

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

NO. SJC-12265

SUFFOLK COUNTY

BEACON RESIDENTIAL MANAGEMENT, LP
PLAINTIFF-APPELLEE

v.

KAYLEM [REDACTED] & Others
DEFENDANTS-APPELLANTS

ON FURTHER APPELLATE REVIEW
FROM THE BOSTON HOUSING COURT

**BRIEF OF AMICI CURIAE
CASA MYRNA AND JANE DOE, INC.
IN SUPPORT OF THE APPELLANT**

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STATEMENT OF INTEREST

Casa Myrna

Casa Myrna is Boston's largest provider of shelter and supportive services to domestic violence survivors. Casa Myrna's services provide survivors with tools to escape and recover from the trauma of abuse and begin to build sustainable self-sufficiency.

Each year, Casa Myrna serves over 1,000 survivors through three residential programs, housing assistance and advocacy, financial literacy, education and job readiness skill building, individual and group counseling, legal advocacy and representation, children's services, and community-based advocacy. Casa Myrna operates SafeLink, Massachusetts' statewide 24/7 toll-free domestic violence hotline, which answers over 25,000 calls annually. Casa Myrna also provides domestic and dating violence awareness and prevention services.

Casa Myrna sees firsthand the impossible decisions survivors face when attempting to leave an abusive situation; often the choice is as stark as staying with an abuser or becoming homeless. This dilemma is amplified when children are involved,

highlighting the need for parents to be able to take action on behalf of their family. Because the case before the Court involves the housing rights of a survivor of domestic violence and her children, Casa Myrna has a great interest in the outcome and the impact the decision will have on survivors across the Commonwealth.

Jane Doe, Inc.

Jane Doe Inc. ("JDI"), the Massachusetts Coalition Against Sexual Assault and Domestic Violence, is a statewide organization of fifty-six member programs that provide direct services to victims and survivors of sexual and domestic violence. Guided by the voices of survivors, JDI creates social change by addressing the root causes of this violence, and promoting justice, safety and healing for survivors.

JDI has a strong interest in this case because it raises significant issues concerning the connection between domestic violence and housing instability. As part of its mission, JDI seeks not only to prevent domestic violence, but to address economic justice and human rights for survivors. For many survivors of

sexual and domestic violence, housing instability is a barrier to accessing safety.

The Violence Against Women Act and analogous state protections are vital tools that allow survivors to access and preserve affordable housing when the abuse they experience would otherwise result in homelessness. In order for these protections to have real meaning for Casa Myrna and JDI clients, survivors like Ms. [REDACTED] must be allowed to intervene in eviction cases to present relevant evidence about the connection between intimate partner abuse and their marginalized housing status.

ARGUMENT

- I. Domestic violence is a human rights and public health crisis and Ms. [REDACTED] case is representative of the dynamics, risks, and barriers that many other victims also experience.**

Rates of intimate partner abuse¹ in the United States and in the Commonwealth are alarmingly high.

¹Throughout the brief we use the terms "domestic violence," "domestic abuse," and "intimate partner abuse" interchangeably to describe "a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or

Children who witness domestic violence and adult victims² who are subjected to it suffer adverse and lasting physical and mental health complications. Ms. Pipkin's case illustrates painful and defining aspects of domestic violence in this country. Her case demonstrates that victims may leave and return to an abuser several times before ending the relationship; abusers use housing as an instrument of abuse and victims experience high levels of housing instability; a victim's fear of not being believed when disclosing their abuse to law enforcement or other authorities is tragically warranted; and immigrant survivors can experience additional barriers and risk, particularly when their abuser has lawful status.

A. Domestic violence has reached epidemic proportions in the United States and in the Commonwealth.

threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, threaten, blame, hurt, injure, or wound someone." Dep't of Justice, Office on Violence Against Women (2016), <https://www.justice.gov/ovw/domestic-violence>.

²Throughout the brief we use the terms "victims" and "survivors" to refer to those who have experienced domestic violence. Anyone who has experienced abuse and lived is surviving it, and we honor the daily courage and resilience required to do so.

Over a third of women³ in the United States have experienced domestic violence. National Center for Injury Prevention & Control, Nat'l Intimate Partner and Sexual Violence Survey: 2010 Summary Report 39 (2011). The rate of domestic violence in Massachusetts parallels the national rate. See id. About one in four women have experienced severe physical violence by an intimate partner (e.g., hit with a fist or a hard object, beaten, slammed against something) at some point in their lifetime⁴. See id. One in fifteen children is exposed to intimate partner violence each year, and 90% of these children are eyewitnesses to

³The brief uses gendered pronouns to describe survivors as "she" and perpetrators as "he." This is in part to reflect the facts of the [REDACTED] case, and also because there is ample research to support the assertion that most domestic violence cases involve female victims and male abusers. Brigner, Why Do Judges Do That? Dom. Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues 13-1, 13-15 to 13-16 (2010).

⁴While domestic violence disproportionally affects women in the United States, race, socio-economic status, sexual and gender identity, and immigration status shape how survivors experience violence, how they are treated by law-enforcement and the justice system, and whether help, safety, and an opportunity to heal are readily available. See Sokoloff & Dupont, Domestic Violence at the Intersections of Race, Class, and Gender, 11 Violence Against Women 38, 42 (2005). Low-income women of color may face higher levels of economic isolation, racism, and language barriers, and thus are especially at risk of experiencing lasting destructive effects of abuse. Id. at 41.

the violence. Hamby et al., Dep't of Justice Office of Juvenile Justice and Delinquency Prevention, Children's Exposure to Intimate Partner Violence and Other Family Violence (2011), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/232272.pdf>.

Domestic violence can be lethal. On average in the United States, more than three women are murdered by their husbands or boyfriends every day. American Psychological Association, Intimate Partner Violence <http://www.apa.org/topics/violence/intimate-partner-violence.pdf>. Interpersonal violence is the leading cause of female homicides and injury-related deaths during pregnancy. Id. In 2016, there were fourteen domestic violence victim homicides in Massachusetts alone. Jane Doe, Inc., Overview of Domestic Violence Homicides in Massachusetts Year to Date, available at http://www.janedoe.org/site/assets/docs/Learn_More/DV_Homicide/2016_YTD_DV_Homicides-asof_10072016.pdf.

B. The impact of domestic violence on children and adult victims is far-reaching and negatively affects life outcomes.

The [REDACTED] children's experience of abuse by their father against their mother makes them victims of domestic violence, even in the absence of allegations

of child abuse. Witnessing domestic violence produces similar physical and mental trauma to the trauma observed in children who are abused. Gonzalez & Corbin, *The Cycle of Violence: Domestic Violence and Its Effects on Children*, 13 SCHOLAR 405, 408 (2010) (citations omitted). The short-term effects of childhood witnessing of domestic violence include generalized anxiety, sleeplessness, nightmares, difficulty concentrating, hyperactivity, increased anxiety about separation from a parent, and intense worry about their own or a parent's safety. National Child Traumatic Stress Network, *Children and Domestic Violence*, <http://www.nctsn.org/content/children-and-domestic-violence>; see also Edleson, *Children's Witnessing of Adult Domestic Violence*, 14 *Journal of Interpersonal Violence* 839, 846 (1999). Children exposed to domestic violence also suffer from physical symptoms like stomachaches, diarrhea, asthma, and peptic ulcers. Goodmark, *From Property to Personhood*, 102 W. Va. L. Rev. 237, 246 (1999). In particular, exposure to domestic violence often manifests itself in a child's decreased performance in school and in lower scores on measures of cognitive,

verbal, motor, and social skills. Ragavan et al., The Health of Women and Children After Surviving Intimate Partner Violence, Violence Against Women 1-23 (2016).

The long-term effects of childhood witnessing of domestic violence include physical health problems related to anxiety, behavioral problems in adolescence such as juvenile delinquency and alcohol or other substance abuse, emotional difficulties in adulthood such as depression and anxiety disorders, and post-traumatic stress disorder. National Child Traumatic Stress Network, supra. As a whole, the toxic stress that results from witnessing domestic violence negatively affects both brain structure and socio-cultural development. See Edleson at 844-861.

Adult victims of domestic violence often sustain serious physical injuries as a result of abuse. These injuries can range from scratches, bruises and welts to lacerations, broken bones and teeth, gunshot or knife wounds, dislocated joints, head or spinal cord injuries, or internal injuries and death. Tjaden & Thoennes, Dep't of Justice, Extent, Nature, and Consequences of Intimate Partner Violence (2000). Depending on the severity of these injuries, victims

can spend weeks or even years recovering physically and sometimes suffer from permanent disfigurement or disability. Common short-term physical effects include chronic fatigue, shortness of breath, muscle tension, involuntary shaking, and negative effects on eating and sleeping patterns. Chrisler & Ferguson, Violence Against Women as a Public Health Issue, Ann. N.Y. Acad. Sci. 1087, 241 (2006).

Adult victims also suffer insidious mental health consequences such as anxiety, depression, post-trauma reactions, and suicidal thoughts. Jordan, Adult Victims of Intimate Partner Violence, Encyclopedia of Mental Health 23 (2d ed. 2016). The long-term effects of domestic violence linger throughout a survivor's life, even if she manages to escape from the violent relationship. Buel, A Lawyer's Understanding of Domestic Violence, 62 Tex. B.J. 936, 939 (1999).

C. The defining aspects of Ms. [REDACTED] experience are common among survivors of domestic violence.

i. Many victims leave and come back, which only emphasizes the power of abuse.

That Ms. [REDACTED] did not "leave" her husband earlier or that she returned⁵ does not diminish the abuse she has experienced. "Leaving a violent relationship is a process, not an event." Bragg, Dep't of Health & Human Servs., Child Protection in Families Experiencing Domestic Violence 25 (2003). Domestic violence survivor and battered women's movement leader Sarah M. Buel wrote this in her personal journal:

It is when my head makes contact with the wall that I freeze, though his fist is coming toward me again...It would take me yet another year of planning, forgiving, calling, reaching for help, before I could leave...So, now I'm a single Mom, [sic] without child support and trying to go to night school and keep my job. But with minimum wage, I can't seem to pay both day care and the rent, so sometimes I think about going back, just to make sure my son has enough to eat. It hurts more to watch him eat macaroni with ketchup for the third night, than it ever did to get beaten.

⁵See A.162-63 (Ms. [REDACTED] testifying about her marriage in 2012 or 2013 when "[w]e talked about working everything out, saving our marriage and doing what was right for the boys, and I dropped the restraining order, and we moved back in together, and everything was fine for the time being . . . "); A.180 (the Court noting that Ms. [REDACTED] "voluntarily left, and then she comes back, she says, four months later"); A.182 (Ms. [REDACTED] explaining that "I left to finish school, and I went to go to my in-laws' house because we were in the house fighting . . . and I had a son in the house who saw it all.")

Buel, *Fifty Obstacles to Leaving*, 28 Colo. Law. 19 (Oct. 1999). Buel explains the complex dynamics that trap victims in abusive relationships in order to debunk the damaging myths that ascribe weakness, stupidity, masochism or codependence to survivors who stay or return to abusers. *Id.* The barriers Buel catalogues range from lack of effective legal advocacy to concerns about children, and from family pressure to economic despair and fear of homelessness. *Id.*

Staying in an abusive relationship may be a survival mechanism. Landenburger, *The Dynamics of Leaving and Recovering from an Abusive Relationship*, 27 J. of Obstetric, Gynecologic, & Neonatal Nursing 700 (1998). Indeed, many victims of domestic violence are most seriously harmed or killed by their partners *after* they have left the abuser. See Pauline Quirion, *Greater Boston Legal Services, Representing Victims of Domestic Violence*, Mass. Cont. Legal Educ. § 25.3.1 (2016) ("The time after separation is considered one of the most dangerous times for victims of domestic violence.")

