualified for the low-income housing credit under section 42(a) of the Code. LP elected to meet the 40-60 test of section 42(g)(1)(B), which requires that at least 40 percent of the units in the building be rent-restricted and occupied by tenants whose incomes are 60 percent or less of area median gross income. Throughout 1990, the first year of the building's credit period, 69 of the 70 units in the building were rent-restricted and occupied by tenants whose incomes were 60 percent or less of area median gross income. The remaining unit in the building was occupied by a resident manager who was hired by LP to manage the building and to be on call to attend to the maintenance needs of the other tenants. All of the units in the building meet the same standard of quality and have the same amount of floor space.

LAW AND ANALYSIS

Section 42(a) of the Code provides that the amount of the low-income housing credit determined for any tax year in the credit period is an amount equal to the applicable percentage of the qualified basis of each low-income building.

Section 42(c)(1)(A) of the Code defines the qualified basis of any qualified low-income building for any tax year as an amount equal to the applicable fraction, determined as of the close of the tax year, of the eligible basis of the building, determined under section 42(d)(5).

Sections 42(c)(1)(B) of the Code defines the applicable fraction as the smaller of the unit fraction or the floor space fraction. Section 42(c)(1)(B) defines the unit fraction as the fraction the numerator of which is the number of low-income units in the building and the denominator of which is the number of residential rental units, whether or not occupied, in the building. Section 42(c)(1)(D) defines the floor space fraction as the fraction the numerator of which is the total floor space of the low-income units in the

building and the denominator of which is the total floor space of the residential rental units, whether or not occupied, in the building. In general, under section 42(i)(3)(B), a low-income unit is any unit that is rent-restricted and occupied by individuals meeting the income limitation applicable to the building.

Section 42(d)(1) of the Code provides that the eligible basis of a new building is its adjusted basis as of the close of the first tax year of the credit period. Section 42(d)(4)(A) provides that, except as provided in section 42(d)(4)(B), the adjusted basis of any building is determined without regard to the adjusted basis of any property that is not residential rental property. Section 42(d)(4)(B) provides that the adjusted basis of any building includes the adjusted basis of property of a character subject to the allowance for depreciation used in common areas or provided as comparable amenities to all residential rental units in the building.

The legislative history of section 42 of the Code states that residential rental property, for purposes of the low-income housing credit, has the same meaning as residential rental property within section 103. The legislative history of section 42 further states that residential rental property thus includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. 2 H.R.Conf.Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89. Under section 1.103- 8(b)(4) of the Income Tax Regulations, facilities that are functionally related and subordinate to residential rental units are considered residential rental property. Section 1.103-8(b)(4)(iii) provides that facilities that are functionally related and subordinate to residential rental units include facilities for use by the tenants, such as swimming pools and similar recreational facilities, parking areas, and other facilities reasonably required for the project. The examples given by section 1.103-8(b)(4)(iii) of facilities reasonably required for a project specifically include units for resident managers or maintenance personnel.

Accordingly, the unit occupied by LP's resident manager is residential rental property for purposes of section 42 of the Code. The adjusted basis of the unit is includible in the building's eligible basis under section 42(d)(1). The inclusion of the adjusted basis of the resident manager's unit in eligible basis will not be affected by a later conversion of that apartment to a residential rental unit.

The term "residential rental unit" has a narrower meaning under section 42 of the Code than residential rental property. As noted above, under the legislative history of section 42, residential rental property includes facilities for use by the tenants and other facilities reasonably required by the project, as well as residential rental units. Under section 1.103-8(b)(4) of the regulations, units for resident managers or maintenance personnel are not classified as residential rental units, but rather as facilities reasonably required by a project that are functionally related and subordinate to residential rental units.

LP's resident manager's unit is properly considered a facility reasonably required by the project, not a residential rental unit for purposes of section 42 of the Code. Consequently, the unit is not included in either the numerator or denominator of the applicable fraction under section 42(c)(1)(B) for purposes of determining the qualifed basis of the building for the first year of the credit period.

Therefore, as of the end of the first year of the credit period, the adjusted basis of the unit occupied by LP's resident manager is included in the building's eligible basis under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B). Because all of the residential rental units in LP's building are low-income units, the applicable fraction for the building is "one" (69/69, using the unit fraction).

If in a later year of the credit period, the resident manager's unit is converted to a residential rental unit, the unit will be included in the denominator of the applicable fraction for that year. If the unit also becomes a low-income unit in that year, the unit

will be included in the numerator of the applicable fraction for that year. In this case, the applicable fraction will also be "one" (70/70, using the unit fraction).

HOLDING

The adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B) for purposes of determining the building's qualified basis.

EFFECTIVE DATE

The Internal Revenue Service will not apply this revenue ruling to any building placed in service prior to September 9, 1992, or to any building receiving an allocation of credit prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling. Similarly, the Service will not apply this revenue ruling to any building described in section 42(h)(4)(B) of the Code with respect to which bonds were issued prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Paul F. Handleman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Mr. Handleman on (202) 622-3040 (not a toll-free call).

Rev. Rul. 92-61, 1992-2 C.B. 7, 1992-32 I.R.B. 4.

REVENUE RULE 92-79

1992-2 C.B. 10, 1992-39 I.R.B. 5.

Internal Revenue Service
Revenue Ruling

LOW-INCOME HOUSING CREDIT

September 11, 1992

Low-income housing credit. This ruling clarifies that a taxpayer that received a low-income housing credit for a building before 1990 must enter into an extended low-income housing commitment under section 42(h)(6)(B) of the Code in order to be eligible for any additional housing credit allocation for the building after December 31, 1989.

ISSUE

Is a taxpayer that received a low-income housing credit allocation for a building from a state housing credit agency before 1990 required to enter into an "extended low-income housing commitment" under section 42(h)(6)(B) of the Internal Revenue Code, as amended by the Revenue Reconciliation Act of 1989, 1990-1 C.B. 214, 218, ("the 1989 Act"), in order to be eligible for an additional housing credit allocation for the building after December 31, 1989?

FACTS

Situation 1. In 1989, W, a calendar year taxpayer, acquired a five-unit residential rental building and placed the building in service for low-income housing. W's unadjusted basis in the building was $100,000. All of the units in the building were low-income units occupied by individuals who met the requirements of section 42 of the Code, including the income requirements of section 42(g)(1) ("low-income individuals"), and the building was a qualified low-income building under section 42. In 1989, W applied for and received a low-income housing credit allocation from the state housing credit agency.

In 1990, W incurred $15,000 of expenditures in rehabilitating the building, and applied to the state housing credit agency for an additional low-income housing credit allocation under section 42(e) of the Code.

Situation 2. In 1989, X, a calendar year taxpayer, acquired a five-unit residential rental building and placed the building in service for low-income housing. Two of the units in the building were low-income units occupied by low- income individuals, and the building was a qualified low- income building under section 42 of the Code. In 1989, X applied for and received a low-income housing credit allocation from the state housing credit agency.

During the second year of the credit period, X rented the remaining units in the building to low-income individuals, and at the end of that year, all of the-units in the building were low-income units occupied by low-income individuals. X applied for an additional low-income housing credit allocation from the state housing credit agency for the addition to qualified basis under section 42(h)(1)(D) of the Code (with the additional credit limited as provided by section 42(f)(3)).

Situation 3. In 1989, Y, a calendar year taxpayer, began construction of a residential rental building to be used for low-income housing. In 1989, after having incurred expenditures that amounted to more than 10 percent of Y's reasonably expected basis in the building, Y applied for and received a low- income housing credit allocation from the state housing credit agency under section 42(h)(1)(E) of the Code.

In 1990, Y placed the building in service and applied for an additional low- income housing credit allocation to cover unexpected costs incurred by Y in constructing the building. The building was occupied by low-income individuals and was a qualified low-income building under section 42 of the Code.

Situation 4. In 1989, Z, a calendar year taxpayer, constructed a residential rental building and placed the building in service for low-income housing. The building was occupied by low-income individuals and was a qualified low- income building under section 42 of the Code. In 1989, Z applied for a low-income housing credit allocation from the state housing credit agency. However, due to a shortage of housing credit dollar amounts under the state housing credit ceiling for 1989, Z received an allocation of some low-income housing credit in 1989 and entered into a binding agreement with the housing credit agency (as described in section 42(h)(1)(C)) before the close of 1989 for additional credit to be allocated from the state housing credit ceiling for 1990.

LAW AND ANALYSIS

Section 42(a) of the code, prior to its amendment by the 1989 Act, allowed a lo-year tax credit for investment in qualified low-income buildings placed in service after December 31, 1986, and, with certain limited exceptions, before January 1, 1990. The low-income housing credit is allocated by state housing credit agencies, which may allocate housing credit dollar amounts in each year up to the state housing credit ceiling for that year. Allocations from a state housing credit ceiling for a calendar year may only be made during that year. As enacted, section 42 allowed allocations in calendar years 1987, 1988, and 1989. The 1989 Act extended the credit to allow allocations after 1989 and amended certain provisions of section 42.

Section 7108(r)(1) of the 1989 Act provides the general effective date for the amended provisions. Section 7108(r)(1) states "[e]xcept as otherwise provided in this subsection, the amendments made by this section shall apply to determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989.11

Under section 42(h)(1)(B) of the Code, a state or local housing credit agency generally must allocate housing credit dollar amounts for a building no later than the close of the calendar year in which the building is placed in service. However, section 42(h)(1)(C) and (D) provides exceptions to this general rule.

Section 42(h)(1)(C) of the Code provides that an allocation may be made for a building in a year after the year the building is placed in service if there is a binding commitment (made not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to the building in a specified later year. The allocation is made out of the housing credit ceiling for the later year.

Section 42(h)(1)(D) of the Code provides, in part, that an allocation may be made for an increase in a building's qualified basis occurring after the close of the first year of the building's credit period if the allocation is made no later than the close of the calendar year in which ends the tax year to which the allocation will first apply.

Under section 42(h)(1)(E) of the Code, a taxpayer may receive an allocation for a building prior to the year the taxpayer places the building in service if, as of the close of the year of the allocation, the taxpayer's basis in the building (or, if the building is part of a multiple-building project, the project) is more than 10 percent of the taxpayer's reasonably expected basis in the building (or project), as of the close of the second calendar year following the allocation year, and the taxpayer places the building in service before the close of the second calendar year following the allocation year.

Under section 42(h)(1)(F) of the Code, a taxpayer may receive an allocation of credit for a multiple-building project prior to the year the taxpayer places the project's buildings

in service if (I) the allocation is made to the project for a calendar year in the project period (as defined in section 42(h)(1)(F)(ii)), (II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and (III) the portion of the allocation which is allocated to any building in the project is specified not later than the close of the calendar year in which the building is placed in service. In order to receive an allocation under section 42(h)(1)(F), the taxpayer must satisfy the rules for an allocation under section 42(h)(1)(E) (a "carryover allocation"), except that the carryover allocation need not be divided among the buildings at the time of the allocation. See H.R. Rep. No. 247, 101st Cong., 1st Sess., 1195-1196 (1989).

Among the changes made by the 1989 Act to section 42 of the Code was the addition of section 42(h)(6)(A), which provides that a building will be eligible for the credit only if the taxpayer and the housing credit agency enter into an extended low-income housing commitment as defined in section 42 (h) (6) (B)

Section 42(h)(6)(B) of the Code defines an extended low- income housing commitment as any agreement between the taxpayer and the housing credit agency that meets a number of specified requirements. Among other things, the agreement must (i) require that the applicable fraction (as defined in section 42(c)(1)) for the building for each tax year in the extended use period will not be less than the applicable fraction specified in the agreement, (ii) allow individuals meeting the income limitation applicable to the building the right to enforce in any state court the requirement in clause (i), (iii) bind all successors of the taxpayer, and (iv) be recorded pursuant to state law as a restrictive covenant.

Section 42(c)(1)(B) of the Code defines the applicable fraction as the smaller of the unit fraction or the floor space fraction of the building. Under section 42(c)(1)(C), the unit fraction is the ratio of low-income units in the building to the number of residential rental units (whether or not occupied) in the building. Under section 42(c)(1)(D), the floor space fraction is the ratio of the total floor space of the low-income units in the building to the total floor space of the residential rental units (whether or not occupied) in the building.

Under section 42(h)(6)(C)(i) of the Code, the housing credit dollar amount allocated for any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for the building. The amount allocated, however, may reflect any increase in the applicable fraction pursuant to the application of section 42(f)(3) if the increase is also reflected in an amended extended low-income housing commitment.

Under section 42(h)(6)(D) of the Code, the extended use period begins on the first day in the compliance period on which the building is part of a qualified low-income housing project, and ends on the later of the date specified by the agency in the extended low-income housing commitment or the date that is 15 years after the close of the compliance period.

In Situation 1, W received an initial allocation of credit from the state housing credit agency in 1989 for acquisition of an existing building. In 1990, W incurred rehabilitation expenditures that W- treated as a separate new building under section 42(e) of the Code. Because section 42(h)(6)(A) applies to allocations made from state housing credit ceilings after 1989, in order to receive in 1990 an allocation of credit for expenditures incurred in rehabilitating the building, W must meet the extended low-income housing commitment. Accordingly, W must enter into an extended low- income housing commitment in which W agrees to maintain the building as low-income housing for at least 15 years beyond the end of the building's compliance period. Under section 42(h)(6)(B)(i), W and the state housing credit agency must specify in the extended low-income housing commitment the minimum applicable fraction that will be maintained throughout the extended use period.

Because they are treated as a separate new building under section 42(e) of the Code, W's rehabilitation expenditures have a separate lo-year credit period and 15-year compliance period which differ from the credit and compliance periods of the existing building. However, the extended low-income housing commitment must apply to the entire property, not just to the rehabilitation expenditures.

