



The Violence Against Women Act (VAWA), Massachusetts State Law and Housing

An Overview for Housing Providers

Massachusetts, January 2020

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Acknowledgement & Disclaimer

Acknowledgment and Disclaimer

The work that provided the basis for this publication grew out of partnership with the Housing Stability and Self-Sufficiency Workgroup (HSSS) of the Governor’s Council to Address Sexual Assault and Domestic Violence. In response to training needs for housing providers, MassHousing developed a two-part training to assist housing professionals working with residents who are survivors of domestic violence, dating violence, sexual assault, and stalking (hereinafter referred to as DVDVSAS unless otherwise noted).

DVDVSAS remains a pervasive problem across the country, including in MassHousing developments. In addition to the ubiquity of this issue is the issuance of guidance by the Department of Housing and Urban Development (HUD) in relation to the 2013 reauthorization of the Violence Against Women Act (VAWA), which created an urgency to address this issue. As of this writing, although the funding (appropriations) for the Violence Against Women’s Act (VAWA) of 2013 has expired, the statute and regulations which contain the housing protections of VAWA remain in effect and there is no expiration date on those protections. HUD’s representatives have also confirmed that HUD Covered Housing Provider must comply with HUD’s regulations and guidance. As such, this handbook focuses on HUD’s regulations and guidance and provides a framework for understanding the guidance by providing citations to VAWA 2013 when applicable.

The authors and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication.

Piltch Associates, Inc., MassHousing, Page Clark, Meg Piltch, and Lisa Morishanti produced this handbook by gathering information from various documents and individuals. Due to the potential for errors, omissions, or inaccuracies, which may exist in the materials and information provided, there is some risk associated with reliance on such information.

Contact an attorney regarding any legal matter related to the information contained in this handbook involving an applicant for housing or tenant.

About MassHousing:

MassHousing (officially the Massachusetts Housing Finance Agency) was created by Chapter 708 of the Acts of 1966 as a self-supporting, independent public authority charged with increasing affordable rental and for-sale housing in Massachusetts. Since making its first loan in 1970, the Agency has provided more than \$24 billion in financing for the construction and preservation of affordable rental housing, and for affordable loan products for homebuyers and homeowners.

MassHousing is recognized as one of the premier housing finance agencies in the country and has won numerous national awards for creativity and innovation in affordable housing. For more information, visit the MassHousing Web site at www.masshousing.com.

About the Authors:

Debbie Piltch

Debbie Piltch, who has a Masters' degree in Labor Studies and a Juris Doctorate, has considerable expertise in discrimination law (including sexual harassment) and housing law. She worked for more than five years at the Disability Law Center (DLC) in Boston, Massachusetts, representing low-income individuals in cases involving discrimination in housing, employment, public accommodations, and education. She also designed and conducted training for consumers, and public and private entities on disability discrimination law. While at the DLC, she served on the Department of Housing and Urban Development's (HUD) taskforce responsible for making recommendations to the Secretary of HUD regarding complicated occupancy issues in public and assisted housing. She wrote the section of the report on reasonable accommodation in relation to persons with drug and alcohol addictions.

She left the DLC in 1994 to establish a consulting business that provides technical assistance and training to government and private entities on their rights and responsibilities in relation to civil rights, anti-discrimination (including workplace and sexual harassment) and housing laws. She has developed a national reputation in the field of housing and discrimination law and has been fortunate to work with several the leading government and private organizations involved in housing issues. A significant portion of her work for these organizations, as well as others, has focused on designing, developing, and implementing training programs on occupancy issues, tax credit compliance, and Federal and State fair housing and anti-discrimination law, including harassment in both the employment and housing context. Ms. Piltch is currently on the Massachusetts Commission Against Discrimination's (MCAD's) referral list to conduct training on a variety of issues including housing discrimination, preventing discrimination in the workplace, preventing harassment (including sexual harassment) in the workplace, and responding to accommodation requests in the workplace. In addition, she is a trained mediator.

In addition, in her capacity as a consultant, she has analyzed countless organization's rules, policies, and procedures, including their employee handbooks, to ensure that they are in compliance with applicable tax credit, civil rights and anti-discrimination laws, employment law and housing laws. She has also designed compliance protocols for government and private entities and has served as an independent monitor for the MA state Attorney General's office in a discrimination case. Although she continues to maintain her consulting business, she is presently employed as Vice President of Compliance for Maloney Properties, Inc., a private housing management company that operates over 12,000 units of affordable housing in Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont. In this capacity, she is responsible for overseeing compliance with federal, state and local regulations, including fair housing laws, employment discrimination laws, and tax credit rules, developing and implementing

rules, policies, and procedures, conducting numerous types of training, and on-site monitoring.

Page Clark

Page was born and raised in Boston's Dorchester/Mattapan neighborhoods, where she still resides. A proud graduate of Boston Public Schools, she attended Pine Manor College earning her Bachelors in English Literature and Sociology. In 2013, Page graduated from Lesley University, earning her Master's in Counseling Psychology.

A passionate advocate and educator, Page is dedicated to working with survivors of domestic violence and the systems that seek to provide services and supports. At The Second Step, in Newton, MA, Page began her career as a housing specialist. Working directly with survivors, Page simultaneously built foundations of trust while helping clients navigate the complicated pathways to affordable housing. During her more than eight-year tenure with the agency, her role expanded and evolved, encompassing advocacy, stabilization, residential and community-based case management, group facilitation, and curriculum development.

In 2010, Page joined the team at the Elizabeth Stone House (ESH) in Roxbury, MA, bringing her passion home to the city she loves. Page is currently the Director of Strong Where You Are, the fast-growing community services arm of ESH. Her work encompasses the intersection of domestic violence, mental health and substance abuse as she and her team work with survivors to navigate increasingly complex systems. In addition to individual counseling, advocacy, and group services, Page and her team provide outreach and training across the Commonwealth on the impacts of domestic violence and complex trauma.

Lisa Morishanti

Lisa Morishanti, a licensed, independent social worker, has spent her career working in collaboration with agencies, community leaders, and various neighborhoods to establish effective strategies that address existing needs. Given her diverse professional experience, she cultivates and maintains relationships across the public sector that bridge the gap between community development, homelessness, housing, mental health, and public safety. She has a steadfast commitment to working collaboratively and developing initiatives, educational opportunities, and programs that are informed by practice and research.

Her passion for resident services began 14 years ago as a member of the Resident Service team at Mission Park. Through her work there and numerous other sites, she learned the complexities of the role and importance of effective team work. She used her experiences to develop timely trainings and workshops that were presented at the American Association of Service Coordinators Conference, New England Resident Service Coordinator Conference, MassHousing Community Service Conference, and the NASW Symposium. She sees the importance of instruction and adequately preparing novice housing providers. As such, she is currently a MassHousing TAP Instructor.

Although she received numerous awards from various institutions regarding her work, the ones that she holds near and dear to her heart are those awarded by resident communities. One award state's "in recognition and sincere appreciation of many years of distinguished service; for your individual talents and concerned dedication so generously given".

She obtained her Bachelor of Science from Boston University, her Master's in Social Work from Boston College, and has provided clinical and macro supervision to budding social work professionals for the past decade. She has worked as a consultant for various state agencies including the Department of Children & Families, MassHousing, and The American City Coalition. She thoroughly enjoys clinical practice and continues to be a

practitioner in one of our busiest Boston area hospitals. She currently sits on the steering committee for the RoxVote Coalition, the Network La Red Board of Directors, and the Madison Park Development Corporation Board of Directors.

Kara Pillsbury Johnson

Kara Pillsbury is an analyst in MassHousing's Community Services Department. In this role, she manages a strategic planning process for the department to analyze the current programmatic offerings, provide a new portfolio of program options, and determine associated impact measures. She also manages the VAWA related work that the department has prioritized including training and development of this handbook.

In prior positions, she was a project manager and then consultant at Linkage, Inc., a management consulting firm, where she focused on strategic planning projects and customized leadership development programs for clients in the retail, healthcare, and financial services industries. Kara's great passion for addressing inequalities facing women and girls motivated her to serve in the U.S. Peace Corps and then later with the Ceiba Foundation, where she worked on community health initiatives for women and infrastructure development in coastal Ecuador.

Kara received her Master of Science in Social Policy from the University of Pennsylvania where her research was focused on gender-based violence in the United States. She received her Bachelor of Science in Political Science from Gordon College.

Meg Piltch

Meg Piltch is an Affordable Housing Management Consultant with a number of years of blended experience in property management and compliance roles. Meg assists Owners/Agents in developing and implementing policies and procedures that equip staff with the tools needed to exceed expectations of tenants, owners and monitoring agencies. Meg has worked with industry leaders on developing trainings and training

manuals that strive to break down the intertwined, and at times contradictory, compliance requirements of different Affordable Housing programs. Meg holds a BA in Human Services from Lesley University.

Preface to this Handbook

This Handbook, and the corresponding training program, was a collaborative effort between Piltch Associates, Inc., MassHousing, Page Clark, Meg Piltch, and Lisa Morishanti. One of the biggest obstacles survivors of DVDVSAS face is housing; both access to housing and retaining housing. The purpose of this Handbook is to provide public¹ and assisted² housing providers information regarding their legal obligations, and rights regarding survivors of DVDVSAS including the obligation not to discriminate, and practical guidance and resources that can be used when a survivor is going to be denied housing because of

¹ Public housing is a broad term used to describe housing owned and/or operated by local and/or state housing authorities (LHAs) to provide decent, safe, and sanitary housing for low-income eligible families. Public Housing has historically referred to actual units that are either owned solely by the public entity, or in conjunction with a private entity or non-profit, and is funded by the federal or state government. In MA, there are approximately 240 local housing authorities that have public housing units. In some cases, a management company may oversee the building for the housing authority, but the housing authority is ultimately responsible for the building; the management company is the Public Housing Authority's agent, and acts on behalf of the Public Housing Authority. This description is verbatim from MassHousing's training, [Housing 4-Pack One: Housing Literacy, Participant Guide, pg. 15](#).

² Assisted housing generally refers to multi-family housing that is owned and operated by private owners or non-profits, which receive financing or subsidies from government agencies in exchange for renting to low income people and keeping the rents restricted. Owners sign an agreement with the agency that provided funding and promise to comply with specific requirements of the program. Depending on the housing program, and the agency, the agreement may have a different name. If the agreement is with the U.S. Department of Housing and Urban Development (HUD), it is often referred to as a Housing Assistance Payment (HAP) Contract. Other common names are: Regulatory Agreement, Restrictive Covenant, and Housing Restriction Agreement.

Multi-family assisted housing funded by the U.S. Department of Housing and Urban Development (HUD) is also sometimes referred to as "project-based" housing because HUD provides a subsidy to the site, or "project" rather than to a specific tenant. This means that HUD agrees to pay the difference between the rent a family living in the unit can afford to pay based on the program rules and the rent HUD agreed with the Owner was fair. If a specific family moves out, the tenant doesn't take the subsidy with them. Rather, it is available for the next family who moves into the unit. Project-based vouchers work the same way. The major difference is that they are assigned to the site by the Housing Authority.

The ownership of an assisted housing development is usually organized into some type of a corporate structure. The structure usually includes a general partner and investors. The general partner is the person who is responsible for putting the deal together and signs the agreement with the funding or financing agency. This description is verbatim from MassHousing's training, [Housing 4-Pack One: Housing Literacy, Participant Guide, pg. 17](#).

In the context of this manual, we are referring to "assisted sites" funded by HUD and covered by HUD Handbook 4350.3 Rev-1 (**OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS (4350.3)**) or funded through their Office of Community Planning and Development, Rural Development and/or the Low-Income Housing Tax Credit Program.

a negative tenancy related behavior or is at risk of losing their housing. Our goal is that the information provided herein, and the corresponding training program that this manual is part of, will reduce discrimination survivors face, facilitate a collaborate effort between housing providers and domestic and sexual violence advocates in Massachusetts, and reduce housing instability as an obstacle for survivors.

Please note that this Handbook isn't designed for lawyers, isn't a legal treatise on the topic, and the authors aren't giving legal advice. If you have a specific housing related issue regarding an applicant or tenant contact a housing attorney to discuss the matter.

The first chapter is designed to provide housing professionals with a foundation for understanding and working with applicants and residents who are survivors of DVDVSAS. The material covers the cycle of violence, the pattern of power and control, various forms of abuse, the impact of traumatic experiences among other important information that sets the context for working with individuals who have experienced domestic or sexual violence. This chapter used information that was developed as part of the training series offered by MassHousing. Part one of this handbook could not have been completed without the contributions of Stephanie Brown of Casa Myrna and Clare Namugga of Boston Area Rape Crisis Center (BARCC). Their development of the initial training provided much of the content for part one of this handbook, and their feedback has been invaluable in this process.

We also wish to thank a number of people who reviewed this document at various stages: Dan Bancroft, Stephanie Brown, Barbara Chandler, Judy Benitez Clancy, Julia Devanthéry, Doreen Donovan, Manette Donovan, David Eng, Maureen Gallagher, Linda Garcia, Jennifer Kadilak, Margaux LeClair, Ingelcia Lewis, Terry Maguire, Anne Moriarty, Theresa Morris, Clare Namugga, Karlo Ng, Heather Staggs, and MassHousing Interns Courtney O'Connell, Bladimir Cuevas, Victoria Findlen, Nathaniel Menard, Sofia Meadows-Muriel, Katherine Tolman, and Meredith Zielonka.

We would also like to extend a special thank you to Bethany Wood of MassHousing. Her dedication to this project made this handbook possible.

To obtain a large print, tape, or electronic version of this Handbook, contact MassHousing at TEL:
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Introduction

This Handbook is for public and assisted housing providers operating housing in Massachusetts. It explains your legal obligations and rights under federal and state laws which provide protections for applicants and tenants who are survivors of DVDVSAS. The Handbook explains the federal and Massachusetts laws relating to DVDVSAS in relation to housing and shows what these laws require and allow housing providers to do throughout the occupancy cycle (admissions, occupancy, and eviction). If you are a public or assisted housing provider, you need to know how these laws affect your day to day practices regarding applicants and tenants.

We have tried to present information in non-technical language where possible. The first chapter of this Handbook provides an overview of domestic violence, sexual assault, stalking and dating violence. The first chapter outlines introductory information around DVDVSAS including the cycle of violence, definitions and statistics, effects of crisis and trauma, responding to disclosure, and building relationships.

The second chapter of this Handbook answers the questions most commonly asked by public and assisted housing providers regarding survivors of domestic violence. You will see that some questions have very clear answers. For other questions, there are several opinions about what constitutes the correct answer. That is because sometimes the law is so new or general that lawyers have different opinions about what it really means. The final answers will be determined over time as various regulatory agencies and courts make decisions on situations where the parties disagree. In the meantime, you and your lawyer need to consider the issues carefully and make what you think is the most reasonable decision. That said, one of the goals of this Handbook is to provide guidance on good business practices for housing providers when addressing issues of DVDVSAS in housing.

The second chapter is divided into three sections. Section 1 provides a basic overview of commonly asked questions regarding the structure of the law. Section 2 then discuss the applicable federal and state laws, and housing providers rights and responsibilities in relation to survivors of domestic violence, dating violence, sexual assault and stalking (DVDVSAS) during the application process. Section 3 of this chapter discusses topics relating to occupancy and termination of assistance and tenancy. Chapter 3 provides an overview of policies and procedures which can impact survivors of VAWA crimes and discusses how to remove barriers to housing.

The following appendices also contain very practical information.

Appendix A: DV Fact Sheet (provided by Jane Doe, Inc.)

Appendix B: SV Fact Sheet (provided by Jane Doe, Inc.)

Appendix C: Jane Doe, Inc (JDI) Map of Domestic and Sexual Violence Service Providers

Appendix D: Department of Public Health (DPH) Service Providers

Appendix E: Sexual Assault Nurse Provider (SANE) Information Sheet

Appendix F: Resource Guide: Housing Protections for Survivors of Domestic Violence, Sexual Assault, Stalking, and Dating Violence

Appendix G: VAWA Regulations Reference Guide

Appendix H: Program Resources by Topic, *Covered Housing Provider*

Appendix I: Program Resources by Topic, *Covered Notice Requirements*

Appendix J: Program Resources by Topic, *Lease Bifurcation*

Appendix K: Program Resources by Topic, *Emergency Transfer*

Appendix L: Housing Search Resources

This handbook does not address the specifics of safety planning, case management, or other services that are most appropriately provided by a service provider. There are numerous resources available on these topics, and we have provided information on those organizations as part of Appendix C (Jane Doe, Inc. Map) as well as Appendix D (Department of Public Health Resources) who can best assist in the delivery of these services and provide appropriate education. In addition, although this Handbook has incorporated in the legal obligation of public and assisted housing providers to provide reasonable accommodations when necessary to enable an applicant/resident with a disability to have an equal opportunity to apply to and enjoy their housing and related services, please see MassHousing’s publication, **A Handbook on the Legal Obligations and Rights of Public and Assisted Housing Providers Under Federal and State Fair Housing Law for Applicants and Tenants with Disabilities**, for more detail³. Likewise, we have incorporated public and assisted housing providers’ obligation and rights regarding providing individuals whose primary language isn’t English and who as a result have a limited ability to read, write or understand English free language assistance. However, please see MassHousing’s website for detailed information on this topic.⁴

³ For more information, refer to MassHousing’s publication titled, A Handbook on the Legal Obligations and Rights of Public and Assisted Housing Providers Under Federal and State Fair Housing Law for Applicants and Tenants with Disabilities.

https://www.masshousingrental.com/portal/server.pt/community/community_services/330/fair_housing_resources/13465

⁴ For more information on language access, refer to MassHousing’s website for various resources and forms https://www.masshousingrental.com/portal/server.pt/community/library/332/limited_english_proficiency

Terminology and Use of Pronouns:

Please note that this handbook uses the term “victim” as well as “survivor.” The authors recognize that some domestic violence and sexual assault advocates and people who experience domestic violence or sexual assault prefer the term survivor. This is based on an empowerment model that uses terminology that recognizes an individual who has experienced domestic violence or sexual assault as a survivor of that crime and not only as a victim of that crime. That said, Federal and State laws that are going to be discussed use the term “victim.” As such, we have chosen to use the term survivor unless we are discussing a specific law. When working with a survivor of domestic violence or sexual assault, the authors encourage readers to mirror the language that that the individual uses for themselves, whether that is “survivor,” “victim” or another term altogether.

Whenever possible, we have also chosen to use the “they” pronoun in place of “he” or “she.” The authors recognize that many people do not identify with a singular gender (i.e. as only male or female). However, there may be references, footnotes, and external materials that refer to a singular gender; in particular, females and use of the “she” pronoun. While this is often seen as an issue that affects individuals who identify as female at a greater frequency, the authors recognize the various nuances that exist in self-reporting, gender identity, and general perception. Accordingly, the pronoun “they” will be used to the extent possible. When working with a survivor of DVDVSAS, the authors encourage readers to mirror the language that the individual uses, including pronouns.

Chapter 1

*Introduction to Domestic Violence, Dating Violence,
Sexual Assault, and Stalking*

Chapter 1:

Introduction to Domestic Violence, Dating Violence, Sexual Assault, and Stalking

Section 1: Overview

Sexual and Domestic Violence (SDV) is a pervasive problem across the Commonwealth of Massachusetts. In Massachusetts, 1 in 3 women & 1 in 5 men reported having experienced rape, physical violence, or stalking by an intimate partner in their lifetime.¹ SDV survivors often face numerous challenges, one of which is housing status. 1 in 5 Massachusetts residents report domestic violence as a reason for their homelessness.² Additionally, 92% of homeless mothers experience sexual violence in their lifetimes.³

In 2018, Safelink, Massachusetts' 24/7 hotline for domestic and dating violence, received 27,067 calls.⁴ Of those calls, 91.8% called primarily for DV emergency shelter. Only 5.9% of callers were connected to a shelter with open space, and for 89% of callers, there was no shelter option available. These staggering statistics demonstrate the urgency and prevalence of SDV in Massachusetts, but also the connection that often presents between housing instability and SDV.

¹ Statistics provided by Jane Doe, Inc. See appendix A for the complete Domestic Violence fact sheet including additional data and statistics.

² Ibid.

³ Statistics provided by Jane Doe, Inc. See appendix B for the complete Sexual Violence fact sheet including additional data and statistics.

⁴ Safelink, is a 24/7 toll-free hotline operated by Casa Myrna. The hotline serves as a statewide resource for anyone affected by domestic or dating violence. The SafeLink toll-free number is (877) 785-2020. For those who are hearing impaired, the SafeLink TTY number at (877) 521-2601. Trained advocates are bilingual in English and Spanish and have access to a service that can provide translation in more than 130 languages. For more information on Safelink, see <https://www.casamyrna.org/get-support/safelink/>.

Massachusetts has an extensive network of providers that work with survivors of sexual and domestic violence. They are organized by geography, but there are also some organizations that serve specific populations across the Commonwealth. These statewide organizations generally have been established with staff and resources that are specifically designed to meet the needs of various communities. We have provided two appendices in this handbook that provide a comprehensive overview of service providers across the Commonwealth. The first is Appendix C, which is a listing of all providers identified through by Jane Doe, Inc., which is the Massachusetts Coalition Against Domestic and Sexual Violence.⁵ The second is Appendix D which is a listing which is a listing of all providers funded through the Department of Public Health (DPH). Many of these providers overlap between the two Appendices, and the authors encourage readers to utilize both listings. Appendix E includes information on the Sexual Assault Nurse Examiner (SANE) Program.⁶ If a survivor has a mental and/or physical disability, they may require specialized attention and resources. The Sexual Assault Response Unit (SARU) works within adult protective services to increase and enhance access to trauma services and survivors of sexual assault.⁷ Throughout this handbook, there is an emphasis on identifying local SDV providers, and if possible, building a relationship with that organization(s). Housing providers should be ready and able to make a warm referral to an SDV provider if the opportunity presents itself. In addition, SDV providers can provide advice to housing providers on situations that arise at their property.

⁵ The Jane Doe, Inc. map can also be accessed directly at https://janedoe.org/wp-content/uploads/JDI_Map_of_DV_and_SA_Service_Providers.pdf

⁶ The Sexual Assault Nurse Examiner (SANE) Program provides compassionate, trauma-informed care to sexual assault patients, including the option of a forensic examination, evidence collection and medications to reduce the risk of assault-related pregnancy or Sexually Transmitted Infections (STIs) within 5 days of a sexual assault. Patients may receive MA SANE services whether or not they choose to report their assault to the police, at no cost to the patient. For more information, see Appendix E, which includes a listing of SANE services and locations.

⁷ SARU is a unit of the Disabled Persons Protection Commission (DPPC), which is an independent state agency established to protect adults with mental and physical disabilities, between the ages of 18 and 59. SARU Services include navigation of resources, peer support, clinical matching services, and an advisory council. The DPPC operates a 24-Hour Abuse Hotline at 1-800-426-9009.

SDV affects individuals in all communities, regardless of gender identity or expression, socioeconomic status, marital status, race, and ethnicity, although the rates of occurrence vary and are further nuanced by challenges in reporting. Additionally, the way in which sexual and domestic violence are perceived, managed, and discussed can vary across communities. In this first chapter, we go into detail around some of the specific challenges.

Intersectionality

Given the national conversation about sexual and domestic violence, there is heightened awareness of the impacts of trauma on individuals and communities. Addressing SDV not only requires an individual response to survivors' needs, but a systemic response that acknowledges the root causes of violence and the differential impact on those communities that are most marginalized.

Racism, sexism, classism, and other systemic oppressions often intersect to exacerbate the experiences of survivors and create additional barriers for seeking safety and well-being. Sexual and domestic violence agencies are social justice organizations that not only work to meet individual needs, but to address inequality and systems issues more broadly. They do this by advocating with survivors as they access law enforcement, the judicial system, educational institutions, immigration, and multiple other systems. For some, these systems can pose additional barriers that may cause another level of harm. The message unintentionally sent by these systems is often: there is no safe haven that can provide the guidance, support, and resources necessary to regain safety, security, and self-sufficiency. Some of these systems at times may re-enact similar dynamics of power and control that may exist in their experience of SDV. They may have protocols and procedures that may be experienced as punitive, sexist, classist, and lacking empathy.

Survivors of SDV may meet challenges when asking for help from law enforcement, seeking safe and affordable housing, and accessing supplemental food and financial assistance. The eligibility criteria and intake processes may make these supports inaccessible. For example, there may be documentation that cannot be provided when someone in crisis has no access to critical items and documents. Survivors have multiple needs they are addressing at the same time and systems may require that they not address all of them in the most effective way for that individual. For those who experience a psychological disability that is a result of their abuse (i.e. PTSD), survivors may be triggered by their interaction with the very systems that are intended to provide support.

The intersectionality of race, ethnicity, religion, immigration status, class, sexual orientation, gender identity and expression, and ability are can result in a compounding of multiple barriers for survivors. It is important to recognize these intersections and consider how our own processes may be mirroring the experience of abuse for survivors.

Section 2: Definitions and Models

The following definitions for Domestic Violence, Sexual Assault, Dating Violence, and Stalking include the parameters set under the Violence Against Women Act (VAWA) as well as additional, commonly used language that is utilized by service providers and advocates who work with survivors.

Domestic Violence (DV): As defined in statute for the purposes of VAWA grant programs, “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.”⁸

DV is a systematic strategy to gain **power and control** (controlling thoughts, feelings, actions and behaviors) over another human being that isolates that person from family, friends, and peers and renders them in fear. The fear that is created as a result of this **pattern** of behavior is established through the belief that if the person should behave, make decisions, live with purpose then they run a major risk of being harmed.

Sexual Assault: As defined in statute for the purposes of VAWA grant programs, “the term ‘sexual assault’ means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.”⁹

⁸ 34 U.S.C. §12291(a)(8). The Violence Against Women Reauthorization Act of 2013 (P.L. 113-4) revised the definition of domestic violence specifically to include “intimate partners” in addition to “current and former spouses.”

⁹ 34 U.S.C. §12291(a) (29).

Sexual assault is sexual activity where consent is not obtained or freely given. The term defines a broad continuum of violent and abusive behaviors including, but not limited to: rape, sexual assault, sexual harassment, and non-contact sexual abuse such as verbal or cyber harassment.¹⁰

Stalking: As defined in statute for the purposes of VAWA grant programs, “The term ‘stalking’ means engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.”¹¹

Stalking may include the repeated following and harassing of another person. It can also include behaviors such as unwanted phone calls, emails, and letters, leaving unwanted gifts, showing up to a location without a legitimate reason, and spying. Stalking is often composed of a series of actions that taken individually might seem harmless (i.e. sending flowers). When these collective actions (i.e. repeated unwanted gifts, phone calls, and following) cause a person to fear for their safety or suffer emotional distress, it is stalking.

Dating Violence: As defined in statute for the purposes of VAWA grant programs, “The term ‘dating violence’ means violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.”¹²

¹⁰ For more information see the Massachusetts Sexual Violence Prevention Plan (2009 – 2016) see <http://www.masoc.net/images/supporting/sv-prevention-plan.pdf>.

¹¹ 34 U.S.C. §12291(a) (30).

¹² 34 U.S.C. §12291(a)(10).

Abuse: A pattern of coercive behaviors — the tactics one person uses to establish and maintain power and control.

- Abuse is a means by which abusers try to control the way a person acts, thinks, feels, and responds to the world around them.
- A person’s inherent right to cultivate their own views, beliefs, and decision-making power is typically not honored.
- Emotional and physical safety is often compromised.

Tactics of Abuse: A common misconception is that the only tactic of abuse is physical. The following tactics serves to render the survivor in a position where they are in fear of imminent danger that may be inflicted upon them and/or their loved ones. Every abusive relationship is different and some, but not all, of these tactics could show up in any given situation.

- **Physical**
 - Slapping/punching, spitting/biting, choking/strangulation, pinching, kicking, pushing/shoving, use of weapons and objects, throwing said objects to evoke fear, withholding access to physical needs including sleep, medical attention, and food
- **Verbal**
 - Insults, name calling, put downs (“can’t you do anything right, you’re useless”), yelling/screaming, threats to hurt/or kill (survivor, themselves, family, and/or children)
- **Emotional/psychological**

- Gaslighting¹³, attacks on self-esteem, interrogation, threats, isolation, threats to “out” mental health or medical conditions, controlling personal and collective decisions, threats to take children (parental rights, filing a 51A: Child Abuse Prevention order with the Department of Children and Family), blaming everything that goes wrong on survivor, convincing survivor that no one else would want them
- **Financial**
 - Destroying credit, refusing access to money (for food, clothing, and basic needs), criminal charges, controlling the financing of the car or home, interfering with employment (calling employer all day—often a contributor to termination), denying access to accounts even if the survivor is the breadwinner, providing an allowance even if the money is earned by the survivor
- **Sexual**
 - Withholding contraception, rape, any sexual violence, withholding affection, name calling (“whore/slut”), forcing degrading acts, forced prostitution, guilt-trip coercive sex, crude insults and jokes, manipulation and blackmail based on sexual history or intimate photos, etc.
 - Marital rape is a criminal act and is illegal in all 50 United States. Consent is required within a marriage.
- **Cultural/identity abuse**

The various forms of abuse listed and the cultural considerations that contribute to a survivor’s access to support and safety are critical to a perpetrator’s ability to gain power and control over the individual. Listed below are different ways people may identify and the abuse tactics that may be used to exert power and control:

¹³ Gaslighting is a form of emotional abuse that causes a survivor to question their own feelings, instincts and sanity. Tactics include denial (e.g. “that didn’t happen, I don’t know what you are talking about”), trivializing (e.g. “you are making such a big deal out of nothing”) and diverting (e.g. “I can tell you have been talking to [friend or family member] again). For more information about gas lighting, see the “What is gaslighting” webpage from the National Domestic Violence hotline retrieved from <https://www.thehotline.org/what-is-gaslighting/>.

- *Religion* – Use of scripture from a Bible or Koran, among other religious texts to justify behaviors; or disregarding sacred rituals to show disregard and control over spiritual and religious practice (i.e. bringing red meat into the home or allowing kids to eat beef hamburgers if the household identifies as Hindu)
- *Race* – DV is statistically higher among African Americans and Latinos, compared with non-Hispanic Caucasian women¹⁴; African Americans and Latinos living in vulnerable communities encounter more social stressors, on average, than non-Hispanic Whites, including work-related problems and financial strain, as well as interpersonal and institutional racism (i.e. at the hands of police, schools, public officials, lenders and landlords, and others)
- *Immigration status* – Undocumented victims of SDV are likely to have perpetrators use their immigration status as a tactic of abuse, rooted in creating a sense of fear to gain control. Some examples of this include not allowing access to immigration documents, the abuser threatens to tell government officials (ICE, local law enforcement, etc.); survivors may be unable to call for help due to fear of status being exposed and their safety further compromised. A survivor may also be unwilling to file a complaint if the abusive partner is undocumented, particularly if they are the main source of income for the family. The survivor may fear that the abusive partner will be deported, and the family will no longer have access to that financial support.

¹⁴ For more information see, “Race/Ethnicity, Religious, Involvement, and Domestic Violence”, by Christopher G. Ellison and Jenney A. Trinitapoli of the *University of Texas at Austin*, Kristin L. Anderson of *Western Washington University*, and Bryon R. Johnson of *Baylor University*. In this study, they explore the relationship between religious participation and partner violence through analyzing data from the National Survey of Families and Households. Christopher G. Ellison, Jenny A. Trinitapoli, Kristin L. Anderson and Byron R. Johnson. 11/7/2015. Race/ethnicity, religious involvement, and domestic violence." *Violence Against Women* 13: 11: 1094-1112. 10.1177/1077801207308259.

- Gender identity and expression & sexual orientation – Lesbian, Gay, Bisexual, Transgender, and Queer Survivors (hereinafter referred to as LGBTQ unless otherwise noted) report extensive levels of judgment, stigma, shame, and isolation as there are not many resources available that understands the unique experience of a LGBTQ survivor; often the experience of LGBTQ individuals is minimized when having conversations about abusive relationships; the Center for Disease Control reports that “44 percent of lesbians and 61 percent of bisexual women experience rape, physical violence, or stalking by an intimate partner, compared to 35 percent of heterosexual women.”¹⁵

Transgender and gender non-conforming survivors of SDV experience greater isolation and are reluctant to ask for support or resources due to stigma. Research is growing, yet limited, due to the complexity of disclosures.

According to a 2015 U.S. Transgender Survey¹⁶:

- Nearly half (47%) of respondents were sexually assaulted at some point in their lifetime and one in ten (10%) were sexually assaulted in the past year; in communities of color, these numbers are higher: 53% of Black respondents were sexually assaulted in their lifetime and 13% were sexually assaulted in the last year

¹⁵For more information see Human Rights campaign: *Sexual Assault and the LGBTQ Community*.
<https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>

¹⁶See *The Report of the 2015 U.S. Transgender Survey* published by the National Center for Transgender Equality (NCTE) Retrieved from
<https://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>

James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality.

- More than half (54%) experienced some form of intimate partner violence, including acts involving coercive control and physical harm

Model 1: Power and Control Wheel

The Power and Control Wheel is a tool designed to outline the overall pattern of behaviors, which are used by an abusive partner to establish and maintain control. These behaviors may be normalized over time. Power and control are not always achieved with aggression, but with coercive tactics that are manipulative and lead to progressive force and fear.

The National Coalition Against Domestic Violence (NCADV) explains the following about power and control:

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that make others aware of the problem. However, regular use of other abusive behaviors by the abuser, when reinforced by one or more acts of physical violence, make up a larger scope of abuse. Although physical assaults may occur only occasionally, they instill fear of future violent attacks and allow the abuser to control the victim's life and circumstances.

Illustrations of the power and control wheel and the post-separation power and control wheel are particularly helpful tools in understanding the overall pattern of abusive and violence behaviors used by abusers to establish and maintain control over their partners both within and following a relationship. Very often, one or more violence incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.¹⁷

¹⁷ See “Dynamics of Abuse” published by the National Coalition Against Domestic Violence. Retrieved from <https://ncadv.org/dynamics-of-abuse>.



18

18 DOMESTIC ABUSE INTERVENTION PROGRAMS

202 East Superior Street Duluth,

Minnesota 55802

218-722-2781

www.theduluthmodel.org

<https://www.theduluthmodel.org/wp-content/uploads/2017/03/PowerandControl.pdf>

Power and Control Diagram Descriptions

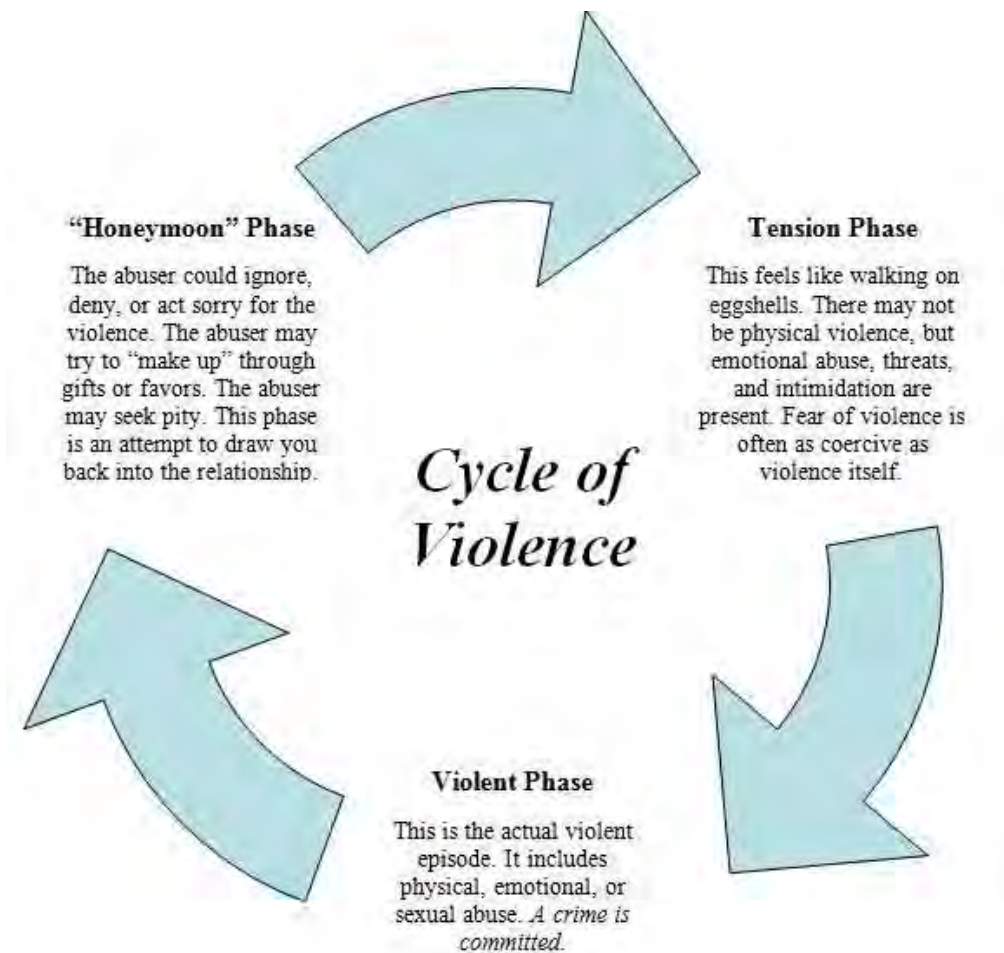
- *Psychological abuse*: playing mind games; exploiting immigration status, sexual orientation and/or disabilities; minimizing concerns, ignoring feelings and placing blame
- *Isolation*: perpetrator usually uses manipulation to create discord and disruption between loved ones including pushing loved ones away; other forms of isolation include but are not limited to: limiting contact with friends and/or family; restricting access to transportation; monitoring phone calls; becoming the only support factor in survivor's life which makes the survivor dependent on their abusive partner
- *Physical Abuse*: hitting, choking, and/or burning; threatening gestures; forcing survivor to abuse alcohol and/or other drugs; using weapons and/or other objects
- *Intimidation*: imposing fear by using looks and gestures; destroying possessions; threatening to call social service agencies and/or immigration authorities; making threats involving children
- *Using privilege*: always claiming to be right; giving commands; using religion, culture, and/or gender-roles to impose authority; "it is my right", "I expect you to do/ behave", "this is your role", and "you must obey"
- *Sexual Abuse*: being forceful, threatening or coercive; physically attacking body parts; preventing the use of birth control and/or safe sex practices; videotaping without consent, and using private photos or conversations to blackmail
- *Verbal Abuse*: name-calling; degrading remarks; using words" to instill fear; yelling and/or swearing
- *Financial Abuse*: controlling all decisions involving money; interfering with choices involving work and education; creating economic dependency; controlling finances and not paying bills to sustain household; threats to report themselves to housing for not being on the lease

Model 2: Cycle of Violence

Although the cycle of violence graphic is a useful tool to understand the mechanics of how abuse evolves and escalates over time through manipulation and fear mongering, it is imperative to note that abusive behavior can, at times, appear unpredictable. The cycle may not be linear and may not account for when the pattern of abuse takes different twists and turns that may not be anticipated. Many practitioners interpret this as intentional and a means to further coerce the survivor.

The beginning of the relationship usually lays the foundation of creating the dependency and establishing the abusive partner as the sole provider of love and affection. When the survivor does not meet the abusive partner's expectations, tension builds, and conflict often ensues. The tension can be small and unnoticeable but typically elicits a response from the abusive partner of intolerance. This typically culminates in an incident or series of incidents that may involve various tactics of abuse including, but not limited to physical, emotional, psychological, or sexual.

After this phase, the abusive partner may express remorse for their behavior. This reconciliatory phase strategically gives the survivor hope that the behavior will cease, and that the relationship will improve. Survivors will often blame themselves for not fulfilling the expectations of their abusive partner during this time. It is important to note that the abuser often attributes their behavior as a direct response to the survivor's alleged shortcomings or incompetency. This transitions into what is often referred to as the "hearts and flowers" or the "honeymoon" stage. During this time, the incident is no longer at the forefront and there is no significant abuse taking place. It is often considered to be the "calm before the storm."



19

(Teen) Dating Violence

The issue of teen dating violence is often overlooked or minimized, in part, because of how relationships have evolved throughout the last few decades. People are typically dating longer and getting married at a later age. The lack of community awareness provides limited resources for teens if they find themselves in an abusive relationship. They may not have a venue in which to disclose their experience which may result in increased isolation.

19 The Women’s Center at Marshall University created the visual representation, *Cycle of Violence*, to emphasize the repetitive phases that domestic abuse can entail. Retrieved from <https://www.marshall.edu/wcenter/domestic-violence/cycle-of-violence/>

The issue of teen dating violence is difficult to describe because “relationships” are often harder to define during this stage of life. The overall inexperience with relationships, lack of expectations, and a tendency to romanticize abusive behavior can lead to problematic behavior.

An additional challenge with teen dating violence is that limited mobility can cause breaking up and staying away to be more difficult. This is often because they may attend the same schools and/or have overlapping social circles which makes staying away from an abusive partner difficult. The following statistics speaks to the prevalence of dating violence amongst teens.

- Nearly 20.9% of female high school students and 13.4% of male high school students report being physically or sexually abused by a dating partner.
- Nearly 1.5 million high school students in the United States are physically abused by dating partners every year.
- Only 33% of teenage dating abuse victims ever told anyone about it.
- 50% of youth reporting dating violence and rape also reported attempting suicide. This is compared to 12.5% of non-abused girls and 5.4% of non-abused boys.²⁰

Peer pressure and the importance of reputation can also compound the experience of teen dating violence. Teens may feel obligated to stay in a relationship to meet social standards. It is also common for youth to be estranged from supportive adult relationships in their lives. If a teen is being abused, they may encounter the following:

- Less economic independence
- Estrangement from supportive adults
- Typically go to friends first for support

²⁰ For more information see the National Coalition Against Domestic Violence “Facts about Dating Abuse and Teen Violence.” Retrieved from https://www.speakcdn.com/assets/2497/dating_abuse_and_teen_violence_ncadv.pdf

- Threatening breakup
- Emotional immaturity
- Cat calling
- Coercive sexual activity
- Threatening to share sexting/intimate messages
- Using social media presence to manipulate
- Isolation and exclusion

Much of what teens experience in dating violence is similar to tactics of abuse that adult survivors may encounter in abusive relationships. There is an increased fear of judgment, minimization of the abusive behavior, and punitive reactions from caregivers resulting in increased isolation. These responses can put a teenager at greater risk as they may not have an outlet to discuss what is happening to them.

Domestic Violence and Teens

**Federal law and many state laws define domestic violence as abuse perpetrated by a current or former spouse, co-habitant, or co-parent. This leaves dating partners without protections afforded to other current or former intimate partners, including access to protective orders and protection from gun violence.*

Section 3: Housing Instability and Poverty

Sexual Violence, Housing Instability, and Poverty

Sexual violence (SV) – sexual activity that occurs without consent and not freely given – impacts every community and affects people of all genders, sexual orientations, and ages. Anyone can experience or perpetrate sexual violence. The perpetrator of sexual violence is often someone known to the victim – whether it is a direct or indirect relationship. According to the US Department of Justice, nearly 6 out of 10 sexual assault incidents are reported by victims to have occurred in their own home or at the home of a friend, relative, or neighbor.²¹

SV may have serious health and economic impacts. For example, a survivor may lose their employment should they have a pattern of continued absences because they have difficulty leaving their home or may encounter difficulty managing major life activities, like household budgeting, that were once easier to do.

If the incident of SV occurred in their place of employment or in their home, survivors may no longer feel safe in those environments, creating potentially significant instability. This compounded with the financial struggles that many survivors face in the aftermath of an incident of SV can render a survivor feeling hopeless and vulnerable. Survivors who struggle financially may experience that the lack of choices traps them in unsafe situations and relationships. They may be dependent on the perpetrators of violence for basic needs, such as shelter, food, medicine, transportation, healthcare, and childcare.

²¹ The U.S Department of Justice, Bureau of Justice Statistics published *Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault*. Retrieved from

<https://www.bjs.gov/content/pub/pdf/SOO.PDF>

Greenfield, Lawrence A. 1997. *Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault*, Washington, DC: Bureau of Justice Statistics, Office of Justice Programs, US Department of Justice.

Also see statistics provided by the National Crime and Victimization Survey (2010-2016.) Retrieved from

<https://www.bjs.gov/content/pub/pdf/cv16re.pdf>

Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, National Crime Victimization Survey, 2010-2016 (2017).

Federal and state policies provide guidance of what needs to be made available to survivors. However, lack of funding prohibits agencies to provide meaningful access to resources that will help sustain housing and economic stability.

Domestic Violence, Housing Instability, and Poverty

Domestic Violence (DV) survivors experience a unique set of barriers. Housing providers are often judicious when making decisions regarding protecting the safety and security of the household and community-at-large. For example, if the abuser is known to the neighborhood and is aware of where the survivor lives, there may be safety and security issues that arise. The housing provider is then charged with making swift decisions to protect the household and the community at large. Although there are housing protections for DV survivors, it does not mean they are always honored. All of the protections afforded to survivors under state and federal law are discussed in Chapters two and three of this handbook.

DV, housing instability, and poverty are often interconnected as survivors try to navigate complex systems and could lose the financial support of their partner if they choose to leave the abusive relationship. The need for safe housing and economic resources to maintain safe housing are two of the most pressing concerns among DV survivors who are planning to or have recently left abusers. This can be exacerbated if the survivor has not been allowed to work, has had their credit destroyed by the abuser, has no access to mutual accounts, has undocumented immigration status, among several other factors. The reality, per research, indicates that more than a third (38%) of DV survivors report becoming homeless immediately after separating from their partners.²² These staggering

²² For more information, see In the *Domestic Violence and Housing Problems* study by Charlene K Baker, Sarah L. Cook, and Fran H. Norris of Georgia State University. This research looks at the study the relationship between survivors of sexual violence and their ability to maintain their housing. Retrieved from [http://socialsciences.people.hawaii.edu/publications lib/domestic%20violence%20and%20housing.pdf](http://socialsciences.people.hawaii.edu/publications_lib/domestic%20violence%20and%20housing.pdf)

statistics helps us better understand the issues that survivors encounter as they make decisions to leave.

Obstacles to Leaving

A survivor's reasons for staying in an abusive relationship are extremely complex and based on the reality in which they are living.²³ Many of these reasons may be difficult for an outsider to understand. Survivors best understand the specific circumstances that define their reality. They are the experts of their own experience and are very much aware of the risks, should they decide to leave an abusive partner. Abusers may follow through with whatever threats they use to exert power and control over their partner. Leaving is dangerous. The highest risk of homicide is immediately after ending an abusive relationship. In fact, a staggering 72% of all murder-suicides involve an intimate partner; 94% of the victims of these murder suicides are female.²⁴

Additional obstacles that survivors may encounter include, but are not limited to the following:

- Children; threats to harm children, take them away from guardian's care, or a desire to keep the family together
- Economic dependency
- Lack of stable housing options; fear of homelessness; or threats to tell landlord who is and is not on the lease agreement
- Religious beliefs
- Isolation and lack of resources

²³ To hear personal stories about the barriers of leaving, see *Private Violence Presents: Why I Stayed*. Retrieved from <https://www.youtube.com/watch?v=IU50HksugZk>

²⁴ See statistics provided by the National Coalition Against Domestic Violence. Retrieved from <https://ncadv.org/statistics>. Also see Appendix A, which provides statistics on domestic homicides in Massachusetts.

- Hoping for a change; some survivors express that with time and understanding things can change the cycle of violence, power, and control
- Love; being abused does not mean that the emotions and feelings of love stop

In addition to survivors determining if and how they will flee an abusive relationship, the following challenges may present themselves:

- *Law enforcement and judicial system*
 - For survivors of SDV, the criminal legal system can be difficult to navigate. Survivors may fear or experience that police or prosecutors will lack the empathy or understanding to handle the case.²⁵ It can be very difficult to re-tell their stories numerous times which is compounded by the fear that authorities will not believe their story or that they will not be perceived as a credible witness. This process can be re-victimizing for survivors.
 - Navigating the law enforcement and judicial system without assistance and guidance can be intimidating and can prevent survivors from coming forward or bringing charges against a perpetrator.²⁶
- *Housing*
 - Housing instability creates distinctive challenges whether a survivor chooses to leave or flee an abusive relationship. If a survivor chooses to leave the home

²⁵ One important way to assist survivors who are interacting with the criminal justice system is to have a trained advocate to assist them in navigating these systems. Many SDV organizations have advocates on staff that will accompany a survivor to court or other legal meetings. For additional information, see Appendices C and D for resources available in the Commonwealth of Massachusetts or contact Safelink, the Commonwealth's 24/7 toll-free domestic violence hotline.

²⁶ There has been positive movement by the criminal justice system to provide more internal supports for victims. This includes trained victim advocates that are housed within some police stations as well as increased training for those throughout the criminal justice system to understand and support survivors. For additional information in Massachusetts, see Appendix F for information on the guidelines produced for law enforcement. Also see Appendices C and D for a listing of SDV providers in Massachusetts. SDV organizations can provide information on how to access support for survivors who are interacting with the criminal justice system.

and go into shelter, part of this transition may include experiencing shame and judgment from others. In some cases, housing instability could be perceived by a survivor. This could include a belief that they will lose their housing if they tell their housing provider that they are experiencing domestic violence because they are not aware of policies in place to support and protect them. In other cases, housing instability could be the reality of their circumstances (i.e. making a choice to leave an abusive relationship and there is no availability in domestic violence shelters).

- *Religious Context*

- Religious doctrines, practices, and teachings convey values and beliefs that influence and shape practices within communities. This may pose a significant barrier for survivors religious beliefs, yet struggle with the obligations, messages, and duties that may support and validate the tactics of abuse employed by the abusive partner. The message that may be communicated suggests that a person must adhere to the expectations set forth by their partner and endure abuse. There can be dissuasion from clergy or other spiritual and cultural supports to “keep family together.” Furthermore, some religions strongly condemn or discourage divorce. This is commonly heard as a structural barrier that survivors face in either sharing their experiences or leaving an abusive relationship.

- *Logistical Next Steps*

- If a survivor chooses to leave an abusive relationship, there are often a number of logistical challenges that they need to navigate in order to ensure their safety. This may include changing a cell phone number, changing an address, removing a child from their school, changing school systems, leaving a job, determining unemployment benefits and eligibility, and learning to navigate a new location if they must relocate.

Much of the information included in the obstacles to leaving, are also the reasons as to why a survivor may not reach out for help, accept a referral to an SDV provider agency, report the crime to law enforcement, or choose to follow through with a court proceeding against their perpetrator. Throughout Chapter 2, there is information about the type of documentation required when claiming DVDVSAS status under VAWA. It should be noted that many survivors do not seek a civil protection order or have the other forms of documentation that may be requested beyond self-certification. For any number of the aforementioned reasons (i.e. immigration status, religious context, fear, etc.) a survivor may not disclose the abusive behavior to a professional (i.e. a victim service provider, attorney, medical professional, mental health professional) or they may not have a record from a Federal, State, tribal, territorial or local law enforcement agency court, or administrative agency. The forms of documentation that may be requested is covered extensively in Chapter 2, part 1 (see question 18) and Chapter 2, part 2 (see Part A, question 2). We encourage readers to keep in mind the many challenges to disclosing abusive behavior and/or leaving an abusive relationship and that documentation beyond self-certification may not be readily available.

Section 4: Reactions to Sexual and Domestic Violence²⁷

Survivors of sexual and domestic violence (SDV) may respond in a myriad of ways to their respective experiences. Fear and having a sense of powerlessness often permeate throughout the course of every day. If a survivor has yet to understand their experience in the context of what is known to be true regarding SDV, there is a significant amount of psychological impacts of being violated and/or abused over time that need to be processed and worked through. In order to live through the experience, survivors may voice being able to manage the abuse while they were actively experiencing it. The minimization of the abuse allows the person to experience an incident of violence or abuse to survive it. When survivors are free of the abuse, they then have to come to terms with what happened, define the experience, who they are and how they want to move forward. However, this can be overwhelming and disheartening as their understanding and relationship with the world around them has changed. This experience can often elicit fear, shame, and self-hatred. It can also manifest into somatic complaints such as chest pains, headaches, and nausea.

Traumatic events create a temporary disruption of stability. Psychological trauma is the unique individual experience of an event or enduring conditions, in which:

- The individual's ability to integrate their emotional experience is overwhelmed, or
- The individual experiences (subjectively) a threat to life, bodily integrity, or sanity.

What is a Crisis?

A crisis is typically a moment in a sequence of events which often leads to a turning point. For example, graduating from college is the culmination of taking classes and completing

²⁷ Information from section 4 *Reactions to Sexual and Domestic Violence*, in particular, some of the information around trauma, neurobiology, and resilience was developed for a training titled, "Trauma, Domestic Violence & Resilience for Home Visiting and Community-Embedded Providers" that was developed by the Boston Public Health Commission (BPHC) in conjunction with Elizabeth Stone House. For additional information, see the training page of BPHC <https://www.bphc.org/whatwedo/violence-prevention/defending-childhood-initiative/Pages/Training-Institute.aspx>

finals and leads to a different phase in life. While this is often an exciting, positive time it often brings feelings of uncertainty as well as new responsibilities that may require new skills and resources.