Fear of homelessness can be another powerful deterrent for victims thinking about leaving an

abusive relationship. A victim's decision to leave may cause the abuser to manipulate the victim's finances or sabotage the victim's employment and education prospects to make it impossible for her to obtain alternative housing. Association of Family and Conciliation Courts, Guidelines for Examining Intimate Partner Violence, 54 Fam. Ct. Rev. 674, 675 (2016) ("[an abuser] exercises power to intimidate, isolate . . . and subordinate the other partner, frequently resulting in significant . . . disempowerment and/or entrapment.") The strong link between domestic violence and homelessness sheds light on why "domestic violence victims often return to their abusive partners." Martyn, Representing Battered Spouses, Florida Dissolution of Marriages c. 21 (2015). Like many other victims, it took several attempts before Ms. [REDACTED] was able to end her relationship with her abuser. And like others in her shoes, terminating the abusive relationship destabilized her housing.

ii. Abusers use housing as an instrument of abuse and victims experience high levels of housing instability and homelessness.

Ms. [REDACTED] case illustrates the connection between domestic violence and the use of housing as a

control mechanism.⁶ Domestic violence is one of the leading causes of housing instability and homelessness, particularly for women and children. See HUD, Domestic Violence and Homelessness, <https://www.hudexchange.info/homelessness-assistance/domestic-violence/> ("Persons experiencing domestic violence, particularly women and children with limited economic resources, are at increased vulnerability to homelessness."). Here in Massachusetts, on one day in 2015, 372 children and 370 adults were seeking refuge in an emergency shelter or transitional housing program provided by one of the Commonwealth's domestic violence programs. Nat'l Network to End Domestic Violence, 2015 Domestic Violence Counts, <http://nnedv.org/downloads/Census/DVCounts2015/Massachusetts.pdf>. On that same day, 322 requests for services went unmet due to shortage of funding, staff,

⁶See A.157 (Ms. [REDACTED] explaining that she described "everything about the abuse" to the property manager, and the manager responded: "[her husband] had to be the one . . . to put my name on the lease because he's the head of the household, and I can't do anything without him"); A.159 (Ms. [REDACTED] explaining that her partner "would be mad. So if we would argue, 'I'm not putting your name on the lease.' If we were on good terms, 'Okay, I'll go Friday. I'll go Monday.'")

or availability. Id. Sixty-three percent of the unmet requests were for housing and emergency shelter. Id. Likewise, domestic violence was the primary cause of homelessness for 330 families (14% of the total population of homeless families) placed in the Commonwealth's Emergency Assistance shelter program over the course of the last seven months. Dep't of Housing and Comm. Dev., DHCD EA Monthly Report, <http://www.mass.gov/hed/docs/dhcd/hs/ea/eamonthlyreport.pdf>.

Homelessness is often the most immediate result of leaving an abusive relationship; many survivors have no place to go if they leave a shared home because abusers have isolated their victims from their family or friends. Reif & Krisher, Subsidized Housing and the Unique Needs of Domestic Violence Victims, 34 Clearinghouse Rev. 20, 21 (2001); DeCandia et. al., Nat'l Center on Family Homelessness, Closing the Gap (2014). Sometimes loss of housing, i.e. being kicked out of a shared home by an abuser, is yet another expression of abuse.

Homelessness can also result when the abuser's actions trigger eviction.⁷ Abusers often control family finances and then do not pay the rent, or break some other rule of the housing program, exposing the family to eviction. See Reif & Krisher at 30 ("Many victims face the loss of housing due to calculated criminal acts of their abusers whose intent is to render their victims homeless and dependent.") As illustrated by

⁷ For example, victims of domestic abuse often receive eviction notices or subsidy terminations based on abuse committed against them. See, e.g., Bouley v. Young-Sabourin, 394 F.Supp.2d 675 (D. Vt. 2005) (tenant subject to eviction 72 hours after being assaulted by her husband prima facie evidence of gender-based discrimination); Dickinson v. Zanesville, 975 F.Supp.2d 863 (S.D. Ohio 2013) (survivor had established a prima facie case for sex discrimination against a housing authority for forcing her to leave her apartment due to instances of domestic violence committed against her and subsequently providing negative references to the survivor's prospective landlords in violation of its duties under VAWA); Fuentes v. Revere Hous. Auth., 84. Mass. App. Ct. 1119 (2013) (hearing officer's decision to uphold Section 8 voucher termination overturned because he failed to take into consideration survivor's testimony that non-payment was due to abuse); Briggs v. Norristown (HUD Conciliation Agreement 2014) (suit by survivor against the city challenging an ordinance which penalized landlords with too many 911 calls to their properties prompting landlords to evict survivors of domestic violence). This increased risk of eviction translates into high rates of homelessness among victims. Domestic violence was one of three primary causes of homelessness for families in the City of Boston in 2012. See U.S. Conference of Mayors, Hunger and Homelessness Survey (Dec. 2012)

Ms. [REDACTED] case, these abusive tactics are particularly problematic in light of the fact that "in many cases only the husband's name is listed on the lease." Lapidus, *Doubly Victimized*, 11 Am. U. J. Gender Soc. Pol'y & L. 377, 385 (2002). Abuse -- the sounds of physical violence and verbal degradation -- can disturb neighbors or damage the apartment, causing landlords to require the victim to pay for the abuser's property damage or seek to remove the family. See *id.* Disturbances from police responses to abuse also lead to eviction: "[i]n 83% of cases, landlords who receive a nuisance citation for domestic violence either evict tenants or threaten to evict them for future police calls." Desmond, *Evicted* 191 (2016). See also Livanos, *Crime-free Housing Ordinances: One Call Away From Eviction*, 19 Pub. Int. L. Rep. 106, 107 (2013).

The Office on Violence Against Women at the United States Department of Justice recently found housing to be a "a significant, urgent shortage" for survivors, "particularly in communities where housing costs are high and space is limited." Dep't of Justice Office on Violence Against Women, *Twenty Years of the*

Violence Against Women Act: Dispatches from the Field (2016). The trauma that results from domestic violence-related housing instability exacerbates both the short-term and long-term damaging effects of domestic violence on children. See Buckner, Understanding the Impact of Homelessness on Children, 51 Am. Behavioral Scientist 721 (2008). Domestic violence can drive family homelessness, and the lack of safe, affordable alternative housing options can also keep victims in unstable and unsafe housing controlled by abusers. In Ms. [REDACTED] case, lack of housing options contributed to her becoming trapped in an abusive relationship, and the abuse has in turn put her and her children at imminent risk of eviction and homelessness.

**iii. Victims often fear disclosing
their abuse to law enforcement or
other authorities.**

Domestic violence victims like Ms. [REDACTED] may refrain from or delay disclosure of their abuse due to "fear of not being believed." Lipshitz & Ekstrom, Domestic Violence and its Reverberations 200 (2006); Truman & Langton, Dep't of Justice, Criminal Victimization, 2014 7 (2015) (just over half of

domestic violence incidents are reported to police).

A victim may minimize or fail to disclose for a number of additional reasons, including isolation from financial, social, and other resources, and barriers created by culture, geography, and language. Assoc. of Fam. and Conciliatory Courts, supra at 674. For these reasons, "[d]elayed disclosure of intimate partner violence does not indicate lack of credibility." Id.

A victim's fear of not being believed is warranted, as Ms. [REDACTED] experience in Housing Court painfully illustrates. In spite of Ms. [REDACTED] testimony describing her abuse, see A.156-160, the judge dismissed her testimony and specifically called into question her credibility regarding abuse. See A.207 ("I don't believe her[,] frankly"); A.217 ("I find that [i]f there was any reason that Mr. [REDACTED] chose not to cooperate with Mrs. [REDACTED] to have her added to the household, it was because the family was receiving a benefit of reduced income"); id. ("[T]he failure to [h]ave Ms. [REDACTED] added to the household was not because of spousal abuse"). Moreover, the Housing Court judge refused to hear evidence about the dynamics of abuse between Ms. [REDACTED] and Mr. [REDACTED]

See A.170 ("I'm not interested in who did what to whom...we're not going to expand that for this purpose."); A.262 ("[N]ow that she got an order forcing her husband from the house, she is saying, 'Now I want to come back on to the lease.' Too convenient by half, too convenient by half.")

As it stands, the Housing Court's decision in Ms. [REDACTED] case is a powerful message to survivors that Housing Courts do not protect those who disclose abuse, but instead discredit, demean, and dismiss those who come forward.

iv. Immigrant survivors of domestic violence face unique challenges regarding their safety and their legal status.

An abuser's strategy of isolating his victim takes on particular salience when the victim is not a U.S. citizen. For many immigrant women, their abuser may be their only means of financial and social support because of a lack of alternative support networks, such as extended families, in their new country. Shetty & Kaguyutan, Immigrant Victims of Domestic Violence, Nat'l Online Resource Center on Violence against Women, (2002). Moreover, abusers of immigrant women often use immigration-related threats

to further assert power and control over their partner, which is compounded by the victim's limited ability to work and lack of trust in law enforcement and courts. Id. (Abusers "use [their] power to threaten to have the victim deported by reporting her undocumented status. . . threaten to revoke residency sponsorship, or refuse to file" necessary paperwork related to a victim's lawful status in the United States.) In Ms. [REDACTED] case, she was taken off the lease in the first instance due to her immigration status, and then forced to live in limbo while she waited for her Green Card. When Ms. [REDACTED] finally received legal status and presented herself to the Plaintiff, she continued to be excluded from formal status on the lease.

II. VAWA is designed to provide relief to survivors and the family members of survivors, such as Ms. [REDACTED] and her children, and the Housing Court did not properly apply VAWA in evaluating the request for intervention.

As noted above, survivors of domestic violence face numerous challenges to obtaining and maintaining housing and experience high rates of eviction. Congress has responded by establishing and steadily expanding the housing protections under the Violence

Against Women Act (hereinafter "VAWA") over the past 23 years.

Congress passed VAWA in 1994 and reauthorized it in 2000, 2005, and 2013. The evolution of VAWA over the past two decades reflects a growing understanding of domestic violence. Each iteration of VAWA has embodied a more empowering set of remedies for victims of domestic abuse.

A. 1994 VAWA's legislative history demonstrates awareness of the justice system's complicity in perpetuating domestic violence.

The framers of VAWA were concerned with the role of the justice system in perpetuating, rather than preventing, domestic violence:

Violence against women cries out for attention not only because we have underestimated the problem's scope and intensity, but also because we have underestimated the staying power of subtle prejudices barring equal access to our criminal justice system for many women crime survivors...these stereotypes persist...[t]hey encourage victims' unwilling silence and they blunt society's outrage.

S. REP. 102-197. Congress recognized that victims are alienated from legal protections because they simply are not believed when it stated "[V]ictim-blaming attitudes are all too pervasive in this country...".

Id. Twenty years after VAWA was first passed, the

Housing Court judge in Ms. [REDACTED] case refused to believe her testimony about abuse and blamed the victim for her housing predicament. The judge found Ms. [REDACTED] testimony about abuse and its relationship to her housing instability not "credible," and refused to even hear evidence about the abuse that had led to a District Court judge granting a restraining order. A.40-41, A.216. Further, he found that her unauthorized status at the apartment was her own fault. A.220.

The original VAWA's strong language and vision was bolstered by an institutional plan for a new, federally funded means by which victims could reliably end their relationship with the abusers: a national network of emergency shelter programs. Violent Crime Control and Law Enforcement Act of 1994, c.4 §40241; see also Runge, The Evolution of a Nat'l Response to Violence Against Women, 24 Hastings Women's L.J. 429, 431 (2013). However, this paradigm came with significant individual costs for victims, as it required them to leave their homes to face uncertain futures. 42 U.S.C. § 14043e(6) (Congress finding that "[t]he average stay at an emergency shelter is 60

days, while the average length of time it takes a homeless family to secure housing is 6 to 10 months.") And predictably, there simply were not enough shelter placements for the great demand from victims in need.⁸ Congress found that:

Women who leave their abusers frequently lack adequate emergency shelter options. The lack of adequate emergency options for victims presents a serious threat to their safety and the safety of their children.

2005 VAWA Reauthorization, codified at 42 U.S.C. § 14043e(5).

B. VAWA 2005 established new rights that allow victims to remain in their homes.

In 2005, Congress set the nation's response to domestic violence on a new path by empowering victims in two ways: (1) removing the abuser from the home and (2) protecting the survivor's right to stay in the home despite wrongdoing by the abuser.