In order to receive a 1990 credit for rehabilitation expenditures, W must also satisfy the minimum qualifying expenditure test for substantial rehabilitation required under section 42(e)(3)(A) of the Code as amended by the 1989 Act. Under section 42(e)(3)(A)(ii), the expenditures must equal the greater of 10 percent of the unadjusted basis in the building or at least $3,000 of qualified basis per low-income unit. These expenditures must be allocable to one or more low-income units or substantially benefit those units. W meets this test because W's $15,000 of rehabilitation expenditures exceed 10 percent of W's $100,000 basis and equal $3,000 of qualified basis per low- income unit ($15,000 of eligible basis for the rehabilitation expenditures multiplied by an applicable fraction of 100 percent for a qualified basis of $15,000, and divided by five low-income units). Therefore, W may qualify for an additional allocation of credit in 1990 for rehabilitation expenditures provided that W enters into an extended low- income housing commitment. The extended use period will end on the later of the date specified by the housing credit agency in the extended low-income housing commitment or 15 years after the close of the compliance period of the building created by the rehabilitation expenditures.

In Situation 2, although X received an initial allocation of credit from the state housing credit agency in 1989 for acquisition of an existing building, X increased the qualified basis of the building after the close of the first year of the credit period. As in Situation 1, in order for X to receive an additional allocation of credit under section 42(h)(1)(D) of the Code for the addition to qualified basis, X must enter into an extended low-income housing commitment with the state housing credit agency under section 42(h)(6). Under section 42(f)(3), unlike credits claimed on the initial qualified basis, credits claimed on additions to qualified basis are allowable annually for the remainder of the building's 15-year compliance period and are determined using a credit percentage equal to two-thirds of the applicable credit percentage allowable for the initial qualified basis. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-92 (1986), 1986-3 (Vol. 4) C.B. 92. The extended use period will end on the later of the date specified by the state housing credit agency in the extended low-income housing commitment or 15 years after the close of the building's compliance period.

A building has only one 10-year credit period and only one 15-year compliance period. Because an addition to qualified basis is not treated as a separate new building, the credit and compliance periods that have already been fixed for the building also apply to the credit allocated for the addition to qualified basis. The extended low-income housing commitment must apply to the entire building.

In Situation 3, Y received a low-income housing credit allocation from the state housing credit agency under section 42(h)(1)(E) of the Code after having incurred more than 10 percent of Y's reasonably expected basis in the building (in this case, also a single building project) being constructed. However, Y incurred additional unexpected costs in constructing the building that were not covered by the initial allocation. In order to receive an additional credit allocation under section 42(h)(1)(B) in the year Y places the building in service, Y must enter into an extended low-income housing commitment with the state housing credit agency under section 42(h)(6). The credit allocated under section 42(h)(1)(B) for the additional unexpected costs is made for the same building as the initial allocation for construction of the building under section 42(h)(1)(E). Because the allocations are made for the same building, the same 10-year credit period and 15-year compliance period apply for both allocations. Therefore, the extended use period will end on the later of the date specified by the state housing credit agency in the extended low-income housing commitment or 15 years after the close of the building's compliance period. As in Situation 2, the extended low-income housing commitment must apply to the entire building.

In Situation 4, due to a shortage of housing credit dollar amounts remaining in the 1989 state housing credit ceiling, Z received an allocation of low- income housing credit in 1989 (the year Z placed the building in service) and entered into a binding agreement with the housing credit agency before the close of 1989 for additional credit to be allocated in 1990 from the state housing credit ceiling for 1990. The 1989 binding commitment, however, does not exempt Z from the requirements of the 1989 Act with regard to the 1990 housing credit allocation. The 1989 binding commitment was necessarily contingent on an extension of the low-income housing credit after December 31, 1989. The 1989 Act did extend the credit after that date, but also made post-1989 allocations conditional on the satisfaction of a number of other requirements, including the requirement of an extended low-income use commitment. Accordingly, as in the above situations, in order to receive the 1990 allocation under section 42(h)(1)(C) of the Code, Z must enter into an extended low-income housing commitment with the state housing credit agency under section 42(h)(6). Because the additional credit allocated under section 42(h)(1)(C) relates to the same building as the initial 1989 allocation, the same 10-year credit period and 15- year compliance period apply for both allocations. The extended use period will end on the later of the date specified by the state housing credit agency in the extended low-income housing commitment or 15 years after the close of the building's compliance period. As in the above situations, the extended low- income housing commitment must apply to the entire building.

The above situations illustrate that the extended low- income housing commitment requirement applies to all buildings receiving allocations from state housing credit ceilings for calendar years after 1989.

HOLDING

A taxpayer that received a low-income housing credit allocation for a building from a state housing credit agency before 1990 must enter into an extended low-income housing commitment under section 42(h)(6)(B) of the Code in order to be eligible for any additional housing credit allocation for the building after December 31, 1989.

This revenue ruling does not address application of the 1989 Act amendment in section 42(d)(5)(C) of the Code allowing for an increase in credit for buildings in high cost areas.

DRAFTING INFORMATION

The principal author of this revenue ruling is Donna M. Young of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Ms. Young on (202) 622-3040 (not a toll-free call).

Rev. Rul. 92-79, 1992-2 C.B. 10, 1992-39 I.R.B. 5.

REVENUE RULE 94-57

1994-2 C.B. 5, 1994-37 I.R.B. 4.

Internal Revenue Service
Revenue Ruling

LOW-INCOME HOUSING CREDIT; CHANGES IN AREA MEDIAN GROSS INCOME; TENANT QUALIFICATION; AVAILABLE UNIT RULE

Published August 24, 1994

Section 42. - Low-Income Housing Credit

(See Also § 142(d.)

Low-income housing credit; changes in area median gross income; tenant qualification; available unit rule. This ruling concludes that (1) the income limitation used to initially qualify tenants in a low-income unit fluctuates with changes in area median gross income, and (2) owners must use the curren area median gross income to determine when the available unit rule of section 42(g)(2)(ii) applies. Rev. Rul. 89-24 modified and superseded.

ISSUES

For the low-income housing credit under s 42 of the Internal Revenue Code:

(1) What is the effect of a change in area median gross income (AMGI) on the income limitation used to determine whether a tenant qualifies as a low-income tenant under s 42(g)(1)?

(2) What is the effect of a change in AMGI on the determination of whether any available residential unit must be rented to a new low-income tenant under s 42(g)(2)(D)(ii)?

FACTS

The Project, a single-building, qualified low-income housing project, received a housing credit dollar amount allocation from a housing credit agency (the Agency) in 1990. The Project was placed in service and began its credit period in 1991. When the Project owner first filed the Project's Form 8609, Low-Income Housing Credit Allocation Certification, the Project owner elected the 40-60 test of s 42(g)(1)(B).

In January 1992, the Tenant took initial occupancy of a rent-restricted residential unit in the Project. At the time the Tenant initially occupied the unit, 60 percent of AMGI, as adjusted for family size, in the area in which the Project is located, as defined in Rev. Rul. 89-24, 1989-1 C.B. 24, was $30x and the Tenant's annual income was $29x. Therefore, the unit that the Tenant occupied qualified as a low-income unit under 42(i)(3).

On May 5, 1993, AMGI, as determined in a manner consistent with section 8 of the United States Housing Act of 1937 (H.U.D. section 8), decreased so that 60 percent of AMGI, as adjusted for family size, in the area in which the Project is located was $25x.

On March 30, 1994, the Tenant's annual income was recertified under s1.42- 5(b)(1)(vi) of the Income Tax Regulations at $36x.

On April 1, 1994, another residential unit in the Project, which was not a low-income unit, became vacant. That unit is of comparable size to the unit occupied by the Tenant.

As of April 1, 1994, 60 percent of AMGI remained $25x, as adjusted for family size. At all times, the unit occupied by the Tenant remained rent-restricted.

LAW

Section 42(g)(1) defines a "qualified low-income housing project" as any project for residential rental use that meets one of the following requirements: (A) 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of AMGI, as adjusted for family size, or (B) 40 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of AMGI, as adjusted for family size. These requirements are referred to as the minimum set-asides. Section 142(d)(1) contains similar requirements for exempt facility bonds the net proceeds of which are to be used to provide qualified residential rental projects.

Section 42(i)(3)(A) defines the term "low-income unit" as any unit in a building if: (i) the unit is rent-restricted (as defined in s 42(g)(2)), and (ii) the individuals occupying the unit meet the income limitation applicable under s 42(g)(1) to the project of which the building is a part (low-income tenants).

Section 42(g)(2)(D)(i) provides that, except as provided in s 42(g)(2)(D)(ii), notwithstanding an increase in the income of the occupant of a low-income unit above the income limitation applicable under s 42(g)(1), the unit continues to be treated as a low-income unit if the income of the occupants initially met the income limitation and the unit continues to be rent-restricted.

Section 42(g)(2)(D)(ii) provides, however, that if the income of the occupants of the unit increases above 140 percent of the income limitation applicable under s 42(g)(1), a unit ceases to qualify as a low- income unit if any residential unit in the building (of a size comparable to, or smaller than, the unit) is occupied by a new resident whose income exceeds the income limitation. Section 142(d)(3) contains similar requirements for exempt facility bonds the net proceeds of which are to be used to provide qualified residential rental projects.

Under s 42(g)(4), s 142(d)(2)(B) applies when determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit. Section 142(d)(2)(B) provides that the income of individuals and AMGI is determined in a manner consistent with determinations of lower income families and AMGI under H.U.D. section 8. Accordingly, the determinations of lower income families and AMGI under H.U.D. section 8 apply to s 42(g)(1) and, therefore, to s 42(g)(2) and s 42(i)(3).

ANALYSIS

Issue 1. For a unit to be a low-income unit, a low-income tenant must meet the applicable income limitation elected by a project owner under s 42(g)(1) at the time the tenant initially occupies a rent-restricted residential unit in the owner's project. If a tenant initially satisfied the applicable income limitation, the unit remains a low-income unit, except as provided in s 42(g)(2)(D)(ii), notwithstanding an increase in the tenant's income (assuming the unit continues to be rent-restricted). See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-93 (1986). Similarly, if AMGI decreases in a project's area, a low-income tenant who occupied a residential unit prior to the decrease in AMGI will continue to qualify as a low-income tenant if the tenant qualified as a low-income tenant at the time of the tenant's initial occupancy. Thus, a change in a tenant's income or a change in AMGI occurring subsequent to the tenant's initial occupancy does not cause that tenant to cease to be a low- income tenant as of initial occupancy.

On the other hand, a decrease in AMGI commensurately decreases the income limitation under s 42(g)(1) used to determine whether a tenant initially qualifies as a low-income tenant if the tenant's initial occupancy occurs on or after the effective date of the decrease in AMGI. Likewise, an increase in AMGI commensurately increases the income limitation under s 42(g)(1) used to determine whether a tenant initially qualifies as a

low-income tenant if the tenant's initial occupancy occurs on or after the effective date of the increase in AMGI. Therefore, a tenant that initially occupies a residential unit after the effective date of a change in AMGI (whether AMGI increases or decreases for the area) must qualify based on the AMGI in effect at the time the tenant initially occupies the unit.

Under the facts presented, as of its initial occupancy, the Tenant is a low-income tenant because the Tenant's annual income at the time the Tenant initially occupied a residential unit in the Project, $29x, was less than the income limitation applicable to the Project, $30x, as adjusted for family size. The result would be the same under s 142(d)(1).

Issue 2. Notwithstanding the analysis of Issue 1, if the income of the occupants in a low-income unit increases above 140 percent of the income limitation under s 42(g)(1), that unit ceases to qualify as a low-income unit unless the project owner rents any available residential unit of comparable or smaller size to a new low-income tenant. A decrease in AMGI decreases the income limitation under s 42(g)(1). Accordingly, a decrease in AMGI decreases the income limitation used to calculate whether a project owner must rent any available residential unit of comparable or smaller size to a new low-income tenant under s 42(g)(2)(D)(ii). Likewise, an increase in AMGI increases the income limitation under s 42(g)(2)(D)(ii) used to calculate whether a project owner must rent any available residential unit of comparable or smaller size to a new low-income tenant.

On April 1, 1994, 140 percent of the applicable income limitation for the Project was $35x (1.4 times $25x), as adjusted for family size. Because the Tenant's annual income is $36x, for the Tenant's unit to continue to qualify as a low-income unit, the Project owner must rent the residential unit that became vacant on April 1, 1994, to a tenant whose income does not exceed the applicable income limitation of $25x, as adjusted for family size. The result would be the same under s 142(d)(3).

HOLDINGS

(1) A decrease in AMGI commensurately decreases the income limitation under s 42(g)(1) used to determine whether a tenant initially qualifies as a low-income tenant if the tenant's initial occupancy occurs on or after the effective date of the decrease in AMGI. Likewise, an increase in AMGI commensurately increases the income limitation under s 42(g)(1) used to determine whether a tenant initially qualifies as a low-income tenant if the tenant's initial occupancy occurs on or after the effective date of the increase in AMGI. This holding would also apply under s 142(d)(1).

(2) A decrease in AMGI decreases the income limitation used to calculate whether a project owner must rent any available residential unit of comparable or smaller size to a new low-income tenant under s 42(g)(2)(D)(ii). Likewise, an increase in AMGI increases the income limitation used to calculate whether a project owner must rent any available residential unit of comparable or smaller size to a new low-income tenant under s 42(g)(2)(D)(ii). This holding would also apply under s 142(d)(3).

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 89-24, 1989-1 C.B. 24, 25, provides that a list of income limits released by the Department of Housing and Urban Development (HUD) may be relied upon until 30 days after the Internal Revenue Service publishes an announcement or notice in the Internal Revenue Bulletin indicating that HUD has released updated income limits. Rev. Rul. 89-24 is modified and superseded. In the future, taxpayers may rely on a list of income limits released by HUD until 45 days after HUD releases a new list of income limits, or until HUD's effective date for this new list, whichever is later. However, under s 7805(b), taxpayers may rely on the income limits in effect prior to May 5, 1993, until 30 days after [FNa1] .

PROSPECTIVE APPLICATION

The Service will not retroactively apply the holdings in this revenue ruling to the extent the holdings in this revenue ruling adversely affect taxpayers.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Erickson 622-3040 (not a toll-free call).