There is typically a time-limited and time-sensitive response to said event. When experiencing different types of crisis, many different emotional responses may be present. There may be a sense of increased anxiety, hopelessness, and a perceived lack of agency. Coping strategies are employed to help manage the emotional response a person may have to the experience. It is also helpful to reach out to social supports to manage the experience.

What is Trauma?

Traumatic experiences shape how people come to understand the world and how they respond to the world around them. When caregivers and loved ones are physically and/or emotionally harmful, the following is learned:

- The world is unsafe
- People cannot or will not have what they want or need
- People are alone

There are experience(s) that threaten a person's physical, emotional, mental, and spiritual well-being, or of someone critically important to them. These events can present as frightening, chaotic, unpredictable, and overwhelming.

It should be noted that the responses to trauma can be similar to the reactions to a crisis.

Traumatic Events

- Occur outside the range of normal human experience
- Includes threats to life and/or physical, emotional or spiritual integrity

- Are typically overwhelming/incomprehensible
- Renders the feeling of powerlessness or inability to control environment

Levels of Trauma Model

The Levels of Trauma Model provides a context from which to understand the structural dynamics that may influence how survivors come to understand their respective experience. There are four levels to this model:

- *Internalized (values and beliefs of self)*
- *Interpersonal (interactions between individuals)*
- *Institutional (procedures that impact safety/healing outcomes)*
- *Structural (laws, culture, and relationships between institutions)*

The first analysis focuses on how the survivor has begun to process their experience, namely how this experience has shaped and influenced how they interact with the world. The second layer of analysis includes understanding the connection between how the survivor responds to interpersonal interactions with people outside of the context of the relationship with the perpetrator of SDV. A survivor's network of support is critical. The third layer represents the institutional level. Having a higher level of understanding regarding the institutional supports in the survivor's life that aids the stabilization of their wellbeing is a fundamental aspect of this model. It includes, but is not limited to, exploring institutional supports such as housing, employment, therapeutic resources, and specialized agencies. These institutions may create a pathway for survivors to access necessary support and services, but these institutions can also cause repeated trauma. The fourth layer represents the structural, including the relationships between institutions. At a structural level, these agencies and resources may be impacted by governing bodies that may not have a full appreciation for how trauma impacts someone's lived experience.

It is important to note that survivors may choose not to leave their relationship for the plethora of reasons aforementioned. Survivors may experience unhealthy levels of stress and distress, which may impact their ability to heal and stabilize. The hope is that they can access resources such as housing, employment, therapeutic resources, and specialized agencies and be assured that they are making informed decisions about how they want to move forward with their life.

The following are some examples of how this model may apply in both a positive and negative context.

- ***Internalized (values and beliefs of self)***
 - Negative: “It’s my fault I was raped. If I listened better, my partner wouldn’t be so violent.”
 - Positive: “I am strong and resilient. I have survived the abuse by my partner, and I am strong enough to leave this relationship.”
- ***Interpersonal (interactions between individuals)***
 - Negative: Survivor feels blamed for sexual assault by housing provider after they ask, “how much did you drink that night?”
 - Positive: Survivor is told “I believe you” by a Resident Service Coordinator and provided with a referral to a local DV provider agency.
- ***Institutional (procedures that impact safety/healing outcomes)***
 - Negative: Policy requiring extensive documentation of domestic violence in order to provide an emergency transfer and not providing clear instructions to complete and acquire the documents.
 - Positive: A housing provider designates a VAWA coordinator that assists a survivor of Domestic Violence through an emergency transfer to another site.

- **Structural (laws, culture, and relationships between institutions)**
 - Negative: Cultural norms of asking, “why didn’t you leave the relationship” as opposed to asking the question of why perpetrators abuse their partners.
 - Positive: Cultural movement around #metoo that demonstrates the prevalence of sexual and domestic violence, allowing survivors to feel they are not alone.

Resilience

Resilience is the capacity of individuals and communities to adapt, survive, and bounce back in the midst of hardship and adversity. Rather than being permanent or innate, resilience is dynamic and fluid; it can be shaped by many factors and expressed in multiple ways.

Trauma and Neurobiology

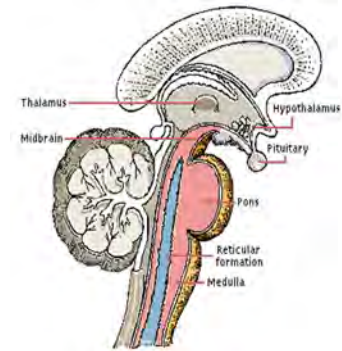
Understanding that SDV is a continuous pattern of power and control on another person's emotional, psychological, physical, sexual and financial wellbeing is critical. A brain that has not gone through recurrent violence can use healthy, reciprocating experiences to strengthen brain development. Trauma interrupts the normative brain development. For example, it may have an impact on a person's ability to make decisions, have healthy reactions, and an ability to promote emotional and psychological wellbeing. SDV shifts the neurobiology in the working brain and does not allow reasonable responses to stress, integrity and decision making to occur. If trauma exposure is prolonged, severe, and recurrent it impairs cognitive functioning and emotional regulation.

Neurobiology of Trauma: What is going on in there?

The following three principal parts of the brain are relevant in helping people understand the impact of trauma.

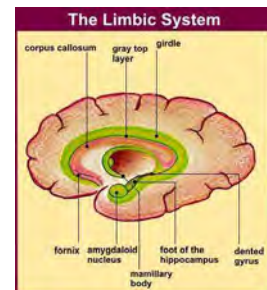
- **Instinctual/brain stem:** “caveman” brain, controls messages from the brain to the body, and basic bodily functions

- Desire for instant gratification
- Keeps us safe and alive
- Automatic reactions
 - Blood circulation
 - Muscle contractions
 - Temperature regulation
 - Breathing, sleeping, eating



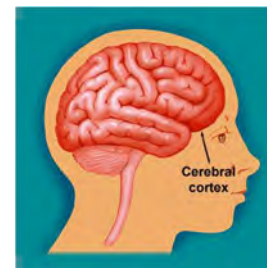
- **Emotional/limbic:** emotions like fear and love originate in this part of the brain and it is also the area that stores memories and manages capacity to pay attention

- Site of emotions
- Site of memory storage
- Automatic reactions:
 - “First alert” alarm system in times of stress and crisis
 - Fight, flight or freeze response



- **Rational/cerebral cortex:** associated with higher brain function including processing details and information, decision making, and it impacts thoughts and actions

- Sense of linear time
- Conscious and alert
 - Observes, anticipates, plans, and responds
 - Makes logical decisions
- Integrates other parts of the brain



Trauma is thought to disrupt the normal functioning of the cerebral cortex. This provides some context to why a survivor might miss or be late to scheduled appointments (such as a recertification) or forget important documents.

Neuroplasticity²⁸

Neuroplasticity is the brain's ability to sustain itself by creating new neural pathways, often referred to as the reorganizing of neural connections. It allows the neurons to compensate for injury and disease and adapts the neurons' activities in response to new experiences or to changes in the environment. During such changes, the brain engages in a process that focuses on removing neural connections that are no longer necessary or useful, and strengthening the necessary ones. In the event of processing traumatic experiences, neuroplasticity suggests that the brain can adjust and adapt as a way to work through the trauma.

How do you develop Neuroplasticity?

There is a movement in the neurosciences to incorporate various techniques that maximize the brain's ability to change and heal itself. Listed below are a few ways to increase and harness the power of neuroplasticity as it pertains to recovering from trauma.

- Through therapy or coaching, namely reframing the experience and focusing on thoughts, feelings, and responses using a clarifying perspective
- The brain needs quality sleep to reset brain connections that are important for memory, learning and overall functioning
- Exposure to new things, an emphasis on continued learning and physical activities
- Reduction of stress, incorporating techniques to help center one's mind, body, and spirit i.e. meditation, yoga, practicing mindfulness

²⁸ For more information see the video, "Neuroplasticity" which is the fourth video in the "Sentis Brain Animation Series." This brief animation demonstrates how we all have the ability to learn and change by rewiring our brains. Retrieved from <https://www.youtube.com/watch?v=ELpfYCZa87g>

- Finding a strong purpose for what you're planning to learn, finding the meaning to connect to your passion for the subject matter
- Incorporating reading on a regular basis

The purpose of the above-mentioned techniques is to generate a different understanding and perspective as it comes to putting into the context the experience a survivor endured. Through a consistent, intentional practice it is believed that survivors can heal and redefine how the experience endured subsequently shapes and influences their life.

Trauma Responses and Housing Instability

There is a movement by public health experts and trauma researchers to understand the impact of housing instability on SDV survivors. There are efforts to encourage housing providers to implement trauma-informed policies, procedures, protocols, and practices that may significantly alter a survivor's experience in a housing community.

The examples listed below are **common emotional reactions** to SDV that may be triggered by housing instability and safety concerns that may arise in their respective housing community.

- **Shame/self-blame**
 - “I should have known to not get myself into this unsafe situation” or “I should not have let him into my room”
- **Anxiety/stress**
 - Worry about how to pay rent for this month or whether perpetrator/perpetrator's family will retaliate
- **Anger**
 - Upset at having no immediate transfer options
- **Fear**
 - Afraid of not being believed if tenant shares their situation with landlord

- Choosing not to disclose because of damage to the property that is the result of SDV
- **Sadness**
 - Unhappy while communicating with other tenants/providers, breaking down and crying in the middle of a conversation
- **Powerlessness**
 - Lack of control over transfer timeline
 - Lack of financial means to resolve rent arrearages
- **Denial**
 - Believes the people are unaware of abuse, believes abuse is not a problem and has no impact on well-being or other tenants
- **Confusion**
 - Lack of understanding around what their rights are, what the process is, or what the language means in the VAWA documents they receive
- **Triggered**
 - Experiences discomfort or flashbacks because they are staying in the same housing unit where incident occurred
- **Healing**
 - Acknowledges the harmful impact SDV has/is having and seeks supports with leaving, starts talking about life and open to understanding, re-engaging with friends and family, and no longer in isolation
- **Strong/Resilient**
 - Ability to adapt to life's circumstances and demonstrate survival skills and methods beyond the trauma, takes control of housing matters to regain or assert safety

Expressed Behaviors

Although there may not be an awareness that a household member is an SDV survivor, the lived experience of that member is shaped and influenced by the former or current

trauma. They may often suffer through their circumstances in isolation. The intersection between a survivor's experience and their tenancy is, therefore, precarious. They may experience fear of not knowing who is aware, the impact of what is going on in the household on their tenancy, and the potential safety issues that may arise. This is compounded by other worries they may experience including the impact of their experience on their children, other members of their family, friends, and employment. The risk to housing stability is significant and often policies, protocols, and practices may be experienced as harmful. For example, when a universal memo is distributed, a survivor may be avoidant and frustrated with the contents of said memo, believing they are being targeted for doing something wrong. Although the behavioral responses are common, it may often be misunderstood, especially if the housing provider is unaware of the situation.

The examples listed below are **common behavioral reactions** to these types of trauma that may be further triggered by housing instability and safety concerns that may arise in their respective housing community.

- **Isolation**
 - Staying in their apartment most of the time with limited interaction with other tenants/providers
- **Distrust**
 - Not reaching out for support until much later after the incident(s)
- **Flashbacks**
 - Flashbacks of incident(s) that feel real i.e. feel as if it is happening again in the home or property
- **Return to normalcy**
 - May not have energy or desire to engage with staff or the community
- **Hypervigilance**

- Putting extra barricades on their doors/windows for extra security measures
- **Disordered eating**
 - Eating may not be the priority or fear of leaving home to go grocery shopping
- **Substance use**
 - Violating no smoking policies, using illicit substances in their apartments
- **Inability to focus**
 - Can impact documentation requests, perceived as avoiding meetings but cannot remember appointment
- **Irritability**
 - Easily gets annoyed when reminded about a housing rule e.g. no smoking in common areas

Trauma-informed Responses and Spaces

Trauma informed practices create an environment in which survivors experience a sense of stability and safety that they may not have experienced in a long time. By applying policies, regulations, and limitations consistently and uniformly, the housing provider does not run the risk of creating what is perceived to be an unsafe situation. Living on edge and not knowing what to anticipate has a psychological, physical, and spiritual impact on the survivor.

The following are suggestions of things to consider that promote a sense of safety and security:

- Clear understanding and explanation of policies, regulations, limitations
- Private space for resources, phone, and support
- Offer space and time to engage the survivor – ask safe/best times when they can connect; oftentimes, survivors just want to be heard

- Staff training and support
- Referral to appropriate resources – regional or closest DV/SA program.²⁹
- Consult with a local DV or SA provider for guidance and support

SEEK Model³⁰

One model for first response to disclosure is the SEEK model, which represents four important components to consider if a survivor chooses to disclose: safety, empowerment, empathy, and knowledge.

- **Safety:**
 - Address any immediate physical or emotional concerns. Be prepared to make a referral to a sexual or domestic violence provider. In the case of disclosure of a sexual assault, be aware of time sensitive information and post-assault medical care. A housing provider should also be prepared to make appropriate referrals in the case of substance use or self-harming behaviors.
 - Refer to Chapter two section two regarding your responsibility in changing the locks, if necessary.
 - Ensure privacy for residents to discuss their situation. This includes a closed off space for conversation and respecting the personal space of the survivor.
 - Protect the confidentiality of your conversation. Refer to Chapter two for your responsibilities in maintaining confidential information as well as how confidential information is addressed under VAWA. Inform the survivor of the limits of your confidentiality if there is information that you are

²⁹ See Appendix C for list of resources through Jane Doe, Inc. Also, see Appendix D for list of Department of Public Health (DPH) funded programs.

³⁰ The SEEK Model was created by the Boston Area Rape Crisis Center (BARCC) as a guide for sexual assault disclosures. This information also applies if a survivor is disclosing domestic violence, dating violence, or stalking.

required to share. You should never discuss a disclosure or confidential conversation with another resident.

- **Empowerment:**

- Be aware of the language that you use. For example, using language such as “I understand the situation is complicated and I am here to support you” demonstrates a level of empathy and empowerment to the survivor.
- Let the survivor decide what to talk about. Do not ask unnecessary questions, but rather, use open ended questions that build a sense of rapport and allows the survivor to direct the conversation.
- Perpetrators of SDV often operate on the basis of power and control. Allowing a survivor the opportunity to direct the conversation and make their own decisions may help serve as a source of empowerment as they determine their next steps.
- Present options as they apply to your role. Refer to chapter two and three for detailed content around emergency transfers, bifurcation of lease, and what information and/or forms you are required to provide to a survivor.
- Be respectful of the decisions that a survivor makes. As mentioned earlier in this chapter, leaving a relationship is difficult and often very dangerous. If the survivor chooses to disclose and remains in the relationship or returns to the relationship, it is their decision to do so.

- **Empathy:**

- Believe the survivor.
- Put yourself in their shoes. If a survivor chooses to disclose, they may do so with a sense of fear, reluctance, or shame. SDV is a deeply personal experience and approaching a disclosure with a baseline of empathy toward the survivor may help alleviate some of those feelings.
- Validate their experiences. Use language such as “You don’t deserve this. It’s not your fault.”

- **Knowledge:**
 - Know your role in the situation. Be prepared to make a referral to an SDV provider or another social service provider, as necessary.
 - Be prepared! Know the policies that your company has in place and consult your attorney for specific cases. Refer to chapters two and three to understand the responsibilities of housing providers.

Role of Housing Provider

Throughout Chapters two and three of this handbook, you will read about the specific responsibilities that housing providers have in relation to VAWA and Massachusetts state law. Understanding what you should do when you suspect that there is/was an incident of SDV or former/current abuse impacting a household is easier when you define the roles and responsibilities of each team member onsite. If you suspect that someone has experienced an incident of violence or abuse in their home, it is important to handle the matter with concern and empathy, while reserving judgment and providing resources. Using an accusatory tone and making assumptions of what is happening or not happening is not consistent with a trauma informed approach nor is it part of a housing provider's role. Upholding the standards of the housing program and being consistent with its application is essential to everyone's well-being and safety.

Accessing resources and support helps inform your reactions and responses to the disclosure and demonstrates your due diligence in trying to achieve a higher level of understanding. It may be helpful to consult with an agency to provide guidance on how to engage the survivor who may be vulnerable and afraid to speak up given the experiences they may have with institutions, agencies, and loved ones. Oftentimes the survivor may feel exposed, ashamed, nervous, and angry. The housing provider may experience an inherent need to save and rescue. As providers of independent housing, however, we must remember that each individual adult tenant has the right to make their own decisions.

The housing provider's goal is to provide people with information and appropriate referrals to help them make the best decision they can for themselves and their loved ones and to work to ensure that they do not experience negative housing consequences as a direct result of the abuse. Although housing providers may be more familiar with these experiences from trainings or things they have encountered, they are not an expert of anyone else's experience. It is critical to listen and remind the survivor that they are the actual expert of their experience. Therefore, the decisions survivors make are informed by multiple factors that only they know.

Taking the time to build a relationship is critical. As you build rapport, it is important to establish boundaries, clarify your role as a housing provider, and inform the tenant of your limitations. Empathetic engagement indicates that you are invested and willing to get to know the tenant community. The following are things to consider as you go through this process as well as some helpful responses:

- Show that you care by building a relationship.
 - "I am here if you need to check in about anything."
 - "I'm worried about your late rent payments. Let me know if something is making it hard for you to pay on time."
- Express concern without asking pointedly about SDV.
 - "I've heard fighting in your apartment and am worried about you. What can I do? How can I be most helpful?"
 - Refrain from asking: "Are you being abused?"
- If a tenant shows trauma reactions (e.g., anger outbursts, irritability, substance use), offer to direct them to supports.
- Post resources in spaces where everyone can access the materials and where there is some privacy for tenants to take them (i.e. in public bathrooms, the laundry rooms, by mailboxes).

- Do not slip a brochure under someone’s door or include in the rent invoice. If they are being abused, the abuser may see it.

Responding to Disclosure

Disclosing information about their experience can spark extreme fear, exposure, judgment and shame. The idea of eviction is a major deterrent to disclose when an abusive partner is not on the lease or when the abuse is happening on the property. Engaging the tenant in a way that is safe and private can help all parties understand the extent of their situation. Sometimes speaking one’s experience out loud can have a profound effect. Things may fall into context in a way that would not have happened if the survivor continued to deal with their experience in isolation. Housing providers should be prepared to make a referral to a Sexual or Domestic Violence Provider if the survivor would like to be connected. Please see Appendix C and Appendix D for statewide and regional resources. In the case of a sexual assault, Massachusetts also offers Sexual Assault Nurse Examiners, commonly referred to as SANE nurses. Please see Appendix E for more information and for a link to hospitals that offer SANE services.

- **Helpful responses to disclosure:**
 - “I believe you”
 - “The abuse is not your fault”
 - “You deserve to be safe”
 - “I am concerned about your safety and the safety of your family”
 - “What is happening to you is wrong”
 - “What would you like to do?”
 - “What would be helpful from me?”

It may be helpful to consider the following when having a conversation with a survivor:

- Listen without judgment

- Believe them
- Let them know that you respect them for telling you
- Affirm that it takes courage and strength to talk about SDV and other traumatic experiences
- Acknowledge possible mixed feelings that may erupt
- Do not give advice or become over-involved, never attempt to mediate between partners – can make the situation worse and/or more dangerous
- Tell them that there is support available
- Consider their risk factors through active listening
- Refer to or consult with a local SDV agency with the understanding that it is the survivor’s decision to accept a referral
- Remember that leaving an abusive relationship can be dangerous! Do not attempt to make a safety plan with the survivor
- Use this handbook to understand your responsibilities, depending on your role. If you are a housing provider, know what your responsibilities are and the policies that are in place if a resident is looking for an emergency transfer, bifurcation of lease, etc.

Conclusion

Throughout Chapter 1, we have provided a basis for some of the important components of DVDVSAS. This information is designed to serve as a baseline for the information contained in Chapters 2 and 3, which provides a thorough and comprehensive overview of housing providers rights and responsibilities in relation to survivors of DVDVSAS. Chapter 1 was also designed to highlight the numerous and varied challenges that survivors encounter, as well as a linkage to the resources available in the appendices of this handbook. We encourage readers to consider the nuances as they review Chapters 2 and 3 and use the collective information as a source of knowledge and empowerment to assist residents with the best possible outcome.

Chapter 2, Part 1

*Applicable Laws, the Legal Framework and
General Questions*

Chapter 2, Part 1:

Applicable Laws, the Legal Framework and General Questions

The following list of questions is organized by topics and covers the whole occupancy cycle: the application process, occupancy, and termination of assistance and tenancy. That said, we begin with a section on general questions designed to give people an overview of the Federal and Massachusetts state laws that protect survivors of domestic violence, dating violence, sexual assault and stalking (DVDVSAS). The intent of this section isn't to give a detailed analysis of these laws or to include every aspect. Instead, we have chosen to address important information that housing providers need to know to comply with applicable laws in relation to housing operations, and to do so in a manner that is effective for all applicants and residents, including survivors of DVDVSAS. People familiar with the federal and state laws which protect survivors of DVDVSAS in Massachusetts as well as fair housing laws can skip this section. Also, please see Appendices H, I, J, and K for a detailed reference guide by topic.

As stated in the Acknowledgment and Disclaimer, as of this writing, although the funding (appropriations) for the Violence Against Women's Act (VAWA) of 2013¹ has expired, the statute and regulations which contain the housing protections of VAWA remain in effect and there is no expiration date on those protections. HUD's representatives have also confirmed that HUD Covered Housing Provider must comply with HUD's regulations and guidance. As such, this chapter focuses on HUD's regulations and guidance and provides a framework for understanding the guidance by providing citations to VAWA 2013 when applicable.

¹ This Violence Against Women's Act (VAWA) of 2013 is cited as 34 U.S.C. [§12291](#).

1. What makes up the law?

The “law” is made up of several kinds of rules: statutes, regulations, executive orders, constitutions, administrative directive systems and judicial and administrative decisions (case law).

A. Statutes

A statute is law in the way most people think about laws, a written collection of rules passed by a legislature. Both Congress and state legislatures pass statutes which may be referred to by the name of the law (Violence Against Women Reauthorization Act, the Fair Housing Act, The Americans with Disabilities Act, Rehabilitation Act, etc.), the number of the law (P.L. 113-4 [Public Law 113-4]), or the code citation from the complete collection of state or federal laws (42 U.S.C. [United States Code] §13701 [Section 13701], G.L. [Massachusetts General Laws]² c. 186 [Chapter 186] §23-29).

B. Regulations

Regulations are the rules government agencies responsible for administering statutes create. Regulations provide structure, detailed procedures, and specific rules to carry out the requirements of more general statutory provisions. Although regulations are related to the statutes they implement, they are also rules, which must be followed. “Regs” set standards of behavior and often provide the procedures for filing a complaint, making an appeal, and requesting a review. Like statutes, they are referred to by code citations (24 [Part 24] C.F.R. [Code of Federal Regulations] §5.2001 [Section 5.2001]), (950 [Part 950] C.M.R. [Code of Massachusetts Regulations] §130 [Section 130]).

² In Massachusetts, laws are cited as G.L. rather than M.G.L.

There are several federal agencies that oversee federally funded or financed affordable housing, including the U.S. Department of Housing and Urban Development (HUD); Rural Development (RD), which is part of the U.S. Department of Agriculture; and the Internal Revenue Service (IRS), which is part of the U.S. Treasury Department, which have created regulations for the programs they oversee.³ HUD funds and oversees the largest number of federal housing programs and has made a number of regulatory changes to implement the requirements of VAWA.⁴

HUD is divided into many different divisions and offices which oversee various programs and functions. For the purposes of this Handbook and companion training, the three most relevant include Community Planning and Development⁵; Multifamily Housing (falls under the Office of Housing)⁶; and Public and Indian Housing⁷. Understanding that there are different divisions is important because each housing program within each division has different regulations and program rules which will be focused on.

³ The U.S. Department of Housing and Urban Development's regulations are contained in 24 CFR Subtitle B; the U.S. Department of Agriculture's regulations are contained in 7 C.F.R §§ 1800 through 2029 and §§ 3500 through 3599; and the Internal Revenue Service (IRS) regulations for the Low-Income Housing Tax Credit Program are contained in 26 CFR Part 1.

⁴ See question #11 herein for information on how HUD issued guidance to implement VAWA 2013.

⁵ HUD's Community Planning and Development division, specifically the Office of Affordable Housing Programs (OAHP) administers grant programs that help finance affordable housing in MA: HOME Investments Partnerships Program (HOME) and the National Housing Trust Fund (HTF). These programs are administered on a state level. The HOME fund is administered by Participating Jurisdictions (state agency or local government entities) and the HTF program is administered by each state. In MA, the Department of Housing and Community Development (DHCD) is responsible for the allocation and oversight of the State HOME funds, and the HTF funds.

⁶ HUD's Multifamily Housing division provides financing and subsidies for housing that is privately owned by non-profit or for-profit entities.

⁷ HUD's Public and Indian Housing division gives funds and technical support to state and local housing authorities both for public housing and the Housing Choice Voucher (HCV) Program, sometimes referred to as Section 8. The HCV program allows individuals to use a voucher to help pay for housing owned by a private or public entity. PHAs may also utilize vouchers at a private site, and these are referred to as Project-Based Vouchers (PBV).

C. Executive Orders

Another kind of law is an executive order issued by the President of the United States (U.S.) or the governor of a state. Executive orders set requirements for behavior, operations or policy for agencies of the government. For example, Massachusetts Executive Order Executive Order 491 established a zero-tolerance policy for sexual assault, domestic violence and stalking and requires state agencies to issue written policies and to provide copies of the policy to all employees. The Executive Order applies to all individuals employed on a full-time or part-time basis by the Office of the Governor or any state agency under the Executive Department. (NOTE: Even though Massachusetts is called a “Commonwealth,” it is treated like any other state.)

D. Constitutions

State and federal constitutions are another kind of law prohibiting various types of discrimination. The United States Constitution is the highest form of law and all other kinds of law must conform to it. The state constitution is the highest state law and all state laws must conform. State constitutions may have higher standards than the federal constitution but not lower. The U.S. Constitution sets requirements for the equal protection of citizens and due process (fair procedure) but is not often relied upon in cases involving discrimination against survivors of domestic violence.

E. Directive Systems

Government agencies that administer housing programs have various methods of communicating rules that program participants must, should, and can follow. For example, the Department of Housing and Urban Development’s (HUD’s) directive system for assisted housing providers and public housing providers consists of handbooks and notices.

Handbooks are an important source for understanding what HUD believes its regulations and the statutes that cover the housing program mean. HUD's handbooks contain mandatory rules, advisory guidance, and statements of what owners are permitted to do. If a dispute about housing policy ends up in court, judges often give a lot of weight to what HUD says in its handbooks. *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs* is a "rule book" on the occupancy, policies, and procedures governing many subsidized, multifamily housing programs. It includes many obligations relating to issues contained in this handbook. It is commonly referred to as HUD Handbook 4350.3 or simply the 4350.3.⁸ The Office of Public and Indian Housing also has an Occupancy Handbook for the Public housing program (7465.1)⁹ and guidebooks for the Public Housing Program and the Housing Choice Voucher (HCV) Program which PHA's rely on for guidance. They are titled Public Housing Occupancy Guidebook¹⁰ and Housing Choice Voucher Program Guidebook. The Housing Choice Voucher Program Guidebook is currently being updated and as they are completed, chapters are

⁸ See https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3 The 4350.3, which most recently was updated in November 2013, provides that VAWA only applies to the Section 8 program, which is incorrect. The Handbook also doesn't include any of VAWA 2013's requirements in any of the chapters, exhibits or appendixes, and nor does it contain any of the guidance provided by HUD's Final Rule implementing VAWA 2013 which was published 11/16/16 and became effective 12/16/16. Compliance with the rule re: completing an emergency transfer plan/providing emergency transfers, and associated recordkeeping and reporting requirements, was required by 06/14/17. See <https://www.federalregister.gov/documents/2016/11/16/2016-25888/violence-against-women-reauthorization-act-of-2013-implementation-in-hud-housing-programs> Please note that HUD issued a correction in the Federal Register on 12/06/16 because of an incorrect compliance date in the preamble and an incorrect paragraph designation in the regulatory text. See <https://www.federalregister.gov/documents/2016/12/06/2016-29213/violence-against-women-reauthorization-act-of-2013-implementation-in-hud-housing-programs-correction>.

⁹ See https://www.hud.gov/program_offices/administration/hudclips/handbooks/pihh/7465.1.

¹⁰ This can be located at https://www.hud.gov/sites/documents/DOC_10760.PDF.

posted on the HUD HCV Program Guidebook webpage.¹¹ Unfortunately, with the exception of references within the newest HCV Program Guidebook chapters, these handbooks and guidebooks haven't been updated to include the requirements contained in the 2013 Reauthorization of VAWA.

HUD's notices to its staff and program participants (owners and their agents, which are often referred to as 'O/As') are extremely important because the notices inform them of a change in policy or rule or to reaffirm an existing rule or amend a regulation. This is particularly important because Handbooks aren't updated very often, and O/As need to be informed of changes in statutes and regulations. HUD's Office of Multifamily Housing Programs also communicates important information through its Rental Housing Integrity Improvement Project (RHIP) listserv.¹² HUD has communicated the requirements of VAWA 2013, and HUD's implementing regulations to O/As, through the RHIP listserv.¹³ HUD's Office of Community Planning and Development uses HOME CPD Notices, HOME Policy Memos, HOME FACTS and its official policy newsletter, HOMEfires, to communicate specific policy.¹⁴ HUD's Offices of Public and Indian Housing¹⁵ and Multifamily Housing¹⁶ have also issued a number of notices on VAWA. Some of these notices were

¹¹ https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook.

¹² RHIP website: https://www.hud.gov/program_offices/housing/mfh/rhiip/mfhrhiip.

¹³ RHIP notices re VAWA can be located at:
<https://www.hud.gov/sites/dfiles/Housing/documents/ListRHIPArchive2018a1.pdf>

¹⁴ See question #11 herein for information on HOME issued guidance on implementing VAWA 2013.

¹⁵ The most recent notice is: PIH-2017-08 (HA), (which Supersedes **PIH Notice** 2007-5; **PIH Notice** 2006-42; **PIH Notice** 2006-23) [Hereinafter referred to as HUD PIH]. The most recent **PIH Notice** (2017-08) [Hereinafter referred to as **PIH Notice**] can be located at <https://www.hud.gov/sites/documents/17-08PIHN.PDF>

¹⁶ The most recent notice is: H-2017-05, (which superseded H 2010-23; H 2009-15) [Hereinafter referred to as **Multifamily Notice**]. The **Multifamily Notice** (H 2017-05) can be located at: <https://www.hud.gov/sites/documents/17-05HSGN.PDF>.

updated by others. Also, as time goes on, notices may expire. Expired notices are sometimes referenced in the newer notices or replaced by a newer notice. Unless a notice is specifically replaced, or contrary guidance has been issued, it may be helpful for housing providers to read an expired notice to get an understanding as to HUD's thinking on a topic because many expired notices are still good guidance. In other words, just because a notice hasn't been reissued doesn't mean HUD has changed its position on a matter. It can simply mean that HUD hasn't gotten around to reissuing the notice. If you have a question regarding the validity of the information contained in an expired notice contact HUD directly and ask for clarification. For a list of notices relevant to VAWA, please see Appendix F. As mentioned above, as with other important topics, HUD has used its RHIP listserv to communicate to O/As what they are required to do and by what date, and to notify them of sample and VAWA required related HUD forms that must be implemented.

F. Case Law

Laws and protections are interpreted through written decisions by courts. The written decisions are called "case law." In some cases, it may be an administrative agency "making" case law. For example, HUD is an administrative agency responsible for enforcement of cases involving the Fair Housing Act, including domestic violence cases brought under this law. Another example of an administrative agency is the Massachusetts Commission Against Discrimination (MCAD), which enforces Massachusetts' discrimination laws, including DVDVSAS cases brought under our state statute.

If a person or housing agency disagrees with the decision a court or administrative agency makes, they can often appeal it. A higher court, an "appellate" court, will make a "ruling" (a decision) either rejecting or upholding the earlier decision. These rulings are law too and they provide

more specific guidance about the meaning and scope of statutory, regulatory or constitutional provisions. For example, the Federal District Court may rule on the meaning of Section 504 of the Rehabilitation Act. On appeal, the Court of Appeals may reverse the lower court's interpretation. Then, the parties can ask the highest court, the United States Supreme Court, to hear the case. If it takes the case, the Supreme Court will uphold or reverse the Court of Appeals' decision. In cases where a higher court disagrees with a lower court's decision of a case, the higher court decision "controls" (wins) and the decision of the lower court may be disregarded. If a decision is not appealed, the lower court decision stands. All these court decisions add to our understanding of the meaning of laws.

State laws can also be enforced at different levels of courts. The names of these courts differ from state to state. In Massachusetts, they are the District or Superior Court, the Court of Appeals, and the Supreme Judicial Court (SJC). If a decision is made at a local or appellate level in either the state or federal courts, that decision governs only in the geographic region covered by that court. Often lawyers from one region will use a case from another region as support for their point of view. Sometimes a judge in another region will give great weight to the first region's decision; other times, the judge will make a different decision. When the regional decisions differ, sooner or later someone will appeal to the highest court. If the highest court takes the case, its decision will then govern everywhere.

Please note that in the area of housing and the rights of survivors of DVDVSA and stalking, there is a growing body of case law.¹⁷ The focus of this handbook

¹⁷ For examples of case law see the National Housing Law Project's website at <https://www.nhlp.org/initiatives/protections-for-survivors-of-domestic-and-sexual-violence/>. Please note that the case law with regard to claims of discrimination have focused on domestic violence and sex

and companion training isn't to analyze the case law, which is fact specific, but rather to provide participants an effective approach to complex situations which takes into account both the letter and spirit of the law. That said, if a particular case is relevant to a topic, it may be discussed or cited.

2. What happens if more than one law applies?

In many cases, you may have obligations under federal and state laws and HUD's Directive System. For example, O/As have obligations under VAWA (Federal) and An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking (Massachusetts).¹⁸ Where more than one law applies in a particular case, you are obligated to comply with all of the laws, unless a rule states that it is superseded by a specific law. Federal laws do not normally supersede state laws if the state law provides greater protection. Note: A good guiding rule to meeting your obligations regarding survivors of DVDVSAS is to follow the requirement which provides the applicant or tenant the most protection, as well as the spirit of the applicable law(s).

discrimination. Although the cases have involved domestic violence, the analysis used in these cases may also be applied to how housing providers handle situations involving sexual assault, stalking and dating violence.

¹⁸ See 34 U.S.C. §12291 and G.L. c.186 §§23-29. Likewise, in respect to disability discrimination, a housing provider in Massachusetts would have to comply with both state and federal laws that apply to them. These include the Massachusetts disability discrimination law, (The Massachusetts Housing Bill of Rights for People with Disabilities, commonly referred to as Chapter 151B), Article 114 of the Massachusetts Constitution, the Massachusetts Equal Rights Law (G.L. Chapter 93 §103), Section 504 of the Rehabilitation Act, The Fair Housing Act and Title II of the ADA. Some of these laws require a housing provider to do more than others or provide protection for individuals who are not covered in other statutes or provide different remedies than others.

3. What Federal and State laws provide housing protections to survivors of DVDVSAS in Massachusetts?

A federal statute, the Violence Against Women Act, commonly referred to as VAWA, provides survivors of domestic violence¹⁹, dating violence²⁰, sexual assault²¹, and stalking²² numerous protections throughout the occupancy cycle in specific federal housing programs.²³ In Massachusetts, survivors of domestic violence²⁴, rape²⁵, sexual assault²⁶ and stalking²⁷ have rights and protections in all²⁸ housing under a state statute, called *An Act Relative to Housing Rights For Victims Of Domestic Violence, Rape, Sexual Assault And Stalking*²⁹. This law is

¹⁹See definition of “domestic violence” at 34 U.S.C. § § 12291(a)(8). HUD’s final rule further defined this term in 24 CFR 5.2003.

²⁰ See definition of “dating violence” at 34 U.S.C. § § 12291(a)(10).

²¹ See definition of “sexual assault” at 34 U.S.C. § § 12291(a)(29).

²² See definition of “stalking” at 34 U.S.C. § § 12291(a)(30).

²³ See “covered housing programs” at 34 U.S.C. § § 12491(a)(3).

²⁴ See definition of “domestic violence” at G.L.c.186 §23.

²⁵ See definition of “rape” at G.L.c.186 §23.

²⁶ See definition of “sexual assault” at G.L.c.186 §23.

²⁷ See definition of “stalking” at G.L.c.186 §23.

²⁸ The statute’s definition section, G.L.c.186 §23, refers to Owners, as defined in 105 CMR 410.020, (MINIMUM STANDARDS OF FITNESS FOR HUMAN HABITATION (STATE SANITARY CODE, CHAPTER II). This section also defines “Housing subsidy provider”.

²⁹ See G.L. c.186 §§23-29, <https://malegislature.gov/Laws/GeneralLaws/PartII/TitleI/Chapter186>.

It is also important to note that in Massachusetts survivors of DVDVSAS may utilize protective orders. In Massachusetts, there are two types of protective orders: an abuse prevention order (209A) and a harassment prevention order (258E). For more information on an abuse prevention order (209A) see <https://www.masslegalhelp.org/domestic-violence/wdwegfh/chapter6-209a-protective-orders>. For more information on a harassment prevention order (258E) see <https://www.masslegalhelp.org/domestic-violence/harassment-prevention-orders>. It is important to mention that these orders are distinct from no trespass orders, which are issued by the housing provider with the intent of keeping someone off the property due to safety reasons. See G.L. c. 266, Section 120 at

extremely important because it applies to all types of housing, not only Public Housing, HUD Multifamily, housing financed with the Tax Credit Program, or HOME funds, **but also market housing**. The law provides survivors specific rights³⁰, and requires Owners to do certain things³¹ and outlines certain obligations and prohibitions for Owners.³² However, VAWA requires covered housing providers³³ to take many actions not required by state law and provides survivors of domestic violence protections not afforded under state law.³⁴ Given that this Handbook is

<https://malegislature.gov/Laws/GeneralLaws/PartIV/Title/Chapter266/Section120>. For more information regarding no trespass orders see https://www.masslegalhelp.org/housing/no-trespass#question_3.

³⁰ Section 24 specifically address the right to break the lease early for safety reasons without incurring financial penalties (and the return of the security deposit) and Section 26 specifically addresses a person’s right to have the locks changed. Please see an excellent article written by Attorney Julia Devanthery on the provision of the statute involving early termination of the lease titled *Early Lease Termination Under G.L. c. 186, § 24: An Essential Escape Route for Tenants Who Are Facing Domestic Violence, Sexual Assault, or Stalking*, Boston Bar Journal, [Summer 2017 Vol. 61 #3](https://bostonbarjournal.com/2017/08/09/early-lease-termination-under-g-l-c-186-%C2%A7-24-an-essential-escape-route-for-tenants-who-are-facing-domestic-violence-sexual-assault-or-stalking/), August 9, 2017 at <https://bostonbarjournal.com/2017/08/09/early-lease-termination-under-g-l-c-186-%C2%A7-24-an-essential-escape-route-for-tenants-who-are-facing-domestic-violence-sexual-assault-or-stalking/>

In regard to security deposits, MA State Law requires the owner to comply with the state’s security deposit law (G.L. c. 186 §15B) and provide a tenant or co-tenant the full and specific statement of the basis for retaining any of the security deposit together with any refund due in compliance within 30 days of the conclusion of the tenancy and the delivery of full possession of the leased premises by all occupants to the landlord.

³¹ Sections 26 specifically addresses Owners obligations regarding changing locks.

³² Section 25 provides Owners are prohibited from refusing to enter into a rental agreement, and a housing subsidy provider from denying assistance, based on an applicant having terminated a rental agreement under section 24 or based upon an applicant having requested a change of locks under section 26. For example, a housing provider can’t retaliate against a tenant for asking for their locks to be changed or cutting their lease short. Section 27 also provides that Owners are prohibited from interfering in a court ordered protective order issued under chapter 209A or any other law, ordering a tenant, co-tenant or member of the household to vacate the dwelling unit. Section 28 also prohibits Owners from adopting a lease provision which requires tenants to sign away their right under this law. Please note that there is an additional provision in G.L. c. 239 (Summary Process), §2A which prohibits owners from retaliating against tenants who exercise their rights under An Act Relative to Housing Rights For Victims Of Domestic Violence, Rape, Sexual Assault And Stalking, or report to any police officer or law enforcement professional an incident of domestic violence, rape, sexual assault or stalking, or file or enforce a protective order by seeking an eviction order.

³³ See question #16 herein for guidance on the term “covered housing provider.” Also see Appendix H.

³⁴ For example, VAWA includes specific notice requirements for covered housing providers, as well as the obligation to have an emergency transfer plan in place for their residents who experience DVDVSAS while living at their site.

for “covered providers” in Massachusetts, we will focus on VAWA, and Owners and Agents’ obligations under VAWA, and incorporate in any specific state requirements throughout this Handbook, and how state landlord/tenant law impacts specific VAWA provisions.

4. The name of the statute—the Violence Against Women Act (VAWA), indicates it only applies to survivors who are women. Is this correct?

No. The name of the law is misleading. It protects not only women, but men and people who are non-binary (don’t identify as either male or female).³⁵

Also remember that you are required to comply with all federal and state non-discrimination requirements and not discriminate against any group based on a protected characteristic. In Massachusetts, this means that in addition to the Federal Fair Housing Act’s protections (race, color, religion, sex, national origin, familial status, and disability)³⁶ you can’t discriminate on the basis of ancestry, gender identity, sexual orientation, marital status, status as a veteran or member of the armed forces, or receipt of Public Assistance or Housing Subsidies.³⁷

³⁵ See 24 CFR 5.2001(a.), **PIH Notice** on VAWA, pg. 5 and **Multifamily Notice**, pg. 6, all of which specify VAWA protections are not limited to women and that survivors are eligible for protections without regard to sex, gender identity, or sexual orientation. The notices further reminds covered entities that HUD programs must also be operated consistently with HUD’s Equal Access Rule (titled [Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity](https://www.hudexchange.info/resources/documents/EqualAccess_FinalRule_2.3.12.pdf)), which requires 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. See https://www.hudexchange.info/resources/documents/EqualAccess_FinalRule_2.3.12.pdf Please note that HUD built on this rule and published a final rule in the Federal Registry (Federal Register / Vol. 81, No. 183 / 64763, Wednesday, September 21, 2016) entitled "[Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs](https://www.hudexchange.info/resources/documents/Equal-Access-Final-Rule-2016.pdf)." See <https://www.hudexchange.info/resources/documents/Equal-Access-Final-Rule-2016.pdf>

³⁶ See 42 U.S.C. §3604 and implementing regulations at 24 CFR §100.5.

³⁷ G.L.c.151B §4.

5. Does VAWA address whether people affiliated with a victim are protected in housing?

Yes. VAWA recognizes that housing providers may take actions against an applicant or resident because of their relationship with a victim of DV/DVSAS. VAWA sought to redress this by adding an additional protection to applicants and tenants which focuses on their relationship with others who wouldn't have VAWA protections, referred to as "affiliated individuals." This term is defined as "(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."³⁸ The statute specifically provides that a VAWA crime committed against an "affiliated individual" of an applicant is not a basis for denying the person assistance or basis for terminating assistance to a tenant.³⁹

³⁸ See 34 U.S.C. § 12491(a)(1) for the definition of affiliated individual. This definition includes situations where an individual has guardianship over another individual who is not a child. Also, neither the statute, or HUD's rule define tenant or lawful occupant. The preamble to HUD's final rule provides that a tenant is someone who is on the lease. See <https://www.govinfo.gov/content/pkg/FR-2016-11-16/pdf/2016-25888.pdf>, pg. 80730. It also provides:

"Generally, while the term 'lawful occupant' as defined by state law would be applicable in determining whether or not someone would be an affiliated individual, it would not be for lease bifurcations. The term 'lawful occupant' for lease bifurcations would be whether or not the person is a lawful occupant (beneficiary or tenant, or recognized member of the household) per the program regulations of the specific HUD program. Therefore, while someone may be a 'lawful occupant' under state law, if they are not on the lease or receiving assistance under the HUD program regulations, they are not eligible for lease bifurcation."

It is important to note, however, that in December of 2016, after HUD's Final Rule was published, the Justice for All Act (<https://congress.gov/114/plaws/publ324/PLAW-114publ324.pdf>) was passed and provided an important clarification to VAWA in re to lease bifurcation. Specifically, it states that the protections afforded to remaining tenants applies to residents as well. The statute now reads (emphasis added):

"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."

This change provides greater protection for survivors who are living in a housing unit but may not be on the lease due to control of their abuser. Who is considered a "tenant" or "resident" under programmatic rules and state law is an important and developing area of case law.

³⁹ See 34 U.S.C. §12491(a)(3). and the discussion on this in the preamble to HUD's final rule, pg. 80730.

Although HUD makes it clear that applicants and tenants⁴⁰ can't be treated differently because of their affiliation with a victim, affiliated individuals do not themselves have protections or remedies under VAWA or any regulations published to date, unless independently applying for or are living in VAWA-covered housing. Rather, according to HUD's guidance, only tenants who are assisted by a covered housing program can invoke the VAWA protections that apply to tenants and seek remedies from the housing provider.⁴¹ In other words, a housing provider isn't required to provide an emergency transfer for someone who isn't their tenant solely because they are "affiliated" with a tenant. It is important to mention that although HUD's regulations and guidance specifically refer to tenant protections in the context of lease bifurcation, as a result of the passage of the Justice for All Act in 2016, VAWA was amended to include any remaining resident as well. VAWA now specifically recognizes that there may be situations where non-tenants may apply to retain housing benefits after an abusive tenant is removed from the home.⁴²

A tenant, however, may be entitled to VAWA protections and remedies because someone they are affiliated with experienced DV/DVSAS. For example, a live-in aide is not standardly a tenant, although they are an authorized occupant, and can't

⁴⁰ Neither the statute, or HUD's rule define tenant or lawful occupant. The phrase "tenants or lawful occupants" does not include affiliated individuals who are neither tenants nor lawful occupants. See footnote #38.

⁴¹ In *Beacon Residential Management, LP v. R.P.*, 477 Mass. 749 (2017), the SJC ruled that as a matter of law, alleged unauthorized residents who are affiliated individuals of tenants are allowed to intervene in summary process cases under Mass. R. Civ. P. 24 (a)(2), if they claim an interest relating to the apartment subject to eviction proceedings. The only issue reached in the case, was the right to intervene; not the merits of the case. An important take away from the court's ruling is that legal standards such as who can intervene should be construed broadly and in favor of survivors. For a discussion of this case and its impact on survivors who due to violence may not be on a lease, see *The Supreme Judicial Court's Decision in Beacon Residential v. R.P. Gives Survivors of Domestic Violence Their Day in Housing Court*, Boston Bar Journal, October 26, 2017 written by Julia Devanthery at <https://bostonbarjournal.com/2017/10/26/the-supreme-judicial-courts-decision-in-beacon-residential-v-r-p-gives-survivors-of-domestic-violence-their-day-in-housing-court/>.

⁴² See footnote #38.

invoke VAWA protections at a site. However, because they are living in the unit with a tenant, they would be an “affiliated individual” of a tenant, and if the live-in aide experiences DVDVSAS, the tenant with whom the live-in aide is associated can’t be evicted or have assistance terminated on the basis that the live-in aide was a victim of a VAWA crime. Likewise, assuming the tenant wants to retain the live-in aide’s services, the housing provider can’t require the tenant to remove the live-in aide from the household as a result of the DVDVSAS. Not only would this violate VAWA, but it is also arguably a violation of federal and state fair housing laws because it fails to satisfy the owner’s obligation to provide a person with a disability a reasonable accommodation. Also, in the same scenario, if a tenant requests and qualifies for an emergency transfer based on the live-in aide being a victim of DVDVSAS, a housing provider would transfer the tenant’s entire household, including the live-in aide.⁴³

Owners’ and Agents’ obligations regarding affiliated individuals will be discussed in the following sections as well.

6. Does VAWA protect a survivor regardless of whether the person is a U.S. Citizen or has eligible immigration status?

YES! VAWA protects all applicants when they are applying for admission to a covered housing program, and members of assisted families regardless of eligible immigration status. This is extremely important because as discussed in Chapter 1, immigrants may be particularly vulnerable to abuse and exploitation and face specific challenges relating to DVDVSAS, especially if their immigration status depends on an abusive

⁴³ See HUD response to comments in the preamble to its **Final Rule**, 80730, as well as **Multifamily Notice**, pg. 6 and **PIH Notice**, pg. 6.

spouse.⁴⁴ This is discussed specifically in the context of lease bifurcation and emergency transfers.

7. Does VAWA protect survivors who are minors?

YES! VAWA protects survivors who are under 18 years of age. However, unemancipated minors would not be eligible to sign leases under any of the housing programs covered in this training.⁴⁵ As such, in order to bifurcate a lease or transfer an adult would need to sign the lease.⁴⁶

⁴⁴ In addition to seeing Chapter 1 of this Handbook, please see a fact sheet that the American Immigration Council published on VAWA protections for immigrant women and victims of crime:

<https://www.americanimmigrationcouncil.org/research/violence-against-women-act-vawa-immigration>

Also see information on the Department of Homeland Security's website at:

<https://www.dhs.gov/immigration-options-victims-crimes>.

Also see the information provided by MassLegal Help titled *Victims/Witnesses of DV Who Are Not Citizens*, produced by Mac McCreight, Greater Boston Legal Services, <https://www.masslegalhelp.org/domestic-violence/housing-non-citizens>. This resource provides a summary of eligibility criteria in re to eligible immigrations status, which is useful for housing providers when needing to make an emergency transfer.

The National Housing Law Project's website features a webinar, titled *Immigrant Access to Federally Assisted Housing*, <https://www.nhlp.org/webinars/march-1-2017-huds-final-rule-implementing-vawa-2013/>. The webinar explains the barriers that survivors who are immigrants face in accessing federally subsidized housing, particularly HUD funded and Rural Development. It details which programs have immigration restrictions, and which don't, as well as how to verify immigration status for survivors who have filed a self-petition to obtain eligible immigration status. The materials include a number of documents, and links to others, including a summary on the NHLP's website regarding VAWA self-petitioners. See *Access to Public and Assisted Housing VAWA Self-Petitioners* <http://niwaplibrary.wcl.american.edu/wp-content/uploads/IMM-Man-Ch3.3-SelfPetitionPrep.pdf>

⁴⁵ See **Multifamily Notice**, pg.6 and **PIH Notice**, pg. 5. Also, please be reminded that in Massachusetts some people because of their profession are required to report to the Department of Families and Children (DCF) if they suspect or know a minor is being abused or neglected. These individuals are called Mandatory Reporters. See G.L.c.119and Department of Children and Families' regulations at 110 CMR 2.00. Also see footnote # 133 for more information.

⁴⁶ Please see footnote #38.

8. Does VAWA protect guests, unreported occupants, live-in-aides or household members not receiving assistance under a covered housing program?

The VAWA statute addresses the protections provided to applicants and tenants. This statute was also amended by the Justice for All Act, which includes a section that expands specific guarantees to “residents” who aren’t listed as tenants. HUD’s final rule, and guidance issued by this agency provides that guests, unreported occupants, and live-in aides of a household are ineligible for VAWA protections that are available only to applicants and tenants.⁴⁷ As discussed in Question 5 above, HUD’s final rule or guidance make no mention of any extension to residents of their right to retain a housing benefit after an abusive tenant is removed from the house.

In other contexts, only tenants who are assisted by a covered housing program can invoke the VAWA protections that apply to tenants and seek remedies from the housing provider. A guest, or an unreported occupant isn’t a tenant. However, a guest or unreported occupant may satisfy the definition of an “affiliated individual”⁴⁸ because of the relationship with the tenant, who is eligible for VAWA protections and remedies.

Likewise, a live-in aide is not standardly a tenant, although they are an authorized occupant, and can’t invoke VAWA protections at a site. Given live-in aides are living in the unit with a tenant, they would be an “affiliated individual” of a tenant and if

⁴⁷ See Final Rule, **80730 and 80733**. Also please note that Tenants in units under a HUD-covered program maintain their VAWA protections where their units are converted to coverage under a new HUD program. The conversion does not eliminate their VAWA protections. For example, if a site that was covered by a HUD housing program that had to comply with VAWA such as Hope VI, Choice Neighborhoods, and turned them into another program that isn’t explicitly covered by VAWA, the site would still need to comply with VAWA. With respect to the Rental Assistance Demonstration Program (RAD), tenants in converted units continue to be covered by VAWA’s protections provided under HUD’s Section 8 Project-Based Voucher, Project-Based Rental Assistance Program, Section 8 Moderate rehabilitation, or the Low-Income Housing Tax Credit Programs. See Federal Register, **80733**.