⁸ In 2016, SafeLink, Massachusetts' statewide domestic violence hotline run by Casa Myrna, received 19,888 calls for emergency domestic violence shelter. Seventy-four percent (74%), or 14,718 callers, were told that there was no shelter available anywhere in the state. Every night the state's 180 emergency domestic violence shelter rooms are full. See Why Domestic Violence Advocates Want a Housing Court Statewide, Housing Court 4 All (Dec. 7, 2016), http://www.housingcourt4all.org/uploads/2/7/0/4/27042339/domestic_violence_advocates_for__housing_court_talk_ing_points-12-12-16.pdf.

Instead of creating pathways for the victim to leave home, Congress shifted VAWA's focus to making home safer for the survivor through four mechanisms: bifurcation, defense to eviction and one-strike rules, protection from discrimination based on domestic violence committed against family members, and the expansion of VAWA's protection to tenants and applicants as well. H.R. 3042-83 (2005 VAWA Reauthorization), codified as 42 U.S.C. § 14043e-11(3)(A); H. R. 3402-85 §§ 606-07.

The first mechanism - bifurcation - is a legal means by which victims can retain possession of an apartment while effectively working with the housing provider to evict the abuser. 42 U.S.C. § 14043e-11(b)(3)(B)(i); 24 C.F.R. 5.2003.

But mechanisms to remove the abuser only address half the problem - the other half was keeping the victims in their homes. Prior to 2005, national housing policies such as public housing (42 U.S.C. § 1437(1)(6) (2005)) and the Section 8 project-based and voucher programs (42 U.S.C. § 1437f(d)(1)(B)(iii) and (o)(7)(D)(2005)) facilitated evictions of domestic violence victims by mandating "one-strike rules" where

instances of criminal activity by "any member of a tenant's household," including their abuser, were grounds for eviction. 42 U.S.C. § 1437(1)(6) (2005); see also Ross, *Eviction, Discrimination, and Domestic Violence*, 18 *Hastings Women's L.J.* 249, 262 (2007). One-strike rules left victims highly exposed to eviction. See 42 U.S.C. § 14043e (Congressional findings).

To correct this injustice, Congress added the affirmative defense against eviction based on status or circumstances "directly relating" to domestic violence. Amendments to the Low-Income Housing Assistance Voucher Program, 109 P.L. 162 §§606(2)(B)-(C), 607(3)-(4). This defense to eviction responded to the practice of evicting victims due to disturbances and damage created by the abuser. See 42 U.S.C. § 14043e(3).⁹

Simultaneously, Congress expanded the anti-discrimination coverage to the family members of

⁹ See also 42 U.S.C. § 14043e(4) ("A recent survey of legal service providers around the country found that these providers have responded to almost 150 documented eviction cases in the last year alone where the tenant was evicted because of the domestic violence crimes committed against her. In addition, nearly 100 clients were denied housing because of their status as victims of domestic violence.")

tenants. H.R. 3402-84 § 606 (2005). And finally, the anti-discrimination clause expanded to include applicants in response to the reality that victims also suffer from discrimination on the front end during the application process. See, e.g., Alvera v. CBM Group, Case No. 01-857 (D. Or. 2001). These four advances of VAWA 2005 formed a new paradigm for victims that continues today.

C. VAWA 2013 expanded the legislative framework that seeks to secure victims in their homes and force abusers to leave.

VAWA's 2013 reauthorization significantly expanded upon the 2005 framework. It broadened VAWA 2005's essential vision of empowering victims to remove abusers and remain in their homes.¹⁰ It enlarged

¹⁰ VAWA 2013 also greatly expanded upon protections for non-citizens to "self-petition" for lawful permanent resident status without their abuser's knowledge. Since the 2013 Reauthorization, HUD has determined that self-petitioners may indicate that they are in "satisfactory immigration status" while applying for housing assistance. NOTICE PIH 2017-02 (Jan. 19, 2017). See also HUD Memorandum, Eligibility of Battered Noncitizen Self-Petitioners for Financial Assistance Under Section 214 of the Housing and Community Development Act of 1980 (Dec. 15, 2016) (making it clear that VAWA self-petitioners are eligible for all Section 214 housing, which includes Project Based Section 8.) This new pathway to subsidized housing means that immigrant domestic violence survivors, like Ms. [REDACTED] can be eligible

the scope of people under its protection. 42 U.S.C. § 14043e-11(a)(3) (list of covered housing under 2013 Reauthorization) with 24 C.F.R. Parts 5, 91, 880, et al. (list of covered housing under 2005 Reauthorization). It expanded its coverage to survivors of sexual assault in addition to domestic violence survivors. See, e.g., 42 U.S.C. § 14043e-11(b)(1). Finally, it required covered housing programs to provide notice to tenants of a new affirmative right to an emergency transfer and of their right to keep their housing subsidies if they transfer. 42 U.S.C. § 14043e-11(d), (e).

Three aspects of the 2013 expansion apply in Ms. [REDACTED] case. First is HUD's broader recognition of the forms of abuse that are considered domestic violence. HUD explicitly rejected the demarcation of domestic violence at the line of physical harm. Second is a grace period for the survivor to establish eligibility for the housing benefits of the removed abuser. Third is the addition of a new category of

to apply and receive subsidized housing regardless of their immigration status.

protected victims in the defense to eviction:

"affiliated individuals."

i. Financial abuse is domestic violence.

VAWA 2013 contemplates abuse beyond physical forms of domestic violence. This is highly relevant to Ms. [REDACTED] case because, other than the evidence of domestic violence (in the form of the 209A restraining order obtained against Mr. [REDACTED] by Ms. [REDACTED] there is also detailed evidence in the record regarding his withholding of her housing rights. A.158-59. This controlling behavior, which caused Ms. [REDACTED] alleged "unauthorized" status at the apartment, constitutes financial abuse, a form of domestic violence contemplated by VAWA.

HUD clarified that the anti-discrimination clause protects against discrimination "on the basis or as a direct result" of domestic violence. VAWA Reauthorization 2013, 81 FR 80724-01. In the 2013 Rule Promulgation, HUD explicitly considered circumstances in which domestic violence manifests in non-physical forms, in which the attack was not on the victim's body but upon her financial person:

HUD interprets VAWA to prohibit covered housing providers from denying admission... 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.

Id. Thus, HUD expanded its understanding of the ways in which abuse can hold survivors back from accessing and maintaining housing, and specifically protects survivors from being denied housing or evicted on the basis of a variety of down-stream effects of abuse beyond physical and emotional injury.

In Fuentes v. Revere Housing Authority, the Massachusetts Appeals Court independently reached the same conclusion as HUD regarding financial abuse. 84 Mass. App. Ct. 1119 (2013) (1:28 decision). The victim in Fuentes faced termination of her Section 8 subsidy because she was in arrears on her rent due to her abuser "routinely threaten[ing] her if she did not give him money." Id. at 1.

Although the hearing officer noted that the plaintiff reported that she had been unable to pay rent because she was the victim of domestic abuse, he refused to consider this evidence...

Id. at 2 n.6. The Appeals Court vacated the Superior Court's decision in favor of the housing authority and

remanded the matter for hearing before a different hearing officer. Id. at 2.

ii. VAWA 2013 and the Justice for All Act created a new opportunity for residents to keep housing benefits of a removed tenant.

VAWA 2013 provided a new mechanism for victims to remove abusers who manipulate legal institutions to retain control in their relationships. S.47, 113th Cong. § 601(A)(4) (2013). This provision guarantees the remaining "tenants" who are survivors a reasonable time to either find new housing or to establish eligibility for the program after an abuser has been evicted. In 2016, Congress passed the "Justice for All Act," which expands that guarantee to "residents," explicitly contemplating occupants not listed as the tenants. Justice for All Act § 6 (2016). The amended mechanism now provides that:

If the individual is the sole tenant eligible to receive assistance under a covered housing program, the public housing agency or owner or manager of housing assisted under the covered housing program shall provide any remaining tenant or resident an opportunity to establish eligibility for the covered housing program.

42 U.S.C. § 14043e-11(b)(3)(B)(ii) (emphasis added). Thus, VAWA now specifically contemplates

situations in which non-tenants may apply to retain a housing benefit after an abusive tenant is removed from the home.

This provision empowers those like Ms. [REDACTED] - who would otherwise face the Hobson's choice between living with their abusers and living on the streets - to work with housing providers to evict their abusers and present themselves as applicants in order to remain in the home as tenants. As a "remaining resident," Ms. [REDACTED] is entitled to seek bifurcation and if granted, a reasonable period of time to establish eligibility for the program before the Plaintiff commenced its eviction action.

**iii. VAWA 2013's addition of
"Affiliated Individual" signals
Congress' intent to protect more
victims.**

Congress added a new category of people protected from eviction under VAWA 2013: "(a) a victim of actual or threatened domestic violence, dating violence, sexual assault, or stalking, or an *"affiliated individual"* of the victim; AND (b) living in, or seeking admission to, a federally assisted housing unit covered by VAWA." 42 U.S.C. § 14043e-11(emphasis added). An "affiliated individual" can be: a

survivor's spouse, parent, sibling, or child; an individual to whom that survivor "stands in loco parentis"; or an "individual, tenant, or lawful occupant" living in the survivor's household. 42 U.S.C. § 14043e-11(a)(1)(A)-(B).

Congress conceived this measure as "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." VAWA Reauthorization 2013, supra. Thus, even if the Court determines that Ms. [REDACTED] is not an applicant for purposes of VAWA protection, her children are still protected from eviction due to abuse perpetrated against her as an affiliated individual.

III. By denying her motion to intervene, the Housing Court deprived Ms. [REDACTED] and her children of the opportunity to articulate valid defenses under VAWA.

A. Ms. [REDACTED] should be allowed to intervene on her own behalf because she is an "applicant for housing" and circumstances directly resulting from domestic violence prevented her from asserting her rights.

A court of competent jurisdiction issued a G.L. c. 209A abuse prevention order deeming Mr. [REDACTED] a perpetrator of domestic violence and Ms. [REDACTED] his

victim. A.40. The restraining order prohibits further abuse, awards custody of the children to Ms. [REDACTED] prohibits Mr. [REDACTED] from contacting the children, and requires him to vacate the family home. Id.

At the intervention hearing, the Plaintiff argued that Ms. [REDACTED] was not entitled to VAWA protections because she was not a legal occupant. A.139. Contrary to the Plaintiff's position, VAWA protections exist for victims of domestic violence who are "applicants," like Ms. [REDACTED] 42 U.S.C. § 14043e-11(b)(1). Despite her repeated efforts, Ms. [REDACTED] was not added to the lease due to ongoing abuse by her husband and "negligence" by the housing provider. A.217.

Ms. [REDACTED] first applied to become a tenant directly through Mr. [REDACTED] Ms. [REDACTED] testified that Mr. [REDACTED] repeatedly denied her requests to be added to the lease in order to enhance his power and control over her. A.158. Mr. [REDACTED] dangled the possibility of adding her to the lease by making promises or denials based on his mood. A.159. When Ms. [REDACTED] stood up to her abuser and removed him using the abuse prevention statute, the landlord responded by moving to evict the

family just twelve days after she obtained her restraining order.¹¹ A.41.

Ms. [REDACTED] also attempted to become a tenant directly through her landlord. But the landlord failed its obligations in two ways. First, the manager failed to provide her with the necessary paperwork upon request, apparently because she failed to ask for the document by the correct name. A.216. Second, the manager erroneously told her that she would need Mr. [REDACTED] to initiate the application process. A.155.

Despite the Plaintiff's errors, she continued to make efforts to put herself on the lease independent of her

¹¹ Ms. [REDACTED] has dual protections against such re-victimization, which she was not able to present to the court. First, under G.L. c. 239, §2A, Ms. [REDACTED] has an affirmative defense against eviction based on retaliation for exercising her protections against domestic violence. See A.35 (proposed answer includes retaliatory eviction defense). This statute creates the rebuttable presumption that such action was in fact retaliatory where the action commenced within six months after the victim's exercise of her rights - Ms. [REDACTED] was evicted two weeks after she obtained her restraining order. A.41. But even if the Plaintiff overcame this presumption and convinced a court that its action was not retaliatory, Ms. [REDACTED] enjoys a second, broader protection under VAWA, which prohibits the denial of occupancy rights to applicants on the basis of domestic abuse. 42 U.S.C. § 14043e-11(b)(1) (emphasis added). This protection is intentionally expansive and applies to Ms. [REDACTED] where the basis for the eviction was due to domestic violence. Ms. [REDACTED] was prejudiced by not being allowed to present either of these defenses.

husband. She called the housing office and personally went into the housing office to apply, but to no avail. Id. At one point, the landlord's witness even stated that she did not give Ms. [REDACTED] a form to add herself to the lease, even though it is management's practice to give that form to "anyone who walk[s] [in] off the street". A.198-99.