FNal. Insert date this revenue ruling is published in the Internal Revenue Bulletin.

Rev. Rul. 94-57, 1994-2 C.B. 5, 1994-37 I.R.B. 4.

REVENUE RULE 95-49

1995-2 C.B. 7, 1995-29 I.R.B. 4

Internal Revenue Service
Revenue Ruling

LOW-INCOME HOUSING TAX CREDIT

Published: July 17, 1995

Section 42. - Low-Income Housing Credit
Low income housing tax credit. An extended low-income commitment satisfies section 42(h)(6) of the Code even though its provisions may be suspended or terminated after the compliance period when a tenant exercises a right of first refusal to purchase a low-income building.

ISSUE

Does an extended low-income housing commitment satisfy s 42(h)(6) if its provisions may be suspended or terminated after the compliance period when a tenant exercises a right of first refusal to purchase a low-income building?

FACTS

The owner (Owner) of a qualified low-income building (as defined in s 42(c)(2) of the Internal Revenue Code) rents the building to a single low- income family (Tenant). In an agreement between the Owner and the Tenant, the Owner grants the Tenant a right of first refusal to purchase the building after the close of the 15-year compliance period (as defined in s 42(i)(1)) at a minimum purchase price as specified in s 42(i)(7)(B). The provisions of the extended low-income housing commitment (Commitment) executed by the Owner with the applicable state housing agency (Agency) are terminated after the compliance period if the right is exercised by the Tenant. The Commitment otherwise meets the requirements of s 42(h)(6).

LAW AND ANALYSIS

Section 42 provides a tax credit for investment in qualified low-income buildings placed in service after December 31, 1986.

Section 42(h)(6) provides that no tax credit is allowed for a building unless an extended low-income housing commitment between the low-income building owner and the appropriate housing credit agency is in effect at the end of the taxable year. The commitment is binding on all successors to the owner and includes certain provisions that continue after the close of the building's 15-year compliance period. One of the commitment's provisions ensures that a certain percentage of a low-income building's units will continue to be available for rental by low-income tenants after the close of the compliance period.

Section 42(i)(7) provides that no federal income tax benefit fails to be allowable to the owner of a qualified low-income building merely by reason of a right of first refusal held by the building's tenants to purchase the building after the close of the 15-year compliance period. Section 42(i)(7) also continues the availability of low-income housing beyond the compliance period by permitting low-income tenants to be homeowners instead of renters.

The objectives of s 42(h)(6) and (i)(7) are similar in that both sections attempt to promote housing for low-income individuals beyond the compliance period, by rental in the case of s 42(h)(6) or by outright ownership in the case of s 42(i)(7). Accordingly, under s 42(h)(6) it is appropriate for an owner and a state housing agency to reference a right

of first refusal to be granted by the owner to tenants (either initially or by later amendment) in a commitment between the owner and the agency. In this case, the Owner and the Agency have agreed that the provisions of the Commitment will be terminated after the compliance period on the exercise by the Tenant of a right of first refusal. The Commitment nevertheless satisfies s 42(h)(6). The Commitment would likewise have satisfied s 42(h)(6) if it had provided that application of its provisions would be suspended, subject to conditions imposed by the Agency, on the exercise of the Tenant's right of first refusal.

HOLDING

An extended low-income housing commitment satisfies s 42(h)(6) even though its provisions may be suspended or terminated after the compliance period when a tenant exercises a right of first refusal to purchase a low-income building.

DRAFTING INFORMATION

The principal author of this revenue ruling is Christopher J. Wilson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Mr. Wilson on (202) 622-3040 (not a toll-free call).

Rev. Rul. 95-49, 1995-2 C.B. 7, 1995-29 I.R.B. 4

Internal Revenue Service
Revenue Ruling

Rev. Rul. 2002-65, 2002-43 I.R.B. 729

Internal Revenue Service (I.R.S.)

Revenue Ruling

LOW-INCOME HOUSING TAX CREDIT

Published: October 28, 2002

Section 42.--Low-Income Housing Credit, 26 CFR 1.42-16: Eligible basis reduced by federal grants.

Low-income housing tax credit. This ruling advises taxpayers that rental assistance payments made to a building owner on behalf or in respect of a tenant under the Rent Supplement Payment program or the Rental Assistance Payments program are not grants made with respect to a building or its operation under section 42(d)(5) of the Code.

Pursuant to § 1.42-16(b)(3) of the Income Tax Regulations, the Internal Revenue Service has determined that rental assistance payments made to a building owner on behalf or in respect of a tenant under the Rent Supplement Payment program (12 U.S.C. § 1701s) or the Rental Assistance Payments program (12 U.S.C. § 1715z-1(f)(2)) are not grants made with respect to a building or its operation under § 42(d)(5) of the Internal Revenue Code.

Interest reduction payments made under mortgage insurance programs (for example, section 236 of the National Housing Act (12 U.S.C. § 1715z-1)) which the payments under the Rent Supplement Payment program and Rental Assistance Payments program are intended to augment are not included within the scope of this revenue ruling. The Treasury Department and the Internal Revenue Service are studying the proper treatment of these payments under § 42.

DRAFTING INFORMATION

The principal author of this revenue ruling is Christopher J. Wilson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Susan Reaman at (202) 622-3040, or Mr. Wilson at (808) 539-2874 (not toll-free calls).

Rev. Rul. 2002-65, 2002-43 I.R.B. 729

Internal Revenue Bulletin: 2004-35
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Rev. Rul. 2004-82

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Low-income housing credit. This ruling answers 12 questions about the low-income housing credit provisions under section 42 of the Code.

PURPOSE

This revenue ruling answers certain questions about the low-income housing credit under § 42 of the Internal Revenue Code.

LAW AND QUESTIONS AND ANSWERS

A. *ELIGIBLE BASIS AND QUALIFIED BASIS ISSUES*

Law

Section 42(a) provides for a credit for investment in certain low-income housing buildings. The amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building (as defined in § 42(c)(2)).

Section 42(c)(1)(A) provides that the qualified basis of any qualified low-income building for any taxable year is an amount equal to (i) the applicable fraction (determined as of the close of the taxable year) of (ii) the eligible basis of the building (determined under § 42(d)).

Section 42(c)(1)(B) defines the applicable fraction as the smaller of the unit fraction or the floor space fraction. Section 42(c)(1)(C) defines the unit fraction as the fraction the numerator of which is the number of low-income units (as defined in § 42(i)(3)(A)) in the building and the denominator of which is the number of residential rental units (that is, all units in the building which are available to rent as personal residences), whether or not occupied, in the building. Section 42(c)(1)(D) defines the floor space fraction as the fraction the numerator of which is the total floor space of the low-income units in the building and the denominator of which is the total floor space of the residential rental units, whether or not occupied, in the building.

Section 42(d)(1) provides that the eligible basis of a new building is its adjusted basis as of the close of the first taxable year of the credit period. Section 42(d)(4)(A) provides that, except as provided in § 42(d)(4)(B) and (C), the adjusted basis of any building is determined without regard to the adjusted basis of any property that is not residential rental property. Section 42(d)(4)(B) provides that the adjusted basis of any building includes the adjusted basis of property of a character subject to the allowance for depreciation (1) used in common areas or (2) provided as comparable amenities to all residential rental units in the building.

Section 42(d)(4)(C)(i) provides that the adjusted basis of any building located in a qualified census tract is determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility. Section 42(d)(4)(C)(iii) provides that the term "community service facility" means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (AMGI) (within the meaning of § 42(g)(1)(B)). Section 42(d)(5)(C)(ii)(I) defines the term "qualified census tract" as any census tract (1) which is designated by the Secretary of Housing and Urban Development (HUD), and (2) for the most recent year for which census data are available on household income in the tract, either in which 50 percent or more of the households have an income which is less

than 60 percent of the AMGI for the year or which has a poverty rate of at least 25 percent. See *http://www.huduser.org/datasets/qct.html* for a listing of census tracts designated by the Secretary of HUD.

Section 42(d)(4)(C)(ii) provides that the increase in the adjusted basis of any building which is taken into account because of a community service facility may not exceed 10 percent of the eligible basis of the qualified low-income housing project (as defined in § 42(g)(1)) of which the community service facility is a part. For this purpose, § 42(d)(4)(C)(ii) provides that all community service facilities which are part of the same qualified low-income housing project are treated as one facility.

Rev. Rul. 2003-77, 2003-29 I.R.B. 75, provides that the requirement that a community service facility must be designed to serve primarily individuals whose income is 60 percent or less of AMGI will be satisfied if the following conditions are met. First, the facility must be used to provide services that will improve the quality of life for community residents. Second, the taxpayer must demonstrate that the services provided at the facility will be appropriate and helpful to individuals in the area of the project whose income is 60 percent or less of AMGI. This may, for example, be demonstrated in the market study required to be conducted under § 42(m)(1)(A)(iii), or another similar study. Third, the facility must be located on the same tract of land as one of the buildings that is part of the qualified low-income housing project. Finally, if fees are charged for services provided, they must be affordable to individuals whose income is 60 percent or less of AMGI.

The legislative history of § 42 states that residential rental property for purposes of the low-income housing credit has the same meaning as residential rental property for purposes of § 103. The legislative history of § 42 further states that residential rental property includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89.

In the Tax Reform Act of 1986 (the "1986 Act"), Congress reorganized §§ 103 and 103A of the Internal Revenue Code of 1954 (the "1954 Code") regarding tax-exempt bonds into §§ 103 and 141 through 150 of the Internal Revenue Code of 1986. Congress intended that to the extent not amended by the 1986 Act, all principles of pre-1986 Act law would continue to apply to the reorganized provisions. H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-686 (1986), 1986-3 (Vol. 4) C.B. 686. Because no regulations have been promulgated relating to residential rental property for purposes of § 103, the regulations relating to residential rental property promulgated pursuant to the 1954 Code continue to apply except as otherwise modified by the 1986 Act and subsequent law.

Under § 1.103-8(b)(4)(i) of the Income Tax Regulations, facilities that are functionally related and subordinate to residential rental projects are considered residential rental property. Section 1.103-8(b)(4)(iii) provides that functionally related and subordinate facilities include facilities for use by the tenants, such as swimming pools and other recreational facilities, parking areas, and other facilities reasonably required for the project. Examples in § 1.103-8(b)(4)(iii) of facilities reasonably required for a project include units for resident managers or maintenance personnel.

Q-1. A new qualified low-income building (Building) is located in an area in which owners of apartment buildings typically employ security officers due to the level of crime in the area.

(a) If a unit in Building is occupied by a full-time security officer for that building and Building's owner requires the security officer to live in the unit, is the adjusted basis of that unit includable in Building's eligible basis under § 42(d)(1)?

(b) If yes, is that unit a residential rental unit includable in the numerator and denominator of Building's applicable fraction under § 42(c)(1)(B)?

A-1. (a) Yes. The legislative history of § 42 indicates that residential rental property includes, in addition to the residential rental units, facilities for use by the tenants and other facilities reasonably required by the project.

Under § 1.103-8(b)(4)(iii), functionally related and subordinate property is property that is reasonably required for the project. Examples of functionally related and subordinate property are units for resident managers or maintenance personnel. See § 1.103-8(b)(4)(iii). Thus, while units for resident managers or maintenance personnel are not residential rental units, they are treated as part of residential rental property because these units are functionally related and subordinate to the project. The unit occupied by a full-time security officer is similar to the units described in the examples contained in § 1.103-8(b)(4)(iii), and is reasonably required by the project because of the level of crime in the area. Thus, the unit is functionally related and subordinate to Building. As a result, the unit is residential rental property for purposes of § 42 and its adjusted basis is includable in Building's eligible basis under § 42(d)(1).

(b) No. The term "residential rental unit" has a different meaning than the term "residential rental property" for purposes of § 42. Under § 1.103-8(b)(4)(iii), units for resident managers or maintenance personnel are residential rental property because they are functionally related and subordinate to residential rental projects, not because they are residential rental units. Similarly, a unit occupied by a full-time security officer is not a residential rental unit. Only residential rental units are includable in Building's applicable fraction under § 42(c)(1)(B).

If in a later year of the credit period, the unit occupied by the full-time security officer is converted to a residential rental unit, the unit will be includable in the denominator of Building's applicable fraction for that year. If the unit also becomes a low-income unit in a later year, the unit will be includable in the numerator of Building's applicable fraction for that year.

Q-2. A new qualified low-income building (Building) received a housing credit allocation on June 1, 2003, and was placed in service in 2004. Building is located in a qualified census tract (as defined in § 42(d)(5)(C)). The neighborhood in which Building is located is an area with a high rate of crime. In 2004, the local police department leases a unit in Building to be used as a police substation (Facility). The Facility is part of the police department's community outreach program. This Facility is intended to serve as a deterrent to crime in the community, assist the community with solving crime-related problems, reduce the response time to area calls for service, and provide the locally assigned police officers with a local office. The services provided by the police are free of charge. The adjusted basis of the property constituting the Facility (of a character subject to the allowance for depreciation and not otherwise taken into account in the adjusted basis of Building) does not exceed 10 percent of the eligible basis of Building.

As required by § 42(m)(1)(A)(iii), prior to the allocation of low-income housing credit to Building, a comprehensive market study was conducted to assess the housing needs of the low-income individuals in the area to be served by Building. The study found, among other items, that due to the high rate of crime in the community in which Building is located, providing a police substation would be appropriate and helpful to individuals in the area of Building whose income is 60 percent or less of AMGI.

(a) Is the adjusted basis of the Facility includable in Building's eligible basis under § 42(d)(1)?

(b) If yes, is the Facility includable in Building's applicable fraction under § 42(c)(1)(B)?

A-2. (a) Yes. The Facility qualifies as a community service facility under § 42(d)(4)(C)(iii). Under the facts presented, the Facility is designed to serve primarily individuals whose income is 60 percent or less of AMGI for the following reasons: (1) the services provided at the Facility are services that will help improve the quality of life for community residents; (2) the market study required to be conducted under § 42(m)(1)(A)(iii) found that the services provided at the Facility would be appropriate and helpful to individuals in the area of Building whose income is 60 percent or less of AMGI; (3) the Facility is located within Building; and (4) the services provided at the Facility are affordable to individuals whose income is 60 percent or less of AMGI.