⁴⁸ See question #5 above re Affiliated Individuals.

the person experiences DVDVSAS, the tenant with whom the live-in aide is associated can't be evicted or have assistance terminated on the basis that the live-in aide was a victim of a VAWA crime. Also, as discussed in Question 5, assuming the tenant wants to retain the live-in aide's services, the housing provider can't require the tenant to remove the live-in aide from the household as a result of the DVDVSAS. Not only would this violate VAWA, but it is also arguably a violation of federal and state fair housing laws because it fails to satisfy the owner's obligation to provide a person with a disability a reasonable accommodation. Also, in the same scenario, if a tenant requests and qualifies for an emergency transfer based on the live-in aide being a victim of DVDVSAS, a housing provider would transfer the tenant's entire household, including the live-in aide.⁴⁹

The HUD notices implementing the agency's final rule also address "unassisted members," in a manner which is confusing. They provide that unassisted members are "ineligible for VAWA protections that are available only to tenants" but that "unassisted members who are also on the lease may qualify by way of the lease for VAWA protections at 24 CFR 5.2005(c)."⁵⁰ This provision focuses on the "construction of the lease and the lease terms."⁵¹ Technically, in a mixed family (where at least one person is a U.S. Citizen or has eligible immigration status and one or more family members don't) individuals who aren't receiving assistance are not covered by VAWA. However, they would be covered if they are listed on the lease. If they are not on the lease, they would still be eligible to retain housing after an abusive tenant

⁴⁹ See 34 U.S.C. §12491(e). and the discussion on this in HUD's final rule, **Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations, 80730.

⁵⁰ See **Multifamily Notice**, pg. 6, and **PIH Notice** pg. 6.

⁵¹ 24 CFR 5.2005(c) provides: **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.

is removed from the home as discussed earlier, provided eligibility and suitability criteria were satisfied.

9. Do all housing programs have to comply with VAWA?

No. As stated in Question 3 above, only specific housing programs are covered by VAWA. Most of these programs are overseen by the Federal Government’s Department of Housing and Urban Development, the acronym for which is HUD, although they are administered by different divisions of HUD. The two other Federal Government agencies responsible for programs covered by VAWA are the Internal Revenue Service (IRS), which is part of the Federal Government’s Treasury Department, and Office of Rural Development (RD), which is part of the Federal Government’s Department of Agriculture. The programs which are required to comply with VAWA and the federal agencies which administer these programs and are responsible for creating regulations and guidance to comply with VAWA are outlined below:

HUD Public Housing (PIH)	HUD Multifamily (Housing) ⁵²	HUD Community Planning and Development (Office of Affordable Housing Programs) ⁵³	Internal Revenue Service (IRS) (Department of Treasury)	Rural Development (RD)
<ul style="list-style-type: none"> • Public Housing program • Housing Choice Voucher program (including the 	<ul style="list-style-type: none"> • Project-based Section 8 programs under the United States Housing Act of 1937 (42 U.S.C. 1437) <ul style="list-style-type: none"> ▪ New Construction 	<ul style="list-style-type: none"> •HOME •Housing Trust Fund (by regulation) <ul style="list-style-type: none"> • HOPWA • CoC 	<ul style="list-style-type: none"> •Tax Credit Program 	<ul style="list-style-type: none"> •Section 515 Rural Rental Housing (RRH) •Section 514/516 Farm Labor Housing (FLH)

⁵² HUD-insured loans do not have to meet requirements of VAWA, unless the property operates with some type of HUD rental or interest rate subsidy program. See Question 2 Q&A’s with Multifamily Staff – Part I, [Hereinafter referred to as **Multifamily VAWA Questions**] at https://www.hud.gov/sites/dfiles/Housing/documents/Revised_VAWA_QA.pdf.

⁵³ HOME website: <https://www.hudexchange.info/programs/home/>.

<p>Project-Based Voucher program (PBV), which includes VASH Vouchers</p> <ul style="list-style-type: none"> • Section 8 Moderate Rehabilitation (Mod Rehab) 	<ul style="list-style-type: none"> ▪ State Agency Financed ▪ Substantial Rehabilitation ▪ Section 202/8 ▪ Rural Housing Services (RHS) Section 515/8 ▪ Loan Management Set-Aside (LMSA) ▪ Property Disposition Set-Aside (PDSA) • Section 202/162 Project Assistance Contract (PAC) • Section 202 Project Rental Assistance Contract (PRAC) • Section 202 Senior Preservation Rental Assistance Contracts (SPRAC) • Section 811 PRAC • Section 811 Project Rental Assistance (PRA) • Section 236 (including RAP) • Section 221(d)(3)/(d)(5) Below Market Interest Rate (BMIR) 	<ul style="list-style-type: none"> • ESG 		<ul style="list-style-type: none"> •Section 538 Guaranteed Rural Rental Housing (GRRH) •Section 533 Housing Preservation Grant (HPG) programs <p>(referred collectively as MFH Programs)</p>
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10. The VAWA statute requires each “appropriate agency” to implement the statute through guidance and rule-making. What agencies are required to do so?

VAWA provides that the term ‘appropriate agency’ means, with respect to a covered housing program, the Executive department (as defined in section 101 of title 5, United States Code) that carries out the covered housing program. Based on the applicable definition, and the list of the housing programs covered by VAWA, that the Department of Housing and Urban Development (HUD) which carries out the majority of the housing programs covered by VAWA, the Department of

Treasury, whose office of Internal Revenue carries out the Tax Credit Program, and The Department of Agriculture, whose agency (Rural Development) carries out its multifamily housing programs⁵⁴ are required to issue rulemaking/further guidance. Per the VAWA statute, these entities are specifically required to provide further guidance and rulemaking regarding an Approved VAWA Certification⁵⁵, a Model Transfer Plan⁵⁶, and reasonable time for requalification or to find new housing as it relates to lease bifurcation⁵⁷.

11. Has the Department of Housing and Urban Development (HUD), The Internal Revenue Service (IRS) and/or Rural Development (RD) issued regulations or guidance on how to implement VAWA 2013?

HUD published a final rule implementing VAWA 2013 for all of its programs in 2016, and fulfilled its obligations required by VAWA 2013 as described in the previous question and answer.⁵⁸ HUD's rule promulgated specific regulations applicable to its housing programs. In addition, HUD has issued notices to both Multifamily Housing Providers and Public Housing Providers⁵⁹, and created specific required and

⁵⁴ For a list of executive departments see section 101 of title 5, United States Code at <https://codes.findlaw.com/us/title-5-government-organization-and-employees/5-usc-sect-101.html>.

⁵⁵ 34 U.S.C. §12491(c)(3).

⁵⁶ 34 U.S.C. §12491(e).

⁵⁷ 34 U.S.C. §12491(b)(3)(B).

⁵⁸ HUD's varying programmatic regulations governing their housing programs have been updated to implement VAWA 2013 through a final rule. This final rule was published in the Federal Register/Vol. 81, No. 221/Wednesday, November 16, 2016, beginning on pg. 80724. Please see <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>. This rule is extremely long and detailed. The preamble (introduction) provides comments received by HUD from people in the industry and HUD's response to those comments. We encourage you to read the comments and HUD's response to fully understand the applicable regulation(s).

⁵⁹ See footnote #15 and #16.

recommended forms⁶⁰, including a VAWA certification form, and a sample emergency transfer plan. HUD's Office of Multifamily Housing has also conducted webinars on VAWA implementation and maintains a website on the topic.⁶¹ The HUD Office of Public and Indian Housing created a five part video training session addressing VAWA reauthorization guidance which may be viewed on the HUDchannel.⁶² In addition, HUD's Office of Affordable Housing Programs (OAHP) issued a newsletter specifically on the reauthorization of VAWA for its HOME program. It also conducted training on VAWA in relation to the HOME and Housing Trust Fund (HTF) programs and is planning to issue further guidance on VAWA implementation specific to the HOME program.⁶³ As of this writing, HUD has not updated the Multifamily Section 8 Lease Addendum to include all of the protections afforded by VAWA or to include other HUD programs, which is discussed in more detail later in this chapter.⁶⁴ In contrast, it has updated both the PIH Section 8 Tenant-

⁶⁰ [HUD-5382](#) Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation; [HUD-5380](#) Notice of Occupancy Rights Under the Violence Against Women Act; [HUD-5382](#) Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation; and [HUD-5383](#) Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, [HUD-5381](#) Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, located in English on HUD's Multifamily webpage for VAWA Resources, https://www.hud.gov/program_offices/housing/mfh/violence_against_women_act and in multiple languages on HUDCLIPS. See <https://www.hud.gov/hudclips>.

⁶¹ Please note that the webinars can be located by going to the website. One webinar was from a [Multifamily Housing Owner/Agent Perspective](#), and one was from a [Multifamily Housing HUD and PBCA Staff Perspective](#). The website also has questions and answers on VAWA related topics.

⁶² See https://video.search.yahoo.com/yhs/search?fr=yhs-pty-pty_maps&hsimp=yhs-pty_maps&hspart=pty&p=hud+vawa+utube#id=3&vid=f05e24bde9bb23e4623e28f201456aee&action=view.

⁶³ See HOMEfires - Vol. 11 No. 1, December 2013. Also see [Implementing HUD's VAWA Rule in the HOME and HTF Programs](#), a presentation by **David Jones**, Affordable Housing Specialist, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development at the National Council of State Housing Agencies' 2018 HFA Institute, at <https://www.ncsha.org/events/2018-hfa-institute/>. Also see Part 2 of HOME Rental Compliance, which focused on the role of the Participating Jurisdiction, <https://www.hudexchange.info/trainings/courses/home-rental-compliance-part-2/2546/>.

⁶⁴ This form can be located on HUD CLIPS in Multiple languages. See https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a#4.

Based Assistance Housing Choice Voucher Program Addendum (form HUD-52641-A) which gets attached to the tenant lease⁶⁵, and form HUD 52530-C for project-based assistance⁶⁶. to include VAWA 2013 protections. Likewise, the Housing Assistance Payment (HAP) Contract for tenant-based assistance (form HUD-52641)⁶⁷, and the Project-Based Voucher Contract (form HUD 52530A for New Construction or Rehabilitation⁶⁸ and 52530B for Existing Housing)⁶⁹ have been revised to include the updated provisions.

Unlike HUD, Rural Development (RD) hasn't promulgated VAWA regulations to ensure that survivors accessing and maintaining housing are afforded the same protections across all RD's covered programs. RD did issue an administrative notice informing State Directors, Program Directors, Borrowers, and Management Agents of the agency's policies on implementing and administering VAWA 2013. The notice expired on January 31, 2018. As of this writing, the notice hasn't been reissued. Although it hasn't been reissued, it provides insight into RD's implementation of VAWA and the Agency's expectations of O/As.⁷⁰ RD is currently following this

⁶⁵See <https://www.hud.gov/sites/dfiles/OCHCO/documents/52641A.pdf>.

⁶⁶ See <https://www.hud.gov/sites/dfiles/OCHCO/documents/52530c.pdf>.

⁶⁷ See <https://www.hud.gov/sites/dfiles/OCHCO/documents/52641.pdf>.

⁶⁸ See https://www.hud.gov/sites/dfiles/OCHCO/documents/52530A_PBv.pdf for Part 1 and <https://www.hud.gov/sites/dfiles/OCHCO/documents/52530Apt2.pdf> for part 2.

⁶⁹ See as well as <https://www.hud.gov/sites/dfiles/OCHCO/documents/52530Bpt1.pdf> for Part 1 and <https://www.hud.gov/sites/dfiles/OCHCO/documents/52530Bpt2.pdf> for Part 2.

⁷⁰ See RD AN No. 4814 (1944-N) January 18, 2017, "Implementation of 42 U.S.C. 14043e-11 of the Violence Against Women Reauthorization Act in Rural Development's Multifamily Housing Programs." It can be located at: <https://www.rd.usda.gov/files/an4814.pdf>.

The notice provides, "RD's implementation and policies shall follow those outlined in this Notice, and in the U.S Department of Housing and Urban Development (HUD) Final Rule, dated November 16, 2016, (80724 FR Vol. 81, No. 221), at 24 CFR part 5, Subpart L – Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking (see 5.2001 - 5.2011). RD's definitions pertaining to the Violence Against Women Reauthorization Act of 2013 shall be as defined by HUD under 24 CFR part 5.2003." This notice was also criticized by advocacy groups for not effectively implementing VAWA. For example, see an analysis done by the National Housing Law Project, titled RD Issues Administrative Notice

guidance and has issued a Letter of Priority Entitlement (LOPE)⁷¹ for survivors needing emergency transfers. Also please be aware that advocacy organizations have requested RD to revisit this notice and make specific changes to the notice which they believe are necessary for compliance with VAWA, and recommended amendments to the Notice that would more accurately reflect the requirements of VAWA 2013 as well as HUD’s final VAWA 2013 rule, which RD has indicated the agency will follow for VAWA implementation and policy purposes.⁷²

To date, the IRS has not issued any regulations or guidance regarding VAWA implementation for the tax credit program. The Treasury Department hasn’t issued a formal statement regarding why they have failed to do so. The general understanding in the housing industry is that it’s because the failure to comply with VAWA doesn’t constitute non-compliance based on Section 42 of the Internal Revenue Code, and therefore does not trigger credit recapture of previously claimed credits, nor does it prevent the owner from continuing to claim credits.⁷³ Although the IRS’s position is

Implementing VAWA and Republishes Unnumbered Letter on Preserving Maturing Housing Developments, which can be located at <http://nhlp.org/files/RD%20VAWA%20AN%20and%20UL%20on%20Preserving%20Maturing%20Housing%20Dev%203.23.17.pdf>

⁷¹ This is defined in Rural Development’s regulations, [7 CFR § 3560.11](#) as “(a) letter issued by the Agency providing a tenant with priority entitlement to rental units in other Agency-financed housing projects for 120 days from the date of the LOPE.”

⁷² The letter was sent from the National Housing Law Project (NHLP), American Civil Liberties Union, National Coalition Against Domestic Violence, National Law Center on Homelessness and Poverty, National Low-Income Housing Coalition, National Network to End Domestic Violence, and Sargent Shriver National Center on Poverty Law. See <http://nhlp.org/files/7.10.17%20RD%20VAWA%20letter%20FINAL.pdf>.

⁷³ Please see **Protections Delayed: State Housing Finance Agency Compliance With The Violence Against Women Act**, beginning on pg. 7 for an excellent discussion of the important role of Housing Finance Agencies in VAWA implementation and footnote #48 for the Internal Revenue’s rationale for their lack of implementation, at <https://nhlp.org/files/Protections%20Delayed%20-%20HFA%20Compliance%20with%20VAWA.pdf>.

accurate, it is short-sighted, and ignores that the failure to follow the requirements in VAWA may also result in a loss of credits for a fair housing violation.⁷⁴ The result is a dramatic variation in states' implementation and monitoring of VAWA compliance, and an overall delay of the implementation of survivors' rights in the tax credit program.⁷⁵ This is despite the best practice recommendations of the national organization which represents the state housing finance agencies that administer the Low Income Housing Tax Credit (Housing Credit) program, the National Council of State Agencies.⁷⁶

12. Has the Massachusetts Department of Housing and Community Development (DHCD) issued guidance for the Low-Income Housing Tax Credit (LIHTC) Program, the HOME Investment Partnerships Program (HOME) or the Housing Trust Fund (HTF) Program?

In Massachusetts, the tax credit program's allocating agency is the Department of Housing and Community Development (DHCD), and they third-party contract with Spectrum to monitor for compliance.⁷⁷ DHCD also administers the State's HOME

⁷⁴Specific requirements of VAWA, such as lease bifurcation could result in the remaining household member being ineligible due to the student rule, or because the person wasn't part of the original household and depending if the site is mixed or 100% tax credit, doesn't satisfy the remaining household member requirement. Guidance needs to be issued regarding how long such an individual may remain without jeopardizing the Owner's credits. Also, the VAWA emergency transfer policy has to incorporate in specific LIHTC programmatic rules involving transfers, otherwise, a transfer could easily result in a violation of tax credit rules.

⁷⁵See *Protections Delayed: State Housing Finance Agency Compliance With The Violence Against Women Act* which outlines what state housing finance agencies have done (and have not done) to comply with VAWA, <https://nhlp.org/files/Protections%20Delayed%20-%20HFA%20Compliance%20with%20VAWA.pdf>

⁷⁶ See <https://www.ncsha.org/wp-content/uploads/2018/02/NCSHA-Recommended-Practices-in-Housing-Credit-Administration-Updated-Dec-2017.pdf>, (See 41). This organization has also facilitated training on VAWA. See <https://www.ncsha.org/events/2018-hfa-institute/>.

⁷⁷ See <https://www.mass.gov/service-details/low-income-housing-tax-credit-lihtc>. Note that in MA non-competitive (4%) tax credits are provided by MassHousing and Massachusetts Development Finance Agency (MDF) in conjunction with tax-exempt bonds.

and Housing Trust Fund (HTF) monies from HUD’s Office of Affordable Housing Programs (OAHP), which is part of the Office of Community Planning and Development.⁷⁸

As discussed in questions 9 and 11, with respect to the tax credit program, the United States Treasury is responsible for implementing VAWA. As it has yet to promulgate regulations or issue guidance, DHCD has not yet issued supplemental guidance.

It is important to note that Spectrum’s website does provide that although legislation hasn’t been enacted to incorporate VAWA into Section 42 of the Internal Revenue Code, and therefore, no enforcement mechanism exists, Spectrum “expects LIHTC properties to incorporate compliance with VAWA requirements into their day to day operations.”⁷⁹ However, no guidance has been provided by Spectrum regarding how to do it given the lack of Treasury guidance regarding VAWA implementation. To date, it hasn’t updated its compliance manual to discuss its expectations regarding the following issues, and it is anticipated this will not occur given lack of guidance from the Treasury Department:

- Use of Form HUD-5380 (or provision of a different form), notice of VAWA rights, and Form HUD-5382, VAWA self-certification form, are distributed at the three required points in time, and to all existing tenants, as required by VAWA 2013;
- Make clear that a VAWA violation which leads to an eviction is a violation of the requirement for good cause eviction;

⁷⁸ It is important to note that in Massachusetts there are other Participating Jurisdictions, commonly referred to as PJs who administer HOME funds. Please see HUD’s grantee locator at <https://www.hudexchange.info/grantees/#/byState>.

⁷⁹ See <https://spectrumlihtc.com/states/massachusetts/>.

- Make clear that a violation of VAWA can be a violation of Fair Housing Law, and result in non-compliance;
- Explain how emergency transfers must comply with tax credit rules, including transfers between buildings⁸⁰;
- Explain how lease bifurcation can result in non-compliance and provide guidance on how long an ineligible person may remain in a LIHTC unit without jeopardizing credits.
- Explain how lease bifurcation can result in triggering other tax credit rules, including the Next Available Unit Rule.

DHCD has incorporated the obligation to comply with VAWA into its applicable⁸¹ HOME and HTF agreements with Owners. As a HOME Participating Jurisdiction (PJ) and a HTF grantee, DHCD has contracted with Casa Myrna, the operator of SafeLink, to implement its Emergency Transfer Plan. (See Appendix C). DHCD is in the process of developing instructions for owners regarding the Emergency Transfer Plan and VAWA compliance, including (owner) distribution of a VAWA notice to applicants and tenants that DHCD has tailored to HOME/HTF.

FinePoint Associates, DHCD's monitor for the HOME and HTF program has incorporated VAWA compliance into its training for O/As.

13. Has MassHousing issued any guidance on VAWA?

MassHousing issued guidance on VAWA. It has also required all MassHousing financed sites to amend their Tenant Selection Plans to incorporate the VAWA provisions (including optional VAWA emergency transfer preferences), required

⁸⁰ Please see **Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition**, Rev. 01-2011, beginning on pg. 4-23.

⁸¹ Under the HUD HOME regulations, compliance with VAWA applies to rental housing projects for which the date of the HOME funding commitment is on or after December 16, 2016. See 24 CFR 92.359(b).

sites to incorporate specific language in the site’s rejection letter, updated the MassHousing Occupancy Agreement, and required sites to provide acknowledgement that they were in compliance with the VAWA notice requirements and Emergency Transfer Plan requirement. As the Performance Based Contract Administrator (CA)⁸² for HUD, MassHousing also reminded all sites of their obligations under VAWA with explicit instructions how to comply. In addition, MassHousing’s Tenant Assistance Program (TAP) program has offered a 2-part training series on DVDVSAS, which this manual is part of, to educate Housing Providers (and advocates) regarding their obligations and rights in re to VAWA and state law.

14. Is compliance with VAWA part of a site’s Management and Occupancy Review (MOR), HOME Audit and/or Tax Credit Audit?

Compliance with VAWA is part of a site’s Management and Occupancy Review, commonly referred to as an MOR.⁸³ However, the form (HUD 9834) Contract Administrators (CAs) utilize to conduct a MOR, which has expired, hasn’t been updated by HUD to include compliance with VAWA 2013.⁸⁴ Currently, the only inquiry listed on Form 9834 focuses on whether documentation relating to “domestic violence, dating violence and stalking” (sexual assault is not included because this was added as a category in the 2013 legislation) is kept separately from the tenant

⁸² The role of a PBCA is to monitor and service section 8 housing assistance payment (HAP) contracts for HUD. See HUD Handbook 4350.3, paragraph 1-4, page 1-8.

⁸³ The **Management and Occupancy Review** is used by Contract Administrators (CAs) for HUD’s Multifamily Housing Programs to ensure that owners/agents comply with the requirements under the Regulatory Agreement, Mortgage, **Management** Certification, Housing Assistance Payments (HAP) Contract and/or other relevant business agreements. The Form Used to conduct this review is not up to date. The training HUD conducted is available on its website provides excellent guidance regarding what the CA will be reviewing. See https://www.hud.gov/program_offices/housing/mfh/violence_against_women_act

⁸⁴ The form utilized is Form 9834, **Management Review For Multifamily Housing**, specifically Addendum A. See <https://www.hud.gov/sites/documents/9834.PDF>.

file and in a secure location for Section 8 sites (again the expansion to other programs occurred in 2013).⁸⁵

HUD's training on VAWA for Owners and Agents from a HUD/Project Based Contract Administrator (PBCA)⁸⁶ perspective also highlighted other areas which can lead to findings on an MOR⁸⁷:

- Is documentation relating to an individual's domestic violence, dating violence, or stalking, kept in a separate file in a secure location from other tenant files?
- Is The Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382) provided to rejected applicants; At move-in; and With notice of eviction or termination of assistance⁸⁸
- Is there an Emergency Transfer Plan? Is it compliant with the VAWA Final Rule and HUD Notice H 2017-05 requirements?
- Has the Tenant Selection Plan been updated to reflect VAWA preferences/priorities (if any)?
 - Documentation that adopted preference/priority was applied to both internal and external emergency transfers in accordance with the TSP.

⁸⁵ See Part II-On-Site Review, in CATEGORY E. LEASING AND OCCUPANCY, Question 21b., which provides, "Is documentation relating to an individual's domestic violence, dating violence, or stalking, kept in a separate file in a secure location from other tenant files? Applicable to Section 8 only."

⁸⁶ A Performance-Based Contract Administrator (PBCA) is an entity (generally housing agencies, such as State Housing Finance Agencies or local housing authorities) which contracts with HUD to perform compliance functions in re to Section 8 HAP contracts. PBCAs are generally required to administer contracts on a statewide basis and have strict performance and reporting requirements.

⁸⁷ See https://www.youtube.com/watch?v=fZMC57-7Kk&list=PLDYbj6cykYZ_jPYGzgnyclR-Drf4HJ5h8&index=2

⁸⁸ It also needed to be provided to each household during its annual recertification (AR) by 12/15/2017.

- For the Section 8 Program, is the VAWA lease addendum there? The new lease addendum is forthcoming, both for the HUD Multifamily Section 8 Program and the other HUD Multifamily Programs.

The Performance Based Contract Administrator (PBCA) in Massachusetts for the Section 8 housing program is MassHousing. In addition, MassHousing will conduct Asset Management Reviews (AMRs)⁸⁹ for sites financed by them. Other HUD Multifamily housing programs will have reviews directly through HUD. If non-compliance in re to VAWA occurs, it must be corrected, or the report will not be cleared, and the Owner/Agent will be in non-compliance.

In Massachusetts, FinePoint Associates monitors on behalf of DHCD for HOME funds it receives from HUD as a Participating Jurisdiction (PJ). FinePoint has added review for VAWA to its checklist and discusses VAWA requirements at applicable HOME-assisted property site visits. If a site is out of compliance, FinePoint will write it up in its monitoring report and the site will need to remedy the deficiency in order to be in compliance. If something isn't corrected, the ultimate decision of what occurs is DHCD's.

Spectrum, DHCD's monitor for the Low-Income Tax Credit Program, will update its review procedures upon issuance of applicable Treasury and/or DHCD guidance.

The PBCA for HUD (MassHousing), FinePoint and Spectrum have no relationship with one another, and do not share information on VAWA compliance (or other types of compliance) with one another.

⁸⁹ An Asset Management review is designed to evaluate management agent performance at MassHousing-financed developments and includes a development's year-to-year financial performance.

15. Are all housing sites covered by VAWA required to provide HUD’s Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) to an applicant for or tenants of housing assisted under a covered housing program?

Yes. All housing providers are required to provide HUD’s Notice of Occupancy Rights (form HUD-5380) and a certification form adopted by the appropriate agency.⁹⁰ Please see Appendix I for a list of who is responsible for carrying out these notice requirements for each housing program.

The VAWA statute **requires** each public housing agency or owner or manager of housing assisted under a covered housing program, **not only HUD programs**, to do so under specific circumstances:⁹¹

- at the time the applicant is denied residency in a dwelling unit assisted under the covered housing program;
- at the time the individual is admitted to a dwelling unit assisted under the covered housing program; and

⁹⁰ The VAWA statute provides in 34 U.S.C. §12491(c)(3)(A) provides:

“(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.”

⁹¹ In addition to the timeframes below, HUD’s Notice of Occupancy Rights and the Certification Form were required to be given to existing residents in public housing, the HCV and PBV program by December 16, 2017, either during the PHA/HUD Multifamily annual recertification or lease renewal process (as applicable), or if no recertification or lease renewal occurred during the first year, then through other means. See PHA Notice, pg. 19. Likewise, in re to HUD Multifamily housing programs this was required to have occurred by December 15, 2017 through the annual recertification process or if the annual recertification had already occurred when the notice came out in 2017, then by other means by December 15, 2017. Providers were required to document in the tenant file when the forms were provided to the household. See **Multifamily Notice**, pg. 21.

- with any notification of eviction or notification of termination of assistance.⁹²

In addition, VAWA states that public housing agencies, owners and managers **must** provide such notice in multiple languages to provide meaningful access to people with limited English proficiency in accordance with federal law.⁹³ The Department of Agriculture⁹⁴ and HUD⁹⁵ have both reaffirmed this obligation while implementing VAWA.

⁹² HUD has interpreted the language “any notification of eviction or termination of assistance” to mean “only the first notice of termination of assistance or eviction” even if the termination of assistance is due to an increase in income. See, Final Rule, **80771**. In question 12 of its revised Questions and answers, HUD Multifamily states, “It is not necessary to resend these forms with subsequent notices for the same termination or eviction action.”

Also please note that Tenants in units under a HUD-covered program maintain their VAWA protections where their units are converted to coverage under a new HUD program. The conversion does not eliminate their VAWA protections. For example, if a site that was covered by a HUD housing program that had to comply with VAWA such as Hope VI, Choice Neighborhoods, and turned them into another program that isn’t explicitly covered by VAWA, the site would still need to comply with VAWA. With respect to the Rental Assistance Demonstration Program (RAD), tenants in converted units continue to be covered by VAWA’s protections provided under HUD’s Section 8 Project-Based Voucher, Project-Based Rental Assistance Program, Section 8 Moderate rehabilitation, or the Low-Income Housing Tax Credit Programs. See Federal Register, **80733**.

⁹³ Specifically listed is Executive Order 13166. All VAWA forms have been translated into Armenian, Cambodian, Creole, Japanese, Korean, Lao, Mandarin, Russian, Spanish, Thai, and Vietnamese and can be downloaded from HUDCLIPS at https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a#4

⁹⁴ See RD AN No. **4814** (1944-N), January 18, 2017 which has expired as of this writing, and nothing new has been issued. It provides:

In accordance with 42 U.S.C. §14043e-11(d)(2), Borrowers must distribute the Notice of Occupancy Rights and the Certification of Domestic Violence and Alternate Documentation Form to all applicants and existing tenants upon each of the following 3 occasions: 1) when an individual is denied residency; 2) when an individual is assigned a RD unit; and 3) with any notification of eviction or termination of assistance. The Notice of Occupancy Rights and the Certification of Domestic Violence and Alternate Documentation Form should be posted in a place(s) where it can be visible to tenants and prospective tenants. These documents will be available from HUD in multiple languages.

⁹⁵ See HUD Final Rule, **Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016, at 80800 / Rules and Regulations §5.2005(A)(3); **Multifamily Notice**, pg. 13 and **PIH Notice**, pg. 11.

However, the HUD multifamily Office notice provides the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) must only be given to each household, whereas the Office of PIH has provided that it must be given to each adult member of a household.⁹⁶ No guidance has been issued by the IRS (in relation to the tax credit program. Spectrum, the monitoring agency for the Massachusetts State Allocating Agency (the Department of Housing and Urban Development) has reminded owners that they are obligated to comply with VAWA, although neither DHCD nor Spectrum have issued guidance specifically on the obligation to provide the notice.⁹⁷

It is also important to point out that the wording of the statute and the way it is being interpreted is that if you operate a HUD site that has market units, VAWA only protects the residents living in the federally subsidized units and/or applicants applying to those units. However, HUD has stated that if a resident originally qualified for a covered unit and signed the applicable VAWA lease addendum (form HUD-91067) and then became “market” resident due to an increase in income, that they “may” still be provided VAWA protections.⁹⁸ For example, a resident due to an increase in income in your Section 8 site, is no longer receiving subsidy. The person previously signed a VAWA lease addendum. The person requests that you bifurcate the lease because of domestic violence. This resident is still protected under VAWA although not receiving subsidy. You would

⁹⁶ See **PIH Notice**, pg. 18. In contrast, **Multifamily VAWA Questions**, #10 specifically addresses this issue differently.

Question: Do O/As have to give the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) to each household or to each member of a household? Answer: Only one set of forms - Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) - must be given to each household.

⁹⁷ See Spectrum website, <https://spectrumlihtc.com/states/massachusetts/>

⁹⁸ See HUD’s **Multifamily VAWA Questions**, Question 4:
https://www.hud.gov/sites/dfiles/Housing/documents/Revised_VAWA_QA.pdf

need to follow the same procedures you would follow to meet this resident's VAWA related request as you would a resident who is currently receiving subsidy and move to bifurcate the lease.

Note: You may choose to offer VAWA protections and remedies to all tenants and applicants, where applicable, and are strongly encouraged to do so. The failure to do so may be considered a fair housing violation to the extent that federal and state fair housing laws protect survivors of DV/DVSA.⁹⁹

16. Who does HUD consider responsible to implement the Notice requirement and other obligations under VAWA in their housing programs?

Another issue that HUD addressed in their final rule¹⁰⁰ and subsequent

⁹⁹ See Question 15 of HUD's Questions and Answers: "In instances where a property has both project-based Section 8 and LIHTC units, are O/As required to distribute the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) to the LIHTC units? Answer: The VAWA Final Rule only applies to applicants and tenants of HUD covered housing programs. Properties funded with LIHTCs should seek guidance from the Department of Treasury or the appropriate HFA for guidance on implementing VAWA protections in those units. Note: O/As may choose to offer VAWA protections and remedies to all tenants and applicants, where applicable."

https://www.hud.gov/sites/dfiles/Housing/documents/Revised_VAWA_QA.pdf

¹⁰⁰ This topic is addressed in the Final rule in numerous places (for example, see **Federal Register**, 80728, 80736), and in the Final Rule, amended the HUD regulations to include a definition of "covered housing provider" in 24 CFR Part 5-General HUD Program Requirements, Waivers and proceeded to identify for each of its programs, the entity or entities which are considered Covered Housing Providers. The definition in HUD's regulation is contained in **§ 5.2003 Definitions** and is as follows:

"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."

guidance¹⁰¹, which only applies to HUD’s programs, is who is considered the “covered housing provider” and responsible to implement the notice requirement, as well as take responsibility for other obligations contained in VAWA.¹⁰² Before discussing who is the covered entity for each HUD program, it’s important to mention that many sites have more than one funding source and are covered by more than one housing program. If your site is responsible for complying with more than one housing program that is covered by VAWA, the responsible covered housing provider may not be the same entity for both programs. For example, if you have project-based Section 8 with HOME Funds, the covered entity for providing the Notice of VAWA rights and Certification Form aren’t the same, and both covered entities must comply with their obligations.

For housing funded through most of HUD’s multifamily housing programs the answer is straight forward because the Owner/Agent has a contract with HUD directly, and is responsible for all aspects of the housing operations and all

¹⁰¹ HUD’s **Multifamily Notice** addresses the concept of a “covered housing provider” on pg. 5, and the **PIH Notice** does so on pg. 4. Both provide a working definition of this term which differ slightly from the regulatory one, but the general concept of it equating to the entity or entities responsible for making sure VAWA’s requirements are implemented.

Multifamily Housing’s Definition is:

Covered housing provider in the VAWA Final Rule refers to the individual or entity that operates a covered housing program, as defined by each program in its regulations, and that has responsibility for the administration and/or oversight of VAWA protections and includes sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, and nonprofit or for-profit organizations or entities. For the purposes of this Notice, *covered housing provider* will be referred to as O/A. Note: Specific to the 811 PRA program, *covered housing provider* is the state housing agency, i.e., Grantee.

PIH’s working definition is:

Covered housing provider refers to the individual or entity under a covered housing program, and as defined by each program in its regulations, 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.

¹⁰² These include the design and implementation of an emergency transfer plan, bifurcation of the lease, and confidentiality and reporting requirements.

interactions with the resident.¹⁰³ The same can also be said for HUD public housing. As such, the Owner/Agent is the covered housing provider. In contrast, other programs' structures are more complex with multiple entities involved in the administration, and funding not coming directly from HUD, but rather through a third-party entity. To assist housing providers in knowing what they are responsible for, we've created a series of appendixes summarizing who is a covered housing provider for what purpose for the housing programs covered by VAWA. Please see appendixes H-K.

17. Are there confidentiality requirements Owners/Agents must keep in mind when implementing VAWA and An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking?

Yes. VAWA has very strict confidentiality requirements which all covered housing providers must follow.¹⁰⁴ The confidentiality requirement contained in *An Act Relative to Housing Rights For Victims Of Domestic Violence, Rape, Sexual Assault And Stalking* focuses solely on not sharing information obtained to verify a person's status as a victim of domestic violence, rape, sexual assault or stalking, in the context of early termination of a rental agreement or tenancy¹⁰⁵ and changing the locks.¹⁰⁶

¹⁰³ An exception is the 811 PRA program, which although it follows the 811 program rules, it is structured differently, and the state agency (grantee) is the *covered housing provider*.

¹⁰⁴ 24 CFR SEC. 41411(C). This is discussed in HUD's Final rule, 24 CFR § 5.2007(c), **Multifamily Notice**, beginning pg. 22, Q&A's with Multifamily Staff – Part I, Question 39, and **PIH Notice**, beginning pg. 19.

¹⁰⁵ See Chapter 186 Section 24 (f), which provides:

“An owner or housing subsidy provider who obtains written proof of status as a victim of domestic violence, rape, sexual assault or stalking shall keep such documentation and the information contained in the documentation confidential, and shall not provide or allow access to such documentation in any way to any other person or agency, unless the victim provides written authorization for the release of such information or unless required by court order, government regulation or governmental audit requirements.”

¹⁰⁶ See Chapter 186 Section 26(b).

Confidentiality includes any content in the verification, not only that the verification was received.

Applicants' and Tenants' privacy rights and Confidentiality requirements are not new to PHAs and HUD multifamily housing providers. Program rules consistently recognize people's right to privacy¹⁰⁷ and require housing providers to take significant

¹⁰⁷HUD Multifamily and PHA housing providers are required to use Consent and verification forms (form HUD-9887, Notice and Consent for the Release of Information to HUD and to a PHA and form HUD-9887-A, Applicant's/Tenant's Consent to the Release of Information Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance, and Owner/Agent created verification forms) in HUD's words to "protect the rights and privacy of tenants and applicants by allowing them to have control over any information collected about them." See HUD Handbook 4350.3, Par. 3-11, pg. 3-24. In addition, the Handbook specifically focusses on the obligation to comply with the Federal Privacy Act. (5 USC 552a, as amended), See Par. 5-12, beginning pg. 5-52, and specific language regarding compliance with the Privacy Act must be included in all Owner/Agent created verification forms. See Appendix 6-A: Guidance for Development of Individual Consent Forms. Also, Par. 5-19 Confidentiality of Applicant and Tenant Information, beginning on pg. 5-62 further explains the Owner/Agents obligations to keep confidential applicant/tenant information, and the penalties for failing to do so, and makes a point to state that O/As also have to comply with State privacy laws. In addition, Par. 5-23 Record-Keeping Procedures, beginning pg. 5-64 also discusses the importance of not sharing confidential information, and maintaining it in a manner that inadvertent disclosure will not take place. In addition, the Office of Public and Indian Housing issued a notice specifically focused on the confidentiality of private information. See **U.S. Department of Housing and Urban Development (HUD) Privacy Protection Guidance for Third Parties**, NOTICE PIH-2015-0, April 23, 2015. <https://www.hud.gov/sites/documents/PIH2015-06.PDF>. It is also important to note that Massachusetts has a statute that covers privacy in general (G.L. c. 214, Section 1B: Right to Privacy) and a very comprehensive statute and implementing regulations that apply to the protection of personal information of all residents of MA. In accordance with the Massachusetts personal information law, companies were required to develop, implement, maintain and monitor a comprehensive written information security program to ensure the security and confidentiality of personal information in both physical and electronic format by January 2010. Personal information includes the resident's first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to the person: a) social security number; b) driver's license number or state-issued identification card; or c) financial account number or credit or debit card number. It doesn't include information that's lawfully obtained from public information or records. It is crucial that you comply with your company's policy, which presumably covers all the requirements of the law. The regulations, 201 CMR 17.00: STANDARDS FOR THE PROTECTION OF PERSONAL INFORMATION OF RESIDENTS OF THE COMMONWEALTH, implement the provisions of G.L. c. 93H, Security Breaches. Managing agents' policies need to also comply with M.G. L. c. 93I, Disposition and Destruction of Records as well. Personal Information for the purpose of the MA Data Security Law is defined in Section 1 of 93H as: A resident's first name and last name or first initial and last name in combination with any 1 or more of the following data elements that relate to such resident: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "Personal information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public. Please see

measures to keep confidential applicant and resident information, including, but not limited to, information obtained from the Enterprise Income Verification System (EIV).¹⁰⁸ The importance of staff maintaining confidentiality regarding any and all information provided by an applicant or resident (or their representative) when the person invokes their rights under VAWA can't be over-emphasized. This includes the person's status as a survivor of DVDVSAS and the new address of the survivor if they transferred/left the unit for safety reasons related to violence. Failure to do so may exacerbate an already difficult situation for the survivor and jeopardize their health and/or safety. This is especially the case when a survivor and abuser both live in the same unit and the survivor is still in the home.

18. Are there specific safeguards and principles Owners/Agents/PHAs need to follow to protect applicants'/residents' privacy and confidential information?

Yes. Some safeguards apply to all confidential information, and others apply specifically to information regarding DVDVSAS or are specific to requirements contained in VAWA or in *An Act Relative to Housing Rights for Victims Of Domestic Violence, Rape, Sexual Assault And Stalking*.

the following to access the regulations implementing the state Statute:
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter93h>.

In addition, MA law imposes clear requirements regarding individuals in professions where confidentiality is an essential element, such as lawyers, doctors, psychologists, and licensed social workers. As such, if a Resident Service Coordinator is a licensed social worker, the RSC is required to adhere to specific requirements, including not disclosing information obtained or revealed during or in connection with the services provided without a resident's consent. See M.G.L c.112, §135A and 258 CMR 22.00: Confidentiality of Client Communications and Records) The exceptions to this are narrow, specifically relate to safety. See G.L.c.112, §135A(c) and 258 CMR 22.04: Limitations and Exceptions to Confidentiality.

Please note that this information was initially created for MassHousing's training on Liability Issues for Resident Service Providers and is contained in its Participant Guide, as well as more detailed information.

¹⁰⁸ See HUD Handbook 4350.3, Chapter 9, Section 4: Security of EIV Data, beginning on pg.9-31. Also see par 5-20 Security of EIV Data, beginning pg. 5-63.

Safeguards And Principles All Housing Providers Need To Follow Regarding Personal/confidential Information And The Application To DVDVSAS:

- Staff must request/collect only information from an individual that is relevant and necessary to accomplish an authorized function of their job. Keep in mind the importance of only asking what you need to know and not what you want to know. In relation to complying with federal and state law, this means that staff needs to understand:
 - What information they are required to ask a survivor of DVDVSAS and for what purpose;
 - what information they are permitted but not required to ask a survivor to provide because the law allows the provider discretion in what information to obtain under specific circumstances; and
 - what information they are prohibited from asking a survivor to provide.

VAWA and An Act Relative to Housing Rights For Victims Of Domestic Violence, Rape, Sexual Assault And Stalking are very specific regarding what documentation an Owner/Agent/PHA is required and permitted to obtain from a survivor in order for the housing provider to provide protections and remedies under the applicable law and the manner in which the housing provider may choose to receive it.¹⁰⁹ The information is very limited.

¹⁰⁹ Please see the VAWA statute, SEC. 12291 (C)(1), as well as 24 CFR § 5.2007. 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 specific forms of documentation outlined in the rules, the choice of which is the person requesting protections/remedies. In other words, it is the housing provider's choice whether to require this documentation, and if so under what circumstances. It is also at the discretion of the housing provider whether to accept a statement or other evidence provided by an applicant or tenant. Also, in accordance with the emergency transfer provisions of VAWA, SEC. 12291 (E)(1), a housing provider must permit an emergency transfer if the tenant requests the transfer and reasonably believes they are "threatened with imminent harm from further violence if the tenant remains within the same dwelling unit assisted under a covered housing program;" or "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

- When you do need to collect personal information, inform the resident in writing of:
 - The information you are requesting;
 - Any laws that require or authorize you to gather the information, if applicable;
 - The purpose for collecting it;
 - What related uses will be made of this information;
 - That the information will be kept confidential;
 - The deadline for providing the information;
 - Whether a response is mandatory or voluntary;
 - The effect, if they refuse to provide you the information; and
 - The person’s point of contact, and how to do so.
- It is important to apply these principles to VAWA in relation to an Owner’s policy and procedures regarding a request made by an applicant/resident for VAWA protections¹¹⁰ or remedies.¹¹¹ VAWA is very specific that:
 - If the covered housing provider requires **documentation of an incident of domestic abuse** to trigger VAWA (rather than accepting the applicant’s/resident’s verbal statement) the covered provider must make the request in writing;¹¹²

transfer.” In this case, the Owner may choose to accept the tenant’s certification of this either orally or require written certification. Also see 24 CFR 5.2005(e)(10) and 24 CFR 5.2007.

¹¹⁰ See 24 CFR § 5.2007(a)(1).

¹¹¹ See 24 CFR § 5.2009.

¹¹² See the VAWA statute, **SEC. 12291** (C)(1), as well 24 CFR 5.2007(a)(1), **Multifamily Notice**, pg. 13 and **PIH Notice**, pg. 11.

- **Simply handing an applicant a copy of the VAWA Notice and Self Certification doesn't constitute a written request for documentation of status.**¹¹³ As such, the Covered housing provider must provide the survivor a dated letter¹¹⁴ and may attach HUD's Notice of VAWA Rights ([HUD-5380](#))¹¹⁵ and Certification Form ([HUD-5382](#)).¹¹⁶
- The letter should include specific information¹¹⁷:
 - An acknowledgement of the request for VAWA protections or remedies, if a request has occurred;¹¹⁸
 - The housing provider's authorization under VAWA to make a request for written documentation, and the types of documentation that are acceptable;
 - The information provided will be kept confidential;
 - The deadline (14-business-days from date of receipt) and if there will be any possibility for extensions;
 - Response is required;

¹¹³ See **Multifamily Notice**, pg. 13 and **PIH Notice**, pg. 11.

¹¹⁴ The regulation, 24 CFR 5.2007(a) assumes that the survivor makes a request prior to the housing provider providing a letter requesting written documentation. Some housing providers are including the request for written documentation in the rejection letter (and eviction notice). The purpose of this is to expedite the provider's capacity to fill a vacancy and/or resolve a lease violation. Survivors may find this confusing because the letter then contains two deadlines: a deadline to appeal the request for rejection and the deadline to provide documentation of the DVDVSAS if the reason for rejection is directly related to the DVDVSAS.

¹¹⁵ This form is called "Notice of Occupancy Rights, form HUD-5380."

¹¹⁶ This form is called, "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation", form HUD-5382.

¹¹⁷ As a reminder, any letter needs to also include notice of the right to request a reasonable accommodation and free language assistance.

¹¹⁸ See HUD's **Multifamily VAWA Questions**, Question 11: https://www.hud.gov/sites/dfiles/Housing/documents/Revised_VAWA_QA.pdf.

- The request will be denied if the victim doesn't provide the information; and
- Who the applicant/resident contacts for questions and how.

Please note that in order to provide this information, management needs to make specific decisions regarding who the point person is for VAWA at the site, management's procedures for contacting a survivor and receipt of documentation, which needs to take into consideration safety concerns for the applicant/resident. You will also need to decide if you will suggest (you can't require) that a survivor designate a point of contact for communications, such as a DV or SA advocate.

A number of types of documentation will satisfy the requirement, and it is **the survivor's choice what to submit; not the housing provider's**.¹¹⁹ These documents include the following:

- HUD's Form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation", **or**
- A document:
 - 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;
 - Signed by the applicant or tenant; and
 - 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

¹¹⁹ See 24 CFR 5.2007(b)(1), HUD Multifamily, pg. 14, **PIH Notice**, pg. 11.

meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under §5.2003; **or**

- A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; **or**
- At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

Please note that third-party documentation may be required by the covered housing provider only when there are conflicting requests for VAWA protections by applicants/residents or the applicant/resident has submitted information that conflicts with information that the housing provider otherwise knows.¹²⁰

The VAWA rules also permits covered housing providers to deny VAWA protections or remedies if an applicant or tenant doesn't provide the documentation requested within 14-business-days after the date that the tenant receives a request in writing for such documentation. A covered housing provider **may** extend this time-frame.¹²¹ If the applicant/resident fails to provide the requested documentation, the covered provider **may** take specific actions.¹²²

- Staff must not have access to information regarding residents unless they need the specific information for a legitimate business reason. This means there is no sharing information among staff unless it is for an authorized reason, and standard safeguards are taken when doing so. In relation to DVDVSAS, this means the information is needed by an

¹²⁰ See 24 CFR 5.2007(b)(2) and **Multifamily Notice**, beginning pg. 16 and **PIH Notice**, beginning pg. 13.

¹²¹ 24 CFR 5.2007(a) (2)(ii), **Multifamily Notice**, pg. 15 and **PIH Notice**, pg. 49.

¹²² 24 CFR 5.2007(a) (2)(i), **Multifamily Notice**, pg. 16 and **PIH Notice**, pg. 49.

Owner/Agent/ PHA employee to provide the VAWA protections to the victim.¹²³

As such, each site will need to determine:

- who will have access to VAWA information;
- how the information will be stored and secured; and
- how the information will be accessed.

It is crucial that staff be trained at least on an annual basis in their company's confidentiality policy and procedures, which must incorporate federal and state requirements, including VAWA's confidentiality requirements. Remind staff (and residents) of the importance of confidentiality by posting notices about confidentiality in the management office (including separated workspaces), and common areas (including but not limited to elevators, bathrooms, and the community room).

- The Owner/Agent/PHA is prohibited under VAWA from entering any information regarding a person exercising protections and remedies under VAWA, including the person's status as a survivor, into any shared database except to the extent that disclosure is:
 - Requested or consented to in writing by the individual (victim) in a time-limited release;
 - Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; **or**
 - Otherwise required by applicable law.¹²⁴

It is important not to construe this as being unable to enter essential information into a secure database, such as your waiting list management

¹²³ See 24 CFR 5.2009 (c) (1), **Multifamily Notice**, pg. 22, **PIH Notice** pg. 19.

¹²⁴ See 24 CFR 5.2009 (c) (2), HUD **Multifamily Notice**, beginning pg. 22, **PIH Notice** pg. 19.

system. You may do so, provided the data base's security measures satisfy Federal (and state) privacy requirements, and the Owner/Agent/PHA has satisfied the above requirements. This is discussed in more detail in Part 3 of this Chapter, in the section on Emergency Transfers. It is also discussed in this section regarding preferences.

- Confidential Information regarding DVDVSAS must not be kept in a resident's file. It must be kept separate and in a locked cabinet, to which only people who need to know the information have access.¹²⁵
- Staff may not share information about one resident with another resident, even if they are in the same family, unless management has written permission from the survivor to do so.
 - Residents often try to engage management in discussions about other residents. Sometimes it's out of concern, sometimes to complain about behavior, and other times it's simply to chit chat/gossip. You may listen, follow up, but are prohibited from sharing information, including any concern you have for the other resident's well-being. Sometimes you simply need to remind people that you're not at liberty to speak with them about a resident, and that they wouldn't want you to share their business with another resident. However, if a resident raises a safety concern for the person or a complaint, you must follow up. However, you must do so in a manner that takes into

¹²⁵ **Multifamily VAWA Questions**, #39. Also see HUD Handbook 4350.3, Par. 4-4 C.9. (d), pg.4-9. In the preamble to HUD's Final Rule, HUD provided contrary information in response to a question by a commentator regarding whether information is required to be kept separate from the resident file. HUD stated, "This rule does not require housing providers to maintain VAWA-related documents in a particular location. Housing providers, using the resources they have, should determine the best strategy for maintaining confidentiality in accordance with VAWA 2013." See 80788 Federal Register / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations. In addition, HUD's **Multifamily Notice** appears to contradict the information contained in Question #39 and in the Handbook in relation to receipt of verbal statements regarding DVDVSAS. In such instances where housing providers accept such statements and do not require written documentation, the provider is instructed to make a notation in the file, as well as keep corroborating information there. Nothing is mentioned regarding keeping this information in a separate location. See **Multifamily Notice**, beginning pg. 13.

consideration the resident's safety. Please see below for suggestions.

- A perpetrator may be a family member. Disclosing any information or any conversation you have had with a survivor to a family member without permission to do so can put the survivor in danger.
- Unless staff has explicit written permission¹²⁶ from a resident to discuss them with an individual, or the person is the individual's legal guardian, staff may not share information about the applicant/resident with the person. This includes but isn't limited to, a family member/friend not living in the unit, a healthcare provider, domestic violence or sexual assault advocate, and safety personnel.¹²⁷ As such, management will

¹²⁶ The written release must be signed and dated by the resident stipulating permission to release information, and the parameters of the information (unless the individual is the resident's legal guardian) and specify a timeframe.

¹²⁷ HUD tried to facilitate the owner/managing agent being able to legally have contact with residents' support networks beginning in late 2009 by requiring O/As in virtually all HUD programs (as well as Public Housing Authorities) to provide applicants the opportunity to give "emergency contact" information at application, using HUD Form 92006, **SUPPLEMENT TO APPLICATION FOR FEDERALLY ASSISTED HOUSING**. HUD has incorporated this requirement into its Multifamily Housing Handbook, the HUD Handbook 4350.3 Rev-1. Applicants may not be required to provide the information. The original Notice as well as the Handbook also recommend that existing residents be provided such an opportunity and that at recertification residents should be provided an opportunity to update the information. An applicant or resident could have more than one contact person, and that it is the applicant's/resident's responsibility to make clear to the owner/agent who should be contacted under what circumstances. It is important that staff familiarize themselves with this form. Please note that this form is available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud9 can be obtained at this website in both English as well as Amharic, Arabic, Armenian, Chinese, Farsi, French, Khmer (Korean), Portuguese, Russian, Spanish, Tagalog and Vietnamese.

See the Joint Notice issue by HUD's Office of Housing (H) and the Office of Public and Indian Housing (PIH), H2009-13 and PIH 2009-36: Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Person or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing. HUD reinstated and extended the 2009 joint Notice issued by the Office of Housing (H) and the Office of Public and Indian Housing (PIH), identified as H 2009-13 or PIH 2009-36, on May 9, 2012 in NOTICE: H 2012-9 and NOTICE: PIH 2012-22(HA). HUD incorporated the requirements contained in the notice into HUD Handbook 4350.3, **Occupancy Requirements of Subsidized Multifamily Housing Programs**. It is discussed in Par. 4-14 titled Taking Applications for Occupancy, beginning on pg. 4-34 and in much more detail beginning on pg. 4-36.

need to come up with procedures for how they are going to communicate with the survivor to avoid inadvertent disclosure to a family member who lives with the survivor and/or an employee of the survivor who works in the survivor's unit.

The only general exception to this key principle is if the staff person is a Mandated Reporter required to disclose specific information based on a legal reporting obligation.¹²⁸ In the state of Massachusetts, some people because of their occupation have a legal obligation to notify a government agency if they suspect an elder¹²⁹, child (someone under

¹²⁸ In the state of Massachusetts, some people because of their occupation have a legal obligation to notify a government agency if they suspect an elder, child (someone under 18) or person with a disability is being abused, and/or neglected. Such individuals are referred to as "Mandated Reporters" and are subject to liability if they have reasonable cause to know the abuse is occurring and don't report it.