The Plaintiff's obstruction of Ms. [REDACTED] attempts to apply for housing cannot serve as a shield against her efforts to assert VAWA based defenses. The landlord's claim that Ms. [REDACTED] may not make her argument because she is not a leaseholder cannot be sustained. Such a holding would reward negligent behavior by a landlord--by denying a tenant rights to which she is entitled when a property manager fails to carry out the basic duties of her job--and sanction spousal abuse.

B. The [REDACTED] children are tenants and legal occupants of the unit, and they have an affirmative defense to eviction due to domestic violence.

VAWA's housing framework reserves its strongest protection for tenants through an affirmative defense to eviction:

No person may deny assistance, tenancy, or occupancy rights to housing assisted under a

covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence...that is engaged in by a member of the household of the tenant...if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence.

42 U.S.C. § 14043e-11(b)(3)(A). The [REDACTED] children are lawful occupants of the unit and therefore considered "tenants" within the meaning of VAWA. See 81 Fed. Reg. 80724, 11 (Nov. 16, 2016)¹² ("tenant" refers to an assisted family and the members of the household on their lease...") This fact is undisputed, as they are named on the lease and the notice to quit is addressed to them. A.6. Moreover, Massachusetts courts have expanded the definition of "tenant" to serve remedial purposes. See, e.g., Serreze v. YWCA of W. Mass., Inc., 30 Mass. App. Ct. 639, 643 (1991); Brown v. Guerrier, 390 Mass. 631, 633-34 (1983).

The abuser, Mr. [REDACTED] is a "member of the household," A.40-41, and the eviction is "on the basis of criminal activity directly relating to domestic violence." The uncontroverted facts are the Plaintiff moved to evict the [REDACTED] family because of Ms.

[REDACTED] unauthorized status in the unit, and this was

¹² HUD published these regulations after the Appeals Court issued its decision in this case.

the only basis for eviction considered by the Housing Court. As detailed above, Mr. [REDACTED] refusal to add Ms. [REDACTED] to the lease and the Plaintiff's failure to provide her with the necessary paperwork to initiate the process on her own caused Ms. [REDACTED] inability to be added to the lease and counted as a tenant.

A.216. Therefore, the basis of the eviction is explicitly related to domestic violence, and the [REDACTED] children have an affirmative VAWA defense to the eviction.

The children also have protection against loss of housing due to domestic violence against an affiliated individual, namely their mother. HUD has made explicit that the inclusion of "affiliated individual" is meant to be "further protection for tenants: and 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.'" VAWA Reauthorization 2013, supra. A parent is an affiliated individual under VAWA. 42 U.S.C. § 14043e-11(a)(1)(A). Therefore, the [REDACTED] children are plainly protected from eviction due to domestic

violence against their mother, an "affiliated individual". Id.

C. The Housing Court's decision to deny Ms. [REDACTED] motion to intervene fails to adequately take into account both the substance and the spirit of VAWA's housing protections.

VAWA's historical background and its current text make clear that both Ms. [REDACTED] and her children have viable defenses to eviction. VAWA's legislative history highlights two particular concerns that Congress sought to redress: courts do not believe victims, and legal institutions compound, rather than help, victims' injuries. Ms. [REDACTED] case has these concerns at its core. The Plaintiff perpetuates Mr. [REDACTED] abuse by evicting Ms. [REDACTED] following her choice to remove him from the home. The Housing Court compounded this harm by denying Ms. [REDACTED] motion to intervene based on its skepticism of her account of abuse. VAWA's purpose is to create vehicles for victims like Ms. [REDACTED] to maintain their homes in spite of abuse. Ms. [REDACTED] should be allowed to intervene to make her case for this defense for herself and her children.

IV. Ms. [REDACTED] should have been allowed to intervene under Mass. R. Civ. P. 24 regardless

of the landlord's allegations regarding her unauthorized status in the apartment.

A. The standard for intervention is liberal, and Ms. [REDACTED] clearly met it under both theories she advanced.

Ms. [REDACTED] should have been allowed to intervene to protect her own interest and the interests of her children in the summary process case pursuant to the liberal intervention standards set forth in Rule 24 of the Massachusetts Rules of Civil Procedure. Mass. R. Civ. P. 24, 365 Mass. 769 (1974). Ms. [REDACTED] advanced two theories in her efforts to intervene: first, that the eviction was brought for reasons related to her status as a victim of domestic violence in violation of VAWA and, relatedly, that she was protected by VAWA as an applicant for housing; and second, that she should be able to intervene on behalf of her minor children, both of whom were lawful tenants.

Mass. R. Civ. P. 24(a) is broad yet simple. This Court has articulated a three-prong analysis for intervention as of right from the language of the text: "(1) the applicant claims an interest in the subject of the action, and (2) he is situated so that his ability to protect this interest may be impaired as a practical matter by the disposition of the

action, and (3) his interest is not adequately represented by the existing parties." Massachusetts Fed'n of Teachers, AFT, AFL-CIO v. Sch. Comm. of Chelsea, 409 Mass. 203, 205 (1991). The burden to show that the current representation is inadequate is "minimal." Frostar Corp. v. Malloy, 77 Mass. App. Ct. 705, 712 (2010).

All three prongs of Rule 24(a) were satisfied in Ms. [REDACTED] case. Maintaining a residence is an interest in property. Greene v. Lindsey, 456 U.S. 444, 451 (1982). The action seeks to evict the [REDACTED] family from their home and Mr. [REDACTED] has defaulted. Thus, Ms. [REDACTED] ability to protect her interests and those of her children in this case is severely impaired – completely nonexistent in fact – in the absence of intervention. Given that Mr. [REDACTED] is her abuser, failed to attend the summary process hearings, or attempt at any time during the course of litigation to remove his default, and moved to another state, Mr. [REDACTED] cannot adequately represent Ms. [REDACTED]

interests. Therefore, Ms. [REDACTED] should be allowed to intervene under MRCP 24(a).¹³

B. The Housing Court Judge applied the wrong standard to Ms. [REDACTED] Motion to Intervene.

The Housing Court judge did not follow the liberal analysis demanded by Rule 24 and precedent. Instead, the judge dissected Ms. [REDACTED] case as if it were a trial on the merits. See A.149-50 ("This is your motion to intervene . . . [the] burden is on you to show *good cause* for intervention and a right to intervention under 24A and alternatively a separate burden if it's permissive under B" (emphasis added)). The Housing Court judge did not explain this conclusion or root it in evidence, but speculated as

¹³ Ms. [REDACTED] also should have been allowed to intervene under the permissive intervention section of MRCP 24(b). The Rule states that a person may be allowed to intervene when the applicant's "claim or defense and the main action have a question of law or fact in common." The commonality requirement has been "generously construed." Commonwealth v. Fremont Inv. & Loan, 459 Mass. 209, 218 (2011). The Court has allowed permissive intervention where the intervenor's complaint "closely parallels the Plaintiff's complaint." Sargeant v. Commissioner of Pub. Welfare, 383 Mass. 808, 819 (1981). Ms. [REDACTED] claims and defenses overlap entirely with the main action that her husband defaulted on. The apartment at issue is where their children in common reside. Under the "generously construed" commonality standard of MRCP 24(b), Ms. [REDACTED] should have been allowed to permissively intervene.

to what he believed to have happened: Ms. [REDACTED] and her husband made a "family decision" to leave Ms. [REDACTED] off the lease. A.220. According to the judge, she left the household for several months to "make it look good" and then returned to reap the benefits of lower rent.¹⁴ A.206-07. The Housing Court judge did not provide evidence in the record to substantiate his theory and indeed, no evidence to support these inferences was provided by the Plaintiff.

By conducting the motion to intervene hearing in such a manner, the Housing Court judge put the proverbial cart before the horse. The issue of intervention is separate from and prior to the final proof on the merits. See Am. Nat. Bank & Trust Co. of Chicago v. Bailey, 750 F.2d 577, 585 (7th Cir. 1984). But the Housing Court judge held Ms. [REDACTED] to the standards of a trial litigant without affording her the attendant rights. For example, Ms. [REDACTED] was not allowed to propound discovery. If she had been, she would have had a number of ways to develop evidence

¹⁴The trial judge raised the issue of fraud, and based his decision upon that assumption. See A.219. However, fraud was not alleged in the notice to quit. Although the notice to quit alleged that Ms. [REDACTED] was an unauthorized occupant, it did not allege intent to deceive. See A.6-13.

for her defense through interrogatories, request the production of documents, and request admissions. See Mass. R. Civ. P. 27, 33, 34, 36; Mass. R. Sum. Proc. 7. Ms. [REDACTED] did not have access to any of these tools. As a result, she was forced to argue her case on the merits without the discovery rights to which litigants are entitled.

Notwithstanding the procedural protections that the Housing Court withheld, it was improper to shift the burden to Ms. [REDACTED] to demonstrate that she did not commit fraud in order to be allowed to intervene.¹⁵ As the Court has declared over a century ago, "fraud is not to be presumed; and it follows that the burden is on the party who relies upon such a defence[sic] to allege and prove it." Beatty v. Fishel, 100 Mass. 448, 449 (1868). See also Kerrigan v. Fortunato, 304 Mass. 617, 620 (1939) ("Not only is fraud never presumed, but it must be affirmatively alleged and proved by the party who relies upon it either for the purpose of

¹⁵ See A.145 at the outset of the hearing the judge stated: "If I find that Georgetown[e] can establish that Ms. [REDACTED] behavior constitutes conduct that would allow them to terminate the lease, that's the end of Ms. [REDACTED] involvement in the case. . . . If I find that Georgetown[e] cannot establish cause to evict based on Ms. [REDACTED] conduct . . . I would allow Ms. [REDACTED] to intervene."

attack or defense.") (quoting Barron v. Int'l Trust Co., 184 Mass. 440, 443 (1903)).

The Plaintiff did not prove that fraud occurred. Rather, without any evidence to support such a claim, the Housing Court judge made an inference that Ms. [REDACTED] engaged in fraud based on a truncated record developed at a motion hearing. However, the Plaintiff failed to engage in the established HUD process.

C. The Plaintiff did not establish under HUD guidelines that Ms. [REDACTED] committed fraud, and therefore she should not have been denied the opportunity to intervene.

The Plaintiff was required by the HUD Handbook 4350.3 "Occupancy Requirements of Subsidized Multifamily Housing Programs" (hereinafter "HUD Handbook") to follow a very specific procedure to determine if anyone in the [REDACTED] family engaged in fraud. The HUD Handbook "describes occupancy requirements and procedures" that govern HUD-subsidized programs, such as the one that subsidizes the [REDACTED] family home. HUD Handbook § 1-1, <https://portal.hud.gov/hudportal/documents/huddoc?id=43503HSGH.pdf>. Although the HUD Handbook is not binding, it "is relevant interpretive guidance that should be used when construing the HUD regulations."

Wells Fargo Bank, N.A. v. Cook, 87 Mass. App. Ct. 382, 386, rev. denied, 472 Mass. 1107 (2015).

The HUD Handbook itself cautions landlords that a "common error is to misuse or overuse the term 'fraud' when a violation is suspected. A violation is not always fraudulent." Id. at § 8-19B. The HUD Handbook defines fraud as "deceit or trickery deliberately practiced in order to gain some advantage dishonestly. Fraud is an intentional deception; it cannot be committed accidentally." Id. This definition of fraud comports with the common law of Massachusetts. The Court has defined common law fraud as "knowing false representation of a material fact intended to induce a Plaintiff to act in reliance." Fordyce v. Hanover, 457 Mass. 248, 257 (2010).