Because the other requirements set forth in § 42(d)(4)(C) are met, the adjusted basis of Building will be determined by taking into account the adjusted basis of the Facility. Thus, the adjusted basis of the Facility is includable in Building's eligible basis.

(b) No. The Facility is not a residential rental unit for purposes of § 42. Therefore, the Facility is not includable in either the numerator or denominator of Building's applicable fraction.

Q-3. On applying to the housing credit agency for an allocation of § 42 credits for a new building, the housing credit agency requires that the applicant pay a nonrefundable application fee. If the applicant is successful, an allocation fee is payable to the housing credit agency. Are the application fee and allocation fee includable in the eligible basis of the applicant's low-income housing building?

A-3. No. The application fee and allocation fee are not includable in the eligible basis of the applicant's low-income housing building because the fees are not capitalizable into the adjusted basis of the building. See § 263 and § 263A. However, depending on the facts and circumstances, all or a portion of these fees may be required to be capitalized as amounts paid to create an intangible asset. See § 1.263(a)-4. Any portion of these fees not required to be capitalized under § 1.263(a)-4 may be deductible as an ordinary and necessary expense under § 162 or § 212, provided the taxpayer satisfies the requirements of those sections.

B. *FIRST-YEAR LOW-INCOME UNIT ISSUE*

Law

Section 42(i)(3)(A) defines "low-income unit" as any unit in a building if (i) the unit is rent-restricted (as defined in § 42(g)(2)), and (ii) the individuals occupying the unit meet the income limitation applicable under § 42(g)(1) to the project of which the building is a part (individuals that meet the applicable income limitation are referred to as "income-qualified"). Section 42(i)(3)(B) provides that a unit will not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

Section 42(f)(1) defines the "credit period" for a low-income housing credit building as the period of 10 taxable years beginning with (A) the taxable year in which the building is placed in service or (B) at the election of the taxpayer, the succeeding taxable year, but in either case only if the building is a qualified low-income building as of the close of the first year of the period.

Section 42(f)(2)(A) provides a special rule for determining the amount of the low-income housing credit allowable for the first year of the credit period. It provides that the credit allowable under § 42(a) with respect to any building for the first taxable year of the credit period must be determined by substituting for the applicable fraction under § 42(c)(1) the fraction (i) the numerator of which is the sum of the applicable fractions determined under § 42(c)(1) as of the close of each full month of the first taxable year of the credit period during which the building was in service, and (ii) the denominator of which is 12.

Q-4. On initial occupancy of a unit in the first year of a newly constructed building's credit period, an income-qualified tenant moved into the unit on the last day of a month. The unit was rent-restricted in accordance with § 42(g)(2). In determining the low-income housing credit for the building for the first year of the credit period, is the unit treated as a low-income unit for that month for purposes of the fraction calculated under § 42(f)(2)(A)?

A-4. Yes. The unit is treated as a low-income unit eligible for inclusion in the numerator and denominator of the monthly applicable fraction calculated under § 42(f)(2)(A)(i) if the tenant, who meets the income limitation under § 42(g)(1), resides in the rent-restricted unit on the last day of the month. However, in accordance with § 42(f)(2)(A), the building must have been placed in service for a full month for the unit to be includable in the numerator and denominator of the monthly applicable fraction.

C. *EXTENDED LOW-INCOME HOUSING COMMITMENT ISSUE*

Law

Section 42(h)(6)(A) provides that no credit will be allowed with respect to any building for the taxable year unless an extended low-income housing commitment (as defined in § 42(h)(6)(B)) is in effect as of the end of the taxable year. Section 42(h)(6)(B)(i) provides that the term "extended low-income housing commitment" means any agreement between the taxpayer and the housing credit agency which requires that the applicable fraction (as defined in § 42(c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in the agreement *and which prohibits the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii)*" (emphasis added).

Section 42(h)(6)(E)(ii) provides that the termination of an extended low-income housing commitment under § 42(h)(6)(E)(i) will not be construed to permit before the close of the 3-year period following the termination (I) the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or (II) any increase in the gross rent with respect to a low-income unit not otherwise permitted under § 42.

Section 42(h)(6)(D) defines the term "extended use period" as the period beginning on the first day in the compliance period on which the building is part of a qualified low-income housing project and ending on the later of (1) the date specified by the agency in the extended low-income housing commitment, or (2) the date which is 15 years after the close of the compliance period.

Section 42(h)(6)(J) provides that if, during a taxable year, there is a determination that a valid extended low-income housing commitment was not in effect as of the beginning of the year, the determination will not apply to any period before that year and § 42(h)(6)(A) will be applied without regard to the determination provided that the failure is corrected within 1 year from the date of the determination.

In the Omnibus Budget Reconciliation Act of 1990, 1991-2 C.B. 481, 531 (the "1990 Act"), Congress amended § 42(h)(6)(B)(i) by adding the language emphasized above, which prohibits the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii). At the time of this amendment, however, § 42(h)(6)(E)(ii) was already part of § 42.

The legislative history to § 42 states that the extended low-income housing commitment must prohibit the eviction or termination of tenancy (other than for good cause) of an existing tenant of a low-income unit or any increase in the gross rent inconsistent with the rent restrictions on the unit. H. Rep. No. 894, 101st Cong., 2d Sess. 10, 13 (1990).

Q-5. Must the extended low-income housing commitment prohibit the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) only for the 3-year period described in § 42(h)(6)(E)(ii)?

A-5. No. Section 42(h)(6)(B)(i) requires that an extended low-income housing commitment include a prohibition during the extended use period against (1) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit (no-cause eviction protection) and (2) any increase in the gross rent with respect to the unit not otherwise permitted under § 42. When Congress amended § 42(h)(6)(B)(i) to add the language emphasized above, § 42(h)(6)(E)(ii) was already part of § 42. As a result, Congress must have intended the amendment to § 42(h)(6)(B)(i) to add an additional requirement beyond what was contained in § 42(h)(6)(E)(ii), which already prohibited the actions described in that section for the 3 years following the termination of the extended use period. Because the requirements of § 42(h)(6)(B)(i) otherwise apply for the extended use period, Congress must have intended the addition of the prohibition against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) to apply throughout the extended use period.

If it is determined by the end of a taxable year that a taxpayer's extended low-income housing commitment for a building does not meet the requirements for an extended low-income housing commitment under § 42(h)(6)(B) (for example, it does not provide no-cause eviction protection for the tenants of low-income units throughout the extended use period), the low-income housing credit is not allowable with respect to the building for the taxable year, or any prior taxable year. However, if the failure to have a valid extended low-income housing commitment in effect is corrected within 1 year from the date of the determination, the determination will not apply to the current year of the credit period or any prior year.

Pursuant to this revenue ruling, each housing credit agency is required to review its extended low-income housing commitments for compliance with the interpretation of § 42(h)(6)(B)(i) provided in this question and answer. This review must be completed by December 31, 2004. If during the review period the housing credit agency determines that an extended low-income housing commitment is not in compliance with the interpretation of § 42(h)(6)(B)(i) provided in this question and answer, the 1-year period described under § 42(h)(6)(J) will commence on the date of that determination.

D. *HOME INVESTMENT PARTNERSHIP ACT LOAN ISSUES*

Law

Section 42(b)(2)(A) provides that for a qualified low-income building placed in service by the taxpayer after 1987, the term "applicable percentage" means (1) the 70-percent present value credit under § 42(b)(2)(B)(i) for new buildings which are not federally subsidized, and (2) the 30-percent present value credit under § 42(b)(2)(B)(ii) for new buildings which are federally subsidized and for existing buildings.

In general, § 42(d)(5)(C)(i) provides that in the case of any building located in a designated qualified census tract or difficult development area (as defined in § 42(d)(5)(C)(ii) and (iii)), (I) the eligible basis of a new building will be 130 percent of the eligible basis determined without regard to this rule, and (II) in the case of an existing building, the rehabilitation expenditures taken into account under § 42(e) will be 130 percent of the expenditures determined without regard to this rule.

Section 42(g)(1) defines the term "qualified low-income housing project" as any project for residential rental property if the project meets the requirements of § 42(g)(1)(A) or (B), whichever the taxpayer elects. The election is irrevocable. The project meets the requirements of § 42(g)(1)(A) if 20 percent or more of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of AMGI. The project meets the requirements of § 42(g)(1)(B) if 40 percent or more of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of AMGI. The requirement a taxpayer elects is referred to as the "minimum set-aside" for the project.

Section 42(g)(2)(A) provides that for purposes of § 42(g)(1), a residential unit is rent-restricted if the gross rent with respect to the unit does not exceed 30 percent of the imputed income limitation applicable to the unit.

Section 42(g)(2)(C) provides that the imputed income limitation applicable to a unit is the income limitation which would apply under § 42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit were: (i) in the case of a unit which does not have a separate bedroom, 1 individual; and (ii) in the case of a unit which has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

Section 42(g)(3)(A) provides that a building will be treated as a qualified low-income building only if the project (of which the building is a part) meets the requirements of § 42(g)(1) not later than the close of the first year of the credit period for the building.

Section 42(i)(2)(A) provides that for purposes of § 42(b)(1), a new building will be treated as federally subsidized for any taxable year if, at any time during the taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under § 103, or any below market Federal loan, the proceeds of which are or were used (directly or indirectly) with respect to the building or operation thereof.

Section 42(i)(2)(B) provides that a loan or tax-exempt obligation will not be taken into account under § 42(i)(2)(A) if the taxpayer elects to exclude from eligible basis of the building for purposes of § 42(d), in the case of a loan, the principal amount of the loan, and in the case of a tax-exempt obligation, the proceeds of the obligation.

Section 42(i)(2)(C) provides that § 42(i)(2)(A) will not apply to any tax-exempt obligation or below market Federal loan used to provide construction financing for any building if (i) the obligation or loan (when issued or made) identified the building for which the proceeds of the obligation or loan would be used, and (ii) the obligation is redeemed, and the loan is repaid, before the building is placed in service.

Section 42(i)(2)(D) provides that the term "below market Federal loan" means any loan funded in whole or in part with Federal funds if the interest rate payable on the loan is less than the applicable Federal rate (AFR) in effect under § 1274(d)(1) (as of the date the loan was made).

Section 42(i)(2)(E)(i) generally provides that assistance provided under the HOME Investment Partnerships Act (HOME) with respect to any building will not be treated as a below market Federal loan under § 42(i)(2)(D) if 40 percent or more of the residential units in the building are occupied by individuals whose income is 50 percent or less of AMGI (the special set-aside). Section 42(d)(5)(C) (the 130 percent eligible basis increase) does not apply to any building to which the preceding sentence applies.

Q-6. Taxpayer owns a new qualified low-income housing project consisting of Buildings 1 and 2, each containing 100 residential rental units. Forty percent of the units in each building are low-income units. Taxpayer elected the minimum set-aside for the project under § 42(g)(1)(B). Also, Taxpayer elected on Form 8609, *Low-Income Housing Credit Allocation Certification*, to treat the buildings as part of a multiple building project. A HOME loan at less than the AFR was provided with respect to the project.

(a) How does the special set-aside under § 42(i)(2)(E)(i) apply to qualify Buildings 1 and 2 for the 70-percent present value credit under § 42(b)?

(b) What rent restriction applies to the low-income units used to satisfy the special set-aside under § 42(i)(2)(E)(i)?

A-6. (a) To qualify the project for the 70-percent present value credit, Taxpayer must rent at least 40 units in each of Buildings 1 and 2 to tenants whose income is 50 percent or less of AMGI throughout the 15-year compliance period because the rule under § 42(i)(2)(E)(i) applies on a building-by-building basis. Because these units are to be low-income units and Taxpayer elected the minimum set-aside under § 42(g)(1)(B), the same units used to satisfy the special set-aside under § 42(i)(2)(E)(i) will also satisfy the project's minimum set-aside.

(b) The rent restriction that applies for all of the low-income units in the project, including the units in Buildings 1 and 2 which are used to satisfy the special set-aside under § 42(i)(2)(E)(i), is based on the applicable income limitation under § 42(g)(1)(B) because § 42(g)(2)(C) contains no exception for buildings that satisfy the special set-aside contained in § 42(i)(2)(E)(i).Therefore, the imputed income limitation (as defined in § 42(g)(2)(C)) applicable to the units in this project is 60 percent of AMGI. Under § 42(g)(2), rent may not exceed 30 percent of this imputed income limitation.

Q-7. (a) Taxpayer owns a newly constructed qualified low-income housing project consisting of one building located in a qualified census tract (Building). A HOME loan at less than the AFR was provided with respect to Building. Construction of Building was funded in part with an obligation the interest on which is exempt from tax under § 103 that was outstanding after Building was placed in service. Taxpayer did not elect to exclude from eligible basis the principal amount of the HOME loan or the proceeds of the tax-exempt obligation as provided under § 42(i)(2)(B). Forty percent of the residential units in Building are occupied by individuals whose income is 50 percent or less of area median gross income. Is Building eligible for the increase in eligible basis provided under § 42(d)(5)(C)(i)(I)?

(b) The facts are the same as in (a) above except that the interest rate on the HOME loan when made was not less than the AFR in effect under § 1274(d)(1), and the tax-exempt obligation was redeemed before Building was placed in service. Is Building eligible for the increase in eligible basis under § 42(d)(5)(C)(i)(I)?

(c) The facts are the same as in (a) above except that the special set-aside under § 42(i)(2)(E)(i) was not met, and the tax-exempt obligation was redeemed before Building was placed in service. Is Building eligible for the increase in eligible basis under § 42(d)(5)(C)(i)(I)?