¹²⁹ The state statute can be found at M.G.L. c. 19A, §15. Also see 651 CMR 5 for the **ELDER ABUSE REPORTING AND PROTECTIVE SERVICES PROGRAM** regulations. The definition of an elder is in G.L. c. 19A §14. An elder is defined as someone 60 years of age or older.

18)¹³⁰ or person with a disability¹³¹ is being abused, and/or neglected.¹³² Such individuals are referred to as “Mandated Reporters” and are subject to liability if they have reasonable cause to know the abuse is occurring and don’t report it. Although Resident Service Coordinators are not Mandated Reporters, licensed social workers are Mandated Reporters; as such, any Resident Service Coordinator who is a licensed Social Worker is a Mandated Reporter in Massachusetts. In addition, the definition of Mandated Reporter in re to children indicates that individuals who work

¹³⁰ See G.L.c.119 and Department of Children and Families’ regulations at 110 CMR 2.00. Please note that the definition of mandatory reporter in G.L. c. 119, Section 21 is quite broad and would include individuals who provide after school programs/Care at a housing site. See <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section21>

¹³¹ See G.L. c. 19C Disabled Persons Protection Commissions regulations for investigations at 118 CMR 5.00. A person with a disability is a person between the ages of 18 and 59, “who is a person with an intellectual disability as defined by section 1 of chapter 123B, or who is otherwise mentally or physically disabled and as a result of such mental or physical disability is wholly or partially dependent on others to meet his daily living needs.” See G.L. c.19C §1. Note: language in Section 10 of this statute is worth noting. It states in part:

“No privilege established, by sections one hundred and thirty-five A and one hundred and thirty-five B of chapter one hundred and twelve, by section twenty or twenty B of chapter two hundred and thirty-three, by court decision or by professional code relating to the exclusion of confidential communications and the competency of witnesses may be invoked to prevent a report by a mandated reporter or in any civil action arising out of a report made pursuant to this chapter; provided, however, a mandated reporter need not report an otherwise reportable condition if the disabled person invokes a privilege, established by law or professional code, to maintain the confidentiality of communications with such mandated reporter.”

See <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter19C/Section10>

The second half of this paragraph raises a question of what a Resident Service Coordinator, who is a Social Worker, should do if a victim confides in him/her but prohibits Social Worker from disclosing. In such instances, a Resident Service Coordinator/Social Worker should contact their supervisor and seek legal counsel. Comparable language doesn’t appear in the Elder abuse statute.

¹³² The statute which protects children uses two terms: neglect and abuse. The statute covering elders, M.G.L. c 19A, doesn’t have a separate definition of neglect. Rather, it is included in the definition of abuse. This statute’s implementing regulations’ definition of abuse explicitly includes neglect. See 651 CMR 5.02. In contrast, the term neglect isn’t used in the definition of abuse in the statute covering persons with disabilities, at M.G.L. c 19C. Nor is there a separate definition of the term neglect. The implementing regulations for this statute include the protection of persons with disabilities for neglect, as well as abuse, but don’t define neglect per se.

at a site in after school programs for children are considered mandatory reporters because of the nature of work they are doing.¹³³

Sometimes not sharing confidential information with others is very difficult, especially because a resident's family can be very demanding in their quest to obtain information about the resident and to get you to do things for the resident that the resident hasn't authorized you to do and/or doesn't want, including the provision of a reasonable accommodation. Before taking any action on behalf of a resident that a family member requests, you must confirm with the resident that they want you to do it (unless the family member is a legal guardian). If you do this orally, document in writing your conversation with the resident, and if it is your standard procedure (which is recommended) follow up with a written confirmation. Likewise, if someone claims to be a resident's legal guardian or power of attorney, you must ask for

¹³³ Please note that the definition of mandatory reporter in G.L. c. 119, Section 21 is quite broad and would include individuals who provide after school programs/Care at a housing site. It provides: "Mandated reporter", a person who is: (i) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath, allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselor, psychiatrist or clinical social worker; (ii) a public or private school teacher, educational administrator, guidance or family counselor, child care worker, person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 15D that provides child care or residential services to children or that provides the services of child care resource and referral agencies, voucher management agencies or family child care systems or child care food programs, licenser of the department of early education and care or school attendance officer; (iii) a probation officer, clerk-magistrate of a district court, parole officer, social worker, foster parent, firefighter, police officer; (iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis; (v) in charge of a medical or other public or private institution, school or facility or that person's designated agent; or (vi) the child advocate.

documentation before providing them any information relating to the individual. Make sure you retain copies of all applicable documentation, and carefully read the documents to ensure you understand the parameters of the relationship between the resident and the third party.¹³⁴

Educate residents regarding the role of members of the management team (manager, assistant manager, leasing agent, recert specialist, resident service coordinator, maintenance supervisor, maintenance technician....) and what they can and can't expect regarding the confidentiality of information that they share with you or that you obtain through your work with them. If residents aren't provided a detailed explanation of what information staff will share with one another, especially what a Resident Service Coordinator will and won't share with management and when a Resident Service Coordinator is going to break his/her confidence or interfere in his/her life, the resident could end up feeling "betrayed" by a staff person.

- Staff must avoid inadvertent disclosure of private information to people by focusing on where, when and how they communicate to people in person, on the phone (including texts), and electronically. It is particularly important for staff to be mindful of this given the sensitive nature of DVDVSAS, and figure out the procedures they will undertake to ensure confidentiality
 - Always handle conversations about residents with anyone (them, other staff, a third-party service provider....) in a professional and business-like manner, demonstrating the utmost respect for individuals' rights to privacy and confidentiality. This includes

¹³⁴ This information is taken directly from MassHousing's RSC Liability Training Participant Guide.

when you may be incredibly frustrated with a resident, skeptical about information you are being provided, or question the validity of a request for VAWA.

- Do not discuss private information in a public place, or in a private space (such as your office) if there are unauthorized personnel, contractors, residents, applicants, who may overhear your conversations. You must only meet in a secure space.
- When receiving a phone call from someone who states they are wanting to discuss an applicant/resident, confirm you have authorization to talk with the person. If you do, ask to call the person back to confirm the person is who they say they are. If you are initiating the call, again confirm you have the correct person and inform them that you need to discuss sensitive information and confirm the person is able to talk privately before you begin.
- Take caution not to transmit confidential information when using fax machines, email, voice mail, and text. For example:
 - Never leave messages containing sensitive, private information a voicemail, or send an email or text with such information;
 - If you are sending a fax, use a secure fax transmission whenever possible, confirm it is a designated fax line, that it is in a secure location where unauthorized personnel are barred, and that a person is on the other line to retrieve immediately. Confirm the person received the fax.
 - If you are sending email, make sure it is encrypted.
- Take precautions when sending confidential information by mail/courier, even if it's inter-office:

- Make sure the courier service has a Written Information Security Program (WISP) and/or have them sign a confirmation that they will follow your company's WISP;
 - If you are mailing confidential information to a person within your office system, use sealable opaque solid envelopes, and address the envelope to the person's attention;
 - When using the U.S. postal service, double-wrap the documents, which can be done using two envelopes, and mark only the inside envelope as confidential with the statement —To Be Opened By Addressee Only.
- Do not remove any information about someone's DVDVSAS information from the office unless it is for a legitimate business purpose, and with the approval of your supervisor.
- Avoid using language referencing domestic violence or sexual assault in agency names, program names, organization names, and staff titles.
- Never leave reports or computer monitors unattended or unsecured. For example, paperwork, files, and/or open screens on a computer monitor containing personal and confidential information about an applicant can't be left out or visible to visitors to the office and/or unauthorized personnel.
- Shred (using cross-cut shredders) and destroy information (through burning using a company that specializes in this if it is a hard copy or permanently erase, not just delete electronic records) that are no longer needed relative to applicants or residents whether printed or stored on electronic media.

19. Are there specific safeguards Owners/Agents/PHAs need to follow when communicating with the survivor?

Yes.

- Unless you have permission from the survivor, don't leave voice messages, send emails, post notices, text, or send letters that contain confidential information, refer to DVDVSAS or VAWA. A perpetrator may live with the survivor or be employed by the survivor as a caregiver, such as a personal care attendant, and have access to one or more of these standard forms of communication. The managing agent then faces a potential dilemma regarding how to provide a request in writing for documentation of DVDVSAS status, without putting the person in danger. A best practice is being flexible regarding how you provide the notice, and ascertain if you can safely reach the person and request them to come to the office where you can hand deliver it, provided the person comes alone or with someone who the resident tells you it's okay to communicate in front of.
- If you have permission to contact the survivor about DVDVSAS through a standard method of communication (phone, email, letter, text) or some other method, utilize that method. HUD states it is a best practice to obtain permission in writing, and document which form(s) of communication with the survivor have been approved by the person. This information is confidential and must be kept separate from the resident's file.¹³⁵
- Any communication with a survivor must be private. Covered Housing Providers must follow safeguards discussed above to ensure that other people can't hear the conversation.
- Although HUD permits covered housing providers to require a survivor to come into the office to pick up a certification form, this practice creates an

¹³⁵ See footnote 107 Herein.

unnecessary barrier to survivors of DVDVSAS. Housing providers should be as flexible as possible (which will depend on administrative capacity) and work with residents to hand-deliver a form when necessary to protect a person's safety, including off-site.

- Maintain a separate telephone line and Post Office box to receive confidential information.
- Suggest (you can't require) that the survivor designate a secure contact for communications regarding the request of VAWA protections. This could be anyone, including an attorney or DV or SA advocate.

20. Are there non-discrimination obligations Owners/Agents must keep in mind when implementing VAWA and An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking?

Yes. Owners and Agents must remember that the requirements of VAWA and State law protecting survivors of DVDVSAS can't be done in isolation from non-discrimination obligations. Non-discrimination requirements, which derive from a number of federal and state laws, impact our rules, policies, procedures, practices, and services throughout the occupancy cycle.¹³⁶ In Question 21 we explain how VAWA must be implemented in a non-discriminatory manner. This requirement can't be overstated. In addition, we would like to remind you of two legal obligations Owners and Agents have which significantly impact VAWA implementation:

- Providing applicants and residents with disabilities reasonable accommodations: changes in rules, policies, practices, services and physical changes to units and common areas necessary to afford a person

¹³⁶ Please see MassHousing's Fair Housing Handbook, titled: **Housing Providers Rights and Responsibilities Under Federal and State Fair Housing Laws** (2016), written by Debbie Piltch. This handbook is currently being revised and will be available in November 2020.

with a disability an equal opportunity to apply to and use and enjoy a dwelling or common area.¹³⁷

- Providing applicants and residents with limited English proficiency, commonly referred to as LEP, meaningful access to the site’s program.¹³⁸

The importance of these two non-discrimination requirements and their application to site operations throughout the occupancy cycle can’t be over emphasized. As discussed in the first chapter of this Handbook, a significant percentage of survivors of DVDVSAS are survivors with disabilities and survivors who have limited English proficiency. In addition, as discussed earlier, some people’s disabilities are the result of the physical and/or emotional abuse from domestic violence, or from trauma emanating from DVDVSAS. For more information on this see Chapter 1. Throughout the remainder of this chapter we will integrate these requirements into the questions and answers. Please note that because statistics demonstrate that a disproportionate number of survivors are women, domestic violence survivors who

¹³⁷ For more information on this topic, see: **A Handbook on the Legal Obligations and Rights of Public and Assisted Housing Providers Under Federal and State Fair Housing Law for Applicants and Tenants with Disabilities**, written by Debbie Piltch in consultation with Ann Anderson, which was originally produced by MassHousing under the Department of Housing and Urban Development's Fair Housing Initiatives Program (FHIP). This handbook is published under “Publications” on MassHousing’s website: https://www.masshousingrental.com/portal/server.pt/community/community_services/330/fair_housing_resources#

¹³⁸ MassHousing has extensive training materials and resources on providing meaningful access to persons with LEP. Please see MassHousing’s website at https://www.masshousingrental.com/portal/server.pt/community/library/332/limited_english_proficiency/18409, as well as Appendix F in this manual.

Also see 24 CFR Part 1 et, Title VI of the Civil Rights Act of 1964, Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, Federal Register / Vol. 72, No. 13 / Monday, January 22, 2007. Also, please note that the Rural Development published their guidance in Federal Register, Vol. 79, No. 229, Friday, November 28, 2014 125. Also, HUD’s Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, which was issued on September 15, 2016, discusses how disparate treatment and disparate impact apply in the context of providing meaningful access to individuals with LEP. Unlike HUD’s previous guidance which only applies to housing providers that receive federal dollars, this guidance applies to any housing provider covered by the Fair Housing Act, which includes market housing and housing funded with tax credits. Please see <https://portal.hud.gov/hudportal/documents/huddoc?id=lepmemo091516.pdf>.

are women and denied housing, evicted, or denied assistance based on DVDVSAS may have a cause of action for sex discrimination under the Fair Housing Act. Likewise, because women of certain national origins and immigrant women also experience domestic violence at disproportionate rates, a survivor may also have a cause of action for race or national origin discrimination under the Fair Housing Act.¹³⁹

21. Do Federal and State Fair Housing Laws prohibit Discrimination against survivors of DVDVSAS?

The Federal Fair Housing Act¹⁴⁰, and Massachusetts state fair housing law¹⁴¹ (which HUD considers substantially equivalent)¹⁴² do not explicitly prohibit discrimination against survivors of domestic violence.¹⁴³ However, cases alleging discrimination against survivors of domestic violence have been brought against housing providers and local government entities under the Fair Housing Act for on the basis of sex.¹⁴⁴ This is not surprising because statistically women are overwhelmingly more likely than men to be “victims” of domestic violence. In addition, it is important to note

¹³⁹ See **Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)**, February 9, 2011 at <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF>. Also, for more information on statistics, please see Chapter 1. Please note that case law in this area has focused on domestic violence. A similar analysis may be used in relation to sexual assault, dating violence, and stalking.

¹⁴⁰ See 42 U.S.C. 3601 et seq.

¹⁴¹ See G.L. c. 151 B.

¹⁴² The standard for determination of substantial equivalency is contained in 24 CFR 115.201.

¹⁴³ See Question 21.

¹⁴⁴ Examples of cases include: **City of Berlin, NH (HUD Conciliation Agreement 2015)**; **Survivor and New England Family Housing Management Organization & Survivor and Michael Warren (HUD Conciliation Agreements 2014)**; **HUD v. Southgate Apt. Co. (HUD Charge of Discrimination 2014)**; **Briggs v. Norristown (HUD Conciliation Agreement 2014)** and; **Dickinson v. Zanesville, 975 F.Supp.2d 863 (S.D. Ohio 2013)**. Also see <https://www.nhlp.org/initiatives/protections-for-survivors-of-domestic-and-sexual-violence/>.

that although cases involving survivors of sexual assault haven't standardly been brought under Fair Housing Laws, the same analysis is applicable, especially given that the vast majority of survivors of sexual assault are women.

Please see Chapter 1 for a discussion of this.¹⁴⁵

HUD's Office of Fair Housing and Equal Opportunity (FHEO) issued guidance to FHEO Directors and Regional Directors on how to evaluate claims of discrimination under the Fair Housing Act and VAWA prior to the Reauthorization of VAWA 2013.¹⁴⁶ Although some of the information in the notice regarding VAWA is outdated, it discusses legal theories under the Fair Housing act¹⁴⁷ and provides examples of housing discrimination cases based on sex involving survivors of domestic violence.¹⁴⁸ HUD's more recent guidance on how the Fair Housing Act applies in cases involving local nuisance and crime ordinances and their potential impact on survivors on domestic violence is extremely important because many survivors are evicted erroneously as a result of such ordinances. This document addresses both disparate treatment and disparate impact theories of discrimination and their applicability.¹⁴⁹

¹⁴⁵ Please note that claims based on other protected classes may also be applicable because statistically women of certain national origin, immigrant women, women of certain races, and women with disabilities, experience domestic violence at disproportionate rates.

¹⁴⁶ See *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)*, February 9, 2011 at <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF>.

¹⁴⁷ The Notice discusses three theories: Direct Evidence, Unequal Treatment and Disparate Impact. Standardly, this is broken down into two theories, Disparate Treatment, which would include both Direct Evidence and Unequal Treatment) and Disparate Impact. HUD's more recent notice, *Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services*, SEPTEMBER 13, 2016, <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF> utilizes the two theories of discrimination.

¹⁴⁸ See notice in footnote 147 for a listing of cases.

¹⁴⁹ *Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or*

Let's briefly discuss the two theories of discrimination which are applicable: disparate treatment and disparate impact, and examples of each regarding domestic violence.

- **Disparate treatment** generally refers to discrimination that occurs when a person in a protected class is treated differently from a similarly situated person who is not in the protected class. This is also referred to as intentional discrimination.

Example: A survivor is evicted because they cannot pay for damages caused by their abuser who broke into their unit; however, another tenant who had their unit damaged by a burglar was not charged for the damages and did not face eviction.

- **Disparate impact** discrimination generally refers to practices that appear neutral but have a greater negative effect on people in a protected class and can't be justified by a legitimate business reason or even if it can be justified, there is a less discriminatory way to satisfy the business need.¹⁵⁰

The analysis involves a three-prong test:

- Does the rule, policy, procedure, practice have a greater impact

Emergency Services, SEPTEMBER 13, 2016, <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF> Please note that in 2013 HUD amended its Fair Housing Act regulations to implement the Fair Housing Act's disparate impact standard. HUD has published a notice seeking public comment on this rule, "to determine what changes, if any, are appropriate following the Supreme Court's 2015 ruling in Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., which held that disparate impact claims were cognizable under the Fair Housing Act and discussed standards for, and the constitutional limitations on, such claims." See <https://www.federalregister.gov/documents/2018/06/20/2018-13340/reconsideration-of-huds-implementation-of-the-fair-housing-acts-disparate-impact-standard> In Massachusetts, the Supreme Court applied the legal theory of disparate impact under federal and confirmed its application to Massachusetts state fair housing law in Burbank Apartments Tenant Association v. William M. Kargman, 474 Mass. 107 (2016).

¹⁵⁰ HUD is reviewing the final rule and supplement to determine what changes, if any, are appropriate following the Supreme Court's 2015 ruling in Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., which held that disparate impact claims were cognizable under the Fair Housing Act and discussed standards for, and the constitutional limitations on, such claims. A proposed rule has been published. See https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_122.

on women/victims of domestic violence?

- If yes, what is the legitimate business necessity/goal of the rule, policy, procedure, practice?
- Is there a less discriminatory alternative available to meet the housing provider's objective?

Example: A housing provider has a zero-tolerance policy for violence on site, including altercations between household members, and evicts all household members. This rule is neutral in the sense that it is applied in the same way to all residents. However, it is likely to have a disproportionately negative impact on DV survivors, which is prohibited by Federal and State Fair Housing law under gender discrimination theory because most survivors are women. The purpose of such a rule is presumably legitimate: to facilitate a crime free environment at the site and to ensure the health and safety of the site community. However, how the method used has a negative impact on survivors. A survivor shouldn't be punished through eviction for their perpetrator's actions. As such, a zero-tolerance policy that didn't have an exception for survivors would violate the Fair Housing Act in accordance with HUD guidance and case law.¹⁵¹ An owner could bifurcate the lease and evict only the perpetrator.

We anticipate more claims involving domestic violence being brought under the Fair Housing Act which focus on two areas:

¹⁵¹ See Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA), February 9, 2011 at <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF> and Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services, SEPTEMBER 13, 2016, <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>.

- screening (history of lease violations, bad credit, criminal records¹⁵²); and
- eviction and lease non-renewal due to disturbances or repeated calls to the police, and property damage.

22. Do the sections of VAWA which apply to Housing Providers and An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking address the same topics?

No. The chart on the following page summarizes the primary topics addressed in these federal and state laws.

¹⁵² Please note that the U.S. Department of Housing and Urban Development's (HUD's) Office of General Counsel issued guidance regarding how the Fair Housing Act applies to the use of criminal history by providers in determining suitability for housing. The guidance, which was issued on April 4, 2016 provides that a housing provider violates the Fair Housing Act, which prohibits discrimination based on race, color, religion, sex, national origin, familial status, and disability, when the provider's policy or practice has a greater impact based on protected status and can't be justified through business necessity, which also means that there's not a less discriminatory means of achieving a necessary business purpose. This means that a housing provider's policy must "accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not." Contained in this document is also a discussion of arrests, and the inability of a housing provider to reject based on an arrest. https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

Please also see related guidance HUD issued on arrests that applies to both public and assisted housing providers, titled, Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, Notice PIH 2015-19 / H 2015-10, which was issued on November 2, 2015, at <https://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf> and follow up questions and answers HUD's Office of Public and Indian Housing ("PIH"), Office of Housing, and Office of General Counsel issued to address questions raised by the notice, titled, FAQs for Notice PIH 2015-19 / H 2015-10: https://portal.hud.gov/hudportal/documents/huddoc?id=FAQ_Exclude_Arrest_Records.pdf

Topic	VAWA	MA State Law
Notice Requirements ¹⁵³	Yes	No
Lease Bifurcation ¹⁵⁴	Yes	No
Reasonable Time to Establish Eligibility Following Bifurcation of a Lease ¹⁵⁵	Yes	No
Termination of the Victim Due to “Actual and Imminent Threat” ¹⁵⁶	Yes	No
Documentation of Domestic Violence ¹⁵⁷	Yes	Yes
Emergency Transfer Plans and Transfers ¹⁵⁸	Yes	No
Early Termination of Lease ¹⁵⁹	No	Yes
Changes In Locks and Protection against retaliation by housing provider for having to have locks changed ¹⁶⁰	No	Yes
General protection against evictions and subsidy terminations ¹⁶¹	Yes	No
Protection against retaliatory eviction for obtaining a protection order or calling the police ¹⁶²	No	Yes
Confidentiality ¹⁶³	Yes	No
Leases, Lease Addendum, Contracts ¹⁶⁴	Yes	No
Establishing Waiting List Preferences ¹⁶⁵	Yes	No
Record Keeping and Reporting Requirements ¹⁶⁶	Yes	No

¹⁵³ 34 U.S.C. §12491(d).

¹⁵⁴ 34 U.S.C. §12491(b)(3)(B).

¹⁵⁵ 34 U.S.C. §12491(b)(3)(B)(ii).

¹⁵⁶ 34 U.S.C. §12491(b)(3)(C).

¹⁵⁷ 34 U.S.C. §12491(c).

¹⁵⁸ 34 U.S.C. §12491(e).

¹⁵⁹ Although VAWA doesn’t contain an early termination provision, the HUD Rule and Guidance does discuss this in varying contexts. See part 3 of this chapter.

¹⁶⁰ This isn’t discussed in the VAWA statute and isn’t a requirement of VAWA. It is discussed in **PIH Notice**, pg. 28 and **Multifamily Notice**, pg. 32 and 39. It is specifically addressed in state law at G.L. c.186 §§25-26.

¹⁶¹ 34 U.S.C. §12491(b).

¹⁶² Arguably, this is covered in the above provision, which is broader. It is explicitly addressed in the state statute at G.L. c.186 §25.

¹⁶³ 34 U.S.C. §12491(c)(4).

¹⁶⁴ This requirement is addressed in HUD’s final rule. See 24 CFR §5.2005(a)(4), 24 CFR §574.604(B), 24 CFR §576.106(g), 24 CFR §578.99 (j)(5). The state statute doesn’t address this although it does address that a housing provider can’t utilize a lease or lease addendum (or other means) to require a tenant to waive their rights under this state law. See G.L. c.186 §28.

¹⁶⁵ This isn’t a requirement but is addressed in HUD’s final rule. For example, see § 886.139(b), §886.339(b), §891.190(b), § 960.206(b)(4), §982.207(b)(4).

¹⁶⁶ This requirement is addressed in HUD’s final rule. See 24 CFR 5.2005(e)(12).

Chapter 2, Part 2

Application Process

Chapter 2, Part 2:

Application Process

Throughout the admission process you are bound not only by program specific requirements but also by a broad standard of nondiscrimination. The requirement not to discriminate means that you must treat each individual applicant on the basis of their merits; you may not make presumptions about whether someone will be able to comply with the lease based on any protected status, including if the person is a survivor of domestic violence, dating violence, sexual assault or stalking (hereinafter referred to as DVDVSAS). At the time of initial application, you may properly confirm the presence of an applicant's DVDVSAS status only if necessary to establish eligibility for a specific housing program or a preference.¹ Thereafter, someone's status

¹ Preferences are extremely important. They are used by Congress (in some housing programs), state governments, regulatory agencies such as HUD, and Owners to address specific housing priorities. Waiting lists for housing are created using objective methods and applicants for housing are placed on waiting lists either through a lottery, or some other method. O/As select applicants with preferences from the waiting list for an available unit earlier than those who do not have a preference. In other words, a preference doesn't make someone eligible for housing, it only allows the person to obtain housing before someone who doesn't have a preference. Generally, there are four types of preferences: statutory, regulatory, state and local, and owner adopted. Statutory and regulatory preferences impact properties covered by specific housing programs. In contrast, state and local preferences apply based on where a housing site is located, and owner adopted preferences are solely based on the population or populations an owner wants to focus on. Owner adopted preferences are subordinate to any program-specific preferences discussed. Also, Owners may decide to assign a hierarchy to their owner-adopted preferences, or aggregate the preferences, so that families that satisfy more than one Owner preference are higher on the waiting list than families that satisfy only one Owner preference. Any preference and set-aside must be included in a site's Tenant Selection Plan, Admission and Continued Occupancy Policy (ACOP) and a Public Housing Authority's Administrative Plan for the Housing Choice Voucher program. PHAs may establish a preference for victims of dating violence, sexual assault, and stalking, in addition to domestic violence. (See 24 CFR 960.206(b)(4), and 982.207(b)(4).) Many PHAs/ Owner/Agents have adopted a priority for survivors of domestic violence. These preferences vary and may have limits which focus on current residents of housing either financed or administered by MassHousing or current residents of housing owned and operated by affiliates of the Owner and under control of the Agent.

Also, any site financed by MassHousing **must** adhere to the following preferences, in descending order, which include survivors of DVDVSAS. The preferences are listed both in the MassHousing Tenant Selection Plan, and detailed in the **Tenant Selection Plan (TSP) Reference Guide, October 2018** which can be found at:

https://www.masshousingrental.com/portal/server.pt/community/library/332/rental_owners_managers_forms_documents#

(A) **1st Priority - Homelessness due to Displacement by Natural Forces:**

An applicant, otherwise eligible and qualified, who has been displaced by:

- (i) fire not due to the negligence or intentional act of applicant or a household member;
- (ii) earthquake, flood or other natural cause; or
- (iii) a disaster declared or otherwise formally recognized under disaster relief laws.

as a survivor of domestic violence must only be considered if an applicant raises it to explain a negative tenancy related history, bad credit, criminal record, or why a specific unit in a development isn't acceptable to them.

In no way does the requirement that you ignore someone's status as a survivor of DVDVSAS limit your ability to determine if the person will be a good tenant. You may continue to use applicant-screening methods designed to determine the likelihood that an applicant will be able to meet the essential requirements of tenancy as expressed in the lease. The questions in this section will help you meet your need to screen tenants adequately without violating federal and state law which protects survivors of DVDVSAS.

(B) 2nd Priority - Homelessness due to Displacement by Public Action (Urban Renewal):

An applicant, otherwise eligible and qualified, who will be displaced within 90 days, or has been displaced within the three years prior to application, by:

- (i) any low rent housing project as defined in M.G. L. c. 121B, § 1, or
- (ii) a public slum clearance or urban renewal project initiated after January 1, 1947, or
- (iii) other public improvement.

(C) 3rd Priority - Homelessness due to Displacement by Public Action (Sanitary Code Violations):

An applicant, otherwise eligible and qualified, who is being displaced, or has been displaced within 90 days prior to application, by enforcement of minimum standards of fitness for human habitation established by the State Sanitary Code or local ordinances, provided that:

- (i) neither the applicant nor a household member has caused or substantially contributed to the cause of enforcement proceedings; and
- (ii) the applicant has pursued available ways to remedy the situation by seeking assistance through the courts or appropriate administrative or enforcement agencies.

Note: For purposes of this subsection, "enforcement" is interpreted as a formal condemnation of the apartment. Citation for code violations does not, without more, constitute a condemnation.

(D) 4th Priority – Involuntary Displacement by Domestic Violence, Rape/Dating Violence, Sexual Assault or Stalking:

An applicant, otherwise eligible and qualified, who has been, or is being, involuntarily displaced by domestic violence, rape, sexual assault or stalking (DVRAS), as such terms are defined in G.L. c. 186, § 23. An applicant is involuntarily displaced by DVRAS if:

- (i) The applicant has vacated a housing unit because of DVRAS; or
- (ii) The applicant lives in a housing unit with a person who engages in DVRAS.

In addition, for Federally Assisted Housing and Developments Receiving Federal Housing Assistance (i.e. programs listed in 34 U.S.C. §12491(a)(3), including Low Income Housing Tax Credits), which are subject to the Violence Against Women Reauthorization Act of 2013 (34 U.S.C. 12291e-11) and regulations promulgated in accordance therewith at 24 CFR Part 5, Subpart L: An applicant, otherwise eligible and qualified, who is a victim of domestic violence, dating violence, sexual assault, or stalking (DVDVSAS), as defined in HUD's Final Rule – Violence Against Women Reauthorization Act of 2013 (81 FR 80724).

A. What Housing Providers must, may, and may not ask applicants?

You are permitted to make investigations to determine whether an applicant meets the site's program² and project eligibility criteria³ and if they will be a good tenant (comply

² Program eligibility refers to the criteria an owner must use to determine whether a family is eligible to receive housing assistance under the rules of the housing program or programs that funded the site. Eligibility requirements vary between housing programs. The eligibility criteria that applies to all of the housing programs covered in this handbook is income eligibility, which means that the household's gross income must be at or below a specific income limit. That said, the income limits vary by program. Housing programs have varying eligibility criteria in addition to a family's income being at or below a specific income limit. Common eligibility criteria for the HUD programs involve Social Security Numbers, Sole Residency, Student Status, a qualifying household member (i.e. the head, co-head or spouse must be 62 years of age or older or have a disability as defined by the housing program) and consenting to the release of information necessary to verify eligibility criteria. Citizenship or legal immigration status for at least one family member is also a criterion in HUD's Section 8 program, but many other HUD programs as well as the Low-Income Housing Tax Credit Program do not have such a requirement.

³ Project eligibility describes the criteria used to determine if a family (which can be a single individual) is eligible to reside in a property based on specifics to do with the site and the tenant population it was designed to serve. In other words, a family may or may not be eligible for housing development A but is for housing development B because of characteristics unique to A, even if both sites were funded under the same housing program. It includes the following: whether some or all the units are designated to serve a family which includes a household member with specific characteristics. For example, a common division is whether the site is a "family" site, (which means that there is no specific requirement regarding the status of the head of household, co-head of household or spouse) or if it is designed for the "elderly/disabled," (which means the head of household, co-head of household or spouse will need to "qualify" the family through their status as a person who is elderly or has a disability). Different housing programs use different definitions of "family", "elderly" and "disabled." It is important to know what definition is used because the applicant household that is applying must satisfy the applicable definition. For example, HUD's public housing and multifamily housing programs both provide housing that serves the elderly and people with disabilities. That said, the definition of an elderly family varies slightly by program and project, but all the definitions require the head, co-head, or spouse be 62 years of age or older for the family to be eligible, they don't require other family members to be elderly. Likewise, HUD's programs use different definitions of disability, but focus on head, co-head or spouse having a disability for the family to be eligible, and not the rest of the family members. This means that if a grandparent who is 62 years of age or older applied to a HUD site with a grandchild who is 6, the family can't be denied housing because the grandchild is under the age of 62. Also, a housing program may focus on serving people facing specific circumstances, such as being homeless, or being a victim of domestic violence, or a veteran, or being in recovery for drug or alcohol addiction. Housing can do this by making something be an eligibility criterion or a preference. If it is an eligibility criterion this means that the requisite family member or members must meet the applicable criteria to qualify for the housing. In contrast, a preference may impact the order of applicants on the waiting list but doesn't make anyone eligible who was not otherwise eligible. In other words, an eligible family will be moved up higher on a waiting list ahead of families that don't satisfy the preference. Other things impact project eligibility. One is the unit sizes available at the site and the project-specific occupancy standards established by the owner. Occupancy standards stipulate what size household may live in what size unit. The purpose of occupancy standards is to efficiently utilize a limited resource, housing, by preventing the over and under-utilization of units. A site's occupancy standards are important to an applicant because they impact the minimum and maximum number of

with the terms of the lease), which is commonly referred to in the industry as “suitable” for housing.⁴ Such inquiries include questions which relate directly to the essential obligations of lease compliance:

- Will the applicant pay rent and other fair charges in a timely manner?

people will qualify to live in a unit. Occupancy standards are contained in a site’s Tenant Selection Plan (TSP) and must comply with requirements set by funding sources as well as fair housing requirements, tenant-landlord laws, and zoning laws. For example, owners cannot create occupancy standards which have the purpose or effect of excluding children. Some owners use a two person per bedroom occupancy standard or other standard based on number of people per bedroom, which many advocates consider discriminatory; MassHousing’s TSP uses square footage of live-able space. Also, please note that agencies which provide state funded vouchers must also follow specific occupancy standards which are based on the regulations and guidance from the Department of Housing and Community Development (DHCD) for the program. The requirements regarding what constitutes an appropriately sized unit includes the state sanitary code regarding the size of bedrooms. Another thing that impacts project eligibility is if all the units have a project-based subsidy. This is because a family can’t use a mobile voucher at a site where all the units have a project-based subsidy. A person with a voucher could still move in but they’d have to give up their mobile voucher.

⁴ Suitability requirements refer to standards used to screen applicants to determine that they will be able to comply with the lease: pay rent on time, not interfere with other people’s quiet enjoyment, maintain a decent safe and sanitary unit, not engage in criminal activity, and comply with other reasonable rules. Common screening tools include looking at criminal records, credit checks, and landlord references. Some housing programs require housing providers to screen all household members (including live-in aides) for specific criminal behavior, and to reject applicants because of the history of such behavior. For example, HUD requires all federally financed or subsidized public or assisted housing programs to screen all members of the household to determine if anyone has a State lifetime sex offender registration requirement. Although the tax credit program doesn’t have such a requirement, the housing provider may choose to use this as a screening criterion.

Please note that the U.S. Department of Housing and Urban Development’s (HUD’s) Office of General Counsel issued guidance regarding how the Fair Housing Act applies to the use of criminal history by providers in determining suitability for housing. The guidance, which was issued on April 4, 2016 provides that a housing provider violates the Fair Housing Act, which prohibits discrimination based on race, color, religion, sex, national origin, familial status, and disability, when the provider’s policy or practice has a greater impact based on protected status and cannot be justified through business necessity, which also means that there’s not a less discriminatory means of achieving a necessary business purpose. This means that a housing provider’s policy must “accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.” Contained in this document is also a discussion of arrests, and the inability of a housing provider to reject based on an arrest.

https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf

Please also see related guidance HUD issued on arrests that applies to both public and assisted housing providers, titled, **Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions**, Notice PIH 2015-19 / H 2015-10, which was issued on November 2, 2015, at <https://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf> and follow up questions and answers HUD’s Office of Public and Indian Housing (“PIH”), Office of Housing, and Office of General Counsel issued to address questions raised by the notice, titled, **FAQs for Notice PIH 2015-19 / H 2015-10**:

https://portal.hud.gov/hudportal/documents/huddoc?id=FAQ_Exclude_Arrest_Records.pdf.

- Will the applicant care for and avoid damaging the unit and the common areas, use facilities and equipment in a reasonable way, create no health, safety or sanitation hazards, and report maintenance needs?
- Will the applicant avoid interfering with the rights and enjoyment of others and avoid damaging the property of others?
- Will the applicant avoid criminal activity that threatens the health, safety, or rights of others and avoid drug-related criminal activity?
- Will the applicant comply with necessary and reasonable house rules, program requirements of HUD and the housing provider, and with health and safety codes?

You are not permitted to ask questions which require someone to reveal information that is irrelevant to this determination. Congressional and administrative agencies' requirements are standardly very specific regarding eligibility, but vary from program to program.⁵ The same is true regarding specific suitability standards.⁶ However, housing

⁵ For information on HUD's Multifamily Housing Programs varying eligibility criteria see HUD Handbook **Occupancy Requirements of Subsidized Multifamily Housing Programs (4350.3)**, which is commonly referred to in the industry as the HUD Handbook 4350.3 or simply the 4350.3. This Handbook was most recently updated in November of 2013. **Chapter 3: ELIGIBILITY FOR ASSISTANCE AND OCCUPANCY** discusses the eligibility criteria for the housing programs covered by this Handbook, which are also covered by VAWA. For HUD's Public Housing/Section 8 Programs see 24 CFR Part 960 and Part 982. For the HOME program see 24 CFR Part 92 (see https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title24/24cfr92_main_02.tpl). For the HTF program see 24 CFR part 91 and part 93. For the tax credit program in Massachusetts see Spectrum's Compliance Guide, which provides citations to the Section 42 of the Internal Revenue Code, at <https://spectrumlihtc.com/states/massachusetts/>.

⁶ For information on HUD's Multifamily Housing Programs see **Chapter 4: WAITING LIST AND TENANT SELECTION** of HUD Handbook **required and permissible** screening criteria see **Requirements of Subsidized Multifamily Housing Programs (4350.3)**. Specifically see Par. 4-7, pg., **Screening for Suitability**, which provides:
 Owners must establish written screening criteria to prohibit the admission of certain individuals who have engaged in drug-related criminal behavior or are subject to a State lifetime sex offender registration program or are individuals whose abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

Specifically, Owners and agents **must** screen to determine:

- 1) Whether any member of the household is subject to a lifetime registration requirement (Massachusetts Level II and III) under a State sex offender registration program. (If yes, the applicant subject to the lifetime registration requirement must be permanently excluded.)
- 2) If a household member has been evicted from federally assisted housing for drug related criminal activity; if yes, the PHA must deny admission to the program for three years from the date of the eviction. It **may** choose to extend the time frame. However, the PHA may admit the household if the

providers have considerable latitude in developing suitability standards beyond any that are required by program rules.⁷ These standards must be reflected in the Tenant Selection

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- PHA determines that the circumstances leading to the eviction no longer exist, such as if the offending family member is in jail or otherwise no longer with the family, or that the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehab program approved by the PHA.
- 3) Whether any household member is currently engaged in illegal use of a drug; if yes, the person **must** be excluded.
 - 4) Whether there is reasonable cause to believe that a household member's illegal use of drugs or a pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; if yes, the person **must** be excluded unless the person can demonstrate that they are no longer using drugs illegally and that the former behavior is unlikely to recur.
 - 5) Whether there is reasonable cause to believe that member's behavior, from abuse or pattern of abuse of alcohol, may interfere with the health, safety, and right to peaceful enjoyment by other residents. The Owner/Agent's screening criteria must be based on behavior, not whether the person has alcoholism or abuses alcohol.

Also see 24 CFR part 5, subpart I & J.

For PHA's see 24 CFR **§982.552 PHA denial or termination of assistance for family** and 24 CFR **§982.553 Denial of admission and termination of assistance for criminals and alcohol abusers.**

In contrast, other programs including HOME, HTF and the Low-Income Housing Tax Credit Program do not have any suitability requirements required by Federal Law. This provides O/As of tax credit sites not funded with other programs great latitude in creating suitability standards, which must be contained in the site's Tenant Selection Plan.

⁷ For example, **HUD Handbook 4350.3**, Par. 4-7 C .3 provides that an Owner/Agent **may** screen for Drug-related criminal activity, violent criminal activity and other criminal activity. The Handbook has not been updated to include HUD's guidance on criminal records and arrest records. See **Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions** The guidance, which was issued on April 4, 2016 provides that a housing provider violates the Fair Housing Act, which prohibits discrimination based on race, color, religion, sex, national origin, familial status, and disability, when the provider's policy or practice has a greater impact based on protected status and can't be justified through business necessity, which also means that there is not a less discriminatory means of achieving a necessary business purpose. This means that a housing provider's policy must "accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not." Contained in this document is also a discussion of arrests, and the inability of a housing provider to reject based on an arrest.

https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf.

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https://portal.hud.gov/hudportal/documents/huddoc?id=FAQ_Exclude_Arrest_Records.pdf.

Other programs provide no guidance whatsoever, including the HOME Program, HTF Program and Tax Credit Program, leaving all decisions to the Owner/Agent.

Plans (TSPs) of all O/As of HUD Multifamily Housing and Tax Credit sites in Massachusetts. A TSP must describe how screening will be done and the standards that will be used. Public Housing Agencies describe the process and standards they use in the PHA's Admission and Continued Occupancy Policy (ACOP) and the Section 8 Administrative Plan.

1. What may I ask and what must I ask an applicant for housing?

Housing providers may ask only questions relevant to eligibility and suitability for the housing program. Again, suitability must focus on compliance with the lease, not about whether an applicant satisfies specific social mores.

Federal law governing HUD's Multifamily and Public housing programs require Owner/Agents (O/As) and Public Housing Authorities (PHAs) to screen for drug abuse and other criminal activity. Such housing providers must establish standards that prohibit admission of individuals who have engaged in specific behavior. The HUD Handbook 4350.3 which governs HUD Multifamily housing providers, lists the following verbatim. Please note that the regulations governing both the Multifamily Housing Programs and PHAs contain similar language and exclusions.⁸

- a. Any household containing a member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity. The housing provider may, but is not required to, consider two exceptions to this provision:
 - (1) The evicted household member has successfully completed an approved, supervised drug rehabilitation program; or
 - (2) The circumstances leading to the eviction no longer exist (e.g., the household member no longer resides with the applicant household).

⁸ See HUD Handbook 4350. Par. 3,4-7 **Screening for Suitability**, beginning on pg. 4-17. The regulations for Multifamily Housing are in 24 CFR part 5, subpart I – **Preventing Crime in Federally Assisted Housing – Denying Admission and Terminating Tenancy for Criminal Activity and Alcohol Abuse**. For Public Housing see 24 CFR Part 960 and 966 and for the [tenant](#)-based assistance under Section 8 see 24 CFR [part 982](#). The PHA regulations also include the exclusion of any household member who has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

- b. A household in which any member is currently engaged in illegal use of drugs or for which the owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents;
- c. Any household member who is subject to a State sex offender lifetime registration requirement; and
- d. Any household member if there is reasonable cause to believe that member's behavior, from abuse or pattern of abuse of alcohol, may interfere with the health, safety, and right to peaceful enjoyment by other residents. The screening standards must be based on behavior, not the condition of alcoholism or alcohol abuse.

Housing providers may therefore ask questions to determine the necessary information.⁹

Remember though, housing providers must be uniform in their inquiries. For example, it would be discriminatory to only make inquiries regarding not interfering with other peoples' quiet enjoyment to survivors of DVDVSAS or people you think are survivors.

2. May I ask an applicant if they are a Victim or Survivor of Domestic Violence, Dating Violence, Sexual Assault or Stalking (DVDVSAS) or require someone to disclose the information?

The general rule is you CANNOT ask a person if they are a victim or survivor of DVDVSAS, or any question that would require the person to disclose this information

⁹ For example, multifamily housing providers and federally subsidized PHAs must ask specific questions to determine suitability, such as do you currently illegally use a controlled substance? Are you or any member of your household subject to a state lifetime sex-offender registration requirement? What states have any member of the household resided?

or related information. Nor can you ask whether anyone “affiliated with” the applicant is a victim or survivor of DVDVSAS. This includes anyone in the applicant household (including a live-in aide), as well as a spouse, parent, sibling, child, or a person to whom the individual serves as a guardian, regardless of age.¹⁰ For example, you cannot ask the following kinds of questions on an application or during an interview:

- Have you ever experienced relationship violence?
- Have you ever called the police?
- Have you in the past attended any self-help groups?
- Have you ever taken out a restraining order?
- Have you ever been harassed?
- Have you ever left an apartment before a lease was up because of safety reasons?
- Has damage ever been done to your apartment by someone who was abusive towards you or someone in your family?
- Have you ever requested to have your locks changed because of safety reasons?

EXCEPTIONS/CIRCUMSTANCES THAT THE INFORMATION MAY BE DISCLOSED

There are some exceptions to the general rule that a housing provider cannot ask whether an applicant is a victim or survivor of DVDVSAS and circumstances in which standard questions may result in a person disclosing the information:

- a. If the person has applied for housing designated for survivors of DVDVSAS or a preference based on DVDVSAS.
 - If this occurs, an Owner/agent may ask for the documentation necessary for the person to qualify for the housing or preference, not for details

¹⁰ The definition for affiliated individual as discussed in question #5 of Chapter 2, Part 1: *Applicable Laws, the Legal Framework and General Questions*.

which are unnecessary.¹¹ There are ways to verify DVDVSAS status without obtaining information that doesn't need to be collected, and therefore can't be collected. When verifying eligibility criteria and preferences, the housing industry hasn't standardly accepted a self-affidavit as documentation. Rather, traditional third-party verification has been required. In contrast, in the context of obtaining protections and remedies under VAWA, self-certification is a central form of verification, which a survivor has the choice of submitting. The reason for this is intertwined with DVDVSAS as discussed in Chapter 1. Simply put, in many cases the survivor is the only person who can document their status as a survivor or provide the information required. For this reason, when a survivor seeks protections and remedies under VAWA, self-certification is given the same weight as any other type of verification and must be accepted by the housing provider unless there is conflicting information. There is however disagreement in the housing industry whether VAWA's sanctioned use of self-certification applies, or should apply, when a survivor needs to document their status for eligibility for a specific housing program designed for survivors or a preference for survivors.¹² There is no written guidance from HUD on this matter. This

¹¹ This is analogous to needing to verify disability status. Please see HUD guidance in the HUD Handbook 4350.3 on verifying disability status, **Par. 3-28 Verification of Family Type and Individual Status** as well as is **Appendix 6B: Verification of Disability - Instructions to Owners and Sample Formats** which are helpful in understanding parameters and a legal approach to obtaining third party verification when verifying status.

¹² Please note that a determination of eligibility for a specific program or a preference isn't addressed in VAWA and is not described as invoking a VAWA protection. That said, if a housing provider creates a preference specifically for internal transfers, or transfers within the site's portfolio, the preference is then intertwined with the site's implementation of VAWA protections. Please see **80740 Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations for a discussion of housing provider's concerns in re to self-certification in the emergency transfer context, and how HUD has addressed it.

In the case of providing documentation/verification of DVDVSA for invoking a VAWA protection, the applicant/resident gets to choose what documentation to provide a housing provider in accordance with this statute and HUD's Final Rule (for HUD programs). In accordance with both, in such instances, if an applicant or tenant represents to a housing provider that the individual is entitled to protection under VAWA at admission or

is an area that unless the VAWA statute is changed to explicitly require housing providers to utilize the forms of documentation contained in VAWA when adopting a preference, that HUD will permit housing providers considerable discretion in their policies and procedures. As a result, housing providers will need to consult their attorney to ensure that how they implement a preference for survivors of DVDVSAS not only complies with VAWA, but also doesn't create barriers to obtaining housing and isn't discriminatory. Clear guidance will also need to be included in the site's written policies.

- When making this decision, bear in mind the following:
 - No single type of evidence can be required to establish the existence of DVDVSAS, rather you must accept a broad range of

during tenancy or eviction, the public housing agency or owner or manager **may** request, in writing, that the applicant or tenant provide documentation. The statute provides the specific forms of documentation someone may choose to present, and it is at the applicant/resident's discretion what to provide the housing provider. See 42 U.S.C. 14043e-11(c) (3) at <https://www.govinfo.gov/content/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf>.

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 relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse; and

“(II) the applicant or tenant; and

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

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

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

evidence as proof of DVDVSAS. For example, it's crucial that you not require that a survivor provide documentation of a restraining order to qualify. As referenced in Chapter 1, not all survivors seek civil protective orders¹³ for varying reasons, including fear of escalating violence by the abuser.

- Self-certification is given the same weight as any other type of verification in VAWA and must be accepted by the housing provider unless there is conflicting information in the context of both establishing status as a survivor (Form 5382), and the need for an emergency transfer (Form 5383). The use of self-certification for an emergency transfer raised concerns for housing providers that are similar to concerns raised in the context of preferences, including that someone may gain a benefit that they aren't entitled to. HUD concluded that there were ways to address such concerns, and that the safety concerns that needed to be addressed with an emergency transfer were paramount and that requiring third party verification would create a barrier for survivors. The use of preferences to redress an emergency situation It is important that if a housing provider has such a concern to review the preamble to HUD's final rule to ascertain HUD's rationale in this context and how it applies to preferences.¹⁴
- Another approach is to make a third-party verification form available to send to an appropriate source of information identified by the applicant, just as you do with other types of

¹³ For an excellent summary of protective orders in Massachusetts, see MassLegalHelp, **Harassment Prevention Orders**, Produced by Mass Law Reform, <https://www.masslegalhelp.org/domestic-violence/harassment-prevention-orders>.

¹⁴ See **Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations beginning pg. 80740.

information you need to document. If a third-party form is used, it must be signed by the applicant authorizing the release of such information to the Owner/Agent/PHA. The form (or a cover letter) should explain why the Owner/Agent/PHA needs the information, provide the definition of DVDVSAS used to determine eligibility or a preference and should request that the source completing the form identify whether the applicant meets the definition. In this way the owner is not required to make any judgments about whether a person is a survivor of DVDVSAS and will not have prohibited information.

- b. When standardly verifying a household's income and asset sources, the person asserts that they don't have access to assets and receive no income from the asset as a result of DVDVSAS.¹⁵
 - If this occurs, check with the applicable monitoring agent regarding whether a self-affidavit is sufficient documentation given the safety issues at hand, and/or whether they would require corroborating evidence. The use of a self-affidavit as source documentation is standardly acceptable in the industry when third-party verification isn't available.¹⁶

¹⁵ See HUD Handbook 4350.3 Rev-1, Exhibit 5-2 which specifically lists as an example of when not to count net assets toward gross income, a battered spouse who owns a house with their partner who because of the domestic violence receives no income from the asset and cannot convert the asset to cash.

¹⁶ For example, HUD's programs consider award letters, bank statements and other documents generated by a third party, third party verification. See HUD Handbook, Par. 5-13 **Acceptable Verification Methods**, beginning on pg. 5-54 and Appendix 3. The tax credit program and Spectrum, which monitors in Massachusetts, require owners to establish due diligence when documenting applicant/resident income eligibility, and permits the use of these types of documents when the managing agent can't obtain traditional third-party verification. Spectrum's staff is standardly extremely helpful in brainstorming how to effectively document a file in complicated situations, and we encourage you to contact the Massachusetts team if a situation arises. This can be done without breaching confidentiality.

- c. It is standard industry practice to ask applicants about their housing history as part of resident screening, and to reach out to past landlords for references.¹⁷ Also, PHA's who operate the Housing Choice Voucher Program are required by regulation to give prospective Section 8 landlords the Section 8 participant's current and prior addresses that are **in the PHA's records**, and the names and addresses of the landlords at the participant's current and prior addresses **if known to the PHA**.¹⁸ An applicant may leave information regarding past housing history on the application blank because the applicant is afraid a perpetrator would be able to track them down by you contacting a previous housing provider. If an applicant raises a VAWA protection under such circumstances (and provides verbal or written documentation of the DVDVSAS in accordance with VAWA and the site's written policies) you will need to explore whether the addresses (not just the states where people live) are required to conduct screening or to comply with a program rule.
- If it's a requirement, is there an alternative or can you seek a waiver from a program rule?
 - If you are conducting screening, do you need to contact the housing provider to make a determination?
 - If yes, is there a way for you to do this without disclosing the site location (or any other identifying factors) where the applicant is applying?

In practice, many housing providers request landlord references, but never receive them back. In such circumstances, housing providers rely solely on

¹⁷ The use of landlord references for resident screening is a standard business practice discussed in the HUD Handbook 4350.3, Par. 4-27 **Implementing Screening Reviews**, pg. 4-57. As explained in this paragraph, it is important to collect only objective information, and to ask questions which focus solely on lease compliance. HUD provides examples of acceptable and unacceptable questions in **Figure 4-7: Questions for Current and Former Landlords** on pg. 4-58.

¹⁸ 24 CFR § 982.307(b). This provides:

(1) The PHA must give the owner:

(i) The family's current and prior address (as shown in the PHA records); and

(ii) The name and address (if known to the PHA) of the landlord at the family's current and prior address.

other methods of screening to make a determination. O/As don't hold up a determination for the failure of a current or previous landlord to return a verification. Likewise, many housing providers place little stock in information obtained from a landlord when they do receive them back. If you do rely on landlord references, it is recommended that you address in your TSP or ACOP how you will address a situation involving a survivor who due to safety related concerns is unwilling to provide a previous landlord, or willing to have you reach out to them. Because it involves, suitability, rather than eligibility, it is up to you to determine the parameters, including the time frame for tenancy history and the use of landlord references for screening purposes.