Ms. [REDACTED] alleged conduct falls well short of this standard. She did not attempt to deceive the landlord. She was frequently the only adult present in the home during inspections or maintenance work. A.168. In at least one case, she signed the forms to switch the locks and was given the new keys. Id. She tried multiple times to have herself added to the lease. Furthermore, the notice to quit professed the

Plaintiff's knowledge of Ms. [REDACTED] long-term occupancy at the home.¹⁶

Had Ms. [REDACTED] intended to deceive the landlord, she would not have repeatedly attempted to add herself to the lease, or made herself available for inspections, repairs, and paperwork. The Housing Court found that the landlord was aware that Ms. [REDACTED] lived there since at least 2013. See A.171. Claims of a lack of knowledge would mean that Plaintiff "must have closed his eyes to avoid discovery of the truth." Greene Ave. Assocs. v. Cardwell, 743 N.Y.S.2d 842, 853 (Civ. Ct. 2002); see also Boston Hous. Auth. v. Bruno, 58 Mass. App. Ct. 486, 488 (2003) (holding that statements on recertification documents are not dispositive where there is other evidence to the contrary).

And even if fraud were committed, it would have been perpetrated by Mr. [REDACTED] alone. He was the lone signatory of all the leases after Ms. [REDACTED] initial removal, as well as the HUD recertification documents.

¹⁶The Notice to Quit states that she "has been residing in [the] apartment for an extended period of time. . . [Ms. Pipkin] has also represented herself as an occupant of [the apartment] to member of management staff." A.8.

A.179. To say that Ms. [REDACTED] was complicit in her abuser's actions is to say that she was also complicit in the abuse she suffered. Ms. [REDACTED] and her children should not be punished and effectively re-victimized for the actions of Mr. [REDACTED]

D. The Plaintiff did not engage in the mandatory pre-termination HUD procedures for addressing alleged fraud and therefore the landlord's case for possession of the unit should be dismissed.

In the event that fraud is suspected, the HUD Handbook prescribes a detailed process¹⁷ that owners must follow to determine if it has occurred. The process is not discretionary; the HUD Handbook uses the word "must" to describe the obligations of the owner, and in some cases, underlines the word "must" to emphasize the point.

The HUD Handbook policy initially presumes that tenant errors are unintentional program violations. If a misrepresentation is suspected, the owner "must investigate and document the tenant's statements and

¹⁷ This process resulted from a series of cases brought to vindicate the due process rights of tenants in federally assisted housing. See Watson v. HUD, 645 F. Supp. 345 (S.D. Ohio 1986); Wilson v. Kemp, 1992 WL 12667348 (S.D. Ind. Order Nov. 30, 1992, sub nom.; Wilson v. Cisneros, 1993 WL 13718228 (S.D. Ind. Order and Judgment March 17, 1993).

any conflicting information the owner has received." Id. at § 8-18C (emphasis added). The investigation may include confronting the tenant with conflicting information, obtaining additional information from other persons or agencies, or taking other actions to verify the tenant's information or conflicting information. Id. Upon discovering that a tenant has failed to report a change in residency, the landlord "must immediately notify the tenant in writing of his or her responsibility to provide information about such changes." § 7-12B (emphasis added). If a suspected misrepresentation cannot be substantiated through documentation, the owner "must treat the case as an unintentional program violation." Id. (emphasis in original).

After gathering the documentation, the owner must notify the tenant in writing of the suspected error and explain why the owner believes the information to be incorrect. Id. at § 8-18D. After the notification, the tenant "must" have an opportunity within ten days to meet with the owner and discuss allegations. Id. The owner "must" inform the tenant that failure to meet may result in eviction, and the meeting "must"

include a designated representative who has not been involved with the process whatsoever. Id. After the meeting, the owner "must" provide a written final decision based solely on the facts presented and with a basis for the decision. Id.

The Plaintiff utterly ignored this detailed and mandatory process. The hearings on Ms. [REDACTED] motions to intervene revealed no evidence of compliance with the HUD Handbook procedure. Rather, the Plaintiff relied on bald allegations of fraud without showing that it had complied with its basic due process obligations under the Project-based Section 8 program.

Plaintiff's failure to follow the correct procedure for establishing fraud has severe consequences for Ms. [REDACTED] and all tenants. Tenants who are evicted for fraud not only lose their home – a devastating outcome – but also lose subsidized housing benefits, making it even harder for them to obtain affordable housing in the future. Eviction for fraud against a subsidized housing provider also leads to an automatic bar from state-funded emergency shelter services otherwise available to families with minor

children facing homelessness. 760 C.M.R. 67.06(2)(c). A finding that Ms. [REDACTED] engaged in fraud could also tragically trigger negative immigration consequences for her as a Legal Permanent Resident. Condoning Plaintiff's actions here would not only result in a mother and her children being put out onto the street with no valid evidence of wrongdoing, it would also increase the risk that future tenants could be evicted without the benefit of the protections laid out by HUD.

CONCLUSION

Casa Myrna and JDI urge the Court to reverse the Appeals Court decision, allow Ms. [REDACTED] to intervene in the summary process case, and remand the matter to the Housing Court.

Respectfully submitted,
CASA MYRNA and JANE DOE,
INC.,
by its attorneys,

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MASS. R.A.P. 16(K) CERTIFICATION

I certify to the best of my knowledge this Brief complies with court rules pertaining to filing of amicus briefs, including, but not limited to: Mass. R.A.P. 17 (brief of an Amicus Curiae); Mass. R.A.P. 19(b) (filing and serving briefs); and Mass. R.A.P. 20 (form of briefs, appendices, and other papers).

Date: March 23, 2017

Julia Devanthery /s/

Julia Devanthery

CERTIFICATE OF SERVICE

I certify that on this the 23rd day of March, 2017, I caused two copies of this Brief to be served on each party of record, and for the original and seventeen (17) copies of the brief to be filed with the Court.

Date: March 23, 2017

Julia Devanthery /s/

Julia Devanthery

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§ 14043. Purpose, 42 USCA § 14043

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 136. Violent Crime Control and Law Enforcement

Subchapter III. Violence Against Women

Part I. Violence Against Women Act Court Training and Improvements

This section has been updated. [Click here for the updated version.](#)

42 U.S.C.A. § 14043

§ 14043. Purpose

Effective: January 5, 2006 to September 30, 2013

The purpose of this part is to enable the Attorney General, through the Director of the Office on Violence Against Women, to award grants to improve court responses to adult and youth domestic violence, dating violence, sexual assault, and stalking to be used for--

- (1) improved internal civil and criminal court functions, responses, practices, and procedures;
- (2) education for court-based and court-related personnel on issues relating to victims' needs, including safety, security, privacy, confidentiality, and economic independence, as well as information about perpetrator behavior and best practices for holding perpetrators accountable;
- (3) collaboration and training with Federal, State, tribal, territorial, and local public agencies and officials and nonprofit, nongovernmental organizations to improve implementation and enforcement of relevant Federal, State, tribal, territorial, and local law;
- (4) enabling courts or court-based or court-related programs to develop new or enhance current--
 - (A) court infrastructure (such as specialized courts, dockets, intake centers, or interpreter services);
 - (B) community-based initiatives within the court system (such as court watch programs, victim assistants, or community-based supplementary services);

§ 14043. Purpose, 42 USCA § 14043

(C) offender management, monitoring, and accountability programs;

(D) safe and confidential information-storage and -sharing databases within and between court systems;

(E) education and outreach programs to improve community access, including enhanced access for underserved populations; and

(F) other projects likely to improve court responses to domestic violence, dating violence, sexual assault, and stalking; and

(5) providing technical assistance to Federal, State, tribal, territorial, or local courts wishing to improve their practices and procedures or to develop new programs.

CREDIT(S)

(Pub.L. 103-322, Title IV, § 41002, as added Pub.L. 109-162, Title I, § 105(a), Jan. 5, 2006, 119 Stat. 2979.)

42 U.S.C.A. § 14043, 42 USCA § 14043

Current through P.L. 114-327. Also includes P.L. 114-329 and 115-1 to 115-8. Title 26 current through 115-8.

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§ 14043e. Findings, 42 USCA § 14043e

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 136. Violent Crime Control and Law Enforcement
Subchapter III. Violence Against Women
Part M. Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking (Refs & Annos)
Subpart 1. Grant Programs

42 U.S.C.A. § 14043e

§ 14043e. Findings

Effective: January 5, 2006

Currentness

Congress finds that:

(1) There is a strong link between domestic violence and homelessness. Among cities surveyed, 44 percent identified domestic violence as a primary cause of homelessness.

(2) Ninety-two percent of homeless women have experienced severe physical or sexual abuse at some point in their lives. Of all homeless women and children, 60 percent had been abused by age 12, and 63 percent have been victims of intimate partner violence as adults.

(3) Women and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.

(4) A recent survey of legal service providers around the country found that these providers have responded to almost 150 documented eviction cases in the last year alone where the tenant was evicted because of the domestic violence crimes committed against her. In addition, nearly 100 clients were denied housing because of their status as victims of domestic violence.

(5) Women who leave their abusers frequently lack adequate emergency shelter options. The lack of adequate emergency options for victims presents a serious threat to their safety and the safety of their children. Requests for emergency shelter by homeless women with children increased by 78 percent of United States cities surveyed in 2004. In the same year, 32 percent of the requests for shelter by homeless families went unmet due to the lack of available emergency shelter beds.

§ 14043e. Findings, 42 USCA § 14043e

(6) The average stay at an emergency shelter is 60 days, while the average length of time it takes a homeless family to secure housing is 6 to 10 months.

(7) Victims of domestic violence often return to abusive partners because they cannot find long-term housing.

(8) There are not enough Federal housing rent vouchers available to accommodate the number of people in need of long-term housing. Some people remain on the waiting list for Federal housing rent vouchers for years, while some lists are closed.

(9) Transitional housing resources and services provide an essential continuum between emergency shelter provision and independent living. A majority of women in transitional housing programs stated that had these programs not existed, they would have likely gone back to abusive partners.

(10) Because abusers frequently manipulate finances in an effort to control their partners, victims often lack steady income, credit history, landlord references, and a current address, all of which are necessary to obtain long-term permanent housing.

(11) Victims of domestic violence in rural areas face additional barriers, challenges, and unique circumstances, such as geographical isolation, poverty, lack of public transportation systems, shortages of health care providers, under-insurance or lack of health insurance, difficulty ensuring confidentiality in small communities, and decreased access to many resources (such as advanced education, job opportunities, and adequate childcare).

(12) Congress and the Secretary of Housing and Urban Development have recognized in recent years that families experiencing domestic violence have unique needs that should be addressed by those administering the Federal housing programs.

CREDIT(S)

(Pub.L. 103-322, Title IV, § 41401, as added Pub.L. 109-162, Title VI, § 601, Jan. 5, 2006, 119 Stat. 3030.)

42 U.S.C.A. § 14043e, 42 USCA § 14043e

Current through P.L. 114-327. Also includes P.L. 114-329 and 115-1 to 115-8. Title 26 current through 115-8.

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§ 14043e-11. Housing protections for victims of domestic..., 42 USCA § 14043e-11

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 136. Violent Crime Control and Law Enforcement
Subchapter III. Violence Against Women
Part M. Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking (Refs & Annos)
Subpart 2. Housing Rights

42 U.S.C.A. § 14043e-11

§ 14043e-11. Housing protections for victims of domestic violence, dating violence, sexual assault, and stalking

Effective: December 16, 2016

Currentness

(a) Definitions

In this subpart:

(1) Affiliated individual

The term "affiliated individual" means, with respect to an individual--

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

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

(2) Appropriate agency

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

§ 14043e-11. Housing protections for victims of domestic..., 42 USCA § 14043e-11

(3) Covered housing program

The term "covered housing program" means--

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

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

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

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

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

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

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

(H) the programs under sections 1437d and 1437f of this title;

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

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

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

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(1) In general

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

(2) Construction of lease terms

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

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

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

(3) Termination on the basis of criminal activity

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

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

(B) Bifurcation

(i) In general

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

(ii) Effect of eviction on other tenants

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

(C) Rules of construction

Nothing in subparagraph (A) shall be construed--

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

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

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

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

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

(iv) to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.

(c) Documentation

(1) Request for documentation

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

(2) Failure to provide certification

(A) In general

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

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

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

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

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

(B) Extension

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

(3) Form of documentation

A form of documentation described in this paragraph is--

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

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

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

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

(B) a document that--

(i) is signed by--

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

(II) the applicant or tenant; and

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

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

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

(4) Confidentiality

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

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

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

(C) otherwise required by applicable law.