A-7. (a) Yes. Because the tax-exempt obligation is outstanding after Building was placed in service and the proceeds of the obligation were not excluded from Building's eligible basis under § 42(i)(2)(B), Building is treated as federally subsidized under § 42(i)(2)(A). Inasmuch as the building is treated as federally subsidized, the 30-percent present value credit under § 42(b) will apply to Building. The fact that the tax-exempt obligation caused Building to be federally subsidized makes § 42(i)(2)(E)(i) (which provides that certain HOME loans will not cause a project to be federally subsidized if the special set-aside requirement under that section is satisfied, and whose applicability prohibits the increase in eligible basis under § 42(d)(5)(C)) inapplicable. Accordingly, Building is eligible for the increase in eligible basis under § 42(d)(5)(C)(i)(I).

If the tax-exempt obligation was redeemed before Building was placed in service or the proceeds of the obligation were excluded from Building's eligible basis, Building would no longer be treated as federally subsidized by the tax-exempt obligation under § 42(i)(2)(A). Therefore, § 42(i)(2)(E)(i) would be applicable, and cause Building not to be treated as federally subsidized by the HOME loan under § 42(i)(2)(A). Accordingly, the prohibition in § 42(i)(2)(E)(i) against using § 42(d)(5)(C) would apply, and Building would not be eligible for the increase in eligible basis under § 42(d)(5)(C)(i)(I). The 70-percent value credit under § 42(b) would apply to Building.

(b) Yes. When the HOME loan was made, the interest rate on the loan was not less than the AFR. Therefore, the loan is not described in § 42(i)(2)(D), and the building will not be treated as federally subsidized under § 42(i)(2)(A). The 70-percent present value credit will apply to Building. Because § 42(i)(2)(E)(i) is inapplicable to HOME loans not described in § 42(i)(2)(D), this loan is not subject to § 42(i)(2)(E)(i), and the prohibition in § 42(i)(2)(E)(i) against using § 42(d)(5)(C) does not apply. Accordingly, Building is eligible for the increase in eligible basis under § 42(d)(5)(C)(i)(I).

(c) Yes. Although Building meets the exception under § 42(i)(2)(C) with respect to the tax-exempt obligation, Building is treated as federally subsidized under § 42(i)(2)(A) because it received a HOME loan at less than the AFR and does not meet the special set-aside under § 42(i)(2)(E)(i). The 30-percent present value credit will apply to Building as it is treated as federally subsidized. Because Building does not meet the special set-aside under § 42(i)(2)(E)(i), the prohibition in § 42(i)(2)(E)(i) against using § 42(d)(5)(C) does not apply, and Building is eligible for the increase in eligible basis under § 42(d)(5)(C)(i)(I).

If Taxpayer elected to exclude the principal amount of the HOME loan from the eligible basis of Building under § 42(i)(2)(B) (whether or not the special set-aside under § 42(i)(2)(E)(i) was met), Building would not be treated as federally subsidized under § 42(i)(2)(A), and the 70-percent present value credit would apply to Building. Because the HOME loan would not be taken into account, § 42(i)(2)(D) and § 42(i)(2)(E)(i) do not apply to Building. Therefore, Building would not be described in § 42(i)(2)(E)(i). Accordingly, the prohibition in § 42(i)(2)(E)(i) against using § 42(d)(5)(C) would not apply, and Building would be eligible for the increase in eligible basis under § 42(d)(5)(C)(i)(I).

E. *VACANT UNIT RULE ISSUES*

Law

Section 1.42-5(c)(1)(ix) provides that a housing credit agency must require the owner of a low-income housing project to certify at least annually to the housing credit agency that, for the preceding 12-month period, if a low-income unit in the project became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income (the "vacant unit rule").

The legislative history to § 42 indicates that vacant units, formerly occupied by low-income individuals, may continue to be treated as occupied by qualified low-income individuals for purposes of the minimum set-aside requirement (as well as for determining qualified basis) provided reasonable attempts are made to rent the unit. H. R. Conf. Rep. No. 841, *supra*, at II-94.

Section 42(g)(2)(D)(i) provides that notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under § 42(g)(1), the unit will continue to be treated as a low-income unit if the income of the occupants initially met the income limitation and the unit continues to be rent-restricted.

Section 42(g)(2)(D)(ii) provides that if the income of the occupants of the unit increases above 140 percent of the income limitation applicable under § 42(g)(1), the unit ceases to be treated as a low-income unit if any available or subsequently available residential rental unit in the building (of a size comparable to, or smaller than, the unit) is occupied by a new resident whose income exceeds the income limitation (the "available unit rule").

Under § 1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140 percent of the applicable income limitation under § 42(g)(1) is referred to as an "over-income unit."

Section 1.42-15(c) provides that a unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law (for example, a unit is not available if it is subject to a preliminary reservation that is binding on the owner under local law prior to the date a lease is signed or the unit is occupied).

Q-8. On July 1, 2003, an income-qualified household (Household) initially occupied a rent-restricted residential rental unit in Building 1 of Project. On October 31, 2003, the property manager moved Household (and transferred Household's lease) to a similar rent-restricted unit in Building 2 of Project that was not previously occupied. Household occupied the Building 2 unit at the end of 2003. The unit Household vacated in Building 1 was unoccupied during November and December. Are both units in Buildings 1 and 2 low-income units at the end of 2003?

A-8. No. While a vacant low-income unit generally retains its character as a low-income unit, where an owner simply moves a tenant from a unit in one building to a unit in another building in the same project, both units may not be treated as low-income units; rather, only the unit that the tenant actually occupies at the end of a month in the first year of the credit period and at the end of each year in subsequent years qualifies as a low-income unit. Thus, in this situation, while the unit in Building 1 vacated by Household was treated as a low-income unit during the months it was occupied by Household, the unit ceased to be treated as a low-income unit when Household vacated the unit. At that time, the vacated unit would be treated as a unit not previously occupied.

Q-9. Ten units previously occupied by income-qualified tenants in a 200-unit mixed-use housing project are vacant. None of the low-income units in the project had been over-income units. The project owner displayed a banner and for rent signs at the entrance to the project, placed classified advertisements in two local newspapers, and contacted prospective low-income tenants on a waiting list for the project and on a local public housing authority list of section 8 voucher holders about the low-income unit vacancies. These are customary methods of advertising apartment vacancies in the area of the project for identifying prospective tenants. Subsequent to the low-income unit vacancies, a market-rate unit of comparable size to the low-income units became vacant. Will the owner violate the vacant unit rule if the owner rents the market-rate unit before any of the low-income units?

A-9. No. In accordance with § 1.42-5 (c)(1)(ix), the owner of a qualified low-income housing project has to use reasonable attempts to rent a vacant low-income unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project are rented to tenants not having a qualifying income. Thus, if the project owner makes reasonable attempts to rent the vacant low-income units to income-qualified tenants, the owner may rent the newly vacated market-rate unit before renting the low-income units and continue to characterize the vacant low-income units as low-income units for purposes of the minimum set-aside requirements in § 42(g)(1) and calculation of the applicable fraction under § 42(c)(1)(B).

What constitutes reasonable attempts to rent a vacant unit is based on facts and circumstances, and may differ from project to project depending on factors such as the size and location of the project, tenant turnover rates, and market conditions. Also, the different advertising methods that are accessible to owners and prospective tenants would affect what is considered reasonable. Under the facts in this situation, the owner used reasonable methods of advertising an apartment vacancy in the area of the project before the owner rented the market-rate unit. Thus, the owner made reasonable attempts to rent the vacant low-income units.

In addition, the available unit rule is not violated by rental of the market-rate unit before the low-income units because there are no over-income units in the building.

Q-10. A building has 10 units of comparable size, consisting of 7 low-income units (none was an over-income unit) and 3 market-rate units. All units in the building were occupied except for one market-rate unit. A low-income unit became vacant on March 15, 2004.

Between March 15, 2004, and March 29, 2004, the owner made reasonable attempts to rent this unit to an income-qualified tenant. The vacant low-income unit became subject to a reservation (a contractual arrangement that is binding on the building owner under local law prior to the date a lease is signed or the unit is occupied) on March 29, 2004, under which the owner agreed to rent the unit to *A*, whose income meets the income limitation elected for the project under § 42(g)(1). Thereafter, the owner ceased any efforts to attempt to rent the unit. On April 30, 2004, *A* signed a lease for the unit and occupied the unit on May 1, 2004. The vacant market-rate unit was rented to a market-rate tenant on April 15, 2004. Did the owner violate the vacant unit rule?

A-10. No. For purposes of the vacant unit rule, an owner needs to make reasonable attempts to rent an available vacant low-income unit. To determine what constitutes an available unit for purposes of the vacant unit rule, the Internal Revenue Service will adopt the rule under § 1.42-15(c) for when a unit is considered not available. Therefore, a unit is not available for purposes of the vacant unit rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law, such as a reservation entered into between a building owner and a prospective tenant. Thus, in this situation, because the vacant low-income unit was subject to a reservation that was binding under local law prior to the renting of the vacant market-rate unit, the low-income unit was not available when the market-rate unit was rented. Accordingly, the owner no longer needed to make reasonable efforts to rent the low-income unit.

In addition, the available unit rule is not violated by rental of the market-rate unit because there is no over-income unit in the building.

F. *RECORDKEEPING AND RECORD RETENTION ISSUE*

Law

Section 42(m)(1)(A)(i) requires each housing credit agency to allocate low-income housing credits according to a qualified allocation plan. Under § 42(m)(1)(B)(iii), an allocation plan is not qualified unless it contains a procedure that the housing credit agency (or an agent or other private contractor of the agency) will follow in (1) monitoring for noncompliance with the provisions of § 42, (2) notifying the Service of any noncompliance which the agency becomes aware of, and (3) monitoring for noncompliance with habitability standards through regular site visits.

Under § 1.42-5(a)(2)(i)(A), for the procedure to satisfy § 42(m)(1)(B)(iii), the procedure must include the recordkeeping and record retention provisions of § 1.42-5(b). However, a monitoring procedure adopted by a housing credit agency may require additional recordkeeping and record retention provisions beyond those specifically provided in § 1.42-5(b).

Section 1.42-5(b)(1) provides that a housing credit agency must require the owner of a low-income housing project to keep certain specified records for each qualified low-income building in the project for each year in the compliance period. Under § 1.42-5(b)(2), the owner must be required to retain the records described in § 1.42-5(b)(1) for a particular year for at least 6 years after the due date (with extensions) for filing the Federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the Federal income tax return for the last year of the compliance period (as defined in § 42(i)(1)) of the building. Section 1.42-5(b)(3) also specifies that the owner must be required to retain the original local health, safety, or building code violation reports or notices that were issued by the state or local government unit (as described in § 1.42-5(c)(1)(vi)) for inspection by the housing credit agency.

The general requirements for keeping records for purposes of the Code are in § 6001 and the regulations thereunder.

Rev. Proc. 97-22, 1997-1 C.B. 652, provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records or transfers their computerized books and records to an electronic storage media, such as an optical disk. Rev. Proc. 97-22 provides that records maintained in an electronic storage system that complies with the requirements of this revenue procedure will constitute records within the meaning of § 6001.

Q-11. May a taxpayer comply with the recordkeeping and record retention provisions under § 1.42-5(b) by using an electronic storage system instead of maintaining hardcopy (paper) books and records?

A-11. Yes, provided that the electronic storage system satisfies the requirements of Rev. Proc. 97-22. However, complying with the recordkeeping and record retention requirements of the Service does not exempt an owner from having to satisfy any additional recordkeeping and record retention requirements of the monitoring procedure adopted by the housing credit agency. For example, the housing credit agency may require the taxpayer to maintain hardcopy books and records.

For the basic requirements of maintaining records in an automated data processing system, including electronic storage systems, see Rev. Proc. 98-25, 1998-1 C.B. 689.

G. *TENANT INCOME DOCUMENTATION ISSUE*

Law

Section 1.42-5(b)(1)(vi) provides that a housing credit agency must require the owner of a low-income housing project to keep records for each qualified low-income building in the project that show, for each year in the compliance period, the annual income certification of each low-income tenant per unit. Under § 1.42-5(b)(1)(vii), the housing credit agency must require the owner to keep documentation to support each low-income tenant's income certification (for example, a copy of the tenant's Federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation).

Under § 1.42-5(c)(1)(iii), the housing credit agency must require the owner of a low-income housing project to certify at least annually that, for the preceding 12-month period, the owner has received an annual income certification from each low-income tenant, and documentation to support that certification.

Rev. Proc. 94-65, 1994-2 C.B. 798, indicates that an owner may satisfy the documentation requirement of § 1.42-5(b)(1)(vii) for a low-income tenant's income from assets by obtaining a signed, sworn statement from the tenant or prospective tenant if (1) the tenant's or prospective tenant's Net Family assets do not exceed $5,000, and (2) the tenant or prospective tenant provides a signed, sworn statement to this effect to the building owner. The revenue procedure provides that a housing credit agency's monitoring procedure may not permit an owner to rely on a low-income tenant's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of the low-income tenant's income from assets to satisfy the documentation requirement. In addition, the revenue procedure indicates that a housing credit agency's monitoring procedure may continue to require that an owner obtain documentation, other than the signed, sworn statement, to support a low-income tenant's annual certification of income from assets.

Q-12. On reviewing tenant files of a project, the housing credit agency discovered that for purposes of determining the income of certain tenants, the owner had accepted signed, sworn self-certifications in which the tenants stated that they had not received any child support payments. Is a signed, sworn self-certification by a tenant sufficient documentation under § 1.42-5(b)(1)(vii) to show that the tenant is not receiving child support payments?

A-12. Yes. Consistent with the documentation requirements in Rev. Proc. 94-65, a signed, sworn self-certification by a tenant is sufficient documentation under § 1.42-5(b)(1)(vii) to show that a tenant is not receiving child support payments. In addition to specifying that a tenant is not receiving any child support payments, an annual signed, sworn self-certification should indicate whether the tenant will be seeking or expects to receive child support payments within the next 12 months. If the tenant possesses a child support agreement but is not presently receiving any child support payments, the tenant should include an explanation of this and all supporting documentation such as a divorce decree and court documents to enforce payment. Also, the self-certification should indicate that the tenant will notify the owner of any changes in the status of child support.