A related issue is the applicant's name, social security number and/or current address. The applicant may be reluctant to provide this information, have legally changed his/her name, have been issued a new social security number by the Social Security Administration and/or be part of the Address Confidentiality Program (ACP) due to safety concerns.¹⁹ This raises the same concerns as discussed above, as well as an additional potential issue: compliance with HUD's requirements to use the Enterprise Income Verification (EIV) system in its entirety. O/A's are required to run the Existing Tenant Search for HUD Multifamily and Public and Indian Housing (PIH) sites at time of application processing for all household members, regardless of age, to identify applicants who may be receiving assistance at another

¹⁹ This program was established by Chapter 409 of the Acts of 2000, and the Regulations are at 950 CMR 130, and is available to Massachusetts residents who are victims of domestic violence, sexual assault or stalking. Program participants are provided an alternative legal residence, as well as work and/or school address. First class mail sent to the substitute address is forwarded to the victim's actual address. This prevents perpetrators from being able to search government records to identify the victim's new location. See <http://www.sec.state.ma.us/acp/acpabtidx.htm#about>.

Multifamily or Public Housing location.²⁰ This search is conducted by social security number. If a household member has been issued a new social security number, EIV will not be able to identify the applicant as receiving assistance at another Multifamily or Public Housing location. Ideally this scenario will not cause a **Tenant Rental Assistance Certification System** (TRACS) error for dual subsidy because the previous landlord will have the old social security number on file whereas the new landlord will run the Existing Tenant Search under the new social security number. It is the previous landlord's responsibility to remove the household member from the lease and HUD Form 50058 (Family Report)²¹ for Public Housing and HUD Form 50059 (Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures)²² for HUD's Multifamily Housing Programs in accordance with HUD rules.²³ However, when the social security number has not been changed, but the applicant has legally changed his/her name and/or is using a "safe address" (i.e. undisclosed), EIV may list the applicant's old name or identify the actual address of the applicant. Either scenario results in you needing to have a conversation with the applicant to ascertain whether the applicant is receiving subsidy at the location listed in the Existing Tenant Report. Do not assume that the applicant is committing fraud or accuse the

²⁰ For Multifamily HUD sites see Exhibit 9-5 in the HUD Handbook 4350.3, as well as Par. 3-10 B.3., pg.3-23. For PIH see Notice PIH 2017-12, **Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System**, August 4, 2017. Also see: <https://www.hud.gov/sites/dfiles/documents/PIH-2018-18%20%20Administrative%20Guidance%20for%20Effective%20and%20Mandated%20Use%20of%20the%20Enterprise%20Income%20Verification%20%28EIV%29%20System.pdf>.

²¹ See <https://www.hud.gov/sites/documents/50058.PDF>.

²² See <https://www.hud.gov/sites/documents/50059.PDF>.

²³ If the person(s) does not get removed from HUD Form 50059 (under the old SSN) in accordance with HUD rules this will be a violation of HUD rules and be problematic for HUD. At the very least, this should be discovered by annual review because all adult household members must participate/sign the HUD 50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures. See <https://www.hud.gov/sites/documents/50059.PDF>.

person of such. The inadvertent result in you asking the person about the conflicting names and/or addresses may be the disclosure of the applicant's status as a survivor of domestic violence. Exercise caution when verifying the applicant's receipt of subsidy; the new landlord's sole objective is to confirm the applicant's move out date from the old property so that the applicant does not receive subsidy in more than one location at a time.²⁴

- d. It is standard industry practice to ask people if they have any aliases. This may place someone who has changed their name due to DVDVSAS in a precarious situation. A related issue is the changing of social security numbers for this reason as well.²⁵ The purpose of needing such information is for resident screening purposes, specifically running a criminal or credit check. In the case of changing a name, and particularly a social security number, the history will remain with the old name/social security number. A housing provider may run a criminal/credit check without a social security number (using other personal identifiers) with the correct name, or with a social security number. If a person has changed their social security number, it is after the person has established the need to do so after satisfying stringent requirements, and a housing provider should not expect to be provided the person's previous name or social security number. It is also important to note that VAWA self-petitioners don't have social security numbers and HUD doesn't have a policy for handling this in programs that require social security numbers. Please see

²⁴ If a housing provider learns an applicant is receiving subsidy at another location, it is recommended you conduct a Subsidy Termination Verification. The form is not required by HUD, but a resident cannot receive subsidy in more than one location at a time. You may also need to address what to do if you are the landlord and the applicant does not want you to contact the previous landlord for safety reasons. In such instances, you will need to proceed with caution. This is similar to the situation discussed earlier when an applicant leaves blanks on the application's housing history. At the very least, the new landlord needs to verify the Move-out date from the previous housing because they won't receive subsidy if there's a TRACS error on the move-in because the household member already exists in TRACS. One possibility is to ask the Contract Administrator for HUD to obtain the information from the housing provider without disclosing the new housing site location which is requesting the info.

²⁵ See <https://www.ssa.gov/pubs/EN-05-10093.pdf>.

Chapter 2, Part 1: *Applicable Laws, the Legal Framework and General Questions*, Question 6 of this handbook for a discussion of VAWA protections for non-U.S. citizens and people who don't have eligible immigration status.

- e. It is standard industry practice to mail/fax/email to third parties to verify information from financial institutions. If an applicant requests you not mail third party verifications to a financial institution, but rather accept statements because of fear the perpetrator would be able to track them down.

The use of bank statements/statements from financial institutions as source documentation is standardly acceptable in the industry, and oral third party verification with a financial institution whereby the housing provider calls the third party source and asks the requisite questions over the phone, records the answer on a form, and signs and dates a certification stipulating the date, time, who was spoken to, and the questions and answers.²⁶ However, some companies require staff to mail/email/fax documentation to a financial institution, all of which standardly has identifying information regarding the location of a housing site, and will only accept oral communications or statements if the financial institution fails to respond. In such instances, the company needs to decide whether they will simply accept alternative source documentation under these circumstances, do so with an affidavit from the applicant, or whether they will require corroborating documentation to do so. Please note that in accordance with HUD guidance for the Multifamily Housing Program and Public Housing, third-party verification includes documents that are generated by a third party, but in the possession of and provided by the tenant (or applicant). The guidance also provides a great deal of flexibility if third party documentation is not available, including documentation of why

²⁶ For example, see HUD Handbook, Par. 5-13 **Acceptable Verification Methods**, beginning on pg. 5-54 and Appendix 3.

the third party is not available, and the use of self-certification. When documenting why third-party isn't available, housing providers must be careful not to disclose the status of someone being a survivor of DVDVSAS.²⁷

- f. It is standard practice based on programmatic requirements to require verification of alimony and child support. This includes the contact information of an ex to verify the amount received and attempts to enforce court ordered alimony and child-support. Sometimes an applicant will not want to provide the contact information of an ex-spouse/partner for an owner/agent to verify that the applicant is not receiving alimony or child-support due to safety concerns. Obtaining confirmation from an ex regarding alimony and child support is not a requirement of programmatic rules. What is required is that the information of non-receipt of child support or the amount of child support be verified through an acceptable method which may be circumstance driven; there is not one required method.²⁸ A standard acceptable method is self-certification stating the amount received when other methods are not available.

Housing providers are standardly programmatically required to count court ordered child support even if the applicant is not receiving it if the person cannot provide documentation of reasonable legal actions to collect amounts due which are not being received, including filing with appropriate courts or agencies responsible for enforcing payment.²⁹ An applicant may explain that they are unable to comply with this requirement due to safety concerns

²⁷ See PIH 2017 – 12 (HA), Aug 4, 2017, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System at <https://www.hud.gov/sites/documents/17-12PIHN.PDF>; HUD Handbook 4350.3 Rev-1, Chapter 5, Section 3: Verification, beginning on pg. 5-52 at <https://www.hud.gov/sites/documents/43503C5HSGH.PDF>; and Appendix 3, Acceptable Forms of Verification, <https://www.hud.gov/sites/documents/43503A3HSGH.PDF>.

²⁸ For example, see Par. 5-6F. in the HUD Handbook 4350.3, pg. 5-11, and Appendix 3.

²⁹ IBID.

because they fear the abuser tracking them down based on their address. In such instances you will need to explain that in spite of the safety concerns raised by the situation, you are required by program requirements to count the alimony/child support unless documentation is provided of such efforts. You may also explain to the applicant child support services available through the Department of Revenue (DOR) include enforcement and refer the applicant to an advocate (if they do not have one) who can assist the applicant in enforcing the court order utilizing safety measures, or amending a court order **if the applicant chooses to do so**.³⁰ The issue of the requirement to count court ordered child support regardless of receipt if the person has not tried to enforce the order is particularly important in cases where the court ordered child support that is not being received will put the family over-income, or when rent is based on a household's gross and/or adjusted income. That said, **it remains the applicant's choice whether to enforce the order or not.**

- g. An applicant may request a modification to the application process as a result of DVDVSAS. For example, someone may request to conduct an interview in an alternative location or manner or remotely, request that you communicate with their advocate, or through an alternative mechanism that is not standardly done, that you not leave messages on their phone via voice message or text. Please remember that this type of request may also be

³⁰ The Massachusetts Department of Revenue provides a wide variety of services, including enforcement of child support orders. Please see their website at <https://www.mass.gov/service-details/learn-about-child-support-services-available-from-dor>; There is also a page on this website which addresses child support and safety for survivors of domestic violence. See <https://www.mass.gov/service-details/child-support-and-your-safety>;

There is also extremely helpful information on MassLegalHelp's website in regards to child support and domestic violence, including the pages titled **Child Support and Domestic Violence**, at <https://www.masslegalhelp.org/children-and-families/child-support-domestic-violence>; **Is filing for child support safe?** At <https://www.masslegalhelp.org/children-and-families/child-support/domestic-violence/is-filing-safe> and **How do I ask for child support in a 209A restraining order case?** At <https://www.masslegalhelp.org/children-and-families/child-support-restraining-order>.

connected to a request for a reasonable accommodation.³¹ If it is, and the disability and the need for accommodation is not obvious or otherwise known to you, you may ask the person to document that they have a disability and needs the requested accommodation to remove a barrier to equal opportunity to apply to or participate in the housing program.³²

- h. If the screening process reveals negative information about a person's past tenancies, you can ask the person to explain the negative information. The explanation may require the person to reveal information regarding DVDVSA. The person may still decide not to say anything about the DVDVSAS. That is the person's right. You, however, have the right to reject a person for unexplained negative information related to the applicant's ability to comply with the terms of the lease.

NOTE: HUD has required language regarding confidentiality on all verification permissions signed by applicants and residents of federally financed housing. It would be good business practice for state-funded public and assisted housing providers, including tax credit sites, to use comparable language.³³

³¹ Please see Chapter 1 for a discussion of how women with disabilities are disproportionately domestic violence survivors and how survivors may acquire a disability as a result of the domestic violence.

³² See HUD/DOJ Joint Statement, Question 18. This notice may be found at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

³³ Figure 5-5 in the HUD Handbook 4350.3, provides that the following statement **must** appear on all consent forms developed by owners:

Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper use of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than \$5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number

3. If a person is applying for housing that is designated for survivors of DVDVSAS or provides a preference for people who are survivors of DVDVSAS, what may I ask an applicant about their status as a victim of domestic violence?

If the person is applying for housing designated for victims of DVDVSAS (or any one of these), or provides an admission preference for victims, you may ask the person to document that they qualify based on the applicable eligibility/preference definition. You may not inquire about details of someone's experience that you don't need to know to make a determination. A person is not obligated to reveal that they are a victim of DVDVSAS, but a person who chooses not to reveal their status as such would not be able to establish eligibility.

Please see question 2 above regarding acceptable methods of documentation.

4. May I ask an applicant if they spent time in a domestic violence shelter or if they presently live in a shelter?

In general, the answer to this is No. An exception is when having stayed in a domestic violence shelter, or currently living in a shelter is a prerequisite for a specific housing program or an Owner preference. If that is the case, the question must be narrowly tailored to only illicit the requisite qualifying information.

If a person discloses that they spent time in a shelter to account for where they were for a particular time period, your inquiries must be limited to that verification. You may not ask any questions about the nature of the domestic violence or require the person to divulge any other confidential information. See question 3, in Section D

are contained in the Social Security Act at 208 (a) (6), (7) and (8). Violation of these provisions are cited as violations of 42 U.S.C. 408 (a) (6), (7) and (8).

titled “Homelessness, Time in Institution, Shelter, Other Non-Traditional Tenancies” on page 161 for a complete discussion.

5. If an applicant has a history of DVDVSAS, but doesn’t have a bad tenancy history or criminal record, may I ask the person questions about the DVDVSAS?

Assuming this person’s eligibility or preference status is unrelated to DVDVSAS, the answer is no. Unless someone has a bad tenancy history, credit, or criminal record related to the DVDVSAS, and they have informed you the adverse factor is a direct result of DVDVSAS, you have no basis for asking the person for any documentation of the DVDVSAS or determining direct result. You must distinguish between a person’s status as a survivor of DVDVSAS and negative tenancy related behavior as a result of the DVDVSAS. Please see the next section for questions regarding bad tenancy history, credit or criminal record.

B. Bad Tenancy History, Credit, Criminal Record

Many housing managers have raised the concern that VAWA requires them to admit applicants who have bad tenancy histories and/or criminal records or bad credit who will repeat patterns of behavior and not be able to comply with the terms of the lease. The questions below explain what you can and must do if an applicant with a history of DVDVSAS has a bad tenancy history or criminal record or credit history as a result of the DVDVSAS.

1. May I reject an applicant with bad tenancy history, credit or criminal record?

YES. You may reject an applicant with a “bad” tenancy history, credit issues or criminal record, provided it is in accordance with your site’s Tenant Selection Plan’s/(TSP’s)/Admission and Continued Occupancy Policy’s (ACOP’s) rejection

standards and your site's regulatory framework³⁴ and you are not rejecting an applicant on a basis that is a direct result of DVDVSAS (see below). Also, depending on the type of housing you manage and the type of bad tenancy history or criminal record an applicant has, you may be required to reject the person based on programmatic rules.³⁵

2. May I deny admission to housing on the basis of or as a direct result of DVDVSAS?

No. An applicant may not be denied admission to housing on the basis of or **as a direct result** of the fact that the applicant is or has been a victim of DVDVSAS if they are **otherwise qualified**. This means a victim can't be denied because of an **adverse factor**, if the adverse factor is determined to be a direct result of the DVDSAS. The only

³⁴ Please see chapter 4 of the HUD Handbook 4350.3 for a discussion of standard screening criteria for HUD financed Although the methods discussed in the Handbook Multifamily Housing providers, specifically Par. 4-7 **Screening for Suitability**, beginning on pg. 4-17. It is extremely important you know what your TSP/ACOP provides. For example, although the Handbook discusses the standard use of credit in the housing industry to determine how well applicants meet their financial obligation to pay rent and utilities (if tenant paid) on time pg. 4-23, if your site is financed by MassHousing, the MassHousing TSP provides you are only permitted to use credit when the person has no rental history. The TSP (B-1), revised October 2018 states:

Credit. An Agent may consider an applicant's credit history, but such information may ONLY be used in lieu of rental history to determine an applicant's ability to pay rent when rental history is not available. Where bad credit is the basis for rejection, mitigating circumstances may include:

- (i) a representative payer or other reliable third party who would take written responsibility for payment;
- (ii) evidence that such poor credit was the result of a disability that is now under control; or
- (iii) evidence that credit problems were the result of other circumstances that no longer exist and there is reason to believe that applicant will now pay rent promptly and in full.

Also see MassHousing's **Tenant Selection Plan (TSP) Reference Guide, October 2018**, pg. 8at https://www.masshousingrental.com/portal/server.pt/community/library/332/rental_owners_managers_forms_documents

³⁵ For PHA's see 24 CFR §982.552 **PHA denial or termination of assistance for family** and 24 CFR §982.553 **Denial of admission and termination of assistance for criminals and alcohol abusers**. Other programs provide no requirements whatsoever, including the HOME Program, HTF Program and the Tax Credit Program.

exception is if a denial is required by a federal statute. For example, if an applicant is subject to a lifetime registration requirement under a State sex offender registration program, a HUD Multifamily housing provider or PHA would be required to deny this individual even if the applicant’s disqualifying behavior was a direct result of the fact that the applicant was a victim of DVDVSAS³⁶

3. What are examples of adverse factors that someone would be rejected for which may be the result of DVDVSAS?

Adverse factors relating to DVDVSAS are often “hidden” and may appear unrelated to DVDVSAS. On closer examination, it is not unusual for common disqualifying negative tenancy related behavior to be manifestation of the type of control perpetrators utilize, as reflected on the Power and Control Wheel discussed in Chapter 1. As such, standard screening procedures can unfairly penalize victims for their abusers’ actions and inactions. The result is that these standard screening criteria are often barriers to a survivor obtaining safe, affordable housing. Below are examples of adverse factors which may be due to an underlying experience of DVDVSAS which are directly from HUD notices. This list isn’t meant to be all inclusive or limiting in any way.

Poor Credit History (Economic Abuse)	Failure to Pay Rent (Economic Abuse Using Isolation)	Poor Rental History (Coercion and Threats Intimidation)	Criminal History (Coercion and Threats Intimidation)
Forcing a victim to obtain credit, including credit cards for the perpetrator’s use.	The victim’s injury or temporary incapacitation	Property damage	Forcing a victim to write bad checks, misuse credit, or file fraudulent tax returns
Using a victim’s credit or debit card without permission or forcing him or her to do so.	The arrest of the only wage-earning member of the household	Noise complaints	Property damage
Selling victims’ personally identifiable information to identity thieves.	Preventing the victim from obtaining and/or maintaining employment	Harassment	Theft
Running up debt on joint accounts.	Sabotaging work or employment opportunities by stalking or harassing the victim at the workplace	Trespassing	Disorderly conduct
Obtaining loans/mortgages in a victim’s name.	Causing the victim to lose the victim’s job by physically battering prior to important meetings or interviews	Threats	Threats

³⁶ Multifamily Notice, pg. 7 and PIH Notice, pg. 6.

Preventing a victim from obtaining and/or maintaining employment	Placing utilities or other bills in the victim's name and then refusing to pay	Criminal activity	Trespassing
Sabotaging work or employment opportunities by stalking or harassing a victim at the workplace or causing a victim to lose his or her job by physically battering the victim prior to important meetings or interviews; forcing him or her to turn the earnings over to the abuser.	Forcing the victim to work without pay in a family business, Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking	Missed or late utility payments(s)	Failure to protect a child from a batterer's violence and/or abuse
Placing utilities or other bills in a victim's name and then refusing to pay.	Forcing the victim to turn his or her earnings over to the abuser.	Missed or late rental payment(s)	Family disturbance/trouble
Forcing a victim to work without pay in a family business.	Inability to pay bills after significant medical expenses resulting from the victim's hospitalization	Writing bad checks to the landlord	911 abuse
Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking.	Losing wages or a job due to missing work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime	Early lease termination and/or short lease terms	Public drunkenness
Job loss or lost wages due to missed work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime			Crimes committed by a victim to defend him or herself or in defense of a third party from domestic violence, dating violence, sexual assault, or stalking
Hospitalization and medical bills the victim cannot pay or cannot pay along with other bills.			Human trafficking
			Drug activity (drug use and the selling of drugs)
			Noise complaints

4. How do I know if a person's poor housing history/credit/criminal record is a direct result of DVDVSAS?

You won't "know" there is a direct result between DVDVSAS and the negative tenancy related behavior unless the applicant (or their representative) tells you it during the application process. for the purpose of explaining negative tenancy related behavior.

Do not make assumptions, or act on gossip, or information from a third party who wasn't authorized by the applicant to talk to you or you to them. A previous landlord

may also disclose this information when answering a neutral question about tenancy history focused on lease compliance on a landlord reference.³⁷ An applicant is not entitled to receive protections under VAWA unless the person requests it. It is up to the applicant to make a request. However, there are no magic words that an applicant needs to use to make the initial request for protections. Please note that if a survivor discloses DVDVSAS to explain something adverse in their application (or tenancy) or asks the housing provider for help in dealing with the DVDVSAS in the context of accessing (or maintaining housing) that is a request for protection. Remember, if a housing provider does not provide notification of rights under VAWA at application there is no reason to think that an applicant will know to ask for protections.

Sometimes applicants (especially if they have an advocate) will clearly tell you they want you to consider circumstances specific to the DVDVSAS. Some applicants are even pro-active when they apply and provide you documentation when submitting an application or immediately when they are notified when you inform them that they are at the top of a waiting list and you are processing their application. Other applicants as stated above are unaware of their rights or are more reserved about sharing information and may be reluctant for varying reasons to disclose information regarding DVDVSAS or demonstrate an adverse factor is the direct result of DVDVSAS. It is important to be sensitive to this, and to not ask survivors to disclose more information than you need to know to make a determination of a direct result and the person's ability to comply with the lease (that they are otherwise qualified). Also, please don't assume that because someone isn't sharing details of the DVDVSAS with you that it is

³⁷ Please remember that you are prohibited from asking verbally or in writing on a landlord reference if an applicant is a victim of DVDVSAS. Depending on what information is disclosed by a landlord, the disclosure may be a violation of confidentiality requirements in violation of both federal and state laws which protect survivors of DVDVSAS. Housing provider covered under VAWA or state law is prohibited from disclosing confidential information regarding DVDVSAS. Also remember that status as a survivor of DVDVSAS can't be a basis for a denial. See 34 U.S.C. §12491(c)(4) and G.L. c.186 §25.

not real, or that the person is “exaggerating” their experience to not take responsibility for a history of negative tenancy related behavior. Housing providers are not entitled to detailed information about an applicant’s experience. Remember, **only ask what you need to know; not what you may want to know**. This is discussed in Question 2 of Section A. “*What Housing Providers must, may, and may not ask applicants?*”, in Chapter 2, Part 2, above.

5. Does a victim have to use specific language or explain the direct result in a particular way to trigger VAWA protections in the admission process?

No. An applicant for housing requests a housing provider to consider protections under VAWA, which in the admission context is often consideration of mitigating circumstances relating to DVDVSAS, whenever the applicant makes it clear to the housing provider that they are a survivor of DVDVSAS and there is a relationship between the negative tenancy history and the DVDVSAS. How the person does this, and the language they use is up to the applicant.³⁸ VAWA does not require that a

³⁸ Many housing providers are required to consider extenuating/mitigating circumstances based on program rules or as required by a financing source or do so by choice as part of their general operating procedures. Sites financed by MassHousing are required to consider mitigating or extenuating circumstances for all applicants if an applicant makes such information known to the housing provider before being rejected. Applicants who are rejected from MassHousing-financed developments also may request a Rejection Conference to consider such information (as well as other issues) if the applicant had not provided such information before the rejection. An applicant may present facts that overcome or outweigh negative screening information and are sufficient to convince the housing manager that the applicant will comply with the lease.

According to the guidance provided in the HUD Handbook 4350.3, assisted properties not financed by MassHousing do not have to consider extenuating circumstances for applicants unless the applicant has a disability and there is a nexus between the reason for the rejection and the applicant’s disability. It is your choice. See the following: Par. 4-4 C.3.e., pg. 4-7; Par. 4-7 F.6, pg. 4-24; F.Par. 4-7 C.4. e. beginning pg. 4-19 in re to criminal activity; Par. 4-28 B., pg. 4-62; In contrast, HUD’s most recent guidance on the use of criminal history during the screening history indicates you **must** consider mitigating factors, that rebut the presumption that an applicant shall be unable to meet the requirements of tenancy. See Footnote 152 in Section 1, Chapter 2.

HUD’s Public Housing Guidebook, pg. 56 requires PHAs to consider mitigating circumstances in the screening process. Mitigating circumstances in the context of reasonable accommodations is discussed beginning on pg. 59. PHAs also have a great deal of latitude in deciding whether to consider mitigating circumstances. The regulations

request be made in a particular manner or at a particular time during the admission process, or by the survivor. It could be made by a housing advocate or a service provider on behalf of the applicant.

Owners have significant leeway when creating their policies and procedures, and when doing so need to keep in mind the importance of not creating barriers to safe, affordable housing for survivors. It is also important to keep in mind how difficult it may be for an applicant who is a survivor of DVDVSAS to communicate with an Owner/Agent, both because of safety reasons and because of trauma.³⁹

provide in 24 CFR § 982.552(C)(2) allow PHAs to consider mitigating circumstances but doesn't require them to. However, in PAMELA CARTER vs. LYNN HOUSING AUTHORITY, 450 Mass. 626 the court concluded that the local housing authority (LHA) hearing officer who upheld the termination of the plaintiff's Section 8 benefits erred by failing to indicate that he had considered "all relevant circumstances" as specified in this regulation. See <http://masscases.com/cases/sjc/450/450mass626.html>.

This regulation also mentions the obligation to comply with reasonable accommodation requirements if the applicant is a person with a disability. However, HUD's notices regarding non-discrimination and accessibility for people with disabilities to PHA's do address this and require consideration of mitigating circumstances if requested as a reasonable accommodation. See NOTICE PIH2010-26 (HA), Non-Discrimination and Accessibility for Persons with Disabilities, July 26, 2010, pg. 25. It can be located at https://www.hud.gov/sites/documents/DOC_8993.PDF Please note that this notice has expired, but is still considered applicable guidance. The importance of PHA tenant screening procedures, and consideration of mitigating circumstances in removing barriers to homelessness is also discussed in the U.S. Interagency Council on Homelessness' publication, titled PHA GUIDE TO MODIFYING TENANT SCREENING AND ELIGIBILITY POLICIES AND PROCEDURES, which can be located at https://www.usich.gov/resources/uploads/asset_library/PHA_TenantScreening.pdf.

³⁹The following are reminders and good business practices when establishing such policies:

- Inform **all** applicants early in the application process about their rights under VAWA and that you will consider mitigating circumstances if their negative tenancy related behavior is a direct result of DVDVSAS prior to a formal rejection if they choose to disclose and/or as part of a formal denial if it occurs.
 - This information may be included as part of your application cover letter, and/or as part of a general notification of non-discrimination, right to request reasonable accommodation and free language assistance.
 - You may also verbally inform all applicants of this (as well as reasonable accommodation and free language assistance) during the applicant interview. This interview must occur in order to gather all necessary information and must occur prior to a criminal/credit check being performed because you are not permitted to run the check unless the person is determined otherwise eligible for housing.
- Routinely ask all applicants if they understand the information given to them and provide assistance if not. Again, don't make assumptions. The concept of VAWA protections, and Reasonable Accommodation are not in most applicants' vocabulary and are complicated to understand.

6. How can I determine if an applicant's history of criminal behavior is a result of their DVDVSAS?

It is not up to you to guess whether the person's behavior is a result of their DVDVSAS. It is up to the applicant to reveal the connection between their DVDVSAS and the criminal behavior. Do not assume that this is the case if you know the applicant is a survivor of DVDVSAS and do not ask the person if their criminal behavior was caused by their DVDVSAS.

You have an obligation to inform applicants about their rights under VAWA at rejection. It is up to the applicant to inform you that the criminal activity was a result of the

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- A victim need not personally make the request; the request may be made by someone else who is acting on their behalf, such as a DV advocate. Please note however, that you must confirm in writing with the applicant that you have permission to communicate with this person on their behalf;
 - When someone states that negative tenancy related behavior is the direct result of DVDVSAS they are effectively asserting their rights under VAWA, although they may not be calling it that, and they may not refer to themselves as a victim. Do not assume that because someone does not call themselves a victim that they are not one or that they are not protected under VAWA. Remember, would a reasonable person know what is being asked?
 - Accept requests for consideration of mitigating circumstances orally or in writing. Although you may prefer requests to be in writing to avoid confusion, giving appropriate consideration to requests even if the requester makes the request orally or does not use your preferred procedures or forms for making such requests removes a barrier;
 - Offer applicants an informal meeting to discuss a likely denial based on criminal, credit, negative landlord references prior to a denial. Please note that in accordance with HUD's Guidance on the use of criminal records this is a requirement. See Appendix H herein. It is also a good business practice and is the best interest of both the applicant and the housing provider. In re to the applicant it increases the likelihood of them presenting mitigating circumstances, and in re to the housing provider reduces the amount of time it will take to fill a unit and the costs associated with rejection hearings. This is specifically mention in Notice PIH 2015-19: Guidance for Public Housing Agencies (PHAs) and Owners of Federally Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, Nov. 2, 2015, pg. 6. This can be found at <https://www.hud.gov/sites/documents/PIH2015-19.PDF>.
 - Determine whether you require an applicant to provide documentation of DVDVSAS when requesting mitigating circumstances and ways for an applicant to demonstrate they are otherwise qualified.

DVDVSAS, and provide documentation of their status as a survivor of DVDVSAS⁴⁰ and the negative tenancy related behavior is a direct result of DVDVSAS if requested by the housing provider, and to show ability to comply with the lease (that they are otherwise qualified), as any other applicant who established mitigating circumstances would need to do in accordance with standard operating procedures.⁴¹ Remember that there are many types of disqualifying behavior that may be a direct result of DVDVSAS, as explained in Chapter 2, Part 2, Question 3, “*What are examples of adverse factors that someone would be rejected for which may be the result of DVDVSAS?*” in this section above.

If an applicant requests VAWA protections, you **may (you are not required to)** request that they provide documentation of their status as a survivor. If you make a request, it **MUST** be in writing. It is up to the applicant to decide the form of documentation they will utilize to document their status provided it satisfies one of the forms of verification contained in VAWA.⁴² You **cannot** refuse to accept the survivor’s

⁴⁰ In accordance with VAWA, HUD’s Final Rule and HUD Guidance, if the Owner/Agent/PHA chooses to request that an applicant (or tenant) documents their claim of DVDVSAS, the Owner/Agent/PHA must make this request in writing to the applicant (tenant). Only providing the survivor the certification form HUD 5382 doesn’t constitute a written request for documentation, unless the certification form HUD 5382 is provided in conjunction with a dated letter requesting documentation. See footnotes 112 and 113 in Chapter 2, Section 1.

⁴¹ Please note that the document(s) governing tenant selection (PHA Admin Plan and ACOP and an O/As TSP) needs to include this procedure. Remember, you cannot hold survivors to a higher standard than other applicants; Survivors do, however need to demonstrate an ability to comply with the terms of the lease if it is uniformly required by housing providers that all applicants do so. The HUD Handbook 4350.3 discusses this in the context of persons with disabilities. See Par. 4-8 B.3., pg.4-25. It provides: “Owners may uniformly require all applicants to provide evidence of an ability to meet the obligations of tenancy, but owners may not impose greater burdens on persons with disabilities. Persons with disabilities may meet the requirements of the lease with the assistance of others, including an assistance animal, a live-in aide, or with services provided by someone who does not live in the unit.”

⁴² See 34 U.S.C. §12491(C)(3), which provides:

“(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;

documentation of their status as a survivor of DVDVSAS, provided it is one of the acceptable forms listed in VAWA, including self-certification.⁴³ VAWA, and HUD’s final rule and guidance, however, do not explicitly address the acceptable form(s) of documentation for a survivor to establish their negative tenancy related behavior is a direct result of the DVDVSAS. The guidance states that a housing provider “should consider the individual’s statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking.” Implicit in this guidance is that it is the survivor’s choice regarding what information to provide the housing provider, and that the survivor’s self-affidavit is an acceptable source of documentation to establish the direct result. In many instances only a survivor will be able to self-certify to the direct result. Remember, as discussed in Chapter 1, many survivors do not disclose DVDVSAS to anyone, and/or do not seek assistance.

The guidance also provides that if a housing provider determines additional information is needed to make such a determination, that they may request such documentation if it is in accordance with their policies and procedures, and that if any

(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—

(ii) 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

(iii) the applicant or tenant; and

(iv) 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.”

⁴³ This can include self-certification, and any other method listed in 34 U.S.C. §12491(C)(3).

information is not clear, that the provider should speak with the survivor to clarify the information.⁴⁴

It is recommended that housing providers seek guidance from their attorney when determining how to implement a determination of a direct result analysis.

In addition to establishing the direct result, you may ask an applicant to demonstrate that they can comply with the lease or is “otherwise qualified,” which as stated earlier is standard operating procedure for all applicants. Please remember that you cannot require a survivor or survivor living in a shelter to do this if you wouldn’t ask all other applicants to do so.

For example:

Assume the survivor of DVDVSAS’s credit was completely destroyed due to their ex spouse’s control over their finances, and that they were evicted from their tax credit unit where they lived with their 6-year old child, for non-payment of rent. The survivor is currently living in a domestic violence shelter with their child and applies to your MassHousing financed Section 8 site which has no tenant paid utilities and qualifies for a preference at your site based on the required state preferences.⁴⁵

What type of documentation could establish the direct result between the applicant in this example being a survivor of DV and the disqualifying factor, an eviction due to non-payment of rent?⁴⁶

⁴⁴ **Multifamily Notice**, pg. 11 for a discussion of this and **PHA Notice**, pg. 9.

⁴⁵ The preferences are listed both in the MassHousing Tenant Selection Plan, and detailed in the Tenant Selection Plan Reference Guide beginning on pg. 15, which can be found at:
[file:///C:/Users/TA_CXO/Downloads/Tenant_Selection_Plan_Reference_Guide%20\(1\).pdf](file:///C:/Users/TA_CXO/Downloads/Tenant_Selection_Plan_Reference_Guide%20(1).pdf).

⁴⁶ Please note that the reasons permitted to deny someone under the Public Housing rules contained in §982.552 may be an adverse factor that is a direct result of DVDVSAS:

- A self-certification from the survivor explaining their ex-spouse had economic control over the survivor's finances and that as a result of the domestic violence the survivor was unable to pay their rent; and/or
- A letter from a Domestic Violence advocate, Social Worker, Health Care Provider, explaining that the person's ex-spouse had economic control over the survivor's finances and that as a direct result of the domestic violence the survivor was unable to pay their rent.

What must the housing provider do in this example when the applicant provides information regarding the direct result between the DV and the non-payment of rent?

- Review the applicant's statement and any possible supporting documentation;
- Request further information about the direct result (vs. the person's status as a survivor of DVDVSAS) if the information provided is insufficient to make a determination; and
- Talk with the applicant to clarify any information when necessary.

What type of documentation can establish the applicant will pay rent on time, and is otherwise qualified in accordance with the housing provider's policies?

This analysis is not new to housing providers. Please be mindful that the intent of this analysis is to rent to people who will comply with the essential components of the lease: paying rent on time; not interfering with other peoples' quiet enjoyment, maintaining a decent safe and sanitary unit; not engaging in criminal activity; complying with

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- (v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.
 - (vi) If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
 - (vii) If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.)

programmatic rules (such as annual and interim reporting requirements) and following other essential reasonable rules.

The standard of what a housing provider is likely to require in this example in re to demonstrating an ability to pay rent is likely to be significantly less than if the resident were moving into a market unit or another tax credit unit where the rent is not based on the family's gross or adjusted income. If the family were moving into a market unit or a tax credit unit without a rental subsidy such as project-based Section 8, the first inquiry a provider would make is whether the applicant's gross income would support the rent based on the O/As definition of a rent-burden, assuming the applicant did not have a mobile voucher.

Depending on this family's income source or sources, the family may not have any countable income, and because this family is applying to a section 8 site, where rent is based on a formula⁴⁷ the family may not be required to pay any rent, although there is a minimum rent of \$25, due to financial hardship.⁴⁸ As such, non-payment of rent wouldn't be an issue. Assuming the family does have countable income, and that they were required to pay rent the following are ways the applicant may demonstrate the ability to pay the rent.

- Payments of utility, telephone, or cable TV bills
- Credit card, loan, or layaway payments
- Any other kind of regular payment
- Completion of a residency-training program/financial management acceptable to the housing manager
- Vendor payment or a representative payee (rep payee)

⁴⁷ See HUD Handbook 4350.3, Exhibit 5-8: Tenant Rent Formulas, at https://www.hud.gov/sites/documents/DOC_35705.PDF.

⁴⁸ See HUD Handbook 4350.3, Par. 5-26D., beginning on pg.5-68. See <https://www.hud.gov/sites/documents/43503C5HSGH.PDF>.

7. Are there some past crimes that are so serious that I can deny someone who is a survivor of DVDVSAS without considering whether the criminal behavior is a direct result of DVDVSAS?

Yes, but only if you are required to do so based on a statutory or regulatory requirement. For example, HUD has specific required exclusions, such as if an applicant is subject to a lifetime reporting requirement under a state sex offender registration program. Since these are **required** exclusions, a provider can't consider mitigating circumstances for anyone, even if the criminal behavior is a direct result of someone's DVDVSAS. If an exclusion is not required, but rather a PHA or Owner/Agent selection criteria, you **must** consider if there the adverse factor is a direct result of DVDVSAS.⁴⁹

If you are not required by statute or regulation to exclude someone based on a specific crime, you must permit a survivor to present documentation that the criminal behavior is a direct result of the DVDVSAS. The housing provider "must make an objectively reasonable determination, based on all the circumstances," whether the criminal behavior is a direct result of the fact that the applicant is a survivor of DVDVSAS.⁵⁰ This requires the housing provider to do the following:

- Review the applicant's statement and any possible supporting documentation;
- Request further information about the direct result (vs. the person's status as a survivor of DVDVSAS) if the information provided is insufficient to make a determination; and
- Talk with the applicant to clarify any information when necessary.

⁴⁹ Multifamily Notice pg. 7, PIH Guidance pg. 6.

⁵⁰ IBID.

The applicant, like all other applicants will also need to demonstrate that they are otherwise qualified for housing. This includes being able to be lease compliant.

8. If a disqualifying factor is the direct result of DVDVSAS, do I have to admit the person if they aren't otherwise eligible or can't comply with the terms of the lease?

No. VAWA specifically provides that a survivor must be “otherwise qualified”, which means able to meet the eligibility requirements and comply with the terms of the lease. For example, if a survivor has no income or assets and is unable to demonstrate an ability to pay rent at a tax credit site and does not have a voucher, a housing provider can reject the applicant even if the reason they have no income is because they are a victim of DVDVSAS.

Payment of rent is a quintessential component of tenancy. Simply put, all tenants have to pay rent, and PHAs/Owners/Agents would not be doing their job if they admitted an applicant who could not demonstrate ability to pay rent. For example, based on PHAs' Admission and Occupancy policies and Owner/Agents' Tenant Selection Plans, housing providers standardly reject people who have been evicted for non-payment of rent or owe another provider money for back rent because housing providers do not view these individuals as demonstrating they are qualified for housing.⁵¹ However, what is

⁵¹ For example, PHAs are specifically permitted (not required) by regulation to deny admission if a family for reasons related to non-payment of rent. 24 CFR §982.552(C) provides such denial **may** take place:

v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(vi) If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

(vii) If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.

also often included in housing provider’s written policies is that they will consider extenuating circumstances and the applicant otherwise qualified if they are able to present information demonstrating ability to pay rent on time. In addition, housing providers are required when the non-payment of rent is related to a disability, to consider extenuating circumstances and determine whether the applicant is otherwise qualified with or without a reasonable accommodation.⁵² In the case of a situation where the non-payment of rent is a direct result of DVDVSAS, as discussed above, the housing provider is prohibited from rejecting on this basis in accordance with VAWA. However, the applicant, like all applicants, will need to demonstrate the ability to pay rent. If an applicant can’t demonstrate ability to pay rent, then they aren’t otherwise qualified. The type of evidence/documentation an applicant needs to demonstrate ability to pay rent, will depend on what prevented the person from paying rent at all or on time, and what has changed so that the applicant can now comply with this essential lease term, or whether a specific system needs to be set up so that the owner receives a direct payment. Also, what an applicant will need to demonstrate in re to being otherwise qualified will be impacted by whether the unit has a minimum income requirement, such as a tax-credit unit that does not also have a project-based subsidy.

Please remember that a housing provider would be engaging in illegal discrimination if they held a survivor to a more stringent standard than other applicants when demonstrating ability to pay rent or making a determination of being otherwise qualified.

It is recommended that housing providers seek guidance from their attorney regarding standard admission criteria to ensure they don’t violate VAWA and when determining how to implement a determination of otherwise qualified.

A PHA may also consider extenuating circumstances in such instances and the PHAs actions [must](#) be consistent with both Fair Housing requirements and protections for survivors of DVDVSAS.

⁵² See HUD Handbook 4350.3 Rev-1, pg. 4-24 and 4-62. Also see 24 CFR §982.552 (C)(2)(iv).

9. What should I do if a person asserts their negative credit history, criminal record, or tenancy history is a direct result of DVDVSAS?

The actions you take will be based on your site's policies and procedures and when the person makes a request: before or after a rejection for admission. The following assumes this is a HUD site, or a program that is using the HUD [Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation](#) (Form HUD-5382).

1. The required *Notice of Occupancy Rights Under the VAWA (Form HUD -5380)*, and- [Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation](#) (Form HUD-5382) – must be provided at rejection, regardless of whether you previously provided these forms to the survivor at application or application interview based on your procedures.
2. If your standard policies and procedures is to require documentation that the person is a victim of DVDVSAS, do so. Remember, if you require this you must put your request in writing (simply handing someone Form HUD-5382 is insufficient), you must permit that the information be provided within 14 **business days** after the date that the individual received the written request for documentation. You may extend this time as well.
3. During the 14-**business day** period (and any granted extensions of that time) no adverse actions can be taken against the individual requesting VAWA protection. In the admission context, this presumably means you cannot rent an available unit to someone else ahead of the person making the request if it would delay the applicant's admission.⁵³

⁵³ See **Multifamily Notice, VIII. Certification and Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**, C. (pg.15). Please note that this time frame is important because in accordance with the HUD Handbook 4350.3, the rejection letter must provide that the applicant has 14 days (NOT BUSINESS DAYS) to request an appeal. See Par. 4-9C. on pg. 4-28.

4. If the applicant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 **business days** after receiving the written request for that documentation, you may (but are not obligated to) deny admission.⁵⁴ If the applicant provides the documentation, acknowledge receipt of the documentation in writing in a timely manner. Documenting your communication with the victim is a good business practice, although as of this writing not a requirement.⁵⁵
5. If the applicant provides the information requested, review the documentation and determine if it provides “enough information” to make a determination that the negative tenancy related behavior is a direct result of DVDVSAS Note: Remember, you cannot ask for any documentation about the DVDVSAS that is not in accordance with VAWA and implementing regulations and guidance.⁵⁶ Please see Question 6 of this section for a discussion of what type of documentation may be used to establish the direct result, and the importance of contacting your attorney regarding this matter.
6. Request further information about the direct result (vs. the person’s status as a survivor of DVDVSAS) if the information provided is insufficient to make a determination; and talk with the tenant to clarify any information when

This may also create a difficult practical dilemma during a rent up at a tax credit site if an Owner is required to rent a unit to a qualified tax credit household by a requisite date to take credits and can’t due to an applicant’s appeal pending.

⁵⁴ Your procedures may also include other protocols, including reaching out to the applicant or the advocate to ascertain the circumstances for the delay. Please remember that when doing so to be mindful not to place the victim at risk, e.g., the abuser may monitor communication methods, including emails, voice messages and texts. To mitigate risks, you should work with the victim to figure out acceptable delivery arrangements. It is also important to note that an applicant does not waive their right to challenge the denial of assistance for failure to provide documentation of DVDVSAS within the requisite timeframe. The documentation and assertion of the disqualifying factor may be raised during an appeal or MassHousing Conference in the context of mitigating circumstances, and documentation presented.

⁵⁵ HUD has made this recommendation in its **Multifamily Notice, VIII. Certification and Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, D.** (pg.15) and stated that it intends to propose this change when it next updates the HUD Handbook 4350.3. HUD’s **PIH Notice** also encourages PHAs to take this action. See pg. 13.

⁵⁶ See 24 CFR 5.2007(b)(1).

necessary. You may offer the applicant assistance in contacting a third party (i.e. case worker, health care provider, law enforcement....) to obtain the information regarding the direct result. The applicant does not have to agree. Remember, if you contact the third party, you need a signed release, and your inquiry must be limited to whether the adverse factor is a direct result of DVDVSAS.

7. If the direct result is established, follow your standard tenant selection criteria and determine if the person will be able to comply with the terms of the lease (otherwise qualified). If as part of your policy you engage in an interactive dialogue to determine what, if anything, the PHA/Owner/Agent may do to facilitate lease compliance, do so.
8. Consider any reasonable accommodation request based on an applicant's disability and if it is reasonable to believe that the reasonable accommodation would make lease compliance likely.
9. Provide reasonable accommodation to persons with disabilities, including any reasonable accommodation that would enable an applicant with a disability to be lease-compliant.
10. If no direct result is established, you may reject the applicant if you would otherwise do so. If you determine there is a direct result, but the person is not otherwise qualified, you may reject the applicant. If there is a direct result and you determine the person is otherwise qualified, admit the applicant.

a. Non-exhaustive List of Examples of Situations That Warrant Admitting an Applicant with a Bad Tenancy History, Credit, or Criminal Record as a Result of DVDVSAS.

- As a result of the applicant's abuser sabotaging their work and employment opportunities by stalking them and harassing them, they lost their job and could not pay rent at their tax credit unit that had no subsidy. In addition, their abuser banged on their door in the middle

of the night, engaged in other behavior, which was disruptive to the neighbors, and on more than one occasion caused damage to the applicant's unit.

- The applicant's bad tenancy history was due to their three-month stay at the hospital, due to injuries sustained from DV, when a public housing authority evicted them based on its policy regarding uninhabited apartments.
- The applicant has a criminal history of prostitution convictions within the last two years. They provide documentation from their DV caseworker stating that they had been forced into prostitution by the person they were living with, and that they are currently living in a DV safe house and hasn't subsequently engaged in any criminal behavior.

b. Verifying an Applicant's Assertions Regarding Their Bad Tenancy History

If an applicant asserts that their bad tenancy history is a direct result of DVDVSAS, you may require adequate documentation of the following: (1) that the person is a survivor of DVDVSAS; (2) that the bad tenancy history was the direct result of the DVDVSAAS; and (3) that the applicant is likely to comply with the lease, provided the last prong is part of your standard operating procedures. Please note that the concept of being otherwise qualified for housing is standardly interpreted by housing providers as meaning both program eligibility and the housing provider's site-specific criteria for determining ability to comply with the terms of the lease.

c. Type of Verification

The type of verification an applicant will need to provide to demonstrate that their bad tenancy history is a direct result of their DVDVSAS, and that they are otherwise qualified, will depend on the specifics of their situation. The VAWA statute, final rule and HUD guidance provide clear direction regarding how a

survivor may inform a housing provider of their status as a survivor of DVDVSAS. As explained in Question 6 of this section, a housing provider may choose to accept a person’s verbal statement or other corroborating evidence regarding the DVDVSAS, in accordance with their policies. As explained in Question 6 of this section, if a housing provider requires a survivor to submit documentation of DVDVSAS, the request must be in writing, and as explained in Question 6, there are a number of acceptable forms of verification, including self-certification (Form 5382), and **it is the tenant’s decision which acceptable form of documentation to provide** and the provider may only ask for additional information if the submitted documentation contains conflicting information.⁵⁷ HUD’s guidance, when discussing the direct result determination, reiterates that a housing provider cannot request additional information regarding the DVDVSAS other than as specified in VAWA.⁵⁸

VAWA, and HUD’s final rule and guidance, however, do not explicitly address the acceptable form(s) of documentation for a survivor to establish their negative tenancy related behavior is a direct result of the DVDVSAS. The guidance states that a housing provider “should consider the individual’s statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking.” Implicit in this guidance is that it is the survivor’s choice regarding what information to provide the housing provider, and that the survivor’s self-affidavit could be an acceptable source of documentation to establish the direct result. In many instances only a survivor will be able to self-certify to the direct result. Remember, as discussed in Chapter 1, many survivors do not disclose DVDVSAS to anyone, and/or do not seek assistance.

⁵⁷ See 24 CFR 5.2007(b)(1). Also see 24 CFR 5.2007(b)(1).

⁵⁸ Please see 24 CFR 5.2007 for the documents a housing provider may ask a survivor for to establish the DVDVSAS. Also see **Multifamily Notice**, pg. 11 for a discussion of this and **PHA Notice**, pg. 9.

The guidance also provides that if a housing provider determines additional information is needed to make such a determination, that they may request such documentation if it is in accordance with their policies and procedures, and that if any information is not clear, that the provider should speak with the survivor to clarify the information.⁵⁹ Although a housing provider has the right to request additional documentation to determine there is a direct result or that the applicant is otherwise qualified, they do not under any circumstance have the right to make broad inquiries into the applicant's DVDVSAS or ask the verification source to reveal specific information. A provider also can't reject the documentation based on preconceived notions of survivors of DVDVSAS, and whether they will be able to comply with the terms of the lease.

It is recommended that housing providers seek guidance from their attorney when determining how to implement a determination of a direct result analysis.

d. Procedures for Verification of The Direct Result Between The Negative Tenancy Related Behavior and the DVDVSAS and The Applicant Is Otherwise Qualified

The housing provider “must make an objectively reasonable determination, based on all the circumstances, whether the adverse factor is a direct result of the fact that the applicant or tenant/participant is a victim of domestic violence, dating violence, sexual assault, or stalking.”⁶⁰ This requires the housing provider to do the following:

- Review the tenant's statement and any possible supporting documentation;

⁵⁹ **Multifamily Notice**, pg. 11 for a discussion of this and **PHA Notice**, pg. 9.

⁶⁰ **IBID.**

- Request further information about the direct result (vs. the person's status as a survivor of DVDVSAS) if the information provided is insufficient to make a determination; and
- Talk with the tenant to clarify any information when necessary.

A provider may offer the applicant assistance in contacting a third party (i.e. case worker, health care provider, law enforcement....) to obtain the information regarding the direct result. The applicant does not have to agree. Remember, if a provider contacts the third party, they will need a signed release, and the inquiry must be limited to whether there is a direct result between the negatively tenancy related behavior and the DVDVSAS or whether the applicant is otherwise qualified.

10. What if one applicant can establish that their disqualifying behavior was a direct result of their DVDVSAS, but their abuser is a member of the household?

To begin with, you may not hold a survivor responsible for their abuser's behavior. Nor can you mandate that the survivor leave their abuser. You will need to engage in screening of both parties and depending on the facts and whether the abuser is not suitable for housing, may admit the survivor and not the abuser. Depending on the facts, and information presented by the family members regarding the negative tenancy behavior, you may decide to admit the entire household.⁶¹

⁶¹ Another topic that HUD needs to provide guidance on is what occurs if there is a family break-up due to DVDVSAS while a family is on the waiting list. HUD has not specifically addressed this in the application context when this occurs in situations related or unrelated to DVDVSA, although it has addressed it in the context of existing tenants. For example, see Question 11 in Chapter 2, Part 3, H. Emergency Transfer, Question 11 for a discussion of this. The first question which HUD needs to provide guidance on is whether VAWA applies. In other words, if an abuser removes a survivor from the waiting list, and the survivor requests to be placed back on the waiting list based on date and time of application, is a

11. Do I have to accept someone who is a survivor of DVDVSAS whose criminal record, negative tenancy history or credit has nothing to do with DVDVSAS?

No. You must apply your standard screening criteria to this individual. You may not hold the person to a higher standard or expect less of the applicant because of their DVDVSAS status.

C. Applicant notification of rights under VAWA: information you may/may not request

More often than not, applicants are unfamiliar with the rules governing admission to the varying affordable housing program, or their rights under these programs or federal and

housing provider required to do so based on VAWA? Any delay in housing based on a factor related to DVDVSAS is arguably discriminatory, even if the delay is not a denial. A related concern is that unlike a situation involving tenancy rights, there are no standard due process requirements in the context of the application.

These situations may get very complicated, depending on who is identified as the head of household (they are standardly who the housing provider contacts for household composition updates), if the abuser willingly removes themselves from the application or if both the abuser and survivor assert they should be considered the “applicant”, and if the change in household composition results in a change in eligibility or unit size or type.

For example, many housing providers have a policy that if there is a change in household composition (other than related to an addition of a child due to birth, adoption, foster care....) which necessitates a different unit size, that the family’s application date would be moved to the date of the change in family composition. This is an example where a standard policy could have an adverse impact on a survivor of DVDVSAS and a survivor would be penalized for the DVDVSAS. Please consult your attorney in such situations.

state fair housing laws. Notifying victims of their rights under VAWA is critical in providing them access to a vital resource. Congress recognized this when passing VAWA, requiring HUD to create a Notice of Occupancy Rights, and for Public Housing Agencies, and Owners and Agents of all covered housing programs to provide this form along with a certification form approved by the appropriate agency during the admission process: “(A) at the time the applicant is denied residency in a dwelling unit assisted under the covered housing program; (B) at the time the individual is admitted to a dwelling unit assisted under the covered housing program.”⁶² Although this is crucial, we also believe that it is beneficial

⁶² Please note that the notification must also be provided “with any notification of eviction or notification of termination of assistance.” See below for full text.

34 U.S.C. §12491(d) provides:

(d) **Notification**

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

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

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

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

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

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

(c)(3)(A) Provides:

(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

to everyone involved in the application process, if applicants are notified sooner of these rights. Many survivors are reluctant to even apply because they do not see the point if they're going to get rejected. It is also beneficial for the housing provider to know as soon as possible if there are potential disqualifying factors so that management can potentially obtain any necessary documents before a rejection takes place, which often delays filling a vacancy.

It is also important to mention that Congress recognized in the statute the importance of providing meaningful access to applicants whose primary language isn't English and who as a result have a limited ability to read, write or understand English.⁶³ HUD's guidance emphasizes this as well, and its VAWA forms are available in multiple languages (Arabic, Armenian, Cambodian, Creole, Hmong, Japanese, Korean, Lao, Mandarin, Russian, Somali, Spanish, Thai, and Vietnamese) on HUDCLIPA to remove a language barrier which prevents many applicants from accessing affordable housing.⁶⁴ Keep in mind that not all applicants read, regardless of their primary or sole language. In addition, other barriers may impede an applicant's ability to access a notice in writing, such as a vision impairment, cognitive disability, language-based learning disability, or trauma. HUD has made it a point in their guidance remind PHAs/Owners/Agents to take appropriate steps to ensure effective communication with applicants (and tenants) with disabilities using appropriate auxiliary aids and services, such as large print or Braille documents, readers,

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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.