(5) Documentation not required

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

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

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

(7) Response to conflicting certification

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

(8) Preemption

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

(d) Notification

(1) Development

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

(2) Provision

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

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

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

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

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

(e) Emergency transfers

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

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

(A) the tenant expressly requests the transfer; and

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

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

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

(f) Policies and procedures for emergency transfer

The Secretary of Housing and Urban Development shall establish policies and procedures under which a victim requesting an

§ 14043e-11. Housing protections for victims of domestic..., 42 USCA § 14043e-11

emergency transfer under subsection (e) may receive, subject to the availability of tenant protection vouchers, assistance under section 1437f(o) of this title.

(g) Implementation

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

CREDIT(S)

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

42 U.S.C.A. § 14043e-11, 42 USCA § 14043e-11

Current through P.L. 114-327. Also includes P.L. 114-329 and 115-1 to 115-8. Title 26 current through 115-8.

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§ 1437. Declaration of policy and public housing agency organization, 42 USCA § 1437

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 8. Low-Income Housing (Refs & Annos)

Subchapter I. General Program of Assisted Housing (Refs & Annos)

42 U.S.C.A. § 1437

§ 1437. Declaration of policy and public housing agency organization

Effective: July 29, 2016

Currentness

(a) Declaration of policy

It is the policy of the United States--

(1) to promote the general welfare of the Nation by employing the funds and credit of the Nation, as provided in this chapter--

(A) to assist States and political subdivisions of States to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families;

(B) to assist States and political subdivisions of States to address the shortage of housing affordable to low-income families; and

(C) consistent with the objectives of this subchapter, to vest in public housing agencies that perform well, the maximum amount of responsibility and flexibility in program administration, with appropriate accountability to public housing residents, localities, and the general public;

(2) that the Federal Government cannot through its direct action alone provide for the housing of every American citizen, or even a majority of its citizens, but it is the responsibility of the Government to promote and protect the independent and collective actions of private citizens to develop housing and strengthen their own neighborhoods;

§ 1437. Declaration of policy and public housing agency organization, 42 USCA § 1437

(3) that the Federal Government should act where there is a serious need that private citizens or groups cannot or are not addressing responsibly; and

(4) that our Nation should promote the goal of providing decent and affordable housing for all citizens through the efforts and encouragement of Federal, State, and local governments, and by the independent and collective actions of private citizens, organizations, and the private sector.

(b) Public housing agency organization

(1) Required membership

Except as provided in paragraphs (2) and (3), the membership of the board of directors or similar governing body of each public housing agency shall contain not less than 1 member--

(A) who is directly assisted by the public housing agency; and

(B) who may, if provided for in the public housing agency plan, be elected by the residents directly assisted by the public housing agency.

(2) Exception

Paragraph (1) shall not apply to any public housing agency--

(A) that is located in a State that requires the members of the board of directors or similar governing body of a public housing agency to be salaried and to serve on a full-time basis; or

(B) with less than 300 public housing units, if--

(i) the agency has provided reasonable notice to the resident advisory board of the opportunity of not less than 1 resident described in paragraph (1) to serve on the board of directors or similar governing body of the public housing agency pursuant to such paragraph; and

§ 1437. Declaration of policy and public housing agency organization, 42 USCA § 1437

(ii) within a reasonable time after receipt by the resident advisory board established by the agency pursuant to section 1437c-1(e) of this title of notice under clause (i), the public housing agency has not been notified of the intention of any resident to participate on the board of directors.

(3) Exception for certain jurisdictions

(A) Exception

A covered agency (as such term is defined in subparagraph (C) of this paragraph) shall not be required to include on the board of directors or a similar governing board of such agency a member described in paragraph (1).

(B) Advisory board requirement

Each covered agency that administers Federal housing assistance under section 1437f of this title that chooses not to include a member described in paragraph (1) on the board of directors or a similar governing board of the agency shall establish an advisory board of not less than 6 residents of public housing or recipients of assistance under section 1437f of this title to provide advice and comment to the agency or other administering entity on issues related to public housing and section 1437f of this title. Such advisory board shall meet not less than quarterly.

(C) Covered agency or entity

For purposes of this paragraph, the term "covered agency" means a public housing agency or such other entity that administers Federal housing assistance for--

(i) the Housing Authority of the county of Los Angeles, California; or

(ii) any of the States of Alaska, Iowa, and Mississippi.

(4) Nondiscrimination

No person shall be prohibited from serving on the board of directors or similar governing body of a public housing agency because of the residence of that person in a public housing project or status as assisted under section 1437f of this title.

§ 1437. Declaration of policy and public housing agency organization, 42 USCA § 1437

CREDIT(S)

(Sept. 1, 1937, c. 896, Title I, § 2, as added Aug. 22, 1974, Pub.L. 93-383, Title II, § 201(a), 88 Stat. 653; amended Aug. 13, 1981, Pub.L. 97-35, Title III, § 322(c), 95 Stat. 402; redesignated Title I, June 29, 1988, Pub.L. 100-358, § 5, 102 Stat. 681; amended Nov. 28, 1990, Pub.L. 101-625, Title V, § 572(2), 104 Stat. 4236; Oct. 21, 1998, Pub.L. 105-276, Title V, § 505, 112 Stat. 2522; Pub.L. 114-201, Title I, § 114, July 29, 2016, 130 Stat. 804.)

Footnotes

¹

So in original. Probably should be "(i)".

42 U.S.C.A. § 1437, 42 USCA § 1437

Current through P.L. 114-327. Also includes P.L. 114-329 and 115-I to 115-8. Title 26 current through 115-8.

End of Document

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S. 2577

One Hundred Fourteenth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,
the fourth day of January, two thousand and sixteen*

An Act

To protect crime victims' rights, to eliminate the substantial backlog of DNA and other forensic evidence samples to improve and expand the forensic science testing capacity of Federal, State, and local crime laboratories, to increase research and development of new testing technologies, to develop new training programs regarding the collection and use of forensic evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to support accreditation efforts of forensic science laboratories and medical examiner offices, to address training and equipment needs, to improve the performance of counsel in State capital cases, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Justice for All Reauthorization Act of 2016".

SEC. 2. CRIME VICTIMS' RIGHTS.

(a) **RESTITUTION DURING SUPERVISED RELEASE.**—Section 3583(d) of title 18, United States Code, is amended in the first sentence by inserting ", that the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a sentence of restitution," after "supervision".

(b) **COLLECTION OF RESTITUTION FROM DEFENDANT'S ESTATE.**—Section 3613(b) of title 18, United States Code, is amended by adding at the end the following: "The liability to pay restitution shall terminate on the date that is the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person ordered to pay restitution. In the event of the death of the person ordered to pay restitution, the individual's estate will be held responsible for any unpaid balance of the restitution amount, and the lien provided in subsection (c) of this section shall continue until the estate receives a written release of that liability."

(c) **VICTIM INTERPRETERS.**—Rule 28 of the Federal Rules of Criminal Procedure is amended in the first sentence by inserting before the period at the end the following: ", including an interpreter for the victim".

(d) **GAO STUDY.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall—

(A) conduct a study to determine whether enhancing the restitution provisions under sections 3663 and 3663A of title 18, United States Code, to provide courts broader authority to award restitution for Federal offenses would

be beneficial to crime victims and what other factors Congress should consider in weighing such changes; and

(B) submit to Congress a report on the study conducted under subparagraph (A).

(2) CONTENTS.—In conducting the study under paragraph (1), the Comptroller General shall focus on the benefits to crime victims that would result if the restitution provisions under sections 3663 and 3663A of title 18, United States Code, were expanded—

(A) to apply to victims who have suffered harm, injury, or loss that would not have occurred but for the defendant's related conduct;

(B) in the case of an offense resulting in bodily injury resulting in the victim's death, to allow the court to use its discretion to award an appropriate sum to reflect the income lost by the victim's surviving family members or estate as a result of the victim's death;

(C) to require that the defendant pay to the victim an amount determined by the court to restore the victim to the position he or she would have been in had the defendant not committed the offense; and

(D) to require that the defendant compensate the victim for any injury, harm, or loss, including emotional distress, that occurred as a result of the offense.

SEC. 3. REDUCING THE RAPE KIT BACKLOG.

(a) IN GENERAL.—Of the amounts made available to the Attorney General for a DNA Analysis and capacity enhancement program and for other local, State, and Federal forensic activities under the heading "STATE AND LOCAL LAW ENFORCEMENT" under the heading "OFFICE OF JUSTICE PROGRAMS" under the heading "DEPARTMENT OF JUSTICE" in fiscal years 2018, 2019, 2020, and 2021—

(1) not less than 75 percent of such amounts shall be provided for grants for activities described under paragraphs (1), (2), and (3) of section 2(a) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(a)); and

(2) not less than 5 percent of such amounts shall be provided for grants for law enforcement agencies to conduct audits of their backlogged rape kits under section 2(a)(7) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(a)(7)) to create and operate associated tracking systems and to prioritize testing in those cases in which the statute of limitation will soon expire.

(b) REPORTING.—

(1) REPORT BY GRANT RECIPIENTS.—With respect to amounts made available to the Attorney General for a DNA Analysis and capacity enhancement program and for other local, State, and Federal forensic activities under the heading "STATE AND LOCAL LAW ENFORCEMENT" under the heading "OFFICE OF JUSTICE PROGRAMS" under the heading "DEPARTMENT OF JUSTICE", the Attorney General shall require recipients of the amounts to report on the effectiveness of the activities carried out using the amounts, including any information the Attorney General needs in order to submit the report required under paragraph (2).

(2) **REPORT TO CONGRESS.**—Not later than 1 month after the last day of each even-numbered fiscal year, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that includes, for each recipient of amounts described in paragraph (1)—

- (A) the amounts distributed to the recipient;
- (B) a summary of the purposes for which the amounts were used and an evaluation of the progress of the recipient in achieving those purposes;
- (C) a statistical summary of the crime scene samples and arrestee or offender samples submitted to laboratories, the average time between the submission of a sample to a laboratory and the testing of the sample, and the percentage of the amounts that were paid to private laboratories; and
- (D) an evaluation of the effectiveness of the grant amounts in increasing capacity and reducing backlogs.

SEC. 4. SEXUAL ASSAULT NURSE EXAMINERS.

Section 304 of the DNA Sexual Assault Justice Act of 2004 (42 U.S.C. 14136a) is amended—

- (1) by redesignating subsection (c) as subsection (d); and
- (2) by inserting after subsection (b) the following:

“(c) **PREFERENCE.**—

“(1) **IN GENERAL.**—In reviewing applications submitted in accordance with a program authorized, in whole or in part, by this section, the Attorney General shall give preference to any eligible entity that certifies that the entity will use the grant funds to—

“(A) improve forensic nurse examiner programs in a rural area or for an underserved population, as those terms are defined in section 4002 of the Violence Against Women Act of 1994 (42 U.S.C. 13925);

“(B) engage in activities that will assist in the employment of full-time forensic nurse examiners to conduct activities under subsection (a); or

“(C) sustain or establish a training program for forensic nurse examiners.

“(2) **DIRECTIVE TO THE ATTORNEY GENERAL.**—Not later than the beginning of fiscal year 2018, the Attorney General shall coordinate with the Secretary of Health and Human Services to inform Federally Qualified Health Centers, Community Health Centers, hospitals, colleges and universities, and other appropriate health-related entities about the role of forensic nurses and existing resources available within the Department of Justice and the Department of Health and Human Services to train or employ forensic nurses to address the needs of communities dealing with sexual assault, domestic violence, and elder abuse. The Attorney General shall collaborate on this effort with nongovernmental organizations representing forensic nurses.”.

SEC. 5. PROTECTING THE VIOLENCE AGAINST WOMEN ACT.

Section 8(e)(1)(A) of the Prison Rape Elimination Act of 2003 (42 U.S.C. 15607(e)(1)(A)) is amended—

- (1) in clause (i), by striking “and” at the end;

(2) in clause (ii), by striking the period and inserting “; and”; and

(3) by inserting at the end the following:

“(iii) the program is not administered by the Office on Violence Against Women of the Department of Justice.”.

SEC. 6. CLARIFICATION OF VIOLENCE AGAINST WOMEN ACT HOUSING PROTECTIONS.

Section 41411(b)(3)(B)(ii) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–11(b)(3)(B)(ii)) is amended—

(1) in the first sentence, by inserting “or resident” after “any remaining tenant”; and

(2) in the second sentence, by inserting “or resident” after “tenant” each place it appears.