A housing credit agency's monitoring procedure, however, may not permit an owner to rely on a low-income tenant's signed, sworn statement indicating that the tenant is not receiving child support payments if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of the low-income tenant's annual child support payments to satisfy the documentation requirement in § 1.42-5(b)(1)(vii).

A housing credit agency's monitoring procedure may continue to require that an owner obtain documentation, other than the statement described above, to support a low-income tenant's annual certification of child support payments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Gregory N. Doran. For further information regarding this revenue ruling, contact Harold Burghart of the Office of Associate Chief Counsel (Passthroughs and Special Industries) at (202) 622-3040 (not a toll-free call).

Rev. Proc. 94-9, 1994-2 CB 555--IRC Sec(s). 42

December 16, 1993

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, Section 42.)

1. PURPOSE

This revenue procedure informs owners of low-income buildings how to make the election provided by section 13142(c)(1) of the Revenue Reconciliation Act of 1993 (RRA 1993), Pub. L. No. 103-66, 107 Stat. 416, 439-40 (1993). The election is available to owners of low-income buildings not covered by section 7108(e)(1) of the Revenue Reconciliation Act of 1989 (1989 Act), 1990-1 C.B. 210, 220, and allows these owners to determine the gross rent limitation for rent- restricted units under the number of bedrooms method of section 42(g)(2)(C) of the Internal Revenue Code.

2. BACKGROUND

Section 7108(e)(1) of the 1989 Act changed the method for computing the maximum allowable gross rent in determining if a unit is rent-restricted under section 42(g)(2)(A). This 1989 Act amendment applies to allocations of housing credit dollar amounts (Allocations) made after 1989 (or, to bond-financed buildings placed in service after 1989, to the extent section 42(h)(4) applies to the building). Prior to the 1989 Act amendment of section 42(g)(2), the maximum allowable gross rent for a rent-restricted unit under section 42(g)(2)(A) was determined on the basis of, and varied in accordance with, the actual number of individuals occupying the unit. Under that method, the maximum allowable rent for a rent-restricted unit varies in accordance with the number of individuals occupying the unit.

For a building subject to section 7108(e)(1) of the 1989 Act, a unit in a building is rent-restricted if the gross rent for the unit does not exceed 30 percent of the imputed income limitation applicable to the unit under section 42(g)(2)(C). Section 42(g)(2)(C) provides that the imputed income limitation applicable to a unit is the income limitation that would apply under section 42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit were as follows: (i) for a unit that does not have a separate bedroom, 1 individual, and (ii) for a unit that has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom. This method is known as the number of bedrooms method.

Section 13142(c)(1) of the RRA 1993 allows an owner of a low- income building not covered by section 7108(e)(1) of the 1989 Act to elect to determine the gross rent limitation under the number of bedrooms method of section 42(g)(2)(C). Thus, owners of low-income buildings that received Allocations before 1990 (or of bond-financed buildings placed in service before 1990, to the extent section 42(h)(4)

applies to the building) can make the election provided for in section 13142(c)(1) of the RRA 1993.

Section 13142(c) of the RRA 1993 places the following conditions on this election: (1) the building owner must have met the requirements of section 42(m)(1)(B)(iii) (relating to state housing credit agency procedures for monitoring compliance with section 42); (2) the owner must make the election during the 180 day period beginning on the date of enactment of the RRA 1993; (3) the owner can only apply the number of bedrooms method to tenants first occupying any rent-restricted unit in the building after the date of the election, and the building owner must apply the number of bedrooms method to all rent restricted units whose tenants first occupy any unit in the building after the date of the election; and (4) once made, neither the building owner nor any subsequent owner may revoke the election.

3. SCOPE

This revenue procedure applies to owners of low-income buildings whose buildings were not subject to the amendments to section 42(g)(2) made by section 7108(e)(1) of the 1989 Act.

4. ELECTION PROCEDURE

To make the election to determine the gross rent limitation based on the number of bedrooms method, a building owner must-

.01 By February 7, 1994, send a written statement signed under penalty of perjury to the Internal Revenue Service Center, P.O. Box 245, Philadelphia, PA 19255, that states:

(a) That the building owner elects to use the number of bedrooms method of section 42(g)(2)(C);

(b) That the building owner meets the requirements of the procedures of the compliance monitoring plan in effect on the date of the election that is implemented by the state housing credit agency responsible for monitoring the building;

(c) That the building owner will only apply the elected method to tenants first occupying any unit in the building after the date of the election; and

(d) The building identification number assigned to the building, the building or project name, the building or project address, and the owner's name and taxpayer identification number. .02 Simultaneously send a copy of the election document to the state housing credit agency responsible for monitoring the building.

.03 Attach a copy of the election document to the building's Form 8609 filed for the tax year in which the building owner made the election.

.04 Keep a copy of the election document with the building's records. This copy must stay with the building's records regardless of any ownership transfer.

5. EFFECTIVE DATE OF ELECTION

An election under section 4 of this revenue procedure made after publication of the revenue procedure is effective when filed with the Internal Revenue Service Center in Philadelphia, PA. An election under section 13142(c)(1) to use the number of bedrooms method made before the publication of this revenue procedure is effective when made if: (1) the building owner complied with the requirements of section 13142(c) of the RRA 1993, and (2) the building owner perfects the election by following the requirements in section 4 of this revenue procedure.

6. EFFECTIVE DATE

This revenue procedure is effective for elections made on or after August 10, 1993.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Jeffrey A. Erickson at (202) 622-3040 (not a toll free call).

Rev. Proc. 94-57, 1994-2 CB 744--IRC Sec(s). 42

August 24, 1994

Part III Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, sections 42; 1.42-13(a).)

1. PURPOSE

This revenue procedure informs owners of qualified low-income housing projects and housing credit agencies (Agencies) when the gross rent floor in section 42(g)(2)(A) of the Internal Revenue Code takes effect.

2. BACKGROUND

On May 5, 1993, new area median gross income (AMGI) figures went into effect for the United States Department of Housing and Urban Development programs and other federal programs that use AMGI figures, including the section 42 low-income housing tax credit program. In some areas, the AMGI level fell below previous levels.

Section 42(g)(1) defines a qualified low-income housing project as any project for residential rental use that meets one of the following requirements: (A) 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of AMGI, as adjusted for family size, or (B) 40 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of AMGI, as adjusted for family size.

Section 42(g)(2)(A) provides that, under section 42(g)(1), a residential unit is rent-restricted if the gross rent for the unit does not exceed 30 percent of the imputed income limitation applicable to the unit. Under section 42(g)(2)(C), the imputed income limitation applicable to a unit is the income limitation that would apply under section 42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit were as follows: (i) in the case of a unit that does not have a separate bedroom, one individual, or (ii) in the case of a unit that has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

For calculating gross rent on a rent-restricted unit, section 7108(e)(2) of the Revenue Reconciliation Act of 1989, 1990-1 C.B. 214, 220, amended section 42(g)(2)(A) to provide that the amount of the income limitation under section 42(g)(1) applicable for any period is not less than the limitation applicable for the earliest period the building that contains the unit was included in the determination of whether the project is a qualified low-income housing project (the gross rent floor). Section 42(g)(3)(A) provides that, except as otherwise provided in section 42(g)(3), a building is treated as a qualified low-income building only if the project (of which the building is a part) meets the requirements of section 42(g)(1) not later than the close of the first year of the credit period for the building.

Section 42(h)(1)(A) provides that the amount of credit determined under section 42 for any taxable year for any building shall not exceed the housing credit dollar amount allocated to the building under section 42(h). Under section 42(m)(2)(A), the housing credit dollar amount allocated to a project shall not exceed the amount an Agency determines is necessary for the financial feasibility of the project and its viability as a qualified low- income housing project throughout the credit period. Section 42(m)(2)(B) provides that in making the determination under section 42(m)(2)(A), an Agency shall consider (i) the sources and uses of funds and the total financing planned for the project, (ii) any proceeds or receipts expected to be generated by reason of tax benefits, (iii) the percentage of housing credit dollar amounts used for project costs other than the cost of intermediaries, and (iv) the reasonableness of the developmental and operational costs of the project. The gross rent under section 42(g)(2)(A) that a low-income housing project may generate is a source of funds an Agency must consider in making the determination under section 42(m)(2)(A).

Section 42(h)(4)(A) provides that section 42(h)(1) does not apply to the portion of any credit allowable under section 42(a) that is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if (i) the obligation is taken into account under section 146, and (ii) principal payments on the financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide the financing. Section 42(h)(4)(B) provides that for purposes of section 42(h)(4)(A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by an obligation described in section 42(h)(4)(A), section 42(h)(1) does not apply to any portion of the credit allowable under section 42(a) for the building. Section 42(m)(2)(D) provides that section 42(h)(4) does not apply to any project unless the governmental unit that issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of section 42(m)(2)(A) and (B). Upon making this determination, an Agency will issue a "determination letter" to a building.

Under section 1.42-13(a) of the Income Tax Regulations, the Secretary may provide guidance through various publications in the Internal Revenue Bulletin to carry out the purposes of section 42.

3. SCOPE

This revenue procedure applies to Agencies and owners of qualified low-income housing projects, as defined by section 42(g)(1).

4. PROCEDURE

Except for a low-income building described in section 42(h)(4)(B) (a bond-financed building), the Internal Revenue Service will treat the gross rent floor in section 42(g)(2)(A) as taking effect on the date an Agency initially allocates a housing credit dollar amount to the building under section 42(h)(1). However, the Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that made the allocation to the building no later than the date on which the building is placed in service.

For a bond-financed building, the Service will treat the gross rent floor in section 42(g)(2)(A) as taking effect on the date an Agency initially issues a determination letter to the building. However, the Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that issued the determination letter to the building no later than the date on which the building is placed in service.

An Agency should establish a procedure that will allow an owner to inform the Agency of this designation no later than the date the owner's building is placed in service.

For the effect of a change in AMGI on the initial qualification of a tenant as a low-income tenant and the available unit rule, see Rev. Rul. 94-57.

5. EFFECTIVE DATE

This revenue procedure is effective for low-income housing projects receiving initial allocations or determination letters issued after * . For those projects that received initial allocations or determination letters prior to this effective date, for purposes of establishing the gross rent floor in section 42(g)(2)(A), owners and Agencies may use a date based on a reasonable interpretation of section 42.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Erickson at (202) 622-3040 (not a toll free call).

Rev. Proc. 94-65, 1994-2 CB 798--IRC Sec(s). 42

October 11, 1994

1. Purpose

This revenue procedure informs housing credit agencies (Agency) and owners of qualified low-income housing projects (owners) when a signed, sworn statement by a low-income tenant will satisfy the documentation requirement of section 1.42-5(b)(1)(vii) of the Income Tax Regulations.

2. Background

Section 1.42-5 provides the minimum requirements that an Agency's compliance monitoring procedure must contain to satisfy its compliance monitoring duties under section 42(m)(1)(B)(iii). Section 1.42-5(b)(1)(vi) provides that an Agency must require an owner to keep records for each qualified low-income building in the project that show for each year in the compliance period the annual income certifications of each low-income tenant per unit. Section 1.42- 5(b)(1)(vii) provides that an Agency must require an owner to keep documents for each qualified low-income building in its project for each year in the compliance period that support each low-income tenant's income certification. The term "low-income tenant" refers to the individuals occupying a rent-restricted unit in a qualified low- income housing project whose annual income satisfies the section 42(g)(1) income limitation elected by the owner of the project. Examples of the documentation required under section 1.42- 5(b)(1)(vii) include a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation. A verification of income from a third party is referred to as a "third party verification."

The Internal Revenue Service has determined that an owner may satisfy the documentation requirement of section 1.42-5(b)(1)(vii) for a low-income tenant's income from assets by obtaining a signed, sworn statement from the tenant or prospective tenant if (1) the tenant's or prospective tenant's Net Family assets do not exceed $5,000, and (2) the tenant or prospective tenant provides a signed, sworn statement to this effect to the building owner. See H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 544 (1993).

3. Scope

This revenue procedure applies to Agencies and owners of qualified low-income housing projects.

4. Procedure

.01 To determine a tenant's Net Family assets, owners and Agencies must use the definition of "Net Family assets" in 24 CFR 813.102, which provides definitions for the H.U.D. section 8 program.

.02 Except as provided in sections 4.03 and 4.04 of this revenue procedure, an Agency's monitoring procedure may provide that an owner may satisfy the

documentation requirement for income from assets in section 1.42-5(b)(1)(vii) for a low-income tenant whose Net Family assets do not exceed $5,000 by annually obtaining a signed, sworn statement that includes the following:

(1) That the tenant's Net Family assets do not exceed $5,000, and

(2) The tenant's annual income from Net Family assets.

.03 An Agency's monitoring procedure, however, may not permit an owner to rely on a low-income tenant's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of the low-income tenant's annual income from assets to satisfy the documentation requirement in section 1.42- 5(b)(1)(vii).

.04 An Agency's monitoring procedure may continue to require that an owner obtain documentation, other than the statement described in section 4.02 of this revenue procedure, to support a low-income tenant's annual certification of income from assets.

5. Effective Date

This revenue procedure is effective October 11, 1994.

Drafting Information

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Erickson at (202) 622-3040 (not a toll-free call).

Rev. Proc. 99-11, 1992-2 IRB 14--IRC Sec(s). 42

January 15, 1999

1. Purpose

This revenue procedure establishes a collateral program as an alternative to providing a surety bond to avoid or defer recapture of low-income housing tax credits under section 42(j)(6) of the Internal Revenue Code. Under this program, taxpayers may establish a Treasury Direct Account and pledge certain United States Treasury securities to the Internal Revenue Service as security. Procedures for establishing the Treasury Direct Account are provided in section 3 of this revenue procedure.

2. Background

Section 42(a) allows a 10-year tax credit for investment in qualified low-income buildings placed in service after December 31, 1986. If, at the close of any tax year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than the amount of the qualified basis at the close of the preceding tax year, section 42(j)(1) provides that the taxpayer's tax for the tax year shall be increased by the credit recapture amount under section 42(j)(2).