⁶³ SEC. 12291(d)(2)(D).

⁶⁴ See **Multifamily Notice**, pg. 22 and **PIH Notice**, pg. 19. The form may be located in multiple languages at https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a#4.

interpreters, and accessible electronic documents. You are also reminded in HUD's guidance of your obligation to provide reasonable accommodations to enable applicants (and tenants) with disabilities to have an equal opportunity to benefit from VAWA protections, including assisting applicants in completing forms.⁶⁵

As discussed below, it is a good business practice to inform all applicants of their rights verbally at various points of contact in the application process, and post the notice on your website, on bulletin boards in the lobby, and in the office where applicant meetings are held. It is also important that all staff who interact with applicants (the receptionist/person who answers the phone, leasing agent, and management team) need to be trained in VAWA protections and communicating these protections to applicants in plain language.

Although HUD does not standardly permit PHA's/Owners/Agents to change OMB approved forms without HUD approval, you may customize the Notice of Occupancy Rights (form HUD-5380) to reflect the type of assistance provided under the specific housing program and specify the program operations that may pertain to or affect VAWA. What you cannot do is change the form's core protections and confidentiality provisions. This is important because if you have a multiple subsidy site you can customize the form accordingly.

Many O/As that have non-HUD programs which have provided no guidance have chosen to use this form as a guide, and customize for use with other programs, and to also use HUD's self-certification form as well, although the administering agency has not formally adopted it.

⁶⁵ HUD **Multifamily Notice**, pg. 13 and **PIH Notice**, beginning pg. 20.

1. If I am a covered housing site, do I have to notify applicants regarding their rights to assert that the reason they were rejected was a direct result of DVDVSAS?

YES. In accordance with VAWA, if you are a covered housing site you **must** include with your rejection letter HUD's Notice of Occupancy Rights⁶⁶ and the certification form⁶⁷ when you reject an applicant.⁶⁸ Your rejection letter **may** include a request for submission of documentation within 14 business days after the date that the individual received the written request for documentation establishing that the reason for rejection is a direct result of DVDVSAS.⁶⁹ There is nothing which prohibits you from extending this time frame.

An example of the type of language you need to include in your rejection letter is as follows:

If the unfavorable circumstances listed above are the result of domestic violence, dating violence, sexual assault or stalking, we want to make sure you understand your protections under the Violence Against Women Act (VAWA). VAWA protections are not only available to women but are available equally to all individuals regardless of sex, gender identity, or sexual orientation. HUD's Notice of Occupancy Rights under VAWA

⁶⁶ Form 5380 [Notice of Occupancy Rights Under the Violence Against Women Act](#) (12/2016). O/As were required to customize this form to reflect the type of assistance provided under the specific housing program and specify the program operations that may pertain to or affect VAWA. You weren't, however, permitted to change the form's core protections and confidentiality provisions. See Question 7.

⁶⁷ Form 5382, [Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation](#) (12/2016).

⁶⁸ See 34 U.S.C. §12491(d), and HUD's implementing regs at 24 CFR 5.2005(a).

⁶⁹ As stated in footnote 98, the regulation, 24 CFR 5.2007(a) assumes that the victim makes a request prior to the housing provider providing a letter requesting written documentation. Some housing providers are including the request for written documentation in the rejection letter (and eviction notice). The purpose of this is to expedite the provider's capacity to fill a vacancy and/or resolve a lease violation. Survivors may find this confusing because the letter then contains two deadlines: a deadline to appeal the request for rejection and the deadline to provide documentation of the DVDVSAS if the reason for rejection is directly related to the DVDVSAS.

(form HUD-5380) and HUD’s Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (form HUD-5382), are attached to this notice. If this is applicable to you and you wish to exercise your rights under VAWA, you may do so by completing and submitting the Certification form (or other form of Alternate Documentation as specified in the Notice and Certification form), and providing any documentation that establishes that the negative tenancy related behavior is a direct result of Domestic Violence, Dating Violence, Sexual Assault, or Stalking so it is received in the management office no later than 14 business days from the date of your receipt of this notice.

When rejecting someone and providing such notification, it is important to remember your obligation to provide meaningful access to people whose primary language is not English. Vital documents, such as termination notices, must be translated and interpreted, if requested, in accordance with the site’s language access plan. Applicants need to be informed that this is an important document and you will provide free language assistance upon request. Also, if your site has a Language Access Plan, you may need to translate the site’s rejection letter in accordance with the Plan. The required notice forms have been translated by HUD into multiple languages⁷⁰ and are available on HUD’s Exchange. Rejection letters should also include that people who have a disability have a right to a reasonable accommodation if such a reasonable accommodation could or has corrected the tenancy related problem. A letter from HUD’s former Director of Program Compliance and Disability Right to MassHousing stated that this is a requirement, but this requirement was not included in the HUD Handbook 4350.3. If your site is financed by MassHousing, it is a requirement.⁷¹

⁷⁰ Currently they are available in 14 languages: Arabic, Armenian, Cambodian, Creole, Hmong, Japanese, Korean, Lao, Mandarin, Russian, Somali, Spanish, Thai, and Vietnamese.

⁷¹ What is included in the Handbook is the requirement that the rejection letter include notice that “persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing process. See Par. 4-9C.2.c. Rejecting Applicants and Denial of Rental Assistance, pg. 4-28.

An example of this type of language to include in the rejection letter is as follows:

If the unfavorable circumstances listed above are the result of your having a disability, you may request a reasonable accommodation. A reasonable accommodation is an adjustment to a procedure, unit or common area that will prevent the tenancy related problem from recurring and enable you to be lease compliant.

You are also encouraged to inform **all** applicants early in the application process about their rights under VAWA and that you will consider mitigating circumstances if their negative tenancy related behavior is a direct result of DVDVSAS. This information may be included as part of your application cover letter, and/or as part of a general notification of non-discrimination, right to request reasonable accommodation and free language assistance.⁷² You may also verbally inform **all** applicants of this during the applicant interview and have the Notice of Occupancy Rights posted in the office where the interview is taking place, and a copy available for each applicant. This interview must occur in order to gather all necessary information, inform applicants of the Owner/Agent obligation not to discriminate against persons with disabilities (which includes the obligation to provide reasonable accommodation), and to provide specific documents⁷³ HUD also encourages you to post the Notice of Occupancy Rights on your websites and in

⁷² We recognize that this is not a requirement, and that the VAWA Final Rule only requires in the admission context that the Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382 be provided to applicants “at the time the applicant is denied assistance or admission [and] at the time the individual is provided assistance or admission.” We believe it to be a good business practice to provide it during the application process to help remove a barrier to housing because applicants who are victims may be more likely to apply if they are aware of their rights. This practice has no negative impact on O/As housing operations.

⁷³ For example, see HUD Handbook, Par. 4-24 Applicant Interviews, pg. 4-47.

public areas, such as waiting rooms, community bulletin boards, and lobbies where applicants (and residents) may view it.⁷⁴

2. If I am a HUD site, but not all my units are HUD units, do I have to notify all applicants regarding VAWA protections?

No, you aren't required to distribute the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) to units not covered by the HUD rule or offer residents living in those units VAWA protections. However, HUD has stated that if a resident originally qualified for a covered unit and signed the applicable VAWA lease addendum ((form HUD-91067) and then became "market" due to an increase in income, that they "may" still be provided VAWA protections.⁷⁵ For example, a resident due to an increase in income in your Section 8 site, is no longer receiving subsidy. The person previously signed a VAWA lease addendum. The person requests that you bifurcate the lease because of domestic violence. This resident is still protected under VAWA although not receiving subsidy. You would need to follow the same procedures you would follow to meet this resident's VAWA related request as you would a resident who is currently receiving subsidy and move to bifurcate the lease.

Note: You may choose to offer VAWA protections and remedies to all tenants and applicants, where applicable, and are strongly encouraged to do so.⁷⁶ The failure to do

⁷⁴ This is not a requirement. HUD requires notification at acceptance or rejection of application. See question Chapter 2, Section 1, Question 15.

⁷⁵ See **Multifamily VAWA Questions**, Question 4. Also please note that Tenants in units under a HUD-covered program maintain their VAWA protections where their units are converted to coverage under a new HUD program. The conversion does not eliminate their VAWA protections. With respect to RAD, tenants in converted units continue to be covered by VAWA's protections provided under HUD's Section 8 Project-Based Voucher program or Project-Based Rental Assistance Program. See **Federal Register** /Vol. 81, No. 221 /Wednesday, November 16, 2016 /Rules and Regulations 80733.

⁷⁶ See **Multifamily VAWA Questions**, #15, which provides:
"In instances where a property has both project-based Section 8 and LIHTC units, are O/As required to distribute the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) to the LIHTC units?
Answer: The VAWA Final Rule only applies to applicants and tenants of HUD covered housing programs. Properties

so may be considered a fair housing violation to the extent that federal and state fair housing laws protect survivors of DVDVSAS.⁷⁷

funded with LIHTCs should seek guidance from the Department of Treasury or the appropriate HFA for guidance on implementing VAWA protections in those units. Note: O/As may choose to offer VAWA protections and remedies to all tenants and applicants, where applicable. "See https://www.hud.gov/sites/dfiles/Housing/documents/Revised_VAWA_QA.pdf

⁷⁷ See a general discussion of Fair Housing obligations in **Federal Register** /Vol. 81, No. 221 /Wednesday, November 16, 2016 /Rules and Regulations 80731.

3. If an applicant asserts that a negative factor is a direct result of DVDVSAS, may I require them to provide supporting documentation?

Yes, you **may** require an applicant to provide documentation that they are a victim of DVDVSAS⁷⁸ and that the negative factor was a direct result of the DVDVSAS.⁷⁹ In other words, a person only submitting documentation of the DVDVSAS is not sufficient if it does not objectively establish the direct result between the negative tenancy related behavior and the DVDVSAS.⁸⁰ This should be familiar to you because the direct result between disqualifying tenancy related behavior and DVDVSAS has historically been raised when

⁷⁸ 24 CFR § 5.2007 (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](#).

In accordance with this provision, it is the applicant’s choice regarding what type of documentation they provided, and you may not require them to submit multiple forms of documentation. However, if you receive documentation with conflicting information, you may require the applicant to submit third party documentation from a professional. Only in the event of conflicting information may you require third party documentation. Before requesting such documentation, you must speak to the victim and attempt to clarify the conflicting information.

⁷⁹ See [Multifamily Notice](#), Pg. 10-11.

⁸⁰ This should be familiar to you because it is analogous to consideration of reasonable accommodation when an applicant claims that negative tenancy related behavior is a direct result of their disability. For more information on this see MassHousing’s Reasonable Accommodation Handbook at file:///C:/Users/TA_CXO/Downloads/RA_Handbook.pdf

applicants request consideration of mitigating circumstances involving a claim of domestic violence and has been in HUD guidance prior to HUD's Final Rule.⁸¹

The language used in VAWA, HUD's final rule and in its guidance indicate that once a direct link is established you should disregard the adverse information and consider the applicant suitable for admission unless other information unrelated to the domestic violence would disqualify the applicant. It also provides that housing providers only have to admit survivors if they are "otherwise qualified" which the housing industry has standardly interpreted as meaning not only eligible, but able to comply with the terms of the lease. If not, Owners/Agents/PHAs would be required to admit people who do not have to demonstrate they can comply with the essential components of the lease, such as payment of rent. HUD's guidance does not specifically address this but suggests that this would be permitted provided this inquiry is in accordance with the Owner's/Agent's/PHA's policies or practices.⁸² For example, if it is applied to all applicants.

4. Does simply providing the applicant (resident) a certification form (HUD 5382) constitute a written request for documentation that they are a victim?

No. unless the certification form is accompanied by a dated letter requesting documentation⁸³

5. Do I have to require written documentation of a person's status as a victim of DVDVSAS?

⁸¹ For example, see **Public Housing Occupancy Guidebook**, Section 19.3, pg. 218.

⁸² See **Public Housing Occupancy Guidebook**, Section 19.3, pg. 218. As well as See 24 CFR 5.2005(b)(1), PIH Guidance, beginning pg. 6, and **Multifamily Notice** beginning pg. 7.

⁸³ See 24 CFR 5.2007(a)(1).

No. you may choose to provide protections to an applicant or tenant based solely on the person's verbal statement or information otherwise known, such as if the applicant lives at a DVDVSAS shelter. If you choose to accept a verbal statement as documentation, this needs to be included in your standard operating procedures.

6. If I make a written request for documentation, do I have to provide a timeframe for the applicant to provide the documentation?

Yes. You may require submission of documentation within 14 business days after the date that the individual received the written request for documentation.⁸⁴ However, you may choose to extend this time period. The decision whether to extend the timeframe may be a difficult one to make. You are balancing the need to fill a vacant unit in a timely manner with the importance of being as flexible as possible to house a victim who may very well need the housing due to safety concerns. It is important to proactively think through how you will handle this situation and address it in your site's TSP/ACOP. Factors to consider include, but aren't limited to:

- Whether you are conducting a rent up, and must meet specific deadlines, such as for the Owner to be able to claim tax credits, or a requisite number of credits;
- Whether you have a high turnover rate;
- Owner/monitoring agent expectations regarding acceptable timeframe for filling vacant units; and
- Whether you are able to get reimbursed by HUD for vacancies.

One reminder for site staff working to fill these units is not to assume survivors who do not provide requested information are simply being "difficult" or unresponsive for no reason. A survivor may have valid reasons for being unable to comply with your request for documentation in addition to a disability which impacts their ability to respond (such as a cognitive disability or post-traumatic stress syndrome) and limited English

⁸⁴ See 24 CFR 5.2007(a)(2).

proficiency. The survivor's DVSA advocate may also be very helpful in assisting the survivor to work with a housing provider. HUD's guidance includes the following:

- Not receiving the request due to hospitalization or time in an emergency shelter;
- Administrative delays in obtaining police or court records; the danger of further violence; and
- The survivor's need to address health or safety issues.

Rather than provide an extension "deadline", permitting survivors who would otherwise be rejected to remain on the waiting list pending submission of the documentation may be an acceptable alternative. In such instances, the applicant retains their place on the waiting list, and if the applicant is unable to provide the documentation, the Owner is permitted to offer a unit to the next eligible household on the waiting list.⁸⁵

7. If an applicant claims protection under VAWA, may I require them to provide third party documentation to establish they are a victim of DVDVSAS and that there is a direct result between the disqualifying factor and the DVDVSAS?

The applicant gets to decide the method of verification to use to establish that they are a survivor and is permitted to use self-certification or any of the other method or methods

⁸⁵ This is analogous to what HUD has instructed Owner/Agents to do in the case of an applicant who is unable to comply with HUD's Social Security requirement. Please see NOTICE: H 10-08, April 13, 2010, **Implementation of Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System - Amendments; Final Rule** <https://www.hud.gov/sites/documents/10-08HSGN.PDF>.

permitted by law.⁸⁶ You may not require third party verification, except under narrow circumstances involving conflicting information.⁸⁷

VAWA, and HUD’s final rule and guidance, however, do not explicitly address the **acceptable form(s) of documentation for a survivor to establish their negative tenancy related behavior is a direct result of the DVDVSAS. The guidance states that a housing provider** “should consider the individual’s statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence,

⁸⁶ See 24 CFR 5.2007, which provides that the applicant, at their discretion, may provide any of the following:

- (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](#).

⁸⁷ If more than one applicant provides documentation to show they are a victim of domestic violence, dating violence, sexual assault, or stalking, and the information in one person’s documentation conflicts with the information in another person’s documentation, or 2) submitted documentation contains information that conflicts with existing information already available to the O/A. In accordance with 5.2007, the third-party information may consist of:

- 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](#).

dating violence, sexual assault, or stalking.” Implicit in this guidance is that it is the survivor’s choice regarding what information to provide the housing provider, and that the survivor’s self-affidavit could be an acceptable source of documentation to establish the direct result. In many instances only a survivor will be able to self-certify to the direct result. Remember, as discussed in Chapter 1, many survivors do not disclose DVDVSAS to anyone, and/or do not seek assistance.

The guidance also provides that if a housing provider determines additional information is needed to make such a determination, that they may request such documentation if it is in accordance with their policies and procedures, and that if any information is not clear, that the provider should speak with the survivor to clarify the information.⁸⁸ Although a housing provider has the right to request additional documentation to determine there is a direct result or that the applicant is otherwise qualified, they do not under any circumstance have the right to make broad inquiries into the applicant’s DVDVSAS or ask the verification source to reveal specific information. A provider also cannot reject the documentation based on preconceived notions of survivors of DVDVSAS, and whether they will be able to comply with the terms of the lease.

It is recommended that housing providers seek guidance from their attorney when determining how to implement a determination of a direct result analysis.

In addition to establishing that there is a direct result between the adverse factor and DVDVSAS, you may ask an applicant to demonstrate that they can comply with the lease or is “otherwise qualified.”

D. Homelessness, Time in Treatment Institutions, Shelters, and other Non-Traditional Housing

⁸⁸ **Multifamily Notice**, pg. 11 for a discussion of this and **PHA Notice**, pg. 9.

More and more applicants to public and assisted housing have non-traditional housing backgrounds, and this is often true with survivors of DVDVSAS. This has proven to be a challenge to providers because housing providers must uniformly apply screening criteria. But the traditional means of determining whether someone will be able to comply with the essential lease provisions, making inquiries of the applicant's landlord(s) for a past period of time or conducting a home visit to the current rental unit, are often not available. Questions a housing provider standardly asks a landlord reference which focus on rent payment and maintaining a housing unit may not be able to be answered by a staff person at a shelter or treatment facility.

This does not mean that it is impossible for you to verify that an applicant without a traditional housing history can comply with the essential provisions of a lease. It means that individuals who have been homeless or living in a domestic violence shelter for some or all of the time period that you review may need assistance in reconstructing their housing histories or finding alternative ways in demonstrating future lease compliance. The questions in this section are designed to show how individuals with non-traditional tenancy histories can establish that they will be good tenants and how you can determine if an applicant who has a non-traditional history will be a good tenant.

1. Can I deny an applicant housing if they have been homeless or in a domestic violence shelter?

As long as the applicant meets the eligibility and qualification requirements in state and federal regulations (which include ability and willingness to follow the lease), you may not deny them housing because they have been homeless or living in a domestic violence shelter or has any other non-traditional housing history. You have the right to ask the applicant for some kind of documentation that they will pay their rent on time, properly maintain the unit, not bother the neighbors, or any other relevant information you would usually get from the applicant's former landlord.

2. If an applicant has not had a landlord for a long time because they have been homeless or living in a domestic violence shelter or living with their family, how can they show that they will?

All applicants are standardly required by housing providers to demonstrate they will comply with the terms of the lease. This obligation is included in the site's Tenant Selection Plan (TSP) or a PHA's Admission and Occupancy Policy (ACOP). There are many ways for an applicant to show that they are responsible and will meet the lease standards. Letters from employers, clergy, neighbors, and staff members of shelters, doctors, or social workers can help you determine whether or not an applicant will meet the lease and other requirements. Use the suggested sources below, which are broken down by types of lease requirements, to verify an applicant's ability to be a good tenant:

a. Paying Rent and Other Charges in a Timely Manner:

- payments of utility, telephone, or cable TV bills
- payments for child support or alimony
- credit card, loan, or layaway payments
- vendor payment or a representative payee (rep payee)
- any other kind of regular payment
- proof of no outstanding debts, liens or defaults or other bad payment history (if the applicant had an opportunity to accrue such a record)
- completion of a residency-training program acceptable to the housing manager

b. Caring For and Avoiding Damaging the Apartment:

- caring for a room or space while living with someone else or in a shelter or group home.
- maintaining any physical space (at a job, etc.)
- chore service or other assistance with care of unit
- live-in or another aide

- successfully answering the housing manager’s questions about how to care for an apartment
- completion of a residency-training program acceptable to the housing manager

c. Respecting the Rights of Others:

- people applicant lives with
- institutions, shelters, transitional housing, group homes
- administrators or other staff in treatment programs
- school or work relationships (teachers, counselors, co-workers)
- school records, if recent
- completion of a residency-training program acceptable to the housing manager

d. Avoiding Criminal Activity:

- clean court records or a record unrelated to ability to be a good tenant⁸⁹
- a good probation or parole record

e. Complying with Other Program Requirements:

- job or school references

⁸⁹ Please note as a reminder that these standards must be reflected in your site’s tenant selection plan and that the U.S. Department of Housing and Urban Development’s (HUD’s) Office of General Counsel issued guidance regarding how the Fair Housing Act applies to the use of criminal history by providers in determining suitability for housing. The guidance, which was issued on April 4, 2016 provides that a housing provider violates the Fair Housing Act, which prohibits discrimination based on race, color, religion, sex, national origin, familial status, and disability, when the provider’s policy or practice has a greater impact based on protected status and can’t be justified through business necessity, which also means that there’s not a less discriminatory means of achieving a necessary business purpose. This means that a housing provider’s policy must “accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.” Contained in this document is also a discussion of arrests, and the inability of a housing provider to reject based on an arrest.

https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf.

Please also see related guidance HUD issued on arrests that applies to both public and assisted housing providers, titled, **Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions**, Notice PIH 2015-19 / H 2015-10, which was issued on November 2, 2015, at <https://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf> and follow up questions and answers HUD’s Office of Public and Indian Housing (“PIH”), Office of Housing, and Office of General Counsel issued to address questions raised by the notice, titled, **FAQs for Notice PIH 2015-19 / H 2015-10:**

https://portal.hud.gov/hudportal/documents/huddoc?id=FAQ_Exclude_Arrest_Records.pdf.

- shelters or any other programs applicant participated in successfully
- current housing manager (if not homeless)
- school records, if recent
- completing a residency training program acceptable to the housing manager

NOTE: The list above was developed by HUD’s Task Force on Occupancy Standards in Public and Assisted Housing, which looked at complicated issues in housing and is contained in MassHousing’s Handbook on Reasonable Accommodation titled: **A Handbook on the Legal Obligations and Rights of Public and Assisted Housing Providers Under Federal and State Fair Housing Law for Applicants and Tenants with Disabilities.**⁹⁰ This list includes possible sources of verification of an applicant’s ability to be a good tenant. **Whether a particular type of verification is appropriate or sufficient evidence in any given case depends on the individual applicant’s history and/or the particular information supplied by the verification source.** The housing provider makes the determination; the applicant may appeal a rejection.

3. Must an applicant, in order to document past living situations, disclose that they lived at a domestic violence shelter which thus discloses information about DVDVSAS?

If you ask all applicants to document their housing history for the same past period of time, you may require the same of all applicants. Your policy needs to address what to do when someone fails to give an address because of safety reasons. (This is discussed in Question 2 of Section A. *“What Housing Providers must, may, and may not ask applicants?”*, in

⁹⁰ For more information on this topic, see: **A Handbook on the Legal Obligations and Rights of Public and Assisted Housing Providers Under Federal and State Fair Housing Law for Applicants and Tenants with Disabilities**, written by Debbie Piltch in consultation with Ann Anderson, which was originally produced by MassHousing under the Department of Housing and Urban Development’s Fair Housing Initiatives Program (FHIP). This handbook is published under “Publications” on MassHousing’s website: https://www.masshousingrental.com/portal/server.pt/community/community_services/330/fair_housing_resources#

Chapter 2, Part 2, above. If the applicant did not live in traditional housing during this period of time, they should be permitted to get a reliable third person to verify the time period that they were in the setting without revealing the name or nature of the setting, or a specific address. A reliable person could include a medical professional, a rehabilitation specialist, a clergy person, a shelter provider, or an employer.

Any kind of shelter, transitional or halfway program or supported housing in which the primary purpose is providing housing (rather than treatment) would be a good source of information for tenancy history.

E. The Lease/Lease Addendum

A lease, which is sometimes called an occupancy agreement, is a legally binding contract between the Owner and the Resident(s). It establishes an agreement which specifies a term of tenancy (which can self-renew), and specifies the Owner's obligations and rights, as well as the tenant's obligations and rights. An Owner can't terminate a lease prior to the term ending without "good cause" which means a material violation of the lease terms. It includes things such as nonpayment of rent, violations of the lease or rental agreement, destruction or damage to the property, interference with other tenants' enjoyment of their housing or creating a nuisance or using the property for an unlawful purpose. Good cause is ultimately based on state and local law and, therefore, the determination of the state court.⁹¹

⁹¹ Many housing programs, including all of HUD's Multifamily Housing Programs, the Tax Credit Program, and HOME Program, prohibit evictions for anything other than good cause. Also, under no circumstance can a housing provider evict someone on any basis that would violate federal, state, or local Fair Housing laws. It is also important to note that the Violence Against Women Act provides that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as either (1) a serious or repeated violation of a lease by the victim or threatened victim of such incident or (2) good cause for terminating the assistance, tenancy, or occupancy rights to housing for the victim of such an incident. See 42 U.S.C. SEC. 41411. (g.). This is discussed in section 2 of this chapter.

Assisted housing programs do not require the use of the same lease, and some, such as the tax credit program, Housing Trust Fund, the HOME program permit the Owner/Agent to create and use their own lease provided specific language is included in the lease. HUD Multifamily housing programs use one of four model leases, depending on what program it is,⁹² and if a site is financed by MassHousing a site must use the MassHousing Occupancy Agreement.⁹³ Lease requirements for HUD's Multifamily Housing Programs are contained in CHAPTER 6. LEASE REQUIREMENTS AND LEASING ACTIVITIES of HUD Handbook 4350.3.⁹⁴ HUD has translated their model lease into multiple languages. Housing providers may need to provide a lease to an applicant/resident in a language other than English in accordance with the owner's obligations to provide meaningful access to persons who have limited English proficiency. If this is done, HUD's Guidance provides that the use these translated leases should be for informational purposes, and that the resident should only be required to sign the English version of the lease.⁹⁵

HUD's Public Housing Program does not require PHA's to use a model lease for public housing units. Rather HUD rules establish required and prohibited provisions for public housing leases and provides PHAs a great deal of flexibility in adding other "reasonable" rules.⁹⁶ In regard to the Housing Choice Voucher Program and the Project Based Voucher program, owners use

⁹² Below is Figure 6-2 from the HUD Handbook 4350.3, on pg. 6-6, which summarizes which programs are required to use which lease.

⁹³ This Occupancy Agreement is available on MassHousing's website and is available in multiple languages. See https://www.masshousingrental.com/portal/server.pt/community/rental_owners_managers/336/occupancy_agreement.

⁹⁴ See <https://portal.hud.gov/hudportal/documents/huddoc?id=43503c6HSGH.pdf>.

⁹⁵ HUD Handbook 4350.3, Par. 6-4, pg. 6-6, HUD LEP Guidance, **Federal Register** / Vol. 72, No. 13 / Monday, January 22, 2007 / Notices, pg.2734, <https://www.govinfo.gov/content/pkg/FR-2007-01-22/pdf/07-217.pdf>. Also see HUD's Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, September 15, 2016, <https://www.hud.gov/sites/documents/LEPMEMO091516.PDF>

⁹⁶ HUD does provide a sample. See https://www.hud.gov/sites/documents/DOC_10768.PDF. Also see HUD's Public Housing Occupancy Guidebook from June 2003, https://www.hud.gov/sites/documents/DOC_10760.PDF

their standard lease (which must include specific information) as well as a HUD Tenancy Addendum, which contains a significant amount of information regarding the owner's and participant's rights and responsibilities, including what constitutes good cause for eviction.⁹⁷ Please also note that the owner also signs HUD's Housing Assistance Payment (HAP) Contract with the Public Housing Authority for these programs which details specific obligations.⁹⁸

1. Does VAWA address whether domestic violence, dating violence sexual assault or stalking (DVDVSAS) may be considered a lease violation?

Yes. VAWA provides that an incident of DVDVSAS cannot be considered by a covered housing provider to be a serious or repeated lease violation by the victim or threatened victim of such incident, or good cause for terminating the assistance or tenancy or occupancy rights of a victim.⁹⁹ Nothing prohibits an Owner/Agent or PHA from taking action against a tenant who is the perpetrator.

⁹⁷ See HUD's Housing Choice Voucher Program Guidebook, <https://www.nhlp.org/wp-content/uploads/HUD-Housing-Choice-Voucher-Guidebook-7420.10G-Apr.-2001.pdf>, beginning pg. 8-21 for a summary. The Tenancy Addendum for the housing choice voucher program, which is to be attached to the owner's lease, is commonly referred to as HUD-52641-A, and is available at <https://www.hud.gov/sites/documents/52641-A.PDF> and is available in multiple languages on HUDCLIPS.

The regulations for this program are found in [24 CFR Part 982](#). The project-based voucher program tenancy addendum, commonly referred to as HUD 52530.c, may be found at <https://www.hud.gov/sites/documents/52530C.PDF>. The regulations for this program may be found at 24 CFR 983.

⁹⁸The HAP contract for the Section 8 Tenant Based Assistance, is often referred to as HUD-52641, and is available at <https://www.hud.gov/sites/documents/52641.PDF> and is available in multiple languages on HUDCLIPS. The HAP contract for the Project Based Section 8 Contract may be located on HUDCLIPS.

⁹⁹ See 34 U.S.C. §12491(b)(2) The statute provides:

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

(2) CONSTRUCTION OF LEASE TERMS. —

(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.”

(3) TERMINATION ON THE BASIS OF CRIMINAL ACTIVITY. —

“(A) DENIAL OF ASSISTANCE, TENANCY, AND OCCUPANCY RIGHTS PROHIBITED. — No person may deny

2. Are covered housing providers required to include VAWA protections in the tenant lease?

The obligation to comply with VAWA exists regardless of whether it is contained in the tenant’s lease. The VAWA statute does not specify any obligation of any covered housing provider to include protections in a lease. However, HUD’s Final Rule requires that all HUD programs covered by VAWA must use a HUD-required lease, lease addendum, or tenancy addendum which includes a description of specific protections afforded to victims of domestic violence, dating violence, sexual assault, or stalking.¹⁰⁰ This is not a new requirement. However, the list of covered HUD programs required to comply with VAWA has dramatically expanded, as well as additional protections being added.¹⁰¹

3. Does HUD have a model or required lease Addendum?

HUD has an outdated VAWA Lease Addendum (form HUD-91067) which historically was only used by its HUD Multi-family Project-Based Section 8 program¹⁰² and which no other program

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.

¹⁰⁰ See 24 CFR 5.2005(a)(4) which provides,

(4) For the Housing Choice Voucher program under [24 CFR part 982](#), the project-based voucher program under [24 CFR part 983](#), the [public housing](#) admission and occupancy requirements under [24 CFR part 960](#), and renewed funding or leases of the Section 8 project-based program under [24 CFR parts 880, 882, 883, 884, 886](#), as well as project-based section 8 provided in connection with housing under part 891, the [HUD](#)-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of [domestic violence](#), [dating violence](#), [sexual assault](#), or [stalking](#), as provided in this subpart.

¹⁰¹ For example, survivors of sexual assault weren’t previously included for protection.

¹⁰² This lease addendum, Form HUD-91067, is discussed in HUD Handbook 4350.3, Chapter 6, Par. 6-4C., pg. 6-5.

is currently required to use.¹⁰³ In accordance with HUD guidance, the head of household, co-head, spouse and all adult members of a household must sign this addendum.¹⁰⁴ HUD is in the process of updating the Section 8 VAWA Lease Addendum, which will include the additional provisions required in the final rule,¹⁰⁵ as well as extra signature lines for all adult household members to be able to sign the addendum.¹⁰⁶ O/As of all HUD Multifamily Housing programs will be required to use this updated form when providing or modifying a lease. O/As will be required to provide a new VAWA Lease addendum (when the revised form HUD-91067 is issued) to all current households. This may be done at each household's next Annual Recertification (AR) or at another timely opportunity. All subsequent new move-ins must also receive the updated VAWA lease addendum.

An interim step O/As of HUD Multifamily Housing may take while waiting for HUD to update the VAWA addendum, is to include in their house rules any additional protections made available to victims of domestic violence, dating violence, sexual assault, or stalking.

Public Housing Authorities (PHAs) must ensure that their leases contain the updated provisions contained in VAWA, including definitions, documentation, and remedies.¹⁰⁷

¹⁰³ HUD has provided that Owners should not (vs. must not) implement the addendum until it is updated. See VAWA Final Rule, Q&A's with Multifamily Staff – Part I, Question 27.

¹⁰⁴ See HUD Handbook 4350.3, Par. 6-5B.2., pg.6-8. Also see **Multifamily VAWA Questions**, #26.

¹⁰⁵ According to HUD's Multifamily Housing Notice (H2017-05), IX. VAWA Lease Addendum, pg.20, the revised HUD-91067 will include updates made to:

1. Definitions (24 CFR 5.2003);
2. VAWA protections (24 CFR 5.2005);
3. Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2007), and
4. Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking as applicable to the multifamily housing program, including emergency transfers (24 CFR 5.2009).

¹⁰⁶ VAWA Final Rule, Q&A's with Multifamily Staff – Part I, Question 26.

¹⁰⁷ See Notice PIH-2017-08 (HA), pg. 18.

Participating Jurisdictions under the HOME program are also required to develop a VAWA lease term/addendum to incorporate all the requirements that apply to the Owner¹⁰⁸ Likewise, Grantees of the Housing Trust Fund must also develop a term/lease addendum¹⁰⁹ and the lease between the Owner and the tenant must include this term/lease addendum.¹¹⁰

¹⁰⁸ See 24 CFR § 92.359(e). This lease term/addendum “must also provide that the tenant may terminate the lease without penalty if the participating jurisdiction determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). When HOME tenant-based rental assistance is provided, the lease term/addendum must require the owner to notify the participating jurisdiction before the owner bifurcates the lease or provides notification of eviction to the tenant. If HOME tenant-based rental assistance is the only assistance provided (*i.e.*, the unit is not receiving project-based assistance under a covered housing program, as defined in 24 CFR 5.2003), the VAWA lease term/ addendum may be written to expire at the end of the rental assistance period. (f) *Period of applicability.* For HOME assisted rental housing, the requirements of this section shall apply to the owner of the housing for the duration of the affordability period. For HOME tenant-based rental assistance, the requirements of this section shall apply to the owner of the tenant’s housing for the period for which the rental assistance is provided.”

¹⁰⁹ See 24 CFR § 93.356 (d) This lease addendum is required to incorporate all requirements that “apply to the owner or lease of HTF-assisted rental housing under 24 CFR part 5, subpart L, and this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if the grantee determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e).”

¹¹⁰ See 24 CFR § 93.303.

Chapter 2, Part 3

*Occupancy and Termination of Assistance and Tenancy
(Tenant and Owner Initiated)*

Chapter 2, Part 3

Occupancy and Termination of Assistance and Tenancy (Tenant and Owner Initiated)

Survivors of domestic violence, dating violence, sexual assault and stalking (DVDVSAS) live in all types of housing, including affordable housing such as HUD-multifamily and Public Housing sites. In some cases, a housing provider may be unaware of a resident's experience as a survivor because there are no outward signs of any problems or any lease violating behavior which has drawn attention to the person or family. In other cases, housing providers face more complicated situations involving DVDVSAS, some of which the housing provider is aware involves DVDVSAS and others which they are not aware of because the situation doesn't present as involving DVDVSAS. Many housing providers struggle with a number of occupancy and eviction issues relating to DVDVSAS: what to do if they suspect a resident is experiencing DVDVSAS; what to do when a survivor asks for assistance or explains that negative tenancy related behavior is a direct result of DVDVSAS;¹ when it is acceptable to terminate assistance² or evict a tenant who is a survivor of DVDVSAS for lease violating behavior that is directly related to the DVDVSAS or unrelated to the DVDVSAS; identifying alternatives to eviction if the lease violating behavior is directly related to DVDVSAS; and specific remedies available to survivors, such as early termination of a tenancy at the request of a survivor of

¹ Lease violations related to DVDVSA may include, but are not limited to:

- Failure to recertify or report for an interim when required
- Failure to report income
- Unauthorized occupant
- Interference with other resident's quiet enjoyment
- Property damage
- Non-payment of rent

For more information see the chart in Question 3, Section B. *Bad Tenancy History, Credit, Criminal Record* of Chapter 2, Part 2, Admission.

² This term is used in housing programs in which a tenant's rent is paid in part or in full by the federal (or state) government through a subsidized housing program. Many of the housing programs covered under VAWA provide rental subsidies to tenants. Others do not. For a summary of HUD's Multifamily Housing Programs covered by VAWA, see Chapter 1 of HUD Handbook 4350.3.

<https://www.hud.gov/sites/documents/43503C1HSGH.pdf>

DVDVSAS, lease bifurcation and emergency transfers. The questions below are designed to provide guidance on these topics. The purpose of this section is not to reiterate each housing program's requirements based on program rules³, but rather to address how VAWA⁴ and **An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking**⁵ impact site operations and policies and procedures.

It also incorporates information on reasonable accommodations in such circumstances when the person may also have a disability, and an owners' obligations to provide free language assistance to residents with limited English proficiency.

Before embarking on this discussion, it is important to acknowledge, as discussed in Chapter 1, how difficult DVDVSAS is for survivors and how deeply it can impact a person's life and their housing struggle. It is also important to be mindful of two important requirements:

- a. Housing providers must not subject a tenant who is or has been a survivor of DVDVSAS to a more demanding standard than other tenants in determining whether to evict or terminate assistance⁶; and

³ Please see Chapter 8 of HUD Handbook 4350.3 for a discussion of HUD's Multifamily Housing rules in regard to termination of assistance and tenancy. <https://www.hud.gov/sites/documents/43503C8HSGH.PDF>. Also see PHA Occupancy Guidebook, beginning pg. 201 at https://www.hud.gov/sites/documents/DOC_10760.PDF and 24 CFR § 966.4(l) at <https://www.law.cornell.edu/cfr/text/24/966.4>.

⁴ VAWA's housing protections are currently cited as 34 U.S.C.A. § 12491, which can be found at <https://www.law.cornell.edu/uscode/text/34/12491>

⁵ See G.L. c.186 §§23-29 at <https://malegislature.gov/Laws/GeneralLaws/PartII/Title/Chapter186>

⁶ This requirement is based both of Fair Housing requirements and contained in VAWA as a specific prohibition. See 34 U.S.C. § 12491(b)(1). This doesn't mean a housing provider cannot evict a survivor or terminate a survivor's assistance or terminate a survivor from a program for any violation not premised on an act of domestic violence, dating violence, sexual assault or stalking. See 24 CFR 5.2005(d)(2). Also see **Multifamily Notice**, pg. 47 and **PIH Notice**, pg. 48.

- b. Covered housing providers are prohibited by VAWA from terminating assistance or evicting a tenant based on an adverse factor, **if** the adverse factor is determined by the housing provider to be a direct result that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.⁷ However, there are a couple of exceptions, which will be discussed in more detail later in this section, which include:
 - i. Whether termination of assistance or eviction is required by a federal statute based on a particular adverse factor;⁸
 - ii. In the case of eviction, whether the housing provider can demonstrate that an actual and imminent threat to other tenants or those employed at or providing services to the property would be present if that tenant or lawful occupant is not evicted or terminated from assistance and that there is no alternative for the community.⁹

Please be mindful that the intent of this is not to permit survivors to ignore ongoing lease obligation which do not pose an imminent threat. All residents must comply with the essential components of the lease: paying rent on time; not interfering with other peoples' quiet enjoyment, maintaining a decent safe and sanitary unit; not engaging in criminal activity; complying with programmatic rules (such as annual and interim reporting requirements) and following other essential reasonable rules. All residents must comply with the terms of the lease; however, providers need to be flexible regarding how a resident complies when the lease violating behavior is a direct result of DVDVSAS. This is a developing area of the law. Although the parameters of what a

⁷ See 34 U.S.C. § 12491(b)(3). Also see 24 CFR 5.2005(d)(2).

⁸ See **PIH Notice** pg. 6, **Multifamily Notice** pg. 7. This is a very narrow exception. The example cited in HUD's guidance focuses in the admission context on the prohibition of someone living in a HUD Multifamily site, or in federally subsidized public housing, or participating in the voucher program, if they are subject to lifetime registration requirement under a State sex offender registration program. The housing provider must comply with section 578 of the Quality Housing and Work Responsibility Act of 1998 even if the person's actions were a direct result of DVDVSAS.

⁹ See 24 CFR 5.2005(d)(3). Also see **PIH Notice**, pg. 38 and **Multifamily Notice**, pg. 36.

housing provider is required to do in situations involving lease violations that are the direct result of DVDVSAS which do not pose an imminent threat, it is reasonable to assume based on the statute, regulations, and HUD guidance, that preservation of tenancy is the goal and that housing providers will need to demonstrate to a court that they have made very significant efforts to preserve the person's tenancy when defending an eviction of someone who raises protection under VAWA. Please contact your site's attorney to discuss any site-specific situation.

Grounding Principles

Before we address the specific topics mentioned, it is essential to be mindful of the importance of the following:

- Establishing relationships with residents on an ongoing basis;
- Learning how to have difficult conversations with people, educating yourself about DVDVSAS;
- Educating yourself about DVDVSAS; and
- Knowing when and whom to ask for help.

We cannot emphasize enough how crucial it is to develop and/or strengthen relationships with professionals who provide supportive services for residents who are survivors of DVDVSAS before a crisis occurs. It cannot be overstated. These include not only domestic violence and sexual assault advocates, but legal aid services, and law enforcement agencies. This is imperative to ensure that survivors are getting the necessary supportive services they need, as well a housing provider getting the assistance, they need in addressing complicated situations.

A. Termination of Assistance and Termination of Tenancy: The Importance of Understanding Program Requirements

The following information is designed to assist housing providers in understanding a framework to reconcile the requirements contained in VAWA¹⁰ and **An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault And Stalking**¹¹ program rules and landlord tenant law in Massachusetts.

1. Termination of Assistance

Many residents receive subsidy under a housing program which enables the family to afford the rent.¹² PHAs and Owners/Agents are required to terminate assistance under program regulations and leases when a tenant is no longer eligible for

¹⁰ This Violence Against Women’s Act (VAWA) of 2013 is cited as 34 U.S.C. [§12291](#). Current versions of proposed legislation may be found at <https://www.congress.gov/bill/116th-congress/house-bill/1585/text>

¹¹ See G.L. c.186 §§23-29. See <https://malegislature.gov/Laws/GeneralLaws/PartII/TitleI/Chapter186>

¹² Please see HUD Handbook 4350.3 for a discussion of how tenant rent is calculated for various HUD Multifamily housing programs. See Chapter 5, Section 4: Calculating Tenant Rent, beginning 5-64 and **Exhibit 5-8: Tenant Rent Formulas**. Under some HUD Multifamily programs (Section 8, Section 236, Rent Supplement, Rental Assistance Payment (RAP), and Section 202/8 programs) only U.S. Citizens and family members who have eligible immigration status, may receive federal assistance. Such families are referred to as “mixed”. In such instances, a family member is considered a tenant, but is not considered “assisted”. For tenant-based HCV assistance see 24 CFR Parts 5 and 982, for project-based HCV assistance see 24 CFR Parts 5 and 983 and for federal public housing see 24 CFR Parts 5 and 960.

subsidy¹³ or to enforce program requirements.¹⁴ The result is loss of subsidy to the resident, and although they may remain in the unit, they must pay the rent required by the applicable housing program. The result is a significant rent burden, and often times evictions based on non-payment of rent.

However, DVDVSAS can impact both eligibility for subsidy and the ability of a survivor to comply with program requirements, and survivors may have VAWA defenses to termination. For example:

- A survivor of DVDVSAS could be determined “ineligible” for subsidy post lease bifurcation (which will be discussed later in this section) due to no one in the household having eligible immigration status,¹⁵ not qualifying as a remaining household member at a site where the

¹³ See HUD Handbook 4350.3, 8-5 Key Requirements: When Assistance Must Be Terminated. This includes when an annual/interim certification determines a tenant is financially able to pay the full rent; a student enrolled at an institution of higher education does not meet the eligibility requirements for assistance, and the failure to establish citizenship/eligible immigration status (which doesn't apply to some of HUD's programs including Section 202 PRAC, Section 811 PRAC, Section 202 PAC and Section 221(d)(3) BMIR). Federal regulations for Public Housing have mandatory termination requirements for failure to sign consent forms 24 CFR 960.259 (b)(1), failure to document citizenship or eligible immigration status under 24 CFR 5.514, failure to provide social security number documentation 24 CFR 5.218(c) and 960.259(a)(3), any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing. 24 CFR 966.4(1)(5)(i)(A), and in the event that there is a lifetime registered sex offender residing in the unit PIH 2012-28 or noncompliance with community service requirements 24 CFR 966.4(1)(2)(iii)(D); 960.603(b); and 960.607(b)(2)(ii) and (c). The HCV Program has similar mandatory grounds for termination which may be found at 24 CFR Parts 5, 982, 983 and PIH 2012-08.

¹⁴ See HUD Handbook 4350.3, 8-5 Key Requirements: When Assistance Must Be Terminated. This includes when a tenant fails to submit the required information to complete the tenant's recertification, sign/submit required consent and verification forms (form HUD9887 and form HUD-9887-A) under specific programs, a tenant who is over/underhoused fails to move to a different-sized unit within 30 days after the owner notifies him/her that the unit of the required size is available. Please note that In a Section 202 PRAC or Section 811 PRAC project, the tenant may be evicted if the tenant or any member of the tenant's family refuses to sign the required verification and consent forms or fails to recertify, rather than termination of assistance. See Par. 5-21 Refusal to Sign Consent Forms, beginning on pg.5-63.

¹⁵ Please see HUD Handbook 4350.3, par. 8-7 Termination of Assistance Related to Establishing Citizenship or Eligible Immigration Status, beginning on pg.8-6 for a discussion of this. Also see **Multifamily Notice**, pg. 36 and **PIH Notice** beginning pg. 35. Also see Chapter 2, Part 1, Applicable Laws, the Legal Framework and General Questions, Question #6.

head co-head or spouse must be 62 years of age or older or have a disability¹⁶ or not being a party to the lease (also called a “lessee” or “tenant”).¹⁷

- A resident may not recertify due to a variety of reasons directly related to them being a survivor of DVDVSAS, such as hospitalization, not being “permitted” to leave a unit or have contact with staff or experiencing trauma.¹⁸

¹⁶ Please see HUD Handbook 4350.3, par. 3-16 Determining the Eligibility of a Remaining Member of a Tenant Family, beginning pg. 3-44. The Handbook provides:

If the individual who establishes eligibility for the project leaves the unit for any reason other than death in a Section 202/8, Section 202 PAC, Section 202 PRAC or Section 811 PRAC project, the owner must determine if the individual(s) still residing in the unit meet the eligibility requirements for the project, income and age or disability. If the individual is not eligible for the project, he/she may not receive rental assistance and depending upon the type of project, he or she may or may not be allowed to remain in the unit. In a 202/8 or a Section 202 PAC project, the individual may remain in the unit but must pay contract rent. In a Section 202 PRAC or 811 PRAC project, the individual may not remain in the unit.

Also see HUD Multifamily Notice, beginning pg. 36.

¹⁷ Please see HUD Handbook 4350.3, par. 3-16 B.1., pg. 3-44, which provides, “The individual must be a party to the lease when the family member leaves the unit.” This can pose a significant barrier to survivors of DVDVSAS because the reason a survivor may not be party to the lease is due to direct control of their abuser. For a discussion of this issue, please see the amici curie brief submitted on behalf of Casa Myrna and Jane Doe in *Beacon Residential Management, LP v. R.P., SJC-12265, slip op. (Sept. 14, 2017)*. Also see Relates to question #5 of Chapter 2, Part 1, *Applicable Laws, the Legal Framework and General Questions*, and footnote #62 in Chapter 2, Part 2, *Application Process*.

¹⁸ Please note that HUD Handbook 4350.3, Par. 7-8 D.4, pg. 7-16, discusses extenuating circumstances when someone reports for recertification after the anniversary date. The paragraph provides that under such circumstances:

“an owner **must** inquire whether extenuating circumstances prevented the tenant from responding prior to the anniversary date. If the tenant is a person with disabilities, the owner **must** consider extenuating circumstances when this would be required as a matter of reasonable accommodation.”

Extenuating circumstances are circumstances beyond the tenant’s control, such as DVDVSAS. This paragraph provides that if the tenant indicates that extenuating circumstances were present, the tenant must provide documentation of the extenuating circumstances. The owner must then determine whether the information provided satisfies HUD’s guidance on the topic. The owner must provide the tenant with a written notice of the decision, the timeframe for which is not provided. If the Owner determines extenuating circumstances weren’t present, the notice must include information on the tenant’s right to appeal the owner’s decision and the owner must follow procedures contained in this paragraph for completing the tenant’s information, determining whether assistance can be reinstated, and the effective date. If the owner determines that extenuating circumstances were present, there is no change in the recertification anniversary date and the Total Tenant Payment (TTP)/Tenant Rent are effective retroactively to the recertification anniversary date. See Par. 7-8 D.5, beginning pg. 7-21.

- When a unit becomes available, a resident may seem “unwilling” to move to a different unit when they are requested to do so because they are over-housed/underhoused, but a barrier may exist directly related to DVSDVSAS such as safety concerns, a perpetrator’s threats, a loss of support or trauma associated with a move.

Program rules and procedures dictate what an owner must do when terminating assistance¹⁹, if and when assistance may be reinstated²⁰, and what occurs when family composition changes and the qualifying household member vacates.²¹

Please note that the Handbook is silent on if extenuating circumstances also apply to Interim reporting requirements. We believe this is an oversight and have confirmed this to be the case with HUD’s Contract Administrator for Massachusetts, MassHousing. However, we recommend that O/As contact the property’s HUD Account Executive to address specific situations. It is our interpretation of the Handbook that if a resident fails to report an increase in income for a legitimate and verifiable extenuating circumstance, when the Owner/Agent ultimately learns of an interim change that increases income, they will process a retroactive IR and have the resident enter into a Repayment Agreement if they cannot repay the amount in full. The O/A should not terminate the resident’s assistance. Additionally, if a resident fails to report a decrease in income for a legitimate and verifiable extenuating circumstance, the O/A should process a retroactive IR. For both scenarios, the O/A must document the extenuating circumstance to explain why the resident was unable to report the interim change in a timely manner as well as confirm that the resident will comply with these requirements moving forward.

Also please note that in a Section 202 PRAC or Section 811 PRAC project, the tenant will be evicted for failing to comply with the recertification requirements and the tenant will pay the greater of operating rent or 30% of income until eviction procedures are completed. See HUD Handbook 4350.3, Par. 7-8 D.3.b., pg. 7-18.

¹⁹ Owners/Agents/PHAs must follow specific notice and procedural requirements. See HUD Handbook 4350.3, Par. 8-6 Procedures for Terminating or Reinstating Assistance, beginning on pg. 8-5. Also note that the concept of mitigating circumstances is discussed regarding the failure to sign the applicable release form(s) in Par. 5-21 Refusal to Sign Consent Forms, beginning 5-63, and a 50059 in Par. 5-31 Procedures for Calculating Rent, beginning 5-80.

²⁰ An owner may reinstate a survivor’s assistance under specific circumstances, provided fraud hasn’t occurred: if the termination of assistance was due to a tenant’s failure to recertify or due to not needing the subsidy because of an increased ability to pay, and the tenant is eligible for assistance (based on the income and rent calculation, the tenant would pay less than market rent), provided the tenant submits the required information; and assistance is available for the unit. See HUD Handbook 4350.3, Par. 8-6 B.

²¹ See HUD Handbook 4350.3 Par. 3-16 Determining the Eligibility of a Remaining Member of a Tenant Family, beginning pg. 3-44.

Further discussion below explains how VAWA impacts what an Owner/Agent/PHA must do when terminating assistance.

2. Termination of Tenancy

Termination of tenancy may be initiated by the tenant when they want to move out or through death or by the housing provider through eviction²². The lease, which is a legally binding contract between the Owner/PHA and the tenant,²³

²² In Massachusetts in order to terminate tenancy a housing provider must go to court after providing the tenant proper notice. The term eviction refers to the process of getting a court order to remove a tenant (and any other occupant) from a rental unit. In Massachusetts, it is illegal for a housing provider to remove tenants and occupants and their belongings from a unit without first getting a court order. To get a court order, a housing provider has to file a civil court case, which is called summary process. The order a judge issues to allow a housing provider to evict a tenant is called an execution and will specify the date the tenant must leave the property with their belongings. After a judge issues an execution, a sheriff or constable (not a housing provider) is permitted to move a tenant and their belongings out of the property. Depending on the reason for the eviction, there are different notice requirements. For non-payment of rent, there is a 14-day notice to quit, which stipulates that the tenant has 14 days to vacate or to pay the amount of rent that is due to the owner. In contrast, a 30-day notice to quit is given in other lease violation cases (as well as no-fault eviction cases). Finally, there is another category for evictions based on a nuisance law which allow housing providers to skip the notice to quit requirement and go straight to court in cases involving such things as possession, sale, or manufacturing of illegal drugs and certain weapons and explosive devices. See G.L. c.139 §19. Subsidized housing providers are also allowed to use this law in situations where a tenant or household member engaged in violence against an employee of the housing provider or against any other person legally on the housing premises or used or threatened use of force against such individuals.