SEC. 7. STRENGTHENING THE PRISON RAPE ELIMINATION ACT.

The Prison Rape Elimination Act of 2003 (42 U.S.C. 15601 et seq.) is amended—

(1) in section 6(d)(2) (42 U.S.C. 15605(d)(2)), by striking subparagraph (A) and inserting the following:

“(A)(i) include the certification of the chief executive that the State receiving such grant has adopted all national prison rape standards that, as of the date on which the application was submitted, have been promulgated under this Act; or

“(ii) demonstrate to the Attorney General, in such manner as the Attorney General shall require, that the State receiving such grant is actively working to adopt and achieve full compliance with the national prison rape standards described in clause (i);”;

(2) in section 8(e) (42 U.S.C. 15607(e))—

(A) by striking paragraph (2) and inserting the following:

“(2) ADOPTION OF NATIONAL STANDARDS.—

“(A) IN GENERAL.—For each fiscal year, any amount that a State would otherwise receive for prison purposes for that fiscal year under a grant program covered by this subsection shall be reduced by 5 percent, unless the chief executive officer of the State submits to the Attorney General proof of compliance with this Act through—

“(i) a certification that the State has adopted, and is in full compliance with, the national standards described in subsection (a); or

“(ii) an assurance that the State intends to adopt and achieve full compliance with those national standards so as to ensure that a certification under clause (i) may be submitted in future years, which includes—

“(I) a commitment that not less than 5 percent of such amount shall be used for this purpose; or

“(II) a request that the Attorney General hold 5 percent of such amount in abeyance pursuant to the requirements of subparagraph (E).

“(B) RULES FOR CERTIFICATION.—

“(i) IN GENERAL.—A chief executive officer of a State who submits a certification under this paragraph shall also provide the Attorney General with—

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81 FR 80724-01, 2016 WL 6745151(F.R.)

RULES and REGULATIONS

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

Wednesday, November 16, 2016

AGENCY: Office of the Secretary, HUD.

***80724 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

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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

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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

24 CFR § 5.2001

§ 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.

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***80799** (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.

24 CFR § 5.2003

§ 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.

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(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 *80800 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.

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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.).
24 CFR § 5.2005

§ 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

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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 *80801 by a

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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

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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.

24 CFR § 5.2007

§ 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 *80802 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;

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(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

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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.

24 CFR § 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:

*80803 (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.

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(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.

24 CFR § 5.2011

§ 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.

24 CFR § 91.520

4. In § 91.520, revise paragraphs (e), (f), (g), and (h) to read as follows:

24 CFR § 91.520

§ 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

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Code of Federal Regulations
Title 24. Housing and Urban Development
Subtitle A. Office of the Secretary, Department of Housing and Urban Development
Part 5. General HUD Program Requirements; Waivers (Refs & Annos)
Subpart L. Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (Refs & Annos)

24 C.F.R. § 5.2003

§ 5.2003 Definitions.

Effective: December 16, 2016

Currentness

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

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

Affiliated individual, with respect to an individual, means:

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

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

Covered housing program consists of the following HUD programs:

- (1) Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.

§ 5.2003 Definitions., 24 C.F.R. § 5.2003

(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

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(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.).

SOURCE: 61 FR 5202, Feb. 9, 1996; 61 FR 9041, March 6, 1996; 61 FR 9537, March 8, 1996; 61 FR 11113, March 18, 1996; 61 FR 13616, March 27, 1996; 61 FR 54498, Oct. 18, 1996; 70 FR 77743, Dec. 30, 2005; 73 FR 72340, Nov. 28, 2008; 75 FR 66258, Oct. 27, 2010; 81 FR 19416, April 4, 2016; 81 FR 80798, Nov. 16, 2016; 81 FR 87812, Dec. 6, 2016; 81 FR 90657, Dec. 14, 2016, unless otherwise noted.

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

Current through March 16, 2017; 82 FR 13970.

Devanthery, Julia 3/22/2017
For Educational Use Only

§ 5.2003 Definitions., 24 C.F.R. § 5.2003

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67.06: Temporary Emergency Shelter, 760 MA ADC 67.06

vi. Inability to access a utility for personal use shall include situations in which the utility is in a location accessible to the general public;

(iii) An irregular overnight sleeping situation, as defined in 760 CMR 67.06(1)(f)7.b., if this has been persistent, as opposed to occasional, and cannot be remedied immediately by access to feasible alternative housing; or

(iv) Physical conditions making a unit unfit for human habitation pursuant to M.G.L. c. 111, § 127B, and 105 CMR 410.020: Definitions.

7. housing situation shall mean, for purposes of 760 CMR 67.06(1)(a)4., either:

a. a specific housing situation, being the location where the children of the applicant household are regularly sleeping overnight; or

b. an irregular overnight sleeping situation. A regular overnight sleeping situation is one that is consistent and continually available, not intermittent or occurring for an individual instance. An irregular overnight sleeping situation is an overnight sleeping situation that is not regular, consisting of repeated moves from place to place or the exhaustion of time limits in a time-limited emergency family homeless shelter not funded pursuant to 760 CMR 67.00.

8. housing situation not meant for human habitation shall mean, for purposes of 760 CMR 67.06(1)(a)4., a housing situation that is defined in 760 CMR 67.06(1)(f)6.d.(ii).

9. primary leaseholder, as used in 760 CMR 67.06(1)(a)4.a., shall mean, for these purposes, a primary tenant, whether holding under a lease, a tenancy agreement, or tenancy-at-will arrangement, with the exception that a primary tenant who is a co-tenant with one or more other co-tenants shall not be considered a primary tenant for purposes of 760 CMR 67.06(1)(f)6.a through c. unless the other co-tenant is an intimate partner.

(2) Shelter Ineligibility. A household shall not be eligible for EA temporary emergency shelter benefits if it became homeless:

(a) for the purpose of making itself eligible for EA;

(b) for the purpose of obtaining a housing subsidy;

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(c) because it abandoned in the preceding year, without good cause, public and/or subsidized housing, or was evicted from public and/or subsidized housing for nonpayment of rent or fraudulent behavior, provided the eviction occurred within the preceding three years; it shall not be considered abandoning housing if the household left for good cause, including, but not limited to, accepting employment or permanent housing elsewhere, or because of a direct threat to the household's safety; a household shall not be denied EA for an eviction, including for reasons referenced in 760 CMR 67.06(2)(d) and (e), when the person causing the eviction is no longer part of the household;

(d) because it was evicted from private, public and/or subsidized housing because of criminal activity, except when the criminal activity was committed by a domestic violence batterer who is no longer part of the household;

(e) because it was evicted from private, public and/or subsidized housing for destruction of the property;

(f) because it lost its housing under an agreement for judgment in eviction proceedings brought in whole or in part for the reasons referenced in 760 CMR 67.06(2)(c), (d) or (e);

(g) because it failed to cooperate with housing assistance program services provided by an agency under contract or agreement with the Department as specified in 760 CMR 67.05, or with a housing assistance program, providing similar services, including provision of overnight shelter, and administered by another government agency or by a nonprofit organization; or

(h) because the teen parent age 18 or older was asked to leave three Teen Living Programs for rule violations or other behavior-related issues or the teen parent refuses to accept a placement in a Teen Living Program.

(3) Temporary Emergency Shelter Placements. An EA-eligible household homeless due to the lack of feasible alternative housing in accordance with 760 CMR 67.06(1)(b) shall be approved for temporary emergency shelter. Any temporary emergency shelter placement must be approved by the Associate Director or his or her designee. Such approval for placement may be withdrawn or temporary emergency shelter benefits terminated if feasible alternative housing subsequently becomes available. A temporary emergency shelter placement shall also be subject to the following provisions:

(a) The Department shall make reasonable efforts to locate temporary emergency shelter that will accommodate the physical composition of the entire household, i.e. the size of the household and the age and gender of the household members.

Rule 24. Intervention, MA ST RCP Rule 24

Massachusetts General Laws Annotated

Massachusetts Rules of Civil Procedure
--

IV. Parties (Refs & Annos)

Massachusetts Rules of Civil Procedure (Mass.R.Civ.P.), Rule 24

Rule 24. Intervention

Currentness

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the Commonwealth confers an unconditional right to intervene or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the Commonwealth confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

(d) **Intervention by the Attorney General.** When the constitutionality of an act of the legislature or the constitutionality or validity of an ordinance of any city or the by-law of any town is drawn in question in any action to which the Commonwealth or an officer, agency, or employee thereof is not a party, the party asserting the unconstitutionality of the act or the unconstitutionality or invalidity of the ordinance or by-law shall notify the attorney general within sufficient time to afford him an opportunity to intervene.

Rules Civ. Proc., Rule 24, MA ST RCP Rule 24
Current with amendments received through January 15, 2017.

End of Document

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Rule 24. Intervention, MA ST RCP Rule 24



The Official Website of the Massachusetts Judicial Branch

Massachusetts Court System

Massachusetts Court System > Case & Legal Resources > Rules & Orders > Trial Court > I. Uniform Summary Process > Uniform Summary Process Rule 7

Uniform Summary Process Rule 7: Discovery

(a) General. Either party may obtain discovery by serving on the opposing party a demand therefor and filing a copy of such demand with the court. Such service and filing shall be made no later than the first Monday after the Monday entry day. A discovery demand, in the form provided in this section, shall be served on the opposing party by mailing first-class or by delivering a copy of it to that party or that party's attorney. A discovery demand shall be filed with the court by mailing first-class or by delivering a copy of it to the clerk. Filing or service by mail is complete upon receipt.

Discovery may be demanded in any of the following forms:

- (1) written interrogatories;
- (2) request(s) for admission;
- (3) request(s) for the production of documents.

Neither written interrogatories nor requests for admissions shall exceed 30 in number including any interrogatories or requests subsidiary or incidental to other interrogatories or requests, however grouped or combined.

Requests for discovery or further discovery not made in compliance with the requirements of this rule shall not be allowed unless on motion and for good cause shown. A request for discovery in response to an answer or counterclaim shall be deemed to establish good cause.

All papers relating to discovery which are filed with the clerk shall contain the docket number of the case.

(b) Postponement of Trial Date. Upon proper service and filing of a demand for discovery as required in section (a) above, hearing of the action shall be automatically postponed and rescheduled for the date two weeks from the original trial date. With the service of the discovery demand, the party demanding discovery shall notify the opposing party of the automatic two week postponement, the newly scheduled trial date, and the requirement in Rule 7(c) as to filing and service of responses no later than ten days after receipt of the request.

(c) Response to Demand for Discovery; Relief or Objection. The party of whom discovery is demanded shall respond by filing and serving answers to the interrogatories and/or responses to the requests for admission, and/or by producing the documents no later than ten days after receipt of the requests. The response shall be completed upon its receipt.

Each interrogatory shall be answered separately and fully in writing under the penalties of perjury, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections by the attorney or person making them. The scope and procedure for requests for production of documents and responses thereto shall be made as permitted and as required by Mass.R.Civ.P. 34(a)(1) and (b); provided, however, that the time limits specified in this rule shall govern. The scope and effect of and the procedure for requests for admission and responses thereto shall be made as permitted and as required by Mass.R.Civ.P. 36; provided, however, that the time limitations specified in this rule shall govern.

A party or the party's attorney objecting to or seeking relief from a discovery request may do so by a motion for protective orders or other relief which shall be filed within five days after receipt of such discovery request.

(d) Enforcement of Discovery Demand. The fact of a party's failure to respond to a demand for discovery as required by this rule and within the time specified by this rule shall be brought to the attention of the court by the party aggrieved thereby or the party's attorney within five days after such failure by a motion for an order compelling discovery as permitted by Mass.R.Civ.P. 37(a) or by an application for final judgment for relief or dismissal.

If a party willfully fails to respond to a discovery demand, on motion heard on the rescheduled trial date the court may make such orders in regard to the failure as are just, and among others the following:

- (1) an order that matters regarding which discovery is sought shall be taken to be established for the purposes of the action in accordance with the claim of the moving party;
- (2) an order refusing to allow the party failing to respond to support or oppose designated claims or defenses or prohibiting the party from introducing designated matters in evidence;
- (3) an order striking out pleadings or parts thereof or staying further proceedings until the discovery demand is satisfied or dismissing the action or any part thereof, or rendering a judgment by default against the party failing to respond.