Section 42(j)(6) provides that a taxpayer that disposes of a qualified low-income building or an interest therein may defer or avoid recapture by furnishing a bond to the Secretary in an amount satisfactory to, and for the period required by, the Secretary if it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the building's compliance period. Guidance on the amount of bond considered satisfactory by the Secretary and the period of the bond required by the Secretary under section 42(j)(6) is provided in Rev. Rul. 90-60, 1990-2 C.B. 3.

Section 7101 provides that a period required to furnish a bond under Title 26 may, in lieu thereof, deposit certain Treasury securities as provided in 31 United States Code (U.S.C.) section 9303.

Under 31 U.S.C. section 9303 if a person is required under a law of the United States to give a surety bond, the person may give a Government obligation as security instead of a surety bond. The obligation shall:

(1) be given to the official having authority to approve the surety bond;

(2) be in an amount equal at par value to the amount of the required surety bond; and

(3) authorize the official receiving the obligation to collect or sell the obligation if the person defaults on a required condition.

A "Government obligation" is defined as a public debt obligation of the United States Government whose principal and interest are unconditionally guaranteed by the Government.

Over the years, taxpayers have reported difficulty in obtaining surety bonds because of the relatively small pool of surety companies that offer surety bonds for low-income housing buildings. Consequently, this program is being established to allow taxpayers to pledge Treasury securities in lieu of a surety bond to secure the taxpayer's liability for credit recapture under section 42(j). Upon furnishing Treasury securities, the taxpayer will be treated, solely for purposes of applying section 42(j), as if the taxpayer had not disposed of the interest and the taxpayer will be deemed to continue to own the disposed-of-interest under the rules of section 42(c). The taxpayer will not, however, be treated as claiming any additional low-income housing credit for the disposed-of-interest for any period following the disposition. If the qualified basis of the taxpayer's deemed interest in a qualified low-income building decreases after a

disposition of the taxpayer's interest in the qualified low-income building, the Treasury securities may be forfeited in whole or in part.

3. Procedures for Establishing a Treasury Direct Account

The Procedures for Establishing a Treasury Direct Account with the Service are as follows:

.01 Taxpayers must complete the Form 8693, Low Income Housing Tax Credit Disposition Bond, (see, however, any further revisions to the Form 8693 and its instructions for any changes in reporting) to determine the required amount of Treasury securities to be pledged as follows:

(1) write the words "TREASURY DIRECT ACCOUNT" across the top of Form 8693;

(2) complete Part I of the Form 8693 which includes lines 1 through 5 (substituting the word "security" wherever the word "bond" appears on line 4), skip line 6, and indicate on line 7a the name and address of the taxpayer;

(3) sign the perjury statement under Part II;

(4) complete Part III, if applicable;

(5) compute the bond amount by completing the worksheet in the instructions; and

(6) submit the completed Form 8693 to:

Internal Revenue Service Low-Income Housing Tax Credit Examination Group Room 3426 P.O. Box 12040 Philadelphia, PA 19105

.02 Upon receipt of the Form 8693, the Service will verify that the appropriate dollar amount of Treasury securities has been pledged and will provide the

taxpayer with a Treasury Direct collateral customer package and approval memorandum authorizing the establishment of the Treasury Direct Account. The taxpayer must then:

(1) complete the Bureau of Public Debt New Account Request Form (PD 5182) including the following information:

(a) taxpayer identification number (TIN);

(b) taxpayer mailing address;

(c) telephone number; and

(d) the direct deposit information for the taxpayer's bank account to which payments will be credited and purchases debited.

(2) submit the PD 5182 with the Service approval memorandum to:

Bureau of the Public Debt IRS Collateral – DCS (PD-DCS) 200 Third Street P.O. Box 428 Parkersburg, WV 26106

.03 Upon receipt of PD 5182, the Bureau of the Public Debt (PD- DCS) will establish a zero par collateral account (that is, an account without a balance). Taxpayers will then have 60 days to fund the account through original issue or secondary market purchases of eligible Treasury securities, which are: 26-week Treasury bills, $1,000 minimum, $1,000 multiples; and 52-week Treasury bills, $1,000 minimum, $1,000 multiples.

For original issue purchases, the taxpayer must:

(1) complete a Treasury Direct Tender Form (PD 5381) to purchase non-competitively the security with the required value and term;

(2) select Debit Account Clearing House as the method of payment on the tender;

(3) submit the completed tender to the PD-DCS collateral desk to be entered via Public Debt's electronic site (PD-DCS will not process any tender received that does not include an already established account number for a Treasury Direct Account);

(4) receive a Treasury Direct Statement of Account that displays both the form of registration and the par amount of Treasury securities pledged; and

(5) submit within 30 days from receipt a copy of the Treasury Direct Statement of Account to the Service at the address cited in section 3.01(6) of this revenue procedure as evidence that the collateral pledge account has been funded.

For secondary market purchases, the taxpayer must:

(1) purchase a Treasury security of the correct term and value on the secondary market through a broker/dealer;

(2) instruct the broker/dealer to transfer the Treasury security or securities into an established Treasury Direct Account;

(3) receive a Treasury Direct Statement of Account that displays both the form of registration and the par amount of Treasury securities pledged; and

(4) submit a copy of the Treasury Direct Statement of Account to the Service as evidence that the collateral pledge account has been funded.

.04 Taxpayers may purchase any combination of eligible Treasury securities to provide the required amount of collateral. All Treasury Direct Accounts are structured so that:

(1) Maturing securities are automatically reinvested in the same type of instruments previously held. If a like reinvestment option is not available upon a security's maturity, the proceeds are invested in the next offered 26 week Treasury bill. No interest accrues or is paid for any period between investments.

(2) PD-DCS reports to the Service all Form 1099 information concerning the accounts.

(3) All refund payments are credited electronically to the bank account of record on the previously established Treasury Direct Account. A refund payment on a Treasury bill is an amount equal to the difference between the face value and the price paid for the bill when purchased at original issue.

(4) Taxpayers are subject to annual maintenance or other fees applicable generally to investors holding Treasury securities in Treasury Direct. Refer to annual Federal Register notices for the schedule of maintenance fees.

.05 Taxpayers are not able, without written authorization from the Service, to transfer securities or initiate other changes to the collateral account. However, taxpayers may communicate directly with PD-DCS with any change in bank account information.

.06 At the end of the required posting period, the taxpayer must complete a Security Transfer Request Form (PD 5179), and forward the Request Form PD 5179 to the Service at the address noted in Section 3.01(6) of this revenue procedure. The Service will review the taxpayer's request and notify PD-DCS to return the posted securities. PD-DCS will not process any transfer request from the taxpayer unless it has been reviewed by the Service.

.07 The taxpayer has two options in receiving back the securities from the Treasury Direct Account. The taxpayer may:

(1) establish a new Treasury Direct Account using the Public Debt New Account Request Form or designate an existing Treasury Direct Account in the taxpayer's name and complete the Security Transfer Request Form (PD 5179) to transfer the securities into the new or existing Treasury Direct Account; or

(2) complete the Security Transfer and Sale Request Form (PD- 5179-1) to transfer the securities to the commercial market's National Book-Entry System (NBES). The securities are transferred from the Treasury Direct system into the Federal Reserve's Bank of Chicago's account in NBES to be sold on the secondary market.

Questions regarding the computation of the required amount of collateral can be directed to:

Internal Revenue Service Low Income Housing Tax Credit Examination Group Room 3426 P.O. Box 12040 Philadelphia, PA 19105 Phone Number: (212) 861-1212 (Ext. 144)

.09 Administrative questions concerning the establishment of the Treasury Direct Account should be directed to:

Bureau of the Public Debt IRS Collateral-DCS 200 Third Street P.O. Box 428 Parkersburg, WV 26106 Phone Number: (304) 480-6158

4. Effective Date

This revenue procedure is effective (Insert date of publication).

Drafting Information

The principal author of this revenue procedure is Jack Malgeri of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further

information regarding this revenue procedure, contact Mr. Malgeri at (202) 622-3040 (not a toll-free call).

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SECTION 1. PURPOSE

This revenue procedure provides safe harbors under which the Internal Revenue Service will treat a residential unit in a building as a low-income unit under § 42(i)(3)(A) of the Internal Revenue Code if the incomes of the individuals occupying the unit are at or below the applicable income limitation under § 42(g)(1) or § 142(d)(4)(B)(i) before the beginning of the first taxable year of the building's credit period under § 42(f)(1), but their incomes exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period.

SECTION 2. BACKGROUND

.01 Questions have arisen regarding when individuals must satisfy the applicable income limitation under § 42(g)(1) or § 142(d)(4)(B)(i) when they move into a residential unit in an existing building under § 42(i)(5) on or after the date a taxpayer acquires the existing building for rehabilitation under § 42(e), but before the beginning of the first taxable year of the building's credit period under § 42(f)(1). Because of these questions, some taxpayers require that the individuals' incomes not exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period, even though the individuals' income did not exceed the applicable income limitation when the individuals moved into the unit. This has resulted in some individuals being evicted, where permissible under local law, from low-income housing projects.

.02 Section 42(a) provides that, for purposes of § 38, the amount of the low-income housing credit determined for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

.03 Section 42(c)(2)(A) generally defines a qualified low-income building as any building which is part of a qualified low-income housing project at all times during the building's compliance period (which is defined in § 42(i)(1) as the period of 15 taxable years beginning with the first taxable year of the credit period under § 42(f)(1)).

.04 Section 42(i)(4) defines a new building as a building the original use of which begins with the taxpayer. An existing building is defined in § 42(i)(5) as any building which is not a new building. Section 42(e)(1) provides that rehabilitation expenditures paid or incurred by the taxpayer with respect to any building are treated as a separate new building for purposes of § 42.

.05 Section 42(f)(1) defines the credit period as the period of 10 taxable years beginning with (A) the taxable year in which the building is placed in service, or (B) at the election of the taxpayer, the succeeding taxable year, but in each case only if the building is a qualified low-income building as of the close of the first year of the period. Under § 42(f)(5)(A), the credit period for an existing building must not begin before the first taxable year of the credit period for rehabilitation expenditures with respect to the building.

.06 Section 42(g)(1) defines a qualified low-income housing project as any project for residential rental use that meets one of the following requirements: (A) 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of the area median gross income, or (B) 40 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of the area median gross income. Under § 42(g)(2), a residential unit is rent-restricted for purposes of § 42(g)(1) if the gross rent for the unit does not exceed 30 percent of the imputed income limitation for the unit. Residential units that satisfy these rent and income requirements are defined in § 42(i)(3)(A) as "low-income units." Section 42(i)(3)(B), (C), (D), and (E) provide more requirements for low-income units. Under § 42(g)(4), a deep rent skewed project, as defined in § 142(d)(4)(B), is also a qualified low-income housing project. To be a deep rent skewed project, § 142(d)(4)(B)(i) requires that 15 percent or more of the low-income units in the project must be occupied by individuals whose income is 40 percent or less of the area median gross income.

.07 Section 42(g)(2)(D)(i) provides that, notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under § 42(g)(1), the unit will continue to be treated as a low-income unit if the income of the occupants initially met the income limitation and the unit continues to be rent-restricted. However, under the available unit rule in § 42(g)(2)(D)(ii), if the income of the occupants of the unit increases above 140 percent of the income limitation applicable under § 42(g)(1), § 42(g)(2)(D)(i) ceases to apply to the unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds the applicable income limitation. In the case of a deep rent skewed project described in § 142(d)(4)(B), if the income of the occupants of the unit increases above 170 percent of the income limitation applicable under § 42(g)(1), § 42(g)(2)(D)(i) ceases to apply to the unit if any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income. See also § 1.42-15 of the Income Tax Regulations.

.08 Under § 42(h)(1), the amount of the credit determined under § 42(a) for any taxable year with respect to any building must not exceed the housing credit dollar amount allocated to the building. However, under § 42(h)(4)(A), a credit allocation generally is not necessary for the portion of a building's eligible basis financed by an obligation the interest on which is exempt from tax under § 103 and the obligation is taken into account under § 146. Under § 42(h)(4)(B), no credit allocation under § 42(h)(1) is necessary for any portion of a building's eligible basis if 50 percent or more of the aggregate basis of the building and the land on which it is located is financed with tax-exempt obligations.

SECTION 3. SCOPE

This revenue procedure only applies to residential units in a building where the incomes of the individuals occupying the unit are at or below the applicable income limitation under § 42(g)(1) or § 142(d)(4)(B)(i) before the beginning of the first taxable year of the building's credit period under § 42(f)(1), but their incomes exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period.

SECTION 4. SAFE HARBORS

.01 *Existing buildings under § 42(i)(5) and new buildings under § 42(e)(1).* A residential unit in an existing building under § 42(i)(5) or a new building under § 42(e)(1) will be considered a low-income unit under § 42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under § 42(f)(1) if:

(1) The individuals occupying the unit have incomes that are at or below the applicable income limitation under § 42(g)(1) or § 142(d)(4)(B)(i) on either the date the existing building was acquired by the taxpayer or the date the individuals started occupying the unit, whichever is later (based on the area median gross income on that date), but their incomes exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period (based on the area median gross income on that date);

(2) The incomes of the individuals occupying the unit are first tested for purposes of the available unit rule under § 42(g)(2)(D)(ii) and § 1.42-15 at the beginning of the first taxable year of the building's credit period;

(3) The unit has been rent-restricted under § 42(g)(2) from either the date the existing building was acquired by the taxpayer or the date the individuals started occupying the unit, whichever is later, to the beginning of the first taxable year of the building's credit period;

(4) Either:

(a) Section 42(h)(1) applies to the building and the taxpayer either receives an allocation to rehabilitate the existing building or enters into a binding commitment for an allocation to rehabilitate the existing building by either the end of the taxable year the taxpayer acquired the existing building or the end of the taxable year the individuals started occupying the unit, whichever is later; or

(b) Section 42(h)(1) does not apply to the building by reason of § 42(h)(4) and the tax-exempt bonds for the project are issued by either the end of the taxable year the taxpayer acquired the existing building or the end of the taxable year the individuals started occupying the unit, whichever is later; and

(5) The unit has been a low-income unit under § 42(i)(3)(B), (C), (D), and (E) from either the date the existing building was acquired by the taxpayer or the date the individuals started occupying the unit, whichever is later, to the beginning of the first taxable year of the building's credit period.