In all cases, a housing provider must file a civil action (summary process) in court and get a judgment from the court that specifies the date that the tenant must leave the rental property with their belongings. If the tenant doesn't leave voluntarily on the date specified, the housing provider will need to arrange for a sheriff or constable to serve an executed judgment on the tenant ordering them to leave. A provider may also need to move any personal property belonging to the tenant to a licensed public warehouse and follow requirements regarding item storage. See G.L. c. 239: **Section 3. Judgment and execution; costs; appeal.**

²³ Some affordable housing programs, such as HUD's Multifamily Housing Programs have strict rules regarding the use of model leases for units subsidized through the programs, and a prohibition against changing specific required provisions. See HUD Handbook 4350.3, Section 1: Leases, Lease Addendums, and Lease Attachments, beginning pg. 6-3. Others, do not, and permit the owner to utilize their own lease. See Figure 6-2 for information on which programs are required to use which lease."

program rules governing the site²⁴ and state landlord tenant law²⁵ impact a number of things relevant to termination of tenancy by a tenant and an owner/PHA, and which can all impact situations involving DVDVSAS:

- The amount of notice a tenant who wants to terminate a lease is required to give a housing provider²⁶;
- The procedures a tenant must follow when giving an owner notice of termination of tenancy²⁷;
- The rights of remaining family members if the person who left the unit was the qualifying household member based on age or disability status;²⁸
- The reasons a housing provider may terminate tenancy;²⁹ and
- The process a housing provider must follow when terminating assistance, including what constitutes proper notice to the tenant(s).³⁰

²⁴ The rules governing Termination of Tenancy are discussed in HUD Handbook 4350.3, Chapter 8: Termination. Termination of Tenancy by Lessees is discussed in Section 2, on pg. 8-8; whereas Termination of Tenancy by Owners in Section 3, beginning on pg. 8-9.

²⁵ See [General Law - Part II, Title I, Chapter 186, Section 11 - Massachusetts](#)
Chapter 239: SUMMARY PROCESS FOR POSSESSION OF LAND
LINK TO SECTION 11:
<https://malegislature.gov/Laws/GeneralLaws/PartII/TitleI/Chapter186/Section11>

²⁶ For example, the HUD Model Lease provides that a tenant must give an Owner (“landlord”) 30-days written notice. See Section 23 Termination of Tenancy, pg. 11.
<https://www.hud.gov/sites/dfiles/OCHCO/documents/90105a.pdf>

²⁷ IBID

²⁸ For example, for HUD Multifamily housing programs, see HUD Handbook 4350.3, par. 3-16, beginning pg. 3-44.

²⁹ For example, for HUD Multifamily housing programs, see HUD Handbook 4350.3, par. 8-13 A., beginning on pg. 8-11, and HUD Model Lease, Section 23 Termination of Tenancy, beginning pg. 11.
<https://www.hud.gov/sites/dfiles/OCHCO/documents/90105a.pdf>

³⁰ For example, for HUD Multifamily Housing Programs see HUD Handbook 4350.3, Par. 8-13 B., beginning on 8-15, and the applicable HUD Lease, such as the HUD Model Lease, Section 23 Termination of Tenancy,

DVDVSAS can impact whether a person is listed as a tenant on the lease, a tenant's need to terminate a lease before the lease term is up, the need to bifurcate a lease, as well as the ability of a survivor to comply with program requirements, leading to termination of tenancy. For example:

- A survivor may need to terminate a lease prior to the end of a lease term due to their belief that they will be in imminent danger if they stay in the unit;
- A survivor of DVDVSAS could be determined "ineligible" to remain in the unit post lease bifurcation due to no one in the household having eligible immigration status³¹;
- A survivor may be unable to pay their rent due to the economic control their abuser places on them;
- A survivor may have an unauthorized person living in the unit because they are afraid to ask the person to leave or add them to the lease.³²
- DV interferes with other households' quiet enjoyment;

pg. 11. <https://www.hud.gov/sites/dfiles/OCHCO/documents/90105a.pdf> Also see Chapter 2, Part 1, *Applicable Laws, the Legal Framework and General Questions*, Question #6.

³¹ Please see par. 8-7 **Termination of Assistance Related to Establishing Citizenship or Eligible Immigration Status**, beginning on pg. 8-6 for a discussion of this. Also see **Multifamily Notice**, beginning pg. 36 and **PIH Notice**, pg. 35. Also see Chapter 2, Part 1, *Applicable Laws, the Legal Framework and General Questions*, Question #6.

³² Please see HUD response to comments in Final Rule at 80730 **Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations, which provides:

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 "premiered 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 be eligible for remedies provided under VAWA.

- As a result of the behavior of a perpetrator of DVDVSAS against a tenant, staff and other residents feel that there is a significant danger to their safety.

Further discussion below explains how VAWA³³ and *An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking*³⁴ impacts what an Owner/Agent/PHA must do when terminating tenancy or providing tenants remedies.

B. Notice Requirements During Occupancy, Termination of Assistance and Termination of Tenancy in Addition to During the Application Process as Discussed in Section 2 of This Chapter

1. When am I required to notify a resident of their rights under VAWA during occupancy, termination of assistance and termination of tenancy (in addition to required times during the application process as discussed in Section 2 of this Chapter)?

Housing providers are required under VAWA to notify tenants³⁵ of their rights under VAWA³⁶ “with any notification of eviction or notification of termination of assistance.”³⁷ HUD’s final rule interprets this obligation as applying to initial

³³ See 34 U.S.C.A. § 12491.

³⁴ See G.L.c.186 §23-29. See <https://malegislature.gov/Laws/GeneralLaws/PartII/TitleI/Chapter186>

³⁵ See 34 U.S.C.A. § 12491(d)(2) and 24 CFR 5.2005(a). PHAs are required to provide each adult tenant of public housing, HCV and PBV adult participant the notice (see Notice PIH-2017-08 (HA), pg. 17), whereas the Multifamily notice refers to households rather than each adult tenant. (see H 2017-05, pg.19). Please note that although the PHA notice requirement is more onerous on housing staff, it is potentially more beneficial for a survivor whose perpetrator is the head of household and fails to share information.

³⁶ HUD’s **Notice of Occupancy Rights under VAWA** (form HUD-5380) and HUD’s **Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation** (form HUD-5382)

³⁷ See 34 U.S.C. §12491(d).

notification of eviction or termination of assistance, (but not with subsequent eviction or termination notices sent for the same infraction).³⁸ The PHA Notice doesn't follow HUD's guidance, and reverts to the statutory language of "any notice"³⁹, whereas the Multifamily Notice provides, "(w)ith any notification of eviction or termination of assistance, (but not with subsequent eviction or termination notices sent for the same infraction)."⁴⁰ This includes:

- The third recertification reminder notice for HUD's Multifamily Housing Programs,⁴¹

³⁸ See **Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations, pg. **80771, which states:**

HUD Response: VAWA 2013 and HUD's VAWA regulations require covered housing providers to give tenants and applicants both the certification form and the notice of rights. The certification form and the notice of rights that housing providers will use are being published with this final rule. It is a statutory requirement to provide both the form and the notice of rights at the times specified in VAWA 2013 and in HUD's VAWA regulations. Housing providers that do not comply with the statutory and regulatory requirements are in violation of program requirements. Among the other times specified in this rule, housing providers are required to give the notice of rights and the certification form to tenants with any initial notification of eviction or termination of assistance. However, housing providers do not need to provide the notice and rights and certification form with subsequent notices sent for the same infraction.

Note that MassHousing's guidance on this topic, dated May 2, 2017, provides that these documents **must** be provided with **any** notice of eviction or termination of assistance, which is what the VAWA statute provides; It doesn't specify that it only needs to be provided with the initial notice for an infraction, but not subsequent eviction or termination notices sent for the same infraction. For general information on termination of assistance and termination of tenancy for HUD Multifamily Housing, see Chapter 8 of HUD Handbook 4350.3. Termination of Assistance is discussed in Section 1 of this chapter and Termination of Tenancy by Owner is discussed in Section 3.

Also note that PHAs and Owners/Agents were initially required to provide existing residents this notice by December 16, 2017, either during the PHA annual recertification or lease renewal process (as applicable). If there will be no recertification or lease renewal during the first year, through other means within the first year as determined by the PHA

³⁹ See Notice PIH-2017-08 (HA), pg. 18-19.

⁴⁰ See H 2017-05, pg.21.

⁴¹ See HUD Handbook 4350.3, Par. 7-7 Notices to Tenants. According to the Handbook, "This notice also serves as a 60-day notice to terminate assistance, and as a 60-day rent increase notice." See pg. 7-13. Also see Chapter 8, TERMINATION.

- The 14-day notice of termination of tenancy for non-payment of rent;⁴²
- The 30-day notice of termination of tenancy for other good cause;⁴³ and
- Termination of tenancy under the Massachusetts Nuisance Law for specific crimes, such as drug-related criminal activity.⁴⁴

2. Are public and assisted housing providers required to use a specific form to notify residents of their rights under VAWA?

Yes. It is called the VAWA Notice of Occupancy Rights (Form HUD-5380), which must be customized.⁴⁵ In addition, housing providers must also include a certification form (form HUD-5382). Both forms are available in multiple

⁴² See HUD Handbook 4350.3, Par. 8-13 A. 5., beginning pg. 8-13. Also see G.L. c. 186, §§11 and 12

⁴³ See HUD Handbook 4350.3, Par. 8-16, beginning pg. 8-22.

⁴⁴ G.L. c. 139, §19. 40. 1985. This law also allows PHAs and federal and state assisted housing providers to terminate a lease where a tenant or household member used or threatened use of force or violence against an employee of the housing provider or against anyone legally present on the premises. Mass. Acts 421, §3.

⁴⁵ 34 U.S.C.A. § 12491(d)(1) & (2) and 24 CFR 5.2005(a). HUD created a notice of VAWA rights “Notice of Occupancy Rights”, form HUD-5380 in accordance with VAWA 2013. O/As and PHAs are prohibited from changing the core protections and confidentiality rights in the Notice. However, they must customize the notice “to reflect the specific assistance provided under the covered housing program and specify the program operations that may pertain to or affect the VAWA Notice of Occupancy Rights.” See **Multifamily Notice**, pg. 21 and **PIH Notice**, pg. 18. The PIH Notice provides examples of the type of information a PHA will need to add:

For example, PHAs must add to the VAWA Notice of Occupancy Rights information that identifies the covered program at issue (e.g., public housing), the name of the PHA (e.g., the Housing Authority of Any Town), and any additional information and terminology that is used in the program and makes the VAWA Notice of Occupancy Rights more meaningful to the applicants, and tenants/participants that receive the Notice (e.g., use of “apartment” or “housing” in lieu of “unit”). This may include additional language in places other than where the VAWA Notice of Occupancy Rights provides instructions to do so, as long as the language does not make changes to the core protections and confidentiality rights as noted above. For example, the additional language cannot add additional requirements to receive VAWA protections, but additional language may be provided to better explain VAWA.

languages⁴⁶ on HUD's Client Information Policy Systems, commonly referred to as HUD clips.⁴⁷

Language will also need to be included in the applicable notice of eviction/termination of assistance as well, referring the tenant to the VAWA notification, such as the following⁴⁸:

If the reason for this termination is the result of domestic violence, dating violence, sexual assault or stalking, we want to make sure you understand your protections under the Violence Against Women Act (VAWA). VAWA protections are not only available to women but are available equally to all individuals regardless of sex, gender identity, or sexual orientation. HUD's Notice of Occupancy Rights under VAWA (form HUD-5380) and HUD's Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (form HUD-5382), are attached to this notice.

If this is applicable to you and you wish to exercise your rights under VAWA, you may do so by completing and submitting the Certification form (or other form of Alternate Documentation as specified in the Notice and Certification form) so it is received in the management office no later than 14 business days from the date of your receipt of this notice.

⁴⁶ This is 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) (HUD's LEP Guidance) (24 CFR 5.2005(a)(3)). See Notice PIH-2017-08 ((HA), pg. 21). Site staff will need to follow the requirements contained in this notice and its Language Access Plan (LAP). Also, please note that the Rural Development published their guidance Federal Register, Vol. 79, No. 229, Friday, November 28, 2014 125. Also, HUD's Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, which was issued on September 15, 2016, discusses how disparate treatment and disparate impact apply in the context of providing meaningful access to individuals with LEP. Unlike HUD's previous guidance which only applies to housing providers that receive federal dollars, this guidance applies to any housing provider covered by the Fair Housing Act, which includes market housing and housing funded with tax credits. Please see <https://portal.hud.gov/hudportal/documents/huddoc?id=lepmemo091516.pdf>. This includes the tax credit program.

⁴⁷ HUDClips is an online resource for HUD's "forms, handbooks, policies and other related information" and can be located at https://www.hud.gov/program_offices/administration/hudclips

⁴⁸ Please note that this language refers to 14 business days, which is a minimum number of days required. Also, the regulation, 24 CFR 5.2007(a) assumes that the victim makes a request prior to the housing provider providing a letter requesting written documentation. Some housing providers are including the request for written documentation in the eviction notice to resolve an issue more expeditiously and avoid going to court if a matter can be resolved in a more informal manner.

3. Does HUD encourage public and assisted housing providers to provide the VAWA Notice of Occupancy Rights (Form 5380) Along with the Certification Form (Form 5382) to occupants at times in addition to a Notification of Eviction or Termination of Assistance for an Infraction?

Yes.⁴⁹ Before discussing these times, it is important to mention that whenever providing a tenant a VAWA Notice and Form it is highly recommended that a provider state or note this is a required procedure (either based on HUD rules or the housing provider's policy). Creating an assumption that providing the information to all tenants is standard operating procedure may prevent a situation where providing the information to a survivor places the person in danger.

HUD suggests posting the VAWA Notice of Occupancy Rights and certification form:

- On websites; and
- In public areas (such as waiting rooms, bathrooms, community bulletin boards, elevators, laundry rooms, and lobbies)

It is recommended that the VAWA Notice of Occupancy Rights and certification form also be posted in the management office and the Resident Service Coordinator's office.

There are other opportunities when PHAs and O/As have to inform tenants about their rights under VAWA, including providing the VAWA Notice of Occupancy Rights (Form HUD-5380) and certification form (form HUD-5382) at times in addition to an initial notification of eviction or termination of assistance for an infraction. This includes subsequent eviction or termination

⁴⁹See Multifamily Notice, pg.22). Also see HUD response to comments in Final Rule at **80770 Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations.

notices sent for the same infraction. Other opportunities to educate residents about their rights under VAWA and provide information about where to obtain assistance include:

- During the recertification process
 - In writing as part of the recertification notices (not only the 3rd reminder notice which includes the notification of termination of assistance); and
 - Orally during the recertification interview which all adults must attend.
- Informal letters to residents informing them that they're in violation of their lease and that if they do not alter their behavior, they will receive a lease violation notice;
- Newsletters; and
- Resident meetings (staff could invite domestic violence and sexual assault advocates to speak and provide written information in plain language).

When terminating assistance or tenancy and providing such notification, it is important to remember your obligation to provide meaningful access to people whose primary language is not English. At the very least, applicants need to be informed that this is an important document and to let management know and you will provide free language assistance. Also, if your site has a Language Access Plan, you may need to translate the site's rejection letter in accordance with the Plan. The required notice forms have been translated by HUD into multiple languages⁵⁰ and are available on HUD's Exchange. Termination of assistance and tenancy letters should also include that people who have a disability have a right to a reasonable accommodation

⁵⁰ Currently they are available in 14 languages: Arabic, Armenian, Cambodian, Creole, Hmong, Japanese, Korean, Lao, Mandarin, Russian, Somali, Spanish, Thai, and Vietnamese.

if such a reasonable accommodation could correct the tenancy related problem. If your site is financed by MassHousing, it is a requirement.⁵¹

An example of this type of language to include in the letter is as follows:

If the reason for your termination is the result of your having a disability, you may request a reasonable accommodation. A reasonable accommodation is an adjustment to a procedure, unit or common area that will prevent the tenancy related problem from recurring and enable you to be lease compliant.

You are also encouraged to inform **all** residents who are engaging in lease violating behavior about their rights under VAWA before you move to terminate assistance or initiate eviction. HUD also encourages you to post the Notice of Occupancy Rights on your websites and in public areas, such as waiting rooms, community bulletin boards, and lobbies where applicants (and residents) may view it.⁵²

C. Documentation Requirements

1. Is a housing provider required to obtain documentation of DVDVSAS when a resident invokes VAWA protections or remedies?

No.⁵³ A housing provider may choose to accept a person's verbal statement or other corroborating evidence, such as a site's security report, regarding

⁵¹ What is included in HUD Handbook 4350.3 is the requirement that the rejection letter include notice that "persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing process." See Chapter 4, Par. 4-9C.2.c. **Rejecting Applicants and Denial of Rental Assistance**, pg. 4-28.

⁵² This is not a requirement. See Chapter 2, Part 1, *Applicable Laws, the Legal Framework and General Questions*, Question 15 for required timeframes.

⁵³ See 34 U.S. Code § 12491(c), 24 CFR 24 CFR 5.2007(a)(1)

their status as a survivor of DVDVSA. Housing providers' written policies should describe the circumstances under which a verbal statement will be accepted. For example, if a manager or RSC is aware of the DVDVSAS, then it is an unnecessary barrier to require a resident to document the DVDVSAS.

2. If a housing provider requires a survivor to submit documentation of DVDVSAS to invoke VAWA protections or remedies, does the provider's request have to be in writing?

Yes, and simply providing the survivor the Notice of VAWA Rights and the certification form HUD-5382 doesn't constitute a written request for documentation. The housing provider must provide the resident a dated letter requesting documentation.⁵⁴

In a situation where the housing provider hasn't received a request for VAWA protections yet, and they are sending a notice of termination of assistance or tenancy, the housing provider may include in the notice a written request for documentation if the resident is planning to invoke their rights or remedies under VAWA, provided this is standard protocol. However, it is important to remember that unless tenants are fully educated that the inclusion of this language with a notice of termination of assistance or tenancy is provided is standard operating procedure, this may not be safe for a survivor if the abuser is also on the lease.⁵⁵

⁵⁴ See 24 CFR 5.2007(a)(1), **Multifamily Notice**, pg. 14 and **PIH Notice**, pg.11.

⁵⁵ Please note that doing this may also start the survivor's clock for responding before the person even makes a request for protection, which is contrary to the spirit of the law.

3. If a housing provider requires a survivor to submit documentation of DVDVSAS to invoke VAWA protections or remedies, can a provider mandate the survivor to use a specific type of documentation?

No. It is the tenant's decision which acceptable form of documentation to provide.⁵⁶ A tenant may satisfy this request by providing any one of the following documents:

- a. Form HUD-5382; **or**
- b. A document:
 - 1) 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;
 - 2) Signed by the tenant; and
 - 3) 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 the VAWA Final Rule, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under VAWA's definitions; **or**
- c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency (for example, a police report); or
- d. At the discretion of an O/A, a statement or other evidence provided by the applicant or tenant.

⁵⁶ See 24 CFR 5.2007(b)(1). Also see 24 CFR 5.2007(b)(1).

If a provider is willing to accept an additional form of documentation, they need to address this in their VAWA policies and specify the document or documents they will accept.⁵⁷ For example, an owner may choose to accept a statement from a religious leader (provided the provider doesn't differentiate among faiths), or a written statement from the survivor.

The only exception to the above is if the submitted documentation contains conflicting information, either because:

- a. two members of the same household submit competing claims for VAWA protections or remedies; **or**
- b. the housing provider has independent information obtained for a legitimate business reason, such as community safety. For example, regularly transmitted safety personnel reports, or surveillance tapes. **Under no circumstance** can a housing provider “investigate” to determine the validity of a resident’s assertion of DVDVSAS.⁵⁸

In such instance, a housing provider may, but is not required to, request third party verification only as listed in ‘b’ through ‘d’ above, for the purpose of resolving the conflict and require submission within 30 calendar days from the date of the request to provide such documentation. There is no requirement that this request be in writing, but it is a good business practice, and confirms when the request was made. It is also a good business practice to include with the request contact information for the Resident Service Coordinator (RSC) to help facilitate services, as well as local domestic

⁵⁷ See HUD PHA Guidance, pg. 12 and Multifamily Notice, pg. 14.

⁵⁸ See HUD PHA Guidance, pg. 15 and Multifamily Notice, pg. 19.

violence and sexual assault advocacy agencies to assist in safety planning, as well as legal aid programs or the Civil Legal Assistance for Victims of Crime (CLAVC) program who may be able to assist in obtaining a restraining order and housing related issues.⁵⁹

The provider's written policy should address how the provider handles conflicting information, situations where both or only one person is able to obtain 3rd party documentation, and whether they develop or follow an existing family break-up policy that permits the housing provider to provide assistance to both persons seeking VAWA protections.⁶⁰ Any policy that is developed must recognize that housing providers are required to adhere to any court order which gives one resident rights of access or control of the property, such as an order of protection, commonly referred to as a 209A. Consulting with a Domestic Violence/Sexual Assault advocacy agency in writing such a policy may be very helpful. One of the reasons this is so important is because, as HUD stated in its guidance, perpetrators sometimes obtain an abuse prevention order (209A)⁶¹ or harassment prevention order (258E)⁶² "or file police reports against victims as a form of retaliation. Further, many survivors are unable to timely access the courts or law enforcement due to the language barriers, disabilities, cultural norms, or fear for their safety. As a result, the fact that only one party submitted third-party

⁵⁹ For information on Legal Aid in MA see <https://mlac.org/help/> and for information on the Civil Legal Assistance for Victims of Crime (CLAVC) program in MA see <https://massclavc.org/>

⁶⁰ If a resident submits third-party documentation, you are prohibited from requesting further documentation; however, if only one person submits third party documentation that meets the criteria listed above, the housing provider may choose to accept the self-certification (Form HUD -5382 or verbal statement) as sufficient documentation. Also see footnote #79 in Chapter 2, Part 2, Application Process.

⁶¹ See <https://www.mass.gov/abuse-prevention-orders-for-defendants>

⁶² See <https://www.mass.gov/harassment-prevention-orders>

documentation is not always a reliable indicator of domestic violence, dating violence, sexual assault, or stalking.”⁶³

If a HUD Multifamily housing provider or PHA denies VAWA protections, they must notify the resident. It is a good business practice for this to be done in writing and provided in a manner consistent with any request made by the survivor to address the person’s safety concerns. If the denial involves termination of assistance, the resident is still entitled to protections provided by program specific rules.⁶⁴ If the denial involves a termination of tenancy, the resident is still entitled to raise the VAWA defense in court.

4. Is a housing provider required to acknowledge receipt of documentation provided by a survivor?

No.⁶⁵ However, it is something that should be addressed in a company’s VAWA policy, including when the provider will/won’t send confirmation and how and to whom the acknowledgement will be sent (based on resident safety/request). The policy should also include a tracking system. For example, it is very important to date and time stamp all documents received and track not only resident requests, but corroborating information given received.

5. During the 14-business day period and any granted extensions of that time, can a covered housing provider take any adverse action against a survivor?

⁶³ See **PIH Notice**, pg. 15 and **Multifamily Notice**, pg. 18. Another barrier not mentioned in the guidance is lack of transportation.

⁶⁴ See HUD Handbook 4350.3, Chapter 8, Section 3, which discusses a hearing and in the case of a PHA, the PHA must hold a separate informal hearing (HCV) or grievance hearing (public housing) for the tenant.

⁶⁵ See **Multifamily Notice**, pg. 15 and **PIH Notice**, pg. 13.

No. This means that a PHA must not terminate assistance or schedule an eviction, grievance hearing, informal review, or informal hearing to take place during this time frame. Likewise, a HUD Multifamily housing provider may not schedule an eviction to take place during this time or terminate someone's assistance.

Also remember that if the person fails to provide the documentation within the 14 days (or longer as permitted by a housing provider), or the provider determines based on the documentation provided that the reason for termination is not a direct result of the DVDVSAS, this does not mean the person waives their right to challenge the denial of assistance or termination using whatever proceedings would be available to a tenant and the person still may raise the DVDVSA at eviction or termination proceedings.⁶⁶

6. What must a survivor do to trigger an owner considering a direct result analysis in the context of Termination of Assistance or Tenancy?

HUD's guidance provides a framework for understanding how the direct result analysis gets triggered when a tenant's assistance or tenancy is being terminated. According to both HUD's Multifamily Notice and PIH Notice, the tenant must tell the housing provider they are a victim of DVDVSAS. The guidance also states that it is the survivor's responsibility to provide the housing provider "enough information" to make a determination that the negative tenancy related behavior is a direct result of DVDVSAS.⁶⁷

⁶⁶ IBID.

⁶⁷ **Multifamily Notice**, pg. 10 and **PIH Notice**, pg. 9.

Please be mindful of the following when applying this to actual situations involving survivors:

- There are no magic words that must be used by the person. Many people may have difficulty disclosing DVDVSAS, and the connection, especially to someone they do not have a close relationship with.
- If someone discloses DVDVSAS believe the person. Proceed based on your company protocols regarding verification requirements establishing the lease violation is a direct result of the DVDVSAS.
- Assuming the direct result is established, you need to work with the resident to ascertain how they can be lease compliant. Engage in an interactive dialogue with the survivor (and/or the survivor's representative) to determine what will resolve the lease violating behavior (not what will get the survivor to leave their abuser). Listen carefully to what the survivor believes will be effective with the goal of preserving the tenancy.

It is also important for housing providers to understand that even if the survivor does not follow these steps, the person is still entitled to raise the VAWA defense in court.

7. What documentation may a tenant provide to establish that the adverse factor (reason for Termination of Assistance or Tenancy) is a direct result of DVDVSAS?

The VAWA statute, final rule and HUD guidance provide clear direction regarding how a survivor may inform a housing provider of their status as a survivor of DVDVSAS. As explained in Question 1 above, a housing provider may choose to accept a person's verbal statement in accordance with their policies and must accept any acceptable source of documentation permitted in accordance with VAWA. As explained in question 2 above, if a housing provider requires a survivor to submit documentation of DVDVSAS, the

request must be in writing, and as explained in question 3 above, there are a number of acceptable forms of verification, including self-certification (Form 5382), and **it is the tenant's decision which acceptable form of documentation to provide** and the provider may only ask for additional information if the submitted documentation contains conflicting information.⁶⁸ HUD's guidance, when discussing the direct result determination, reiterates that a housing provider cannot request additional information regarding the DVDVSAS other than as specified in VAWA.⁶⁹

VAWA, and HUD's final rule and guidance, however, do not explicitly address the acceptable form(s) of documentation for a survivor to establish their negative tenancy related behavior is a direct result of the DVDVSAS. The guidance states that a housing provider "should consider the individual's statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking." Implicit in this guidance is that it is the survivor's choice regarding what information to provide the housing provider, and that the survivor's self-affidavit could be an acceptable source of documentation to establish the direct result. In many instances only a survivor will be able to self-certify to the direct result. Remember, as discussed in Chapter 1, many survivors do not disclose DVDVSAS to anyone, and/or do not seek assistance.

The guidance also provides that if a housing provider determines additional information is needed to make such a determination, that they may request such documentation if it is in accordance with their policies and procedures,

⁶⁸ See 24 CFR 5.2007(b)(1). Also see 24 CFR 5.2007(b)(1).

⁶⁹ Please see 24 CFR 5.2007 for the documents a housing provider may ask a survivor for to establish the DVDVSAS. Also see Multifamily Notice, pg. 11 for a discussion of this and PHA Notice, pg. 9.

and that if any information is not clear, that the provider should speak with the survivor to clarify the information.⁷⁰

It is recommended that housing providers seek guidance from their attorney when determining how to implement a determination of a direct result analysis.

8. If a resident assert that the reason for Termination of Assistance or Tenancy (the adverse factor) is a direct result of DVDVSAS, what must a housing provider do?

The housing provider “must make an objectively reasonable determination, based on all the circumstances, whether the adverse factor is a direct result of the fact that the applicant or tenant/participant is a victim of domestic violence, dating violence, sexual assault, or stalking.”⁷¹ This requires the housing provider to do the following:

- Review the tenant’s statement and any possible supporting documentation;
- Request further information about the direct result (vs. the person’s status as a survivor of DVDVSAS) if the information provided is insufficient to make a determination; and
- Talk with the tenant to clarify any information when necessary.

This approach is not new to housing providers and facilitates the goal of maintaining a resident’s tenancy whenever possible. Please be mindful that the intent of this is not to permit survivors to ignore ongoing lease obligation.

⁷⁰ Multifamily Notice, pg. 11 for a discussion of this and PHA Notice, pg. 9.

⁷¹ IBID.

All residents have to comply with the essential components of the lease: paying rent on time; not interfering with other peoples' quiet enjoyment, maintaining a decent safe and sanitary unit; not engaging in criminal activity; complying with programmatic rules (such as annual and interim reporting requirements) and following other essential reasonable rules. Also, although all residents must comply with the terms of the lease, providers need to be flexible regarding how a resident complies.

D. Addressing Behavior that Does and Does Not Violate the Lease

1. What is a lease violation and what is not?

To determine what a lease violation is you need to first examine the provisions in the lease. Although leases of different housing programs vary, the essential obligations for all leases are the same: timely rent payments, care of the premises, respect for the rights of others, avoiding criminal activity and complying with other reasonable requirements. If a tenant does not adhere to these obligations they are in violation of the lease. A housing provider may only evict a tenant for the specific reasons that are contained in the lease.⁷² Covered housing providers are prohibited by VAWA from terminating assistance or evicting a tenant based on an adverse factor, **if** the adverse factor is determined to be a direct result that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.⁷³ However, there are a couple of exceptions, which will be discussed in more detail later in this section:

⁷² See HUD Handbook 4350.3, Figure 8-2, Allowable Circumstances for Terminating Tenancy, page 8-11 and paragraph 8-13, Material Noncompliance with the Lease, beginning on page 8-11. Also see 24 C.F.R. § PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE, § 966.4(l) and 24 C.F.R. § 982.208 (Lease and Tenancy) and § 982.310 (Owner Termination of Tenancy). Also, if you would like to terminate tenant-based assistance under the Housing Choice Voucher Program, you may do so only for the reasons set forth in the program regulations and Administrative Plan, as applicable.

⁷³ See 24 CFR 5.2005(b)(1), **Multifamily Notice**, pg. 7 & PIH Notice beginning pg. 6.

- a. If a termination of assistance or eviction is required by a federal statute based on a particular adverse factor;⁷⁴
- b. In the case of eviction, if the housing provider can demonstrate that an actual and imminent threat to other tenants or those employed at or providing services to the property would be present if that tenant or lawful occupant is not evicted or terminated from assistance.⁷⁵

2. What should I do if I suspect that a tenant, who has not violated the lease is a victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking (DVDVSAS), appears to be acting out of the ordinary for the person?

A housing provider (manager, assistant manager, maintenance provider, resident service provider) may suspect domestic violence for a number of reasons, including but not limited to the resident: having marks or injuries; wearing specific clothes to try to cover up bruises or marks, such as long sleeves in the summer; stopping coming to site events or not leaving the unit; appearing depressed or anxious or demonstrating mood or personality changes; being publicly insulted by their partner; making excuses for their partner's behavior; acting submissive around their partner; and residents and/or staff members voicing concerns.

If a manager, resident service coordinator or other staff person has good cause to believe that a resident is experiencing domestic violence, dating violence, sexual assault or stalking (DVDVSAS), the action you take will generally depend on your role at the site (your "lane"), your relationship with the tenant and

⁷⁴ See Multifamily Guidance pg. 7 and PIH pg. 6.

⁷⁵ See 24 CFR 5.2005(d)(3). Also see PIH Notice, pg. 38 and Multifamily Notice, pg. 36.

how serious the problem appears, if you are a mandated reporter⁷⁶ and of course, your company's policies and procedures.

⁷⁶ In the state of Massachusetts, some people because of their occupation have a legal obligation to notify a government agency if they suspect an elder, child or person with a disability is being abused, and/or neglected. Such individuals are referred to as "Mandated Reporters" and are subject to liability if they have reasonable cause to know the abuse and or neglect is occurring and do not report it. The statute governing elder abuse can be found at G.L. c 19A, §15. Also see 651 CMR 5 for the ELDER ABUSE REPORTING AND PROTECTIVE SERVICES PROGRAM regulations. The definition of an elder is in G.L. c. 19A §14. An elder is defined as someone 60 years of age or older. The statute covering elders, G.L. c 19A, doesn't have a separate definition of neglect. Rather, it is included in the definition of abuse. This statute's implementing regulations' definition of abuse explicitly includes neglect. See 651 CMR 5.02.

The statute governing children can be found at G.L.c.119 and the Department of Children and Families' regulations at 110 CMR 2.00. The statute which protects children uses two terms: neglect and abuse. Please note that the statute which covers children specifically includes the case of a child who is "physically dependent upon an addictive drug at birth, as well as a child being sexually exploited; or a human trafficking victim." The definition of a human trafficking victim is defined by G.L c. 233, section 20M which then states a person is subjected to the conduct prohibited under sections 50 or 51 of chapter 265 which include: Trafficking of persons for sexual servitude; trafficking of persons under 18 years for sexual servitude; trafficking by business entities; penalties; tort actions brought by victims.

The statute governing persons with disabilities can be found at G.L. c. 19c Disabled Persons Protection Commissions regulations for investigations at 118 CMR 5.00. A person with a disability is a person between the ages of 18 and 59, "who is a person with an intellectual disability as defined by section 1 of chapter 123B, or who is otherwise mentally or physically disabled and as a result of such mental or physical disability is wholly or partially dependent on others to meet his daily living needs." See G.L. c.19C §1. The term neglect is not used in the definition of abuse in the statute covering persons with disabilities, at G.L. c 19C. Nor is there a separate definition of the term neglect. The implementing regulations for this statute include the protection of persons with disabilities for neglect, as well as abuse, but do not define neglect per se. The language in Section 10 of this statute is worth noting. It states in part:

"No privilege established, by sections one hundred and thirty-five A and one hundred and thirty-five B of chapter one hundred and twelve, by section twenty or twenty B of chapter two hundred and thirty-three, by court decision or by professional code relating to the exclusion of confidential communications and the competency of witnesses may be invoked to prevent a report by a mandated reporter or in any civil action arising out of a report made pursuant to this chapter; provided, however, a mandated reporter need not report an otherwise reportable condition if the disabled person invokes a privilege, established by law or professional code, to maintain the confidentiality of communications with such mandated reporter." See

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter19C/Section10>

The second half of this paragraph raises a question of what a Resident Service Coordinator, who is a Social Worker, should do if a victim confides in him/her but prohibits Social Worker from disclosing. In such instances, a Resident Service Coordinator/Social Worker should contact their supervisor and seek legal counsel. Comparable language doesn't appear in the Elder abuse statute.

Although housing staff are not Mandated Reporters, licensed social workers are Mandated Reporters; as such, any site staff person who is a Licensed Social Worker is a Mandated Reporter in Massachusetts. Also, in regard to children, G.L. c. 119, Section 21 is quite broad and would include individuals who provide after school programs/Care at a housing site. It provides:

Any policy regarding intervention in non-lease violating behavior must be applied uniformly to all tenants regardless of protected status. For example, you cannot choose to intervene or not to intervene simply because a person has a disability, or because a tenant is a woman and you suspect the perpetrator is a man. If a resident's behavior gives you good cause to believe the person needs assistance, you may intervene. You can offer assistance to who needs it. The point is that you must treat persons in similar situations in a similar manner.

Example: The resident comes in for annual recert and presents with massive bruises on arms and/or face.

What do you think? Be mindful of making assumptions, which may/may not be accurate. For example, it could be caused by medication, blood drawings, or medical treatment.

What do you do? Conduct the annual cert in a kind, open manner. The standard "good business practice" of reminding everyone about VAWA

"Mandated reporter", a person who is: (i) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath, allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselor, psychiatrist or clinical social worker; (ii) a public or private school teacher, educational administrator, guidance or family counselor, child care worker, person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 15D that provides child care or residential services to children or that provides the services of child care resource and referral agencies, voucher management agencies or family child care systems or child care food programs, licenser of the department of early education and care or school attendance officer; (iii) a probation officer, clerk-magistrate of a district court, parole officer, social worker, foster parent, firefighter, police officer; (iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis; (v) in charge of a medical or other public or private institution, school or facility or that person's designated agent; or (vi) the child advocate.

protections may be helpful in creating a safe environment; do not focus on the bruising.

Example: The resident comes in for annual recert 45 minutes late and they are disorganized and do not have the proper paperwork.

What do you think? Be careful of making assumptions, which may/may not be accurate. For example, their tardiness and disorganization can be signs of trauma.

What do you do? Conduct the annual cert in a kind, open manner. The standard “good business practice” of reminding everyone about VAWA protections may be helpful in creating a safe environment. This is an opportunity to not only remind people about the importance of completing the cert on time, but also ask if anything is going on to prevent this and if a referral for supports would be helpful.

3. Are there good business practices that I should follow when approaching a resident who I suspect is experiencing DVDVSAS who hasn't violated the lease?

Yes. Please do not let fear of saying the wrong thing or approaching a situation in an ineffective manner prevent you from reaching out to a resident you are concerned is experiencing DVDVSAS.

The following are good business practices when having such conversations. Also remember, that if you are the property manager and are fortunate to have a Resident Service Coordinator (RSC) at your site, a good starting point is to include the RSC.

- Make sure you are aware of your concern/goal: the person’s safety-not the person leaving the abuser, which may be an effect **if the resident chooses to do so**.
- Try to meet with the resident in a discreet manner. In other words, do not call the person on the phone or send them a letter or an email or text unless you can come up with another reason for doing so, such as a resident event. Ideally you want to talk to the resident in person about meeting with you, and when they are not with others, including children.
- If the resident agrees to meet with you do so in a time/place that is not rushed and that is private. Do not raise the DVDVSAS unless the person brings it up, but rather check in to see if everything is okay or if the person wants assistance with anything. Remember, it is important to focus on your willingness to provide assistance **if the person wants it**. Likewise, if you observe specific behavior, focus on what you observe, and not on your assumptions or conclusions regarding what is causing the person to behave out of the ordinary or what caused the bruising on their body.
- Always take your cue from the resident and **listen without judgement**:
 - If the person doesn’t want to talk about the DVDVSAS do not pursue this avenue. Remind the resident that you care about them, and that you are available to talk with them about anything, if and when the person wants to do so or if they need assistance with anything at a later date. For example, *“I’m here if there’s anything you want to talk about. This is my availability.....”* If you are the property manager and the site has an RSC, you may also add, *“and just as a reminder,is also available at.....”*
 - Do not judge status, action and inaction. You are not the person. What may seem a simple decision for you may not be for the resident.
 - If the resident does disclose the DVDVSAS:

- Follow the resident’s cues;
- Use active listening skills;
- Fact find regarding information you need to know to assist the resident (not want to know), bearing in mind that you are not the person’s advocate and do not have the skills nor the privacy protections to perform this role;
- Help the resident feel heard and believed by avoiding questions that demonstrate disbelief;
- Validate the person’s feelings⁷⁷;
- Offer your support by letting the person know that you are not judging them⁷⁸;
- Express your concern for their safety;⁷⁹
- Let the person make their own decisions;⁸⁰
- Identify assistance needed based on an individualized assessment of the person’s specific circumstances, needs and decisions;
- Provide ways to get help, which requires you to have developed previous relationships with local organizations in the area.

Again, whether you are the property manager or an RSC, it is crucial you understand your role and not become a front-line advocate for the individual. Rather, in an ideal situation,

⁷⁷ This includes assuring the person that you believe them, stating something like, “I’m sorry that you are going through this.”

⁷⁸ The resident may start crying and blame themselves for the perpetrator’s behavior or for failing to call 911. Assure the person, it is not their fault, without criticizing the perpetrator. If you criticize the perpetrator the victim may later be unwilling to open up to you. The important thing is to listen.

⁷⁹ This includes statements such as “I’m concerned about you” or “I’m worried about your safety” or “Please know I’m here for you if and when you want to talk.”

⁸⁰ Remember, you do not know what’s best for someone else. It is important that all decision making remain where it belongs; with the resident.

the information obtained by a housing provider (including an RSC) is to refer to a community based sexual and/or domestic violence program. Remember, a housing provider does not have statutory privilege and cannot assure the survivor that information shared with them would remain confidential-it could be subpoenaed, et. If a resident discloses, it is important that they know this is not a confidential person and they can be connected to a confidential person.

4. What do I do if staff has heard fighting and I suspect Domestic Violence?

- Remember to remain impartial and not to make assumptions:
 - Speak with the residents separately (if the perpetrator is a household member) or resident without the guest who you suspect is the perpetrator.
 - Avoid bringing your pre-conceived ideas about domestic violence into the situation, including who is the perpetrator and the victim;
 - Focus on the facts: the fighting and what was/wasn't heard.
 - Listen and take cues from the resident when you approach the person or persons.

- Focus on the alleged behavior.

For example, approach the resident when you anticipate no one else is home, and say to the person, "I've heard fighting in your apartment and am worried about you. Is there anything I can do?"

NOT: ARE YOU BEING ABUSED?

You may also say, "I'm here for you if you need to check in about anything"

NOT: Here's a list of domestic violence agencies.

If you have received complaints from neighbors, you may also say, “The office has received complaints from other residents regarding the noise level. If it continues it may be considered a lease violation. Please let me know if there’s anything I can do. I do not want to take action against you.” This may also be an opportunity for staff to share information about VAWA. However, if it is done at this time, the provider must make it clear to all of the residents that doing so is standard operating procedure when fighting has been heard in a unit.

5. What do I do if I’ve received resident complaints (not in writing) regarding fighting and I suspect Domestic Violence?

Begin by asking yourself how you would handle the same situation if you didn’t suspect DV/DVSAS. You need to decide if you are or are not treating this as a lease violation and follow your standard protocols. If you do not consider this a lease violation, and are concerned, follow the suggestions in the previous question, simply by substituting that “staff has heard fighting” with “you’ve received resident complaints.” If you do consider this lease violating behavior, see the next question.

6. What should I do (or staff do) if there is violence/criminal activity occurring?

Focus on the violence/criminal activity regardless of who is committing it and follow company protocol. **Industry wide, the standard operating procedure is to call 911 immediately.**

It is also important to:

- Instruct staff and residents regarding the protocol to immediately call 911 in situations involving violence and/or criminal activity. Make it clear to everyone that management must call police even if a resident

requests management not do so in situations involving violence and/or criminal activity;

- Follow your company's incident report protocol;
- Follow up with the resident or residents as soon as possible, preferably the next day, unless they are in police custody.
- If there are multiple residents involved, you will need to talk with people on an individual basis.
- Focus on the lease violation, the resident's safety which is of paramount importance, and what the housing provider needs to do to facilitate the resident's safety. This is the intent in doing the following:
 - Follow a fact-finding approach to determine the actions the housing provider needs to take;
 - Avoid bringing your opinion about the situation into the discussion and your preconceived ideas about domestic violence into the situation;
 - Listen and take cues from the resident when you approach the person or persons;
 - Remind the resident(s) of VAWA protections. Explain you do this in all instances of violence which takes place at your site;
 - If the resident raises DVDVSAS, and requests VAWA protections/remedies, follow your company's procedures regarding developing a plan of action. Whatever plan is created must be based on an individualized assessment and what the survivor requests and believes will work for them; not what the housing provider believes will be effective. Remember, your role and that you are not a front-line advocate for the individual. You do not have statutory privilege and cannot assure the survivor that information shared with them would remain confidential-it could be subpoenaed, et.

Basic, yet important principles to keep in mind:

- Ask the person if they would like to call the referral agency vs. tell them they should/need to.
- If the person wants to call the referral agency, ask the person if she'd like to make the call from your office; it may not be safe to do it from home.
- Do not provide written or digital resources to the individual (unless they want them), or slip materials under their door, or leave phone messages or text messages-the abuser may see it.
- Contact your attorney immediately. They may recommend beginning an eviction against the perpetrator, or if no one has raised VAWA protection, against both parties involved. If this is the case, VAWA protections and remedies may be requested by one or both tenants during the eviction process, and eviction will no longer be the starting point, but rather preservation of tenancy for the survivor assuming documentation is provided regarding the DVDVSAS in accordance with management's policies. With regard to a perpetrator that is not on the lease, an attorney may recommend a no trespass order or an action under M.G. c. 121B 32C, which is a preliminary Injunction whereby the housing provider asks the Housing Court for an order forbidding a nonresident from coming onto the housing property.⁸¹ The latter is standardly better for a survivor. In the case of a no trespass order, if it is violated the perpetrator can pressure the survivor to say the perpetrator is an invited guest, whereas an injunction under Section 121B 32C removes the survivor from the

⁸¹ See M.G. c. 121B Section 32C: Unlawful conduct by tenant, members or non-members of tenant household; civil action by landlord for injunctive or other equitable relief at <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter121B/Section32C>

equation altogether because it is solely between the housing provider and the person they do not want on the property, and there is no exception in re to the perpetrator being an “invited guest.”

- Remember that if you bring an action against the perpetrator, to do so in a planned manner, and keep the survivor informed for the purpose of safety planning.
- Remember that in the case of DVDVSAS time is of the essence.
- **REMINDER:** You must follow communication protocols, including confidentiality. See Questions 17-18 of Chapter 2, Part 1, *Applicable Laws, the Legal Framework and General Questions*.

7. What can I do if a tenant engages in a minor lease violation and I suspect Domestic Violence, Dating Violence, Sexual Assault or Stalking (DVDVSAS) is involved?

Whether you are required to provide residents written notification regarding VAWA when there is a minor lease violation will depend on how you address the lease violation. Some companies’ standard practice is to handle things “informally” and not send a lease violation notice immediately. Others have a standard protocol of sending a lease violation notice for any lease infraction. Housing providers are required under VAWA to provide the VAWA Notice of Occupancy Rights and certification form with any notification of eviction or termination of assistance, (but based on HUD’s Final Rule not with subsequent eviction or termination notices sent for the same infraction).⁸²

A best practice regardless of approach is to provide all tenants information

⁸² HUD’s Notice of Occupancy Rights under VAWA (form HUD-5380) and HUD’s Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (form HUD-5382)

regarding protections under VAWA, as well as consideration of a reasonable accommodation, if applicable, regardless of what you “suspect”, and if it is a formal notification of eviction or termination of assistance. In other words, tell all tenants about VAWA protections and reasonable accommodation regardless of what you think is causing the lease violation and let your resident decide whether to ask for VAWA protections or an accommodation, or both.

a. Informally Communicate with the Tenant

One approach is to inform the tenant verbally or in writing, according to your company’s policy, that they are engaging in lease-violating behavior and that if they continue, you will send a lease violation notice. Because you do not know who is impacted by DVDVSAS, it is recommended you remind the tenant of protections under VAWA (and the right to request an accommodation if the negative tenancy related behavior is as a result of a disability).

You may offer to consider any information the tenant believes could help with the situation. You may also ask if you, another staff person, such as a resident service coordinator, or someone else such as a service provider or family member, can do anything to enable them to comply with the lease. Do not raise your assumption regarding the DVDVSAS (or a person’s disability). Always check to see if you have permission to contact a third party in cases involving lease violations.⁸³ Nor can you

⁸³ HUD Multifamily Housing providers and PHAs must include as an attachment to the application form HUD-92006, Supplement and Optional Contact Information for HUD-Assisted Housing Applicants, Supplement to Application for Federally Assisted Housing, and it is a recommended practice at recertification. This requirement applies to the programs covered by HUD Handbook 4350.3, and is discussed in Par. 4-14 D, beginning on pg. 4-36. In addition, PHA’s must utilize this form when administering federally assisted public housing, as well as Tenant-based Housing Choice Vouchers and Project-based Housing Choice Vouchers. See NOTICE: H 2012-9/ NOTICE: PIH 2012-22(HA), **Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing**, May 19, 2012. Par. 4-14 D provides verbatim:

contact a third-party service provider or family member to assist the tenant without the tenant's written permission.

Speaking with the Tenant

When speaking with the resident, it is important to make sure you are following your company's confidentiality protocols regarding where the

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1. At time of application: A. Owners must provide applicants the opportunity to complete the information on form HUD-92006, Supplement to Application for Federally Assisted Housing. This form gives applicants the option to identify an individual or organization that the owner may contact and the reason(s) the individual or organization may be contacted. The applicants, if they choose to provide the additional contact information, must complete, sign and date the form. B. Owners cannot require that applicants provide the contact information, as providing contact information is optional on the part of the applicant. Those applicants who choose not to provide the contact information should check the box indicating that they "choose not to provide the contact information" and sign and date the form. C. Owners should provide applicants the opportunity at time of admission to update, remove or change contact information provided at the time of application, particularly if a long period of time has elapsed between the time of application and actual admission. D. If the applicant chooses to have more than one contact person or organization, the applicant must make clear to the owner the reason each person or organization may be contacted. The owner should accommodate the applicant by allowing them to complete a form HUD-92006 for each contact and indicate the reason the owner may contact the individual or organization. For example, the applicant may choose to have a relative as a contact for emergency purposes and an advocacy organization for assistance for tenancy purposes.
 2. After admission: A. Owners should provide tenants who were not provided the opportunity to provide contact information at the time of application and admission, the option to complete form HUD92006 and provide contact information at the time of their annual recertification. B. Owners cannot require tenants who have not provided contact information to provide the contact information, as providing this information is optional on the part of the individual or family. C. Tenants may request to update, remove or change the information provided on form HUD-92006 at any time and owners must honor this request. D. Owners should provide tenants who have provided contact information using form HUD-92006 the opportunity to update, remove or change the information at the time of annual recertification to ensure that current information is on file. This includes allowing tenants who originally chose not to provide contact information the opportunity to provide contact information if they request to do so. Remember, providing contact information is optional on the part of applicants and tenants.
 3. Owners use of the contact information. Owners will contact the individual or organization provided only for the use or uses indicated by the applicant or tenant on form HUD-92006. This contact information will assist the owner in providing the delivery of services or special care to the tenant and assist in any tenancy issues arising during the term of tenancy of the tenant.
 4. Retention and confidentiality of contact information. A. If the applicant does not become a tenant, the owner will retain the form HUD-92006 with the application for three years. (See Paragraph 4-22. B. If the applicant becomes a tenant, the owner will retain the form HUD-92006 with the application for the term of tenancy plus three years. (See Paragraph 4-22. C. Owners must keep the contact information confidential. Owners are allowed to release the information for the stated statutory purpose only: To assist the owners in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants.

conversation takes place. Also be aware, not only of your choice of words, but also your body language, and your tone of voice.⁸⁴ Explain the rule in a calm manner and set expectations. For example, “I’m worried about your late rent payments. Our policy is that if you do not pay your rent, your family will be evicted, which no one wants to occur. Let me know if something is making it hard for you to pay your rent on time.” **It is up to the person to tell you they are a victim and the lease violation is a direct result of the DVDVSAS.** That being said, there are no magic words that must be used by the person. Many people may have difficulty disclosing DVDVSAS, and the connection, especially to someone they do not have a close relationship with. If someone discloses DVDVSAS believe the person. Proceed based on your company protocols regarding verification requirements establishing the lease violation is a direct result of the DVDVSAS. Assuming the direct result is established, you need to work with the resident to ascertain how they can be lease compliant. Engage in an interactive dialogue with the survivor (and/or the survivor’s representative) to determine what will resolve the lease violating behavior (not what will get the survivor to leave their abuser). Listen carefully to what the survivor believes will be effective with the goal of preserving the tenancy.

You will also need to address safety concerns, while staying in the role of a housing provider (versus an advocate), which means you need to be prepared with knowledge about where domestic violence/sexual

⁸⁴ A great deal of communication is nonverbal. Types of nonverbal communication include, but are not limited to, body language such as postures (i.e. crossing arms, putting hands on hips, folding hands...), personal space, touch, facial expression, eye gaze/contact, including rolling of the eyes, as well as hand/finger gestures, and our voice, including tone, loudness, inflection, and pitch.

assault supports exists in the community which can help a resident with safety planning and other supportive services.⁸⁵

- Engaging in a fact-finding process which focuses on the person's safety and the actions the housing provider needs to take. This assumes active listening, which may require asking specific questions and reframing the information to make sure you get the facts correct so you know what action to take (such as referrals). Some questions you may ask when fact finding:
 - Are you safe?
 - Do you feel in danger?
 - Would you like a referral vs. tell them they should/need to contact someone.
 - Ask the person if she'd like to make the call from your office; it may not be safe to do it from home.
 - Do not judge status, action and inaction. You are not the person. What may seem a like a simple decision for you may not be for the resident.
- It is also important to note that the person may regret telling you, reaching out to a referral, calling 911, or may not want to do so. Actions a survivor takes can have significant consequences such as putting the survivor in danger or subject to coercion, result in increased financial burdens, humiliation, or have implications for child custody.

Remember:

- Do not use disparaging/negative comments about the

⁸⁵ HUD's sample Emergency Plan includes a provision of local resources, and it is discussed in HUD's regulations relating to Emergency Transfers. See 24 CFR 5.2005(e) and HUD Model Transfer Plan, Form form HUD-5381, at https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a#4.

perpetrator. Focus on the victim's needs and safety.

- Do not provide written or digital resources to the individual (unless they want them), slip materials under their door, or leave phone messages or text messages-the abuser may see it.

b. Send a Lease Violation Notice

If it is your standard policy to send a lease violation notice immediately when someone engages in such behavior, or when the behavior continues after you have first spoken to the tenant, or when the tenant engages in other minor lease violations, you must follow the same procedure with a tenant who you suspect is a survivor of DVDVSAS (and/or has a disability).⁸⁶ The only exception to this is if the tenant informs you that the lease violation is a direct result of DVDVSAS. If your standard policies and procedures is to require documentation that the person is a survivor of DVDVSAS, do so. Remember, if you require this you must put your request in writing (simply handing someone Form HUD-5382 is insufficient), you must permit that the information be provided within 14 **business days** after the date that the individual received the written request for documentation. You may extend this time as well.

If you send a lease violation notice, you must clearly state what provision of the lease is being violated and how it is being violated. If this is a formal lease violation notice that is serving as a notice of termination of tenancy

⁸⁶ You must make sure that you are not responding differently to a lease violation because you believe someone in the household is a survivor of DVDVSAS. In the case of a termination or eviction, PHAs and O/As must comply with 24 CFR 5.2005(d)(2), which provides:

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

See PIH notice, pg.9, and Multifamily notice, beginning on pg. 11.

specific programmatic procedures must be followed regarding notice and the manner of service, as well as state and local law.⁸⁷ Also, any housing provider covered by VAWA must include the VAWA Notice of Occupancy Rights under VAWA (form HUD-5380) and HUD's Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (form HUD-5382). Also, please see Question 3 in B., Notice Requirements During Occupancy, Termination of Assistance and Termination of Tenancy in Addition to During the Application Process as discussed in Section 2 of this Chapter for sample language to include in the letter itself regarding VAWA and documentation requirements. In addition, all lease violation notices should inform the individual of your obligation to provide reasonable accommodation if the negative tenancy related behavior is connected to a disability and tell the tenant how to request a reasonable accommodation if they need it. While the statutes and regulations for non-MassHousing properties do not specifically require notice of the right to reasonable accommodation to be included in a lease violation notice,⁸⁸ it is important to note that the Massachusetts Supreme Judicial Court denied an eviction for lack of such efforts to try a reasonable accommodation.⁸⁹ It is also a way to be proactive, avoid litigation, and preserve tenancies which reduces turnovers.

⁸⁷ For example, multi-family sites covered by HUD Handbook should review Par. 8-13 B., beginning on pg. 8-15.

⁸⁸ Many advocates believe that the general requirement in federal law is to inform all applicants and tenants about the law and your obligation to comply with the law includes a notice under these circumstances. See 28 C.F.R. 35.106 and 24 C.F.R. 8.54. Assisted housing providers financed by HUD are required to include in the eviction notice, a statement that people with disabilities have the right to request reasonable accommodation to participate in the hearing process. HUD Handbook 4350.3 REV 1, paragraph 8-13 B. 2(5), page 8-15. Also, PHAs are required to provide ongoing notification of the right to a reasonable accommodation to participate in hearings and other matters. See 24 CFR § 966.7 Accommodation of persons with disabilities.

⁸⁹ See, *Citywide Associates v. Penfield*, No. 89-SP-9147-S, Hampden Division of the Housing Court Department (4/21/89), *aff'd*, 409 Mass. 140 (1991). Also see *Housing Authority of City of Bangor v. Maheux*, 748 A.2d 474(Me.2000); *St. George Villa Associates*, and *St. George Apartments v. Barnhurst*, No

The lease violation notice may also include a statement that you have information about services available from a resident service coordinator, if any, or from local agencies or groups. Including such information in lease violation notices or eviction notices may encourage a survivor to reach out. It is also evidence that the tenant was informed as to possible assistance

NOTE: All written (or alternate format) communications with applicants and residents **MUST** contain a disability non-discrimination statement as described in Exhibit 2-3 of HUD 4350.3 Rev 1 in the Appendix for any site that receives federal dollars. Other protected classes under federal or Massachusetts law include the following: race, color, religion, national origin, creed, ancestry, sex, sexual orientation, gender identity, age, familial status, veteran status, marital status, receipt of public assistance or housing subsidy.⁹⁰ Your locality may also have additional covered classes. Only disability is required to be mentioned, but you may wish to include all covered classes in one place. Also, remember that you may need to translate the lease violation notice into a different language for tenants whose primary language is not English in accordance with your obligation to provide meaningful access to residents with Limited English Proficiency.⁹¹

9605 00683 (EV), (5th Dist. Wash. Cty. Utah Aug. 1996); *Roe v. Housing Authority*, 909 F.Supp. 814 (D. Colo. 1995); and *Roe v. Sugar River Mills Assoc.*, 820 F.Supp. 636 (D.N.H. 1993). Also see *Shkolnik*. In this case the judge indicates consideration of reasonable accommodation occurred prior to eviction although tenant at various points denied lease violating behavior.

⁹⁰ See for state law G.L. c. 151B, §4 at <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151B/Section4> and MCAD regulations at 804 CMR 02.0 at https://www.mass.gov/files/documents/2017/12/26/804-CMR-2_2.pdf

⁹¹ See 24 CFR Part 1 et, Title VI of the Civil Rights Act of 1964; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, August 11, 2000; **Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, Federal Register** / Vol. 72, No. 13 / Monday, January 22, 2007. Also

c. DVDVSAS Related to a Minor Lease Violation

If the individual tells you that the negative tenancy related behavior is a result of DVDVSAS:

- First and foremost, focus on your resident's safety, and ascertain what if anything the person would find helpful from you as a housing provider, including how the person would like you to communicate with them. This cannot be overstated. You do not want your well intentioned, but misguided actions to subject a tenant to danger. Also bear in mind as previously discussed in Chapter 1, page 20, the survivor is at most risk when they decide to leave;
- You are encouraged to again provide the survivor with the VAWA Notice of Occupancy Rights and certification form, to ensure that the person fully understands the rights and the protections afforded them.
- Follow your company's procedures, which must comply with VAWA, regarding obtaining documentation. You are not required to obtain any documentation and may instead choose to provide benefits to an individual based solely on the individual's verbal statement.
- If your standard policies and procedures is to require documentation that the person is a victim of DVDVSAS do so. Remember, if you require this you must put your request in writing (simply handing someone Form HUD-5382 is insufficient), you must permit that the information be provided within 14 **business days** after the date that the individual received the written request for documentation. You may extend this time as well.

please note that the Rural Development published their guidance Federal Register, Vol. 79, No. 229, Friday, November 28, 2014

- During the 14-**business day** period (and any granted extensions of that time) no adverse actions can be taken against the individual requesting VAWA protection. In the lease violation context, this means you cannot pursue the eviction during this time frame or terminate assistance, or any step towards the eviction.⁹²
- If the applicant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 **business days** after receiving the written request for that documentation, you may, but are not obligated to initiate termination of assistance or evict the tenant.⁹³ If the applicant provides the documentation, acknowledge receipt of the documentation in writing in a timely manner, in a manner that works for the resident. Documenting your communication with the victim is a good business practice, although as of this writing not a requirement.⁹⁴

If the applicant provides the information requested, review the documentation and determine if it documents the person’s status as a survivor of DVDVSAS and whether you can objectively determine

⁹² For example, HUD’s PIH Guidance provides, “PHAs must not schedule an eviction, grievance hearing, informal review, or informal hearing to take place during this time frame.” See pg.12.

⁹³ Your procedures may also include other protocols, including reaching out to the applicant or the advocate to ascertain the circumstances for the delay. Please remember that when doing so to be mindful not to place the victim at risk, e.g., the abuser may monitor communication methods. To mitigate risks, you should work with the victim to figure out acceptable delivery arrangements. It is also important to note that an applicant doesn’t waive their right to challenge the denial of assistance for failure to provide documentation of DVDVSAS within the requisite timeframe. The documentation and assertion of the disqualifying factor may be raised during an appeal or MassHousing Conference in the context of mitigating circumstances, and documentation presented.

⁹⁴ HUD has made this recommendation in its Multifamily Notice, VIII. Certification and Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, D. (pg.15) and stated that it intends to propose this change when it next updates the HUD Handbook 4350.3. It is also contained as a recommendation in the PIH Guidance on pg. 49.

the lease violating behavior (adverse factor) is a direct result of the DVDVSAS.

- It is important to remember the use of the words “a direct result” by a survivor are not necessary for a provider to make an objective, reasonable determination that a direct result between an adverse factor and DVDVSAS exists. The required use of this language or a survivor needing to spell out the connection is an unnecessary barrier. For example, in response to a noise complaint, a survivor writes: “my husband choked me and destroyed my phone” they have not articulated the nexus between the abuse and disturbance of the neighbors, but a rational inference can be made that the noise was related to abuse.
- If you need to clarify information with the tenant regarding the direct result analysis, do so.
- If you need additional information to make a determination regarding the direct result, request further information. You may offer the applicant to contact a third party (i.e. case worker, health care provider, law enforcement....) to obtain the requisite information regarding the direct result. The tenant doesn't have to agree. If the person agrees, obtain a signed release form. Remember, if you contact the third party, your inquiry must be limited to the purpose of the release, which is a straight forward inquiry: Is the reason for the termination of assistance or tenancy a direct result of the DVDVSAS?

Note: Remember, you cannot ask for any documentation about the DVDVSAS that is not in accordance with VAWA and implementing

regulations and guidance.⁹⁵ In deciding how to interpret the statute and regulation's silence on the types of acceptable documentation when establishing direct result, housing providers must be cognizant of the permitted use of self-certification to establish DVDVSAS status and to obtain remedies under VAWA, unless there is conflicting information. In many instances only a survivor will be able to self-certify to the direct result.

- If the direct result nexus is established, in accordance with your policies and practice, VAWA provides that you cannot terminate assistance or tenancy based on any factor that is a direct result of DVDVSAS. Please discuss with your attorney how you should proceed, including working with the tenant to determine how they will comply with the terms of the lease.
- Consider any reasonable accommodation request based on a resident's disability and if it is reasonable to believe that the reasonable accommodation would make lease compliance likely.
- Provide reasonable accommodation to persons with disabilities, including any reasonable accommodation that would enable an applicant with a disability to be lease-compliant.

⁹⁵ See 24 CFR 5.2007(b)(1).

Please note that both the PIH Guidance on pg. 15, and the Multifamily Notice on pg. 19, emphasize that O/As and PHAs cannot refuse to accept documentation which satisfies this requirement, and are prohibited from asking for additional documentation of victim status unless the submitted documentation contains conflicting information, including conflicting claims between two parties. The guidance further explains that housing providers are prohibited from engaging in any type of investigation to ascertain the validity of someone's claim that they are a victim (i.e. talking to other residents or the survivor's employer). However, a housing provider may receive reliable information from a source that it standardly receives for other legitimate reasons, such as safety at the site, information from, unrelated to a specific request, such as surveillance tapes and police/security reports. In such circumstances when the tenant subsequently does not submit third-party documentation, or the information contains conflicting information regarding the person is a victim of DVDVSAS, the O/A/PHA may deny VAWA protections and must notify the applicant or tenant.

- If no direct result is established, you must serve notice to the resident in accordance with specific requirements.⁹⁶
- A tenant who disagrees with an Owner's/Agent's/PHA's determination must use the program's appeal procedures or may contact the local HUD field office.⁹⁷

d. Reasonable Accommodation for a Minor Lease Violation

If the individual requests an accommodation as a means of ending the lease violation, consider the request, and provide it assuming you've established via your reasonable accommodation procedures:

- i. The person has a disability that meets the civil rights definition;
- ii. There is a nexus between the person's disability and the negative tenancy related behavior;
- iii. The accommodation doesn't pose a fundamental change in the program or an undue financial and administrative burden; and
- iv. The requested accommodation is likely to resolve the lease violation.

If you determine it is unreasonable, engage in an interactive dialogue with the resident to determine what if any accommodation is likely to enable the resident to be lease compliant and doesn't pose a fundamental change in the program or an undue financial and administrative burden. **The provision of reasonable accommodation**

⁹⁶ This obligation is discussed in 24 CFR 5.2005(b)(1). See HUD Multifamily Notice pg. 11 and PIH Notice pg. 13.

⁹⁷ See Multifamily Notice, pg. 11 which refers the O/A to HUD Handbook 4350.3, Chapter 8, Section 3) or provides that the survivor may contact the local HUD field office. Also see PIH Notice, pg. 8-9 which mentions only the appeal process.

does not require the lowering or waiving of essential lease requirements.⁹⁸

8. What can/must I do if a tenant engages in a major lease violation and asserts it is related to DVDVSAS?

No matter what the lease violation involves, you must determine whether it is a direct result of DVDVSAS, if requested.

Do not assume that because someone has a history of DVDVSAS, or you know or think you know that someone is a survivor of DVDVSAS, that the lease violation is / is not a direct result of the DVDVSAS. Follow the same procedures described in the previous question to ascertain if there is a direct result.

- a. If you determine the person is not a survivor or there is no direct result between DVDVSAS and the lease violation, you do not have to provide VAWA protections. You will need to notify the resident. You also still need to follow the programmatic rules regarding establishing material non-compliance with the lease, and eviction procedures.⁹⁹

Please remember that a survivor may still raise the VAWA defense in an eviction proceeding.

- b. If you determine the lease violation is a direct result of the DVDVSAS, determine if an “actual and imminent threat” to other

⁹⁸ For more information on this topic see for more information on this topic see MassHousing’s **Handbook on the Legal Obligations and Rights of Public and Assisted Housing Providers Under Federal and State Fair Housing Law for Applicants and Tenants with Disabilities** available on MassHousing’s website.

⁹⁹ For example, Multifamily housing providers must follow guidance in HUD Handbook 4350.3, Chapter 8-13, “Material Noncompliance with the Lease”.

tenants or those employed at or providing services to the property would be present if that tenant or lawful occupant is not evicted or terminated from assistance.¹⁰⁰ This is a very high threshold and is discussed in more detail below.

- If you determine there is an “actual and imminent threat” contact your attorney, if you haven’t already, to determine how to proceed.
- If you have determined that there is a direct result between the DVDVSAS and the lease violation but there is no “actual and imminent threat”, a housing provider covered under VAWA must not evict the person or terminate their assistance.

This does not mean the resident is not responsible for ongoing lease obligations, such as rent payment or complying with recertification requirements. What it does mean is that the housing provider will need to actively work out a plan with the tenant to enable the person to comply with the terms of the lease. It may also mean that a housing provider will need to do so on more than one occasion for the same type of a lease violation. An inability to comply with the terms of the lease moving forward, with or without assistance from the housing provider, means to a housing provider that the tenant is not otherwise qualified to live in housing. In such instances, it is recommended that the housing provider contact their attorney (if they haven’t already) and decide what to do and when to do it.

¹⁰⁰ “*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.” See 24 CFR 5.2005(d)(3).

For example, after repeated attempts to work with a survivor on non-payment of rent issue directly related to DVDVSAS, a housing provider and the attorney may choose to go to court **with the goal of preserving someone's tenancy** and request a judge to assist in supportive services, or, arranging a re-payee. Again, the focus must be an interactive dialogue to determine what will solve the negative tenancy related behavior which is a direct result of the DVDVSAS to enable the survivor to comply with the lease.

9. What does a housing provider have to do to demonstrate that failing to evict or terminate a resident's assistance poses an actual and imminent threat to other tenants or employees at the property?

This is a high threshold for a housing provider to satisfy and should only be used by a covered housing provider if there are no other actions or remedies to reduce or eliminate the threat. This determination must be based on objective evidence such as words, gestures, and actions, rather than based on assumptions about DVDVSAS.

HUD further provides that to make such a determination, housing providers consider the following factors:

- a. The duration of the risk;
- b. The nature and severity of the potential harm;
- c. The likelihood that the potential harm will occur, and
- d. The length of time before the potential harm would occur.¹⁰¹

¹⁰¹ This type of an analysis is not new to housing providers. It is similar to the process used to determine if a person with a disability poses a direct threat. In the case of a person with a disability, the Fair Housing Act prohibits excluding someone with a disability based on fear, speculation, or stereotype about a

HUD emphasizes that eviction under these circumstances should be a last resort and has provided the following list of some possible actions a covered housing provider can take to reduce or eliminate the threat:¹⁰²

- a. Barring the perpetrator from the property (where state and local laws permit);
- b. Changing the victim's locks (pursuant to the O/A's lock replacement policy and state and local laws);
- c. Installing basic security features (e.g., better lighting or an alarm);
- d. Encouraging the victim to seek an emergency transfer;
- e. Allowing an early lease termination;

particular disability or persons with disabilities in general. The law requires an individualized assessment based on reliable objective determination which must consider; (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. See **JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT**, May 17, 2004, Question 5., page 5 and page 6. There are also a series of cases that require a housing provider to consider reasonable accommodation when an eviction of a tenant with a disability is based on their violent actions. See *Roe v. Sugar River Mills Associates*, 820 F.Supp. 636 (D.N.H. 1993) (owner can only treat a tenant with a disability as exempt from protections under the Fair Housing Amendments Act, as a direct threat to health and safety of other tenants, if the owner has first made reasonable efforts to accommodate his or her disability); *Roe v Housing Authority of City of Boulder*, 909 F. Supp. 814(DColo 1995) (housing authority cannot evict a tenant with a disability based on violent behavior when it hadn't tried to provide a reasonable accommodation and unless no reasonable accommodation would eliminate or acceptably minimize the risk); *Arnold Construction, AL.L.C. v. Hicks*, 621 N.W.2d 171 (S.D. 2001); *Cornwell & Taylor LLP v. Moore*, 2000 WL 1887528, (Minn. App. 20001) (The landlord failed to show that no reasonable accommodation would eliminate or acceptably minimize any risk the tenant might pose); *Douglas v. Kriegsfeld*, 884 A.2d 1109 (D.C. 2005) (This case permitted an eviction of a tenant with a disability after factual consideration on Reasonable accommodation and the determination that no reasonable accommodation could ameliorate the situation sufficiently to protect the health and safety of others). A more recent case which cited many of the cases listed above for support is the *Boston Housing Authority v. Bridgewater* (452 Mass. 833.842-843, 898 N.E.2d 848 (2009))(hereinafter *Bridgewater*) (When a tenant poses a direct threat to others and requests a reasonable accommodation, the housing provider must either show "the failure of an accommodation instituted at the request of the tenant" or show that "no accommodation will acceptably minimize the risk the tenant poses to other residents."

¹⁰² See 24 CFR 5.2005(d)(4), PIH Notice, beginning pg. 36, and Multifamily Notice, beginning pg. 38.

- f. Allowing the victim to arrange for temporary absence from the assisted unit;
- g. Helping the victim access available services and support (e.g., providing information for a local victim service provider and civil legal assistance providers, to help the victim get any necessary court orders), and/or
- h. Working with police and victim service providers to develop a safety plan for the property and a plan of action for the victim.

10. Can a resident request VAWA protection once an eviction process has been initiated?

Yes. A person can request a housing provider to consider the direct result between DVDVSAS and the lease violation at any point during the eviction process. Likewise, a person may request a reasonable accommodation at any point in an eviction procedure. In both instances, the request triggers an owner to take action. In the case of DVDVSAS, an owner/agent/PHA will need to follow its policy on whether it requires written documentation of the DVDVSAS, and the resident will need to provide documentation that the lease violating behavior is a direct result of the DVDVSAS, and based on the owner's policy, what if any documentation will be required to establish the resident will be able to comply with the terms in the future.

If a resident requests a reasonable accommodation any time during the eviction process, you must consider whether the individual has a disability, if there is a nexus between the person's disability and the negative tenancy

related behavior and if yes, whether a reasonable accommodation will enable the tenant to comply with the terms of the lease.¹⁰³

If the disability and/or connection to the lease problem are not obvious or known to you, you have the right to ask the tenant to document their disability status, the connection between the disability and the lease violation, and that the accommodation is likely to enable them to comply with the lease. You may request evidence that the person is willing to follow any proposed plan. Your individualized assessment of the situation may also consider the seriousness of the lease violation(s) and whether a repeat violation would seriously affect others or affect your legal responsibilities to provide decent, safe and sanitary housing.¹⁰⁴ If you believe that the accommodation proposed by the resident will result in a fundamental alteration of the program, an undue financial and administrative burden, or will not enable the tenant to comply with the terms of the lease, then engage in an interactive dialogue to determine if another accommodation is reasonable (not pose a fundamental change in the program or an undue financial and administrative burden) and enable the tenant to comply with the terms of the lease. If no alternative exists that satisfies these parameters, proceed with the eviction after you have consulted your attorney. However, if you do this, be prepared to offer objective reasons for your decision. It is important that you keep good records of your analysis, and the factors you considered because a **determination whether an accommodation is reasonable is fact-specific and will be resolved on a case-by-case basis.**¹⁰⁵

¹⁰³ See *Bridgewaters*, 452 Mass. 833, 842-843, 898 N.E.2d 848 (2009) *Douglas v. Kriegsfeld Corporation*, 884 A.2d 1109, 1121 (D.C.2005); *Housing Auth. Of Bangor v. Maheux*, 748 A.2d 474, 476 (Me. 2000); *Andover Housing Authority vs. Shkolnik, (hereafter, Shkolnik)*, 443 Mass. 300, 820 N.E.2d 815 (2005); *Radecki v. Joura*, 114 F.3d 115, 116-17 (8th Cir. 1997).

¹⁰⁴ For example, *Bridgewaters*, cited herein.

¹⁰⁵ See *Shkolnik*, 443 Mass.300, 306(2005), cited herein.

11. If I take no further action after a 14-day or 30-day notice because a tenant's non-compliance was a direct result of DVDVSAS and they assured me they would be able to comply with the lease going forward, what should I do if the tenant starts having lease problems again?

Consult your lawyer. There are no limits on the number of times someone may invoke VAWA protections. However, do not assume that the lease violation is a direct result of DVDVSAS simply because historically a lease violation was a direct result. Tenants must abide by the lease.

12. If I take no further action after a 14-day or 30-day notice because a tenant tells me they will not let their abuser back into the unit, but does, what can I do?

Consult your lawyer. Keep in mind a housing provider cannot require a tenant not to have a relationship with their abuser or penalize the person in any way for doing so. It is also important to remember that it is quite possible that the survivor needed the abuser there for some reason or that the survivor was coerced or threatened to do this, or it was done against their will. The key is whether there are continued lease violations, and what the lease violation consists of. For example, the owner may evict if the owner can demonstrate through objective factors that an actual and imminent threat to other tenants or staff exists if the tenant or lawful occupant is not evicted. As discussed in Question 9 in this section, this is a high standard. **This is an example, however, of where you should contact your attorney and they may consider using an injunction under M.G. 121B 32c.**

13. Can I evict a tenant for failing to take out a restraining order, cooperating with a do not trespass order or letting a perpetrator back into a unit?

No. Nor may a housing provider require a survivor to honor a restraining order the survivor has against the perpetrator of abuse. A restraining order is against a perpetrator; not the survivor. As such, only a perpetrator can violate a restraining order.¹⁰⁶

Consult your attorney regarding enforcing a restraining order that you are aware of by refusing the perpetrator access to the property.

14. Should I refer a tenant to legal services if I start an eviction?

This is up to you. If you want to help a tenant try to save their tenancy, then by all means refer the tenant to legal services. Sometimes a lawyer can facilitate services necessary to correct lease problems if needed as well. As such, it is a good business practice to provide tenants information about the local legal aid programs or the Civil Legal Assistance for Victims of Crime (CLAVC) program.¹⁰⁷

15. What can I do to ensure the well-being of other tenants if a DVDVSAS situation affects other tenants?

Make sure that tenants know they should call the police if they feel threatened in any way. If there is potential violence or danger, you should also contact the police in accordance with your company policy. In addition,

¹⁰⁶ Please see <https://www.masslegalhelp.org/domestic-violence/wdwgfh/chapter6-209a-protective-orders> for more information on this topic.

¹⁰⁷ For information on Legal Aid in MA see <https://mlac.org/help/> and for information on the Civil Legal Assistance for Victims of Crime (CLAVC) program in MA see <https://massclavc.org/>

you can increase security if you think it is necessary. **Please contact your attorney for other suggestions based on the circumstances of the situation.**

E. Remedies

An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking” and/or VAWA address specific remedies that are available to survivors of DVDVSAS who are tenants. These include changing locks, early termination of a lease, lease bifurcation and an emergency transfer. These are addressed below:

Changing Locks

Please note that this is an area where state law, *An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking*,¹⁰⁸ which as a reminder applies to all housing providers in the state of Massachusetts (market, tax credit, public housing, multifamily, state-funded), requires housing providers to do more than VAWA requires. VAWA discusses lock changes only in the context of lease bifurcation¹⁰⁹, and as a method a provider may consider to reduce or eliminate an “actual and imminent threat” in the context of determining whether to evict a survivor of DVDVSAS.¹¹⁰ VAWA doesn’t specifically address an Owner/PHA’s obligation to take steps to reduce the threat of further violence against a survivor, including changing locks.¹¹¹ However, it is standard operating procedure for affordable housing providers to change a unit’s lock at the request of a tenant, and

¹⁰⁸ See G.L. c.186 §§23-29. See <https://malegislature.gov/Laws/GeneralLaws/PartII/TitleI/Chapter186>

¹⁰⁹ See **Multifamily VAWA Questions**, #35.

¹¹⁰ See **PIH Notice**, pg. 37, **Multifamily Notice**, pg. 39.

¹¹¹ See **PIH Notice**, pg. 28, **Multifamily Notice**, pg. 32.

to have a policy addressing lock changes. It is also not unusual in situations involving DVDVSAS or other safety concerns for the housing provider to pay for lock changes.

1. Is an owner/agent/PHA required to permit a survivor of DVDVSAS to have their locks changed?

Yes.¹¹² An owner is required at the request of a tenant, co-tenant or a household member (18 years of age or older, or an emancipated minor) to change the locks of the unit in which the person lives if the person reasonably believes they are under an imminent threat of domestic violence, rape, sexual assault or stalking at the premise.¹¹³

2. Can owner/PHA require a victim to provide documentation of their status as a victim of Domestic Violence, Rape, Sexual Assault or Stalking before changing the locks?

The housing provider is required to make a good faith effort to change the locks within two business days or give the tenant, co-tenant or household member permission to change the locks, which presumably means whether or not documentation is provided.¹¹⁴ However, the owner may request

¹¹² See M.G. c. 186, Section 26

¹¹³ *IBID.* There are financial penalties for failing to comply with this. Subsection (g) provides:
An owner who takes action to prevent the tenant, co-tenant or household member who has complied with subsection (b) from changing the locks, or any owner who changes the locks but fails to make a good faith effort to provide a key to the tenant, co-tenant or household member requesting the lock change as provided in subsection (d), shall be liable for actual and consequential damages or 3 months' rent, whichever is greater, and the costs of the action, including reasonable attorneys' fees, all of which may be applied in setoff or recoupment against any claim for rent owed or owing for use and occupancy. Damages shall not be imposed if the court determines that the owner acted in good faith.

¹¹⁴ See [Chapter 186, Section 24](#) and [Chapter 186, Section 26](#), which provides:
"An owner shall have the right to request, in good faith, proof of the status as a victim of domestic violence, rape, sexual assault or stalking, including the name of the perpetrator, if known as provided in subsection (e) of section 24."

documentation, although it is not a requirement or a good business practice except in circumstances when the perpetrator lives with the victim and is a party to the lease (vs. a live-in aide). Waiting for documentation to change a lock to a unit is an unnecessary delay in preventing potential repeated violence against a victim.

A housing provider who requests documentation must accept the following types of documentation regarding a person's status as a victim of domestic violence, rape, sexual assault or stalking¹¹⁵:

- a. A copy of a valid protection order under chapter 209A¹¹⁶ or 258E¹¹⁷ obtained by the tenant, co-tenant or member of the household;
- b. A record from a federal, state or local court or law enforcement of an act of domestic violence, rape, sexual assault or stalking and the name of the perpetrator if known; or
- c. A written verification from a qualified third party to whom the person reported the domestic violence, rape, sexual assault or stalking (including domestic violence and sexual assault counselors, licensed social workers and mental health professionals, and various law enforcement professionals which includes:
 - The name of the organization/provider
 - The date of the domestic violence, rape, sexual assault or stalking; and

¹¹⁵ IBID.

¹¹⁶ This is an order prohibiting further contact and/or abuse in situations where victims of violence who are family members, reside in the same household or have a substantial dating relationship with the perpetrator can obtain.

¹¹⁷ This is a harassment prevention order prohibiting further contact and/or harassment against victims of criminal harassment, stalking and sexual assault, regardless of their relationship to the perpetrator.

- The name of the perpetrator if known; and
- The sworn statement of any adult victims that the acts in the verification are true.¹¹⁸

3. How quickly does an owner/PHA need to change the locks or permit a tenant to do so?

A housing provider must within two (2) business days of the request make a good faith effort to change the locks **or** give the tenant permission to change the locks. The failure of a housing provider to change the locks within two business days gives the tenant automatic “permission” to do so on their own.

The housing provider must provide the new key as soon as possible, but no later than within the same timeframe (two (2) business days) in which the locks must be changed.

- If the O/A/PHA doesn’t respond within two (2) business days of a resident’s request, a resident may change the lock, provided:
 - The locks are installed in a workmanlike (i.e., professional) manner with locks of similar or better quality than the original or the housing provider can replace the locks and charge for the costs.
 - The resident must make a good faith effort to give a copy of the key to the housing provider within two business days after they change the locks, if the rental agreement requires that the owner retain a key to the leased residential premises.

¹¹⁸ G.L. c. 186, section 24.

If the locks are changed a survivor is prohibited from voluntarily giving a key to a perpetrator.¹¹⁹

4. What should a PHA/Owner do if the perpetrator lives with the survivor?

Contact your attorney immediately. In such cases Massachusetts state law provides that the housing provider may change the locks in accordance with this law and deny a key to the alleged perpetrator upon receipt of a request to change the locks when specific documentation is provided. The following is verbatim from the statute:

- i. A copy of a valid protective order issued under chapter 209A or chapter 258E issued against a tenant, co-tenant or household member; or
- ii. A record from a federal, state or local court or law enforcement, indicating that a tenant, co-tenant or household member thereof poses an imminent threat of domestic violence, rape, sexual assault or stalking.¹²⁰

An owner who refuses to provide a key to any person based on the reasonable belief that such person is the perpetrator of alleged domestic violence, rape, sexual assault or stalking, shall not be liable for such refusal.¹²¹

¹¹⁹ G.L. c. 186, section 26(f).

¹²⁰ See G.L. c. 186, section 26(c).

¹²¹ See G.L. c. 186, section 26(f).

5. Does an Owner/PHA have to keep confidential any information provided regarding the status of someone as a victim?

Yes.¹²² The importance of confidentiality cannot be overstated and has previously been discussed. A PHA/Owner cannot discuss the information with anyone inquiring why the locks were changed (including other staff), unless the provider has written permission from the victim to do so or unless required by court order, government regulation or governmental audit requirements.

6. Can an owner charge for the lock change?

Yes.

- Housing provider may charge a reasonable customary fee for the expense, although many housing providers cover the cost in situations involving DVDVSAS.
- The expense to resident may be reimbursed to the victim through the Massachusetts Victims of Violent Crime Compensation Program¹²³ in certain circumstances or attributed to the perpetrator in accordance with a court order.¹²⁴

¹²² See [G.L.c. 186, § 24\(f\)](#).

¹²³ See Victim Compensation website <http://www.mass.gov/ago/public-safety/resources-for-victims/victims-of-violentcrime/victim-compensation.html>.

¹²⁴ In accordance with a 258E Harassment and Prevention Order, the perpetrator may be required to pay for the locks to be changed. See <https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleIV/Chapter258E/Section9>.

F. Early Termination of Tenancy

As a result of DVDVSAS, survivors may need to terminate their tenancy before a lease permits them to do so. This section explores Owner's/PHA's obligations when this occurs. Please note that this is another area where the protections afforded under MA state law, An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking are particularly important. Remember, this law applies to all types of housing and all tenants in MA (market, tax credit, public housing, multifamily, state-funded).

1. Do VAWA and An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking address early Termination of Tenancy as a remedy?

HUD's guidance and regulations mention early lease termination in limited context:

- In re to what actions an Owner/PHA should consider to reduce or eliminate an "actual and imminent" threat that a tenant or lawful occupant would pose to other tenants or those employed at or providing services to the property if not evicted or terminated from assistance;¹²⁵
- Implicitly in the context of the obligation to provide emergency transfers; and
- In the regulations for the tenant-based section 8 program early

¹²⁵ **PIH Notice**, pg. 36 and **Multifamily Notice**, pg. 39.

termination provision.¹²⁶ Likewise, HUD addresses this issue in a few other programs.¹²⁷

¹²⁶ See [24 C.F.R. 982.354\(b\)\(4\)](#). In accordance with this provision HUD's PIH guidance pg. 40 provides the following:

The PHA may not terminate assistance if the family moves out of the unit with or without prior notification as required by 24 CFR 982.354, in violation of the lease in order to protect the health or safety of the victim, as the victim reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit.

Similarly, if the family moves out of the assisted unit in violation of the lease in order to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit, and has otherwise complied with all other obligation under the HCV program, the family may receive a voucher from the PHA and move to another jurisdiction. (See 24 CFR 982.353(b).) However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move is not required to believe that they were threatened with imminent harm from further violence if they remained in the dwelling unit.

State or local law may have protections for victims beyond those in VAWA or HUD regulations. Nothing in VAWA should be construed to supersede any provision of any Federal, State, or local law that provides greater protection than VAWA for victims of domestic violence, dating violence, sexual assault, or stalking; as such, owners in jurisdictions that provide greater protections for victims must grant those protections for victims.

When the entire family moves from the contract unit for any reason, including to protect the health or safety of the family member that is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, the HAP contract terminates automatically. The PHA must not pay HAP to the owner of the previously occupied unit once the family moves out.

If the perpetrator remains in the unit, the PHA continues to pay the owner until the PHA terminates the perpetrator from the HCV program.

If the HAP contract terminates for any reason, the lease terminates automatically. (See forms HUD-52641, 52642, and 52530(c).) If a family moves out of the property at any time during the month, the owner may keep the housing assistance payment (HAP) for the month when the family moves out of the unit (24 CFR 982.311(d)(1)). In the event the PHA executes a new HAP contract with a new owner after the victim moves out of the original unit to protect his or her health or safety, the PHA must not disclose the victim's new address (or any other information collected on the new HAP contract) to the original owner, as the information collected in the HAP contract is protected by the Privacy Act.

¹²⁷ In addition, under this rule's HOME regulations at §92.359 (e), HOPWA regulations at §574.604(f), CoC regulations at § 578.99(j), and HTF regulations at §93.359(e) leases and occupancy agreements must include a provision that tenants may terminate their leases without penalty if they meet the conditions

However, the final rule and HUD guidance doesn't address early lease termination for the vast majority of their programs, including the important question of financial obligations when a tenant terminates a lease.

In contrast, a central component of the protections and remedies for victims contained in An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking is early lease termination.¹²⁸

2. When is an owner obligated to permit a survivor to terminate a lease early in accordance with MA state law?

When three threshold eligibility criteria are satisfied:

- The tenant or household member has experienced domestic or sexual abuse in the past three months, or is in imminent fear of serious physical harm;
- The tenant requests termination of the tenancy to the owner in writing; and
- The tenant vacates the unit within three months of giving the early termination notice.¹²⁹

for an emergency transfer under this rule. See 80744 **Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations for a discussion of this.

¹²⁸ See **Section 24: Termination of rental agreement or tenancy by victim of domestic violence, rape, sexual assault or stalking** of G.Lc 186.

¹²⁹ Section 24 (b) & (c) of G.Lc 186.

3. What documentation is an owner permitted to require a victim to provide to trigger the early termination of a lease under An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking?

An owner may, but is not required to, request proof be provided to show:

- a. The person was a victim of domestic violence, rape, sexual assault or stalking, within the prior 3 months; or
- b. A tenant or co-tenant is reasonably in fear of imminent serious physical harm.

In determining what documentation satisfies the threshold, focus on what the statute explicitly permits you to focus on. In other words, what you need to know, and not what you may want to know. For example, in regard to early termination, there is no mention in the statute of a housing provider being able to make inquiries regarding where the violence took place, or who the perpetrator is, whether the perpetrator lives with the victim, or whether a housing provider had any previous knowledge of the abuse.¹³⁰

A housing provider, may but is not required to obtain documentation of the domestic violence, rape, sexual assault or stalking.¹³¹ A housing provider who requests documentation must accept any of the following types of documentation regarding a person's status as a victim of domestic violence, rape, sexual assault or stalking¹³²:

¹³⁰ For example, Where the violence took place, the identity of the perpetrator, whether the perpetrator is part of the household are all irrelevant to whether a tenant qualifies for this remedy under state law.

¹³¹ See [Chapter 186, Section 26](#), which provides:
"An owner shall have the right to request, in good faith, proof of the status as a victim of domestic violence, rape, sexual assault or stalking, including the name of the perpetrator, if known as provided in subsection (e) of section 24."

¹³² IBID.

- a. A copy of a valid protection order under chapter 209A¹³³ or 258E¹³⁴ obtained by the tenant, co-tenant or member of the household;
- b. A record from a federal, state or local court or law enforcement of an act of domestic violence, rape, sexual assault or stalking and the name of the perpetrator if known; or
- c. A written verification from a qualified third party to whom the person reported the domestic violence, rape, sexual assault or stalking (including domestic violence and sexual assault counselors, licensed social workers and mental health professionals, and various law enforcement professionals which includes:
 - The name of the organization/provider
 - The date of the domestic violence, rape, sexual assault or stalking; and
 - The name of the perpetrator if known; and
 - The sworn statement of any adult victims that the acts in the verification are true.¹³⁵

4. Does an owner/PHA have to keep confidential any information provided regarding the status of someone as a victim?

Yes.¹³⁶ The importance of confidentiality cannot be overstated and has previously been discussed. A PHA/Owner cannot discuss the information with anyone, even another tenant, unless the PHA/Owner has written permission from the victim to

¹³³ This is an order prohibiting further contact and/or abuse in situations where victims of violence who are family members, reside in the same household or have a substantial dating relationship with the perpetrator can obtain.

¹³⁴ This is a harassment prevention order prohibiting further contact and/or harassment against victims of criminal harassment, stalking and sexual assault, regardless of their relationship to the perpetrator.

¹³⁵ See G.L. c. 186, section 24.

¹³⁶ See G.L. c. 186, § 24(f).

do so or unless required by court order, government regulation or governmental audit requirements.

5. If a tenant requests early termination of a lease under An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking when does tenancy terminate?

Tenancy terminates on the “quitting date” which is either the date that a tenant surrenders their interest in the unit, or the date they have informed the landlord that they have left, whichever is later.

- If the tenant already vacated the unit, and then gave notice to the O/A/PHA of their intent to abandon the unit and not return, the quitting date is the date that they gave notice. For example, if a survivor left on the 1st of the month but told their landlord they vacated on the 20th of the month, the quitting date is the 20th of the month.
- If the tenant gives notice prior to vacating the unit, the quitting date is the actual date that they vacate after providing the notice. This is called turning over possession of the unit. For example, if the tenant gives notice on the first of the month, but they vacate on the 15th of the month, the quitting date is the 15th of the month.

6. If a tenant’s request for early termination of a lease under An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking is granted, are co-tenants’ rental obligations terminated as well?

MA law does not terminate the rental obligations of co-tenants who are not qualified to terminate their leases for safety reasons. This means, the remaining

tenant(s) continues to be bound by the terms of the tenancy with the Owner/PHA.

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- If the co-tenants were jointly and severally liable under the lease (which is very common), the remaining tenant continues to be liable for the entire monthly rent after the survivor vacates.
- If roommates had individual tenancy agreements with the O/A, the remaining roommate's share would stay the same after the survivor vacated, and the O/A would receive less rent for the unit until a replacement tenant moves in.

7. If a tenant's request's for early termination of a lease under An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking, until when is the resident responsible for rent?

Tenants are responsible for rent through the "quitting date" but not after.¹³⁸ The intent of the statute, as expressed by a number of legislators, is that tenants would not be liable after the quitting date (which is either the date that a tenant

¹³⁷ See G.L. c. 186, § 24(d).

¹³⁸ See G.L. c. 186, § 24(c). This provision provides:

A tenant or co-tenant to whom this section applies shall be discharged from liability for rent or use and occupancy for 30 days or 1 full rental period after the quitting date, whichever last occurs, to the extent that a rental agreement and applicable law may otherwise impose such liability beyond the quitting date. Such tenant or co-tenant shall be entitled to a refund of any prepaid rent for any period thereafter. The tenant or co-tenant shall receive a full and specific statement of the basis for retaining any of the security deposit together with any refund due in compliance with section 15B within 30 days of the conclusion of the tenancy and the delivery of full possession of the leased premises by all occupants to the landlord.

Also please be reminded that some HUD program rules specific address early termination. Under the final rule's HOME regulations at § 92.359 (e), HOPWA regulations at § 574.604(f), CoC regulations at § 578.99(j), and HTF regulations at § 93.359(e) leases and occupancy agreements must include a provision that tenants may terminate their leases without penalty if they meet the conditions for an emergency transfer under this rule. See **80744 Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations for a discussion of this.

surrenders their interest in the unit, or the date they have informed the landlord that they have left, whichever is later) and could therefore pay rent somewhere else.¹³⁹ For example, if a survivor/tenant moves out on July 15th and gives notice on July 31, they would be responsible for the rent through the quitting date, which in this example is July 31. They would not be liable for August rent.

Some housing providers (due to confusion in wording of the statute) request tenants to pay for the month after the “quitting date,” which **contradicts the intent of the statute** (no penalty for early termination), and places a huge financial burden on a survivor, who would thus be required to simultaneously pay rent for two units.¹⁴⁰ Please consult your attorney if this situation arises.

Also, there is confusion regarding what occurs if there are co-tenants and only one tenant is a survivor and vacates. If the remaining tenant and the person who vacated were on the same lease, the remaining tenant continues to be liable for the entire monthly rent after the survivor vacates. This means, for example, if the survivor vacated on July 31st, the remaining tenant on the lease would be responsible for the full rent on August 1. In contrast, if a housing provider had individual tenancy agreements with the people living in the unit, which is not unusual in market housing with roommates, and a survivor moved out due, the

¹³⁹ For an excellent discussion of legislative history, see Early Lease Termination Under G.L. c. 186, § 24: An Essential Escape Route for Tenants Who Are Facing Domestic Violence, Sexual Assault, or Stalking by Julia Devanthery, Boston Bar Journal, August 9, 2017. See <https://bostonbarjournal.com/2017/08/09/early-lease-termination-under-g-l-c-186-§-24-an-essential-escape-route-for-tenants-who-are-facing-domestic-violence-sexual-assault-or-stalking/>

¹⁴⁰ For an excellent discussion of these issues and the early termination provision, see Early Lease Termination Under G.L. c. 186, § 24: An Essential Escape Route for Tenants Who Are Facing Domestic Violence, Sexual Assault, or Stalking by Julia Devanthery, Boston Bar Journal, August 9, 2017. See <https://bostonbarjournal.com/2017/08/09/early-lease-termination-under-g-l-c-186-§-24-an-essential-escape-route-for-tenants-who-are-facing-domestic-violence-sexual-assault-or-stalking/>

remaining roommate would not be responsible for the survivor's share of the rent. Rather, the remaining roommate's share of the rent would stay the same as it was before the survivor vacated, and the housing provider would receive less rent for the unit until a replacement tenant moves in. For example, if a housing provider signed separate leases with two roommates and each roommate was responsible for paying \$800 in rent per month, a remaining roommate would only be responsible for paying \$800, not \$1,600 for rent if their roommate vacates for safety reasons in accordance with **AN ACT RELATIVE TO HOUSING RIGHTS FOR VICTIMS OF DOMESTIC VIOLENCE, RAPE, SEXUAL ASSAULT AND STALKING.**¹⁴¹

8. If a tenant's request for early termination of a lease under An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking is granted, does a housing provider have to refund any pre-paid rent and security deposit?

Yes. After termination, owners are responsible for refunding the tenant any pre-paid rent, (including the last month's rent). The landlord must also return the survivor's security deposit within 30 days after tenancy ends in accordance with the provisions contained in state law.¹⁴²

9. What do I do if a resident makes a request for early termination and they haven't completed the minimal 6-month lease term in the tax credit program necessary to establish non-transiency?

¹⁴¹ See G.L. c. 186, § 24(d).

¹⁴² See G.L. c. 186, § 15B. and G.L. c. 186, § 24(c). What occurs if there are remaining roommates will depend on a number of factors, including whether the roommates had separate leases, or if the parties were on the same lease if they paid their last month rent and security deposit separately. Housing providers and advocates should consult an attorney who has an expertise in this area of the law.

Process the request as you would any other request for early termination. You cannot deny a request because of any program rule requiring a minimum lease term. Document the file to establish that the reason for early termination was unforeseen and due to extenuating circumstances. Use the application and interview, both of which must ask if the applicant anticipates any changes in household composition over the next 12 months, and intent to comply with the minimum lease requirement. Do not hesitate to contact the monitoring agency, Spectrum, to discuss ways to document the file without breaching confidentiality.

G. Bifurcation of a Lease

A lease is a binding agreement between the Owner/PHA and a tenant or tenants. Not all tenants who are on a lease sign the lease. Such individuals are still considered lease holders and have rights to the unit under the lease. In some cases of DVDVSAS, a survivor may request to remain in the unit and have a housing provider remove their abuser from the lease when the abuser will not voluntarily leave the unit in order to prevent further violence. Neither VAWA or an Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking require providers to split the lease and evict only one tenant at a survivor's request. An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking doesn't address lease bifurcation, whereas HUD's Final Rule implementing VAWA addresses this as an important option available to housing providers when trying to preserve housing options for survivors of DVDVSAS. Please note that although HUD's Final Rule presents lease bifurcation as an option for housing providers, rather than a requirement, the arbitrary withholding of bifurcation as a remedy for a survivor could be construed as discriminatory.

If a housing provider chooses to offer lease bifurcation as a remedy, the covered housing provider must follow any applicable regulations relating to lease

bifurcation.¹⁴³ These requirements are discussed below. Before proceeding, it is important to mention that nothing in our Massachusetts state law prevents an Owner/PHA from a single party eviction.

1. What are important things to remember when bifurcating a lease?

- In Massachusetts, to evict a tenant you must go to court. Contact your landlord/tenant attorney as soon as possible given the high importance of the survivor's safety to determine what programmatic procedures and notice requirements you must follow.
- If you are a HUD Multifamily housing provider¹⁴⁴ or PHA¹⁴⁵, you are required to comply with programmatic notice requirements. Again, contact your landlord-tenant attorney for guidance.
- In an eviction case, an alleged perpetrator has the right to review documentation regarding the grounds for the eviction, including evidence of domestic violence. This is an exception to the confidentiality requirement.¹⁴⁶ Please note, that although this is an exception, information regarding the temporary location of the victim, or the location of any services that the victim is receiving

¹⁴³ Most of HUD's programs follow the requirements contained in 24 CFR § 5.2009. In contrast, HOPWA follows 24 CFR 574.460; HOME follows 24 CFR 92.359; HTF follows 24 CFR 93.356; ESG follows 24 CFR 576.409; and CoC follows 24 CFR 578.75.

Also, lease bifurcation is not available to a PHA as a remedy in their voucher program, because the PHA doesn't control the lease, and Tenant-Based Section 8 assistance cannot be bifurcated. Instead, the PHA's family break-up policies will apply in situations where a household divides due to domestic violence, dating violence, sexual assault, or stalking. See 24 CFR § 982.315, regarding family break-up, which specifically requires that PHAs ensure that the victim retains assistance.

¹⁴⁴ See Par. 8-13 B., beginning on pg. 8-15 of HUD Handbook 4350.3. Also see 24 CFR 247.4(c).

¹⁴⁵ 24 CFR §966.4 (l)(3).

¹⁴⁶ 24 CFR 5.2007(c)(2).

arguably are not necessary for an alleged perpetrator's defense and must be maintained confidentially. Consult with your attorney regarding this.

- It is a good business practice to make sure the survivor knows the date (and time if possible) when the perpetrator is going to be given notice of the eviction. HUD also encourages housing providers to simultaneously provide the survivor contact information for local victim service providers. Doing this may facilitate safety planning.¹⁴⁷
- A survivor may change their mind in relation to wanting a lease to be bifurcated for one or more reasons, including but not limited to, they have reconciled with the perpetrator or fear the perpetrator's retaliation if they do not stop the lease bifurcation, in which case you will need to decide whether to pursue the eviction. If you pursue the eviction, the survivor may not be willing to testify, and requiring them to testify may escalate the violence. On the other hand, if you have sufficient evidence outside of their testimony, you may decide to move forward. Such situations will be very case specific and require you to consult with your site's attorney.
- When a lease holder is evicted, it may result in the need to determine if the remaining family members are eligible to remain in the unit based on program requirements.
 - The tenant may not qualify for the housing program; or
 - The tenant may qualify to remain in the unit but may not qualify for the specific size unit based on family composition, and a transfer may be necessary after the lease is bifurcated and an appropriately sized unit becomes available.

¹⁴⁷ PIH Notice, pg. 35.

- Due to the change in household compositions Multifamily Housing programs and PHAs will need to expeditiously conduct an Interim Recertification (IR) to determine eligibility (if applicable), the new rent, and if the resident needs to move to a smaller unit because they are now over-housed.
 - Remember to follow HUD rules regarding the effective date of the IR.¹⁴⁸
 - Do not count assets that are not accessible to the resident as a result of the violence.¹⁴⁹
 - If an Owner/Agent bifurcates the lease of a tenant living in a Project-Based Voucher unit or the lease of a Housing Choice Voucher holder:
 - It is a good business practice to notify the PHA prior to lease bifurcation so the PHA may offer to assist the tenant in obtaining services such as legal services and safety planning¹⁵⁰; and
 - It is a requirement that the Owner/Agent immediately notify the PHA of the change in the lease and provide a copy of all such changes to the PHA, although PHA approval is not required.¹⁵¹

¹⁴⁸ HUD Handbook 4350.3, Chapter 7, Section 2, beginning pg. 7-22.

¹⁴⁹ HUD Handbook 4350.3, Exhibit 5-1 B. 7., see https://www.hud.gov/sites/documents/DOC_35701.PDF

¹⁵⁰ **PIH Notice**, pg. 35

¹⁵¹ See 24 CFR 982.308(g) for tenant-based HCV and 24 CFR 983.256(e) for PBV.). Also see **PIH Notice**, pg. 35.

2. How long do remaining tenants have to establish eligibility (or find alternative housing) when a lease is bifurcated?

If a housing provider bifurcates a lease under VAWA, any remaining tenants who **had not already established eligibility for assistance** must be given a reasonable time period to demonstrate eligibility for housing assistance **or** find alternative housing following lease bifurcation. In many housing programs, this rule relating to lease bifurcation will be irrelevant because the family's eligibility is not based on any one family member, but rather the characteristics of the family as a whole. This is not the case for programs in which:

- The head, co-head or spouse must be 62 years of age or older or have a disability; or
- Rent may be pro-rated where not everyone in the family is a U.S. citizen or has eligible immigration status.¹⁵²

HUD has reviewed each housing program's governing statute and, in the Final Rule, provided a chart explaining why remaining tenants might not have established eligibility for a program, and the time frame in which a remaining family member must establish eligibility. As the chart illustrates, a housing provider must provide a tenant either the maximum time permitted by the program's governing statute, or, if there are no statutory prohibitions, at least 90 calendar days from the date of bifurcation of the lease or until expiration of the lease (whichever is first) to establish eligibility for the same housing program that provided assistance to the evicted or terminated tenant; or under another covered housing program; or find alternative housing.¹⁵³

¹⁵² This includes the Section 8 program (Multifamily and Public Housing) and all HUD programs covered by HUD Handbook 4350.3 except: Section 221(d)(3) BMIR properties; Section 202 PAC; Section 202 PRAC; Section 811 PRAC; and Section 202 projects with units not receiving assistance under the Rent Supplement. See HUD Handbook 4350.3, Par. 3-7 F., pg. 3-27.

¹⁵³ See §5.2009(b)(1). Also see **Multifamily Notice**, pg. 37 and **PIH Notice**, pg. 36. According to HUD, assistance is limited to 30 days for the Section 236, Public Housing and Section 8

housing programs (PBV and HCV programs, PBRA, and Mod Rehab/SRO) if the remaining family member has not submitted documentation evidencing a satisfactory immigration status or a pending appeal of a verification determination of the family member's immigration status in accordance with 214 of the Housing and Community Development Act of 1980. See **PIH Notice**, pg. 36.

Also, in the case of Public Housing, the PHA is prohibited from initiating eviction procedures until 30-days after the lease bifurcation. See **PIH Notice**, pg. 36.

Please note that the wording in the final rule and the guidance may lead a reader to assume that the only eligibility criteria a resident may need to establish is eligible immigration status. However, a tenant may have eligible immigration status and need to establish eligibility based on different criteria. In such instances, there is no basis to assume that the tenant would not have 90 days to establish eligibility from the date of bifurcation of the lease, rather than 30 days. As such, it is reasonable to include in a housing policy for a Housing Authority the following, and apply comparable language to HUD Multifamily