(e) Further Postponement of Trial Date. Upon proper service and filing of a motion for a protective order against a demand for discovery, or upon proper service and filing of a motion to compel response to a demand for discovery or for final judgment for failure to respond, the rescheduled trial date may be postponed and may be rescheduled, if needed, by the court following the hearing and ruling on such motion.

ADD . 45

Related Links

Boston Municipal Court
Department
District Court Department
Housing Court Department
Eviction

Rules Amendments

Probate and Family Court
Standing Order 1-17
Effective July 1, 2017

As amended, effective February 1, 1982 and February 1, 1993.

Commentary

This rule establishes a limited right to discovery in summary process actions.

In keeping with the need for expeditious procedure, an automatic postponement of the trial date for two weeks from the originally scheduled date results from the timely service and filing of a discovery demand. This two-week postponement allows a reasonable time prior to the rescheduled trial date for a response to the demand and for action permitted by the rule, should a timely response not be made. The party demanding discovery must notify the opposing party of the automatic two-week postponement and of the requirements of Rule 7(c).

It is noteworthy that demands for discovery must be filed and served no later than the Monday prior to the original trial date. Because the answer and discovery deadlines fall on the same day, a plaintiff will often not know in time whether discovery is desirable because of the answer and any possible counterclaim. Therefore, section (a) provides that the plaintiff's request for discovery in response to an answer or counterclaim should be allowed on motion. In most cases, the defendant (tenant) will probably not object to any additional delay caused by the plaintiff's request for discovery. See [Rule 6](#) [hearing on pretrial motions on date case is originally scheduled for trial].

In section (d), the sanctions listed for failure to respond to a discovery demand are based on [Mass. R. Civ. P. 37\(b\)\(2\) \(A\), \(B\), and \(C\)](#). For the requirements of service, see [Rule 3](#) and [Mass. R. Civ. P. 5](#).

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**HUD Handbook 4350.3:
Occupancy Requirements of Subsidized
Multifamily Housing Programs**

November 2013

CHAPTER 1. INTRODUCTION

1-1 Purpose of This Handbook

- A. HUD-subsidized multifamily properties represent an important and valuable resource in addressing the nation's affordable housing needs. The successful delivery of this housing resource to the people who need it depends on effective occupancy policies and procedures. HUD's occupancy requirements and procedures ensure that eligible applicants are selected for occupancy, that tenants receive the proper level of assistance, and that tenants are treated fairly and consistently.
- B. This handbook describes the occupancy requirements and procedures governing the HUD-subsidized multifamily housing programs identified in paragraph 1-2. The handbook also addresses the procedures by which households apply for housing and the rights and responsibilities of in-place tenants and property owners.
- C. This handbook is addressed to tenants, owners, managers, HUD Field Office Staff, Performance-Based Contract Administrators and Traditional Contract Administrators. The first points of contact regarding information in this handbook are Office of Multifamily Housing staff in the corresponding local HUD Field Office for an area.
- D. This handbook does not supersede any Contract Administrator's or owner's rights, obligations, or requirements. Where the Handbook references HUD or Contract Administrator, the Contract Administrator will only perform those tasks required under the provisions of their Annual Contributions Contract (ACC).

1-2 Programs Subject to This Handbook

A. Applicable Programs

The requirements and procedures described in this handbook apply to each HUD-subsidized multifamily housing program listed in Figure 1-1.

B. State Agency Financed Properties

For HUD-subsidized properties financed by state agencies, this handbook covers only the applicable HUD requirements. Owners of these properties are subject to additional requirements established by states and their designated housing finance or other agencies.

1. State agencies may enforce state requirements, as long as they do not conflict with this handbook or HUD regulations.
2. State agencies must obtain written HUD approval before changing any of the HUD forms required by this handbook.

2. If the owner is terminating tenancy for other good cause, the notice must be effective at the end of the lease term, but in no case earlier than 30 days after receipt of the notice by the tenant. This notice period may run concurrently with any comparable notice period required by state or local law.
3. A termination notice for other good cause must provide that the proposed termination will be effective at the end of the lease term, but in no case earlier than 30 days after receipt of the notice by the tenant.

Section 4: Discrepancies, Errors, and Fraud

8-17 *Key Regulations

24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System *

8-18 Procedures for Addressing Discrepancies and Errors

A. Overview

To promote income and rent integrity, owners must investigate and research discrepancies and possible errors.

Owners must use HUD's EIV system as a tool to identify possible discrepancies in income reported by the tenant as well as identifying tenants who may be deceased or receiving assistance at more than one location or under more than one HUD rental assistance program.

B. Program Violations

When owners identify an error involving a tenant, they should first determine if the error constitutes a program violation.

A program violation occurs when the tenant by action or inaction breaches a lease, regulation, or other program requirement. Tenant errors occur because tenants misunderstand or forget rules. Tenant errors are thought of as unintentional program violations.

C. Investigating and Discovering the Facts

1. If an owner suspects that a tenant has inaccurately supplied or misrepresented information that affects the tenant's rent or eligibility, the owner must investigate and document the tenant's statements and any conflicting information the owner has received. To research questionable information, the owner may:
 - a. Confront the tenant with the tenant's information and any conflicting information;

- b. Obtain additional information from other persons or agencies; and
- c. Take other actions to verify either the tenant's information or the conflicting information.

***NOTE:** Owners may not suspend, terminate, reduce or make a final denial of any benefits of a tenant until they have taken appropriate steps to independently verify the tenant's information or the conflicting information.*

- 2. If an intentional misstatement or withholding of information cannot be substantiated through documentation, the owner must treat the case as an unintentional program violation.

D. Notifying and Meeting with the Tenant

- 1. After gathering the documentation, the owner must notify the tenant in writing of the error and identify what information is believed to be incorrect.
- 2. The tenant must have an opportunity, within 10 days, to meet with the owner and discuss the allegations.
 - a. The owner must also inform the tenant that failure to do so may result in the tenant's termination of tenancy.
 - b. The meeting with the owner must be with a designated representative who has not been involved in any manner with the review of the allegedly false information.
 - c. The owner must provide a written final decision, based solely on the facts presented and discussed at the meeting to the tenant within 10 days of the date of the meeting. The decision must also state the basis for the determination.
- 3. For tenants with a disability, the notice must be in a form accessible to the tenant, and the meeting must be held in a location accessible to the tenant.

E. Determining the Outcome of the Investigation

- 1. If the tenant meets with the owner to discuss the error, and the owner is convinced the tenant's submissions were correct, the owner should document the file accordingly and close the investigation.
- 2. If, after meeting with the tenant, the owner determines that the provision of inaccurate information was an unintentional program violation, the owner should correct the tenant's rent, if applicable, and provide the tenant with notice of the change in rent. If the tenant is unable to repay the full amount, the owner and tenant should enter into a repayment agreement. *(See Paragraph 8-23 for information on repayment agreements.)*

- a. If, after the income adjustment, the tenant no longer qualifies for assistance, the tenant may remain in the property subject to making repayments and paying market rent.
- b. The owner may terminate tenancy if the tenant refuses to pay the new monthly rent or refuses to repay the previously overpaid subsidy pursuant to the repayment agreement.
- c. If necessary, civil action may be filed to recover the funds.

Example – Unintentional Program Violation

A two-income household receives rental assistance payments. One individual works full time, which was fully disclosed during the last recertification. The other has a part-time job, but the work is on an as-needed basis. Because the income earnings were uncertain, small in amount, and infrequent, the tenant misunderstood the requirement to report income and did not report the uncertain income earnings.

3. If the owner determines the tenant knowingly provided inaccurate or incomplete information, and this can be substantiated through documentation, the owner needs to pursue the incident as fraud following the guidance in paragraph 8-18.

8-19 Procedures for Addressing Fraud

A. Overview

Some investigations may lead to the discovery of efforts by tenants or other parties to mislead the owner and, possibly, to commit fraudulent acts that result in the receipt of benefits or rent subsidies for which the tenant is not eligible. If after following the procedures in paragraph 8-17 for investigating and researching questionable information, the owner may determine that the tenant has knowingly provided inaccurate or incomplete information and will pursue the incident as fraud.

B. Criminal Violation (Fraud)

A criminal violation would be fraud, which is considered deceit or trickery deliberately practiced in order to gain some advantage dishonestly. Fraud is an intentional deception; it cannot be committed accidentally.

NOTE: A common error is to misuse or overuse the term "fraud" when a violation is suspected. A violation is not always fraudulent. It is important that owners first review and assess the circumstances before labeling a violation as fraud.

C. Documenting Fraud

In order to establish fraud, the tenant file must contain documentation showing the following:

1. The tenant was made aware of program requirements and prohibitions (i.e., all appropriate signatures are on the intake documents); and
2. The tenant intentionally misstated or withheld some material information. The strongest proof of fraud is an admission by the tenant. Fraudulent intent can also be demonstrated by documenting that:
 - a. The act was done repeatedly (i.e., not a one-time or accidental occurrence), or there was prior determination of fraudulent intent or conviction (e.g., signing false HUD-50059s);
 - b. False names or social security numbers were used;
 - c. The tenant falsified, forged, or altered documents;
 - d. The tenant omitted material facts that were known to the tenant (e.g., employment of self or other household members); or
 - e. The tenant made admission to another person of the illegal action or omission (e.g., boasting that he/she cheated, or telling an employer or neighbor that an "absent" spouse has moved in with the tenant).

D. Taking Action to Address Fraud

1. When fraud is present, the authorized course of action for owners to take is termination of tenancy. An owner's authority to pursue eviction in cases of tenant fraud is grounded in the material noncompliance provision contained in both the model lease and in the regulations [24 CFR 247.3]. Material noncompliance includes "knowingly providing incomplete or inaccurate information."
2. Fraud can be handled as a civil and/or criminal violation.
 - a. Fraud can be handled as a civil violation by using it as grounds for a termination of tenancy. Providing false information is a material noncompliance with the lease. The owner must seek recovery for subsidy overpayment by asking the court for judgment against the tenant.
 - b. Fraud is handled as a criminal violation when a local or federal prosecutor decides to prosecute the tenant for violation of a state or federal law. To convict the tenant, the prosecutor must show the court that the case contains all the elements of criminal fraud.
3. When a tenant is evicted for material noncompliance for submitting false, incomplete, or inaccurate information on household income or family composition required for certification or recertification, an owner must file a civil action against the tenant to recover improper subsidy payments. An

owner may consider referring the case for prosecution as a criminal violation, if applicable. Prosecution may be pursued on the local, state, or federal level.

8-20 *Discrepancies Reported in the EIV System*

A. Requirements Regarding Discrepancies *Reported in the EIV System*

*At the time of recertification, or at other times as stated in the owner's policies and procedures, owners must review and resolve any discrepancies reported in the EIV system that could result in errors in a tenant's rent and/or HUD assistance payments. This includes discrepancies in income reported on the EIV Income Discrepancy Report and discrepancies reported on the EIV Deceased Tenant Report and Multiple Subsidy Report. (See Chapter 9, Enterprise Income Verification (EIV), for more information on use of these reports.)

1. EIV Reports.

a. Income Discrepancy Report:

At the time of recertification, owners must review and resolve any discrepancies in income reported on the EIV Income Discrepancy Report. Using this report, the owner must identify any unreporting or underreporting of income by the tenant reported on current or historical HUD-50059s and transmitted to TRACS.

b. EIV Verification Reports.

Owners must review and resolve any discrepancies in the information reported on the following reports to identify tenants who may be receiving assistance they are not entitled to receive.

- (1) Deceased Tenant Report.** Tenants reported by SSA as being deceased, and where HUD is continuing to pay subsidy.
- (2) Multiple Subsidy Report.** Tenants who may be receiving rental assistance at more than one location.

NOTE: The reports in EIV are a tool to alert owners of possible discrepancies. Not all EIV discrepancies reported are valid discrepancies.

2. Owners may not suspend, terminate, reduce or make a final denial of any benefits of a tenant until they have taken appropriate steps to independently verify information relative to any discrepancy reported. For example, if there is an income discrepancy, the owner must verify:

- a. The amount of the wages, unemployment compensation, or SSA benefits involved;**