.02 *New buildings under § 42(i)(4) (not including new buildings under § 42(e)(1))*. A residential unit in a new building under § 42(i)(4) will be considered a low-income unit under § 42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under § 42(f)(1) if:

(1) The individuals occupying the unit have incomes that are at or below the applicable income limitation under § 42(g)(1) or § 142(d)(4)(B)(i) on the date the individuals started occupying the unit (based on the area median gross income on that date), but their incomes exceed the applicable income limitation in effect at the beginning of the first taxable year of the building's credit period (based on the area median gross income on that date);

(2) The incomes of the individuals occupying the unit are first tested for purposes of the available unit rule under § 42(g)(2)(D)(ii) and § 1.42-15 at the beginning of the first taxable year of the building's credit period;

(3) The unit has been rent-restricted under § 42(g)(2) from the date the individuals started occupying the unit to the beginning of the first taxable year of the building's credit period;

(4) The taxpayer elects under § 42(f)(1)(B) to treat the taxable year succeeding the taxable year the building was placed in service as the first taxable year of the credit period; and

(5) The unit has been a low-income unit under § 42(i)(3)(B), (C), (D), and (E) from the date the individuals started occupying the unit to the beginning of the first taxable year of the building's credit period.

SECTION 5. AUDIT PROTECTION

If the taxpayer currently uses a method consistent with the safe harbors for determining whether a unit is a low-income unit under § 42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under § 42(f)(1) (as described in section 4 of this revenue procedure), the issue will not be raised by the Service in a taxable year that ends before November 24, 2003. Also, if the taxpayer currently uses a method consistent with the safe harbors for determining whether a unit is a low-income unit under § 42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under § 42(f)(1) (as described in section 4 of this revenue procedure) and the issue is under consideration (within the meaning of section 3.09 of Rev. Proc. 2002-9, 2002-1 C.B. 327) for taxable years in examination, before an appeals office, or before the U.S. Tax Court in a taxable year that ends before November 24, 2003, the issue will not be further pursued by the Service.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after November 24, 2003.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Paul Handleman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Handleman at (202) 622-3040 (not a toll-free call).

Internal Revenue Bulletin: 2004-27
July 6, 2004

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- A. APPENDIX

SECTION 1. PURPOSE

This revenue procedure informs owners of qualified low-income housing projects how to obtain the waiver from the Internal Revenue Service of the annual recertification of tenant income (waiver) provided in § 42(g)(8)(B) of the Internal Revenue Code.

SECTION 2. BACKGROUND

Section 1.42-5 of the Income Tax Regulations provides the minimum requirements that a housing credit agency's (Agency's) compliance monitoring procedure must contain to satisfy its compliance monitoring duties under § 42(m)(1)(B)(iii). Section 1.42-5(b)(1)(vi) provides that an Agency must require an owner to keep records for each qualified low-income building in the project that show for each year in the compliance period the annual income certifications of each low-income tenant per unit. Section 1.42-5(b)(1)(vii) provides that an Agency must require an owner to keep documents for each qualified low-income building in its project for each year in the compliance period that support each low-income tenant's income certification. Section 1.42-5(c)(1)(iii) provides that an Agency must require an owner to certify at least annually that, for the preceding 12-month period, the owner has received an annual income certification from each low-income tenant and documentation supporting that certification.

Section 42(g)(8)(B) provides that on application by the taxpayer, the Secretary may waive any annual recertification of tenant income for purposes of § 42(g) if the entire building is occupied by low-income tenants (a 100 percent low-income building). Low-income tenants are individuals occupying a rent-restricted unit in a qualified low-income housing project whose combined income satisfies the § 42(g)(1) income limitation elected by the owner of the project.

SECTION 3. SCOPE

This revenue procedure applies to Agencies and owners of qualified low-income housing projects that consist entirely of 100 percent low-income buildings.

SECTION 4. PROCEDURE FOR OBTAINING A WAIVER UNDER § 42(g)(8)(B)

An owner applying for the waiver for its 100 percent low-income building must (1) complete and sign the applicable portions of the Form 8877, *Request for Waiver of Annual Recertification Requirement for the Low-Income Housing Credit*, (2) have the Agency responsible for monitoring the building for compliance with § 42 sign the applicable portion of the form, and (3) file the form with the Service pursuant to the instructions accompanying the form. A copy of the 2004 version of Form 8877 is included in the appendix to this revenue procedure. The Service will notify the

owner whether the request for waiver has been approved or denied. See section 5.02 of this revenue procedure for the period the waiver is in effect.

SECTION 5. EFFECT OF OBTAINING A WAIVER UNDER § 42(g)(8)(B)

.01 If an owner of a 100 percent low-income building obtains a waiver of the annual income recertification from the Service, the owner will be exempt from the recertification requirements of § 1.42-5(b)(1)(vi) and (vii) and § 1.42-5(c)(1)(iii) As a result, the owner is not required under those sections to (1) keep records that show an annual income recertification of all the low-income tenants in the building who have previously had their annual income verified, documented, and certified; (2) maintain documentation to support that recertification; or (3) certify to the Agency responsible for monitoring the building for compliance with § 42 that it has received this information.

.02 The waiver takes effect on the date the Service approves the waiver. Once the waiver takes effect, it remains in effect until the end of the 15-year compliance period (defined in § 42(i)(1)), unless the waiver is revoked, in which case the waiver ceases to be in effect on the date of revocation. See sections 5.04 and 5.05 of this revenue procedure regarding revocations.

.03 Obtaining the waiver will not prevent an owner from having to produce documentation to verify the owner's compliance with § 42 upon an examination of the owner's federal income tax return. Thus, for example, the owner must keep records and documentation that show the income of tenants upon initial occupancy of any residential unit in the building. In addition, except as provided in section 5.01 of this revenue procedure, obtaining the waiver will not prevent an owner from having to satisfy the requirements of the compliance monitoring procedure adopted by the Agency responsible for monitoring the building for compliance with § 42.

.04 The Service may revoke the waiver if the building ceases to be a 100 percent low-income building or if the Service determines that an owner has violated § 42 in a manner that is sufficiently serious to warrant revocation. In any case, the Service will revoke the waiver if the Agency requests, in accordance with the instructions to Form 8877, that the Service revoke the waiver.

.05 A waiver will be automatically revoked if there is a change in the ownership for federal tax purposes of the 100 percent low-income building (including a change resulting from a termination of a partnership under § 708). In this case, the owner that received the waiver must notify the Service of the revocation in accordance with the instructions to Form 8877. The new owner may apply for a waiver.

.06 An Agency's compliance monitoring procedure will not fail to satisfy § 42(m)(1)(B)(iii) solely because the 100 percent low-income buildings to which the waiver applies have been exempted from the recertification requirements of § 1.42-5(b)(1)(vi) and (vii) and § 1.42-5(c)(1)(iii). Nonetheless, the Agency's compliance monitoring procedure must continue to require that an owner satisfy the requirements in § 1.42-5(b)(1)(vi) and (vii) and § 1.42-5(c)(1)(iii) upon a tenant's initial occupancy of any residential rental unit in the building.

.07 A 100 percent low-income building to which the waiver applies continues to be subject to the review requirements of § 1.42-5(c)(2).

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 94-64, 1994-2 C.B. 797, is superseded. Waivers obtained under Rev. Proc. 94-64 are not affected by this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for applications filed on or after July 6, 2004.

DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Selig at (202) 622-3040 (not a toll-free call).

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, § 42; 1.42-5.)

Rev. Proc. 2005-37

SECTION 1. PURPOSE

This revenue procedure establishes a safe harbor under which housing credit agencies and project owners may meet the requirements of § 42(h)(6)(B)(i) of the Internal Revenue Code as described in Q&A-5 of Rev. Rul. 2004-82, 2004-35 I.R.B. 350, concerning extended low-income housing commitments (commitments).

SECTION 2. BACKGROUND

Section 42(a) provides for a credit for investment in qualified low-income buildings (as defined in § 42(c)(2)). Under § 42(i)(3)(A), low-income units in a building must be occupied by individuals who meet the income limitation applicable under § 42(g)(1) to the project of which the building is a part. The building owner must elect under § 42(g)(1) to rent a percentage of the residential units to individuals whose income is 50 percent or less of area median gross income or 60 percent or less of area median gross income.

Section 42(h)(6)(A) provides that no credit will be allowed with respect to any building for the taxable year unless a commitment (as defined in § 42(h)(6)(B)) is in effect as of the end of the taxable year.

Section 42(h)(6)(B)(i) requires commitments to include the prohibitions against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) during the extended use period, that is, prohibitions against eviction or termination of tenancy of an existing tenant of any low-income unit (other than for good cause) and any increase in the gross rent with respect to a low-income unit not otherwise permitted by § 42, applicable throughout the entire commitment period.

Section 42(h)(6)(B)(ii) provides that a commitment must allow individuals who meet the income limitation applicable to the building under § 42(g) (whether prospective, present, or former occupants of the building) the right to enforce in any state court the prohibitions of § 42(h)(6)(B)(i).

Section 42(h)(6)(J) provides that if, during a taxable year, there is a determination that a commitment was not in effect as of the beginning of the taxable year, the determination shall not apply to any period before the year and subparagraph (A) shall be applied without regard to the determination if the failure is corrected within 1 year from the date of determination.

Section 1.42-5(c)(1)(xi) of the Income Tax Regulations provides that a housing credit agency must require the owner of a low-income housing project to certify at least annually to the housing credit agency that, for the preceding 12-month period, a commitment as described in § 42(h)(6) was in effect (for buildings subject to § 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 1990-1 C.B. 210),

including the requirement under § 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to § 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 1993-3 C.B. 1).

On August 30, 2004, the Service ruled in Q&A-5 of Rev. Rul. 2004-82 that § 42(h)(6)(B)(i) requires commitments to include the prohibitions against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) during the extended use period, that is, prohibitions against eviction or termination of tenancy of an existing tenant of any low-income unit (other than for good cause) and any increase in the gross rent with respect to a low-income unit not otherwise permitted by § 42, applicable throughout the entire commitment period. This requirement for commitments extends back to the effective date of § 42(h)(6)(B)(i). See § 11701(a)(7)(A) of the Omnibus Budget Reconciliation Act of 1990, 1991-2 C.B. 481, 531.

Q&A-5 provided that if it is determined by the end of a taxable year that a taxpayer's commitment does not meet the requirements for a commitment under § 42(h)(6)(B) (for example, it does not provide no-cause eviction protection for the tenants of low-income units throughout the extended use period), the low income housing credit is not allowable with respect to the building for the taxable year, or any prior taxable year. However, if the failure to have a valid commitment in effect is corrected within 1 year from the date of the determination, the determination will not apply to the current year of the credit period or any prior year.

Q&A-5 required each Agency to review its existing commitments by December 31, 2004, to ensure that the no-cause eviction protection and the prohibition against improper increases in gross rent apply throughout the extended use period. If during that review, an Agency determined that a commitment did not comply with these requirements, the 1-year period described under § 42(h)(6)(J) will commence on the date of that determination.

SECTION 3. SAFE HARBOR

.01 The Service has determined that Agencies may satisfy the review requirements under Q&A-5 for commitments entered into before January 1, 2006, under § 42(h)(6)(B)(i) in the following manner:

(1) Commitments entered into before January 1, 2006, that contain general language requiring building owners to comply with the requirements of § 42 (catch-all language) satisfy the requirements under Q&A-5, if:

(a) Agencies notify building owners in writing on or before December 31, 2005, that consistent with the interpretation in Q&A-5, the catch-all language prohibits the owner from evicting or terminating the tenancy of an existing tenant of any low-income unit (other than for good cause) throughout the entire commitment period. Further, Agencies must notify building owners that the catch-all language prohibits the owner from making an increase in the gross rent with respect to a low-income unit not otherwise permitted by § 42 throughout the entire commitment period;

(b) The owner must, as part of its certification under § 1.42-5(c)(1)(xi), certify annually that for the preceding 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenants

had an increase in the gross rent with respect to a low-income unit not otherwise permitted under § 42;

(c) If the owner fails to make the certifications in (b) above or the Agency learns that the owner has evicted tenants in low-income units or terminated their tenancies other than for good cause or has increased the gross rent of a tenant with respect to a low-income unit not otherwise permitted under § 42, the Agency shall report the owner to the Internal Revenue Service using Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition; and

(d) Section 3.02 shall also apply to any amendment to any commitment containing catch-all language if the amendment is executed after December 31, 2005.

(2) Commitments entered into before January 1, 2006, that do not contain specific language on the § 42(h)(6)(B)(i) prohibition against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) or catch-all language do not satisfy the requirements of Q&A-5 and must be amended to clearly provide for the § 42(h)(6)(B)(i) prohibition against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) by December 31, 2005.

.02 The Service has determined that Agencies may satisfy the review requirements under Q&A-5 for commitments executed after December 31, 2005, under § 42(h)(6)(B)(i) in the following manner:

(1) Commitments executed after December 31, 2005, must clearly provide for the § 42(h)(6)(B)(i) prohibition against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii);

(2) The owner must, as part of its certifications under § 1.42-5(c)(1)(xi), certify annually that for the preceding 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under § 42; and

(3) If the owner fails to make the certifications in (2) above or the Agency learns that the owner has evicted tenants in low-income units or terminated their tenancies other than for good cause or has increased the gross rent of a tenant with respect to a low-income unit not otherwise permitted under § 42, the Agency shall report the owner to the Internal Revenue Service using Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.

EFFECTIVE DATE

This revenue procedure is effective on June 21, 2005, the date this revenue procedure was released to the tax services.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jack Malgeri of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Malgeri on (202) 622-3040 (not a toll-free call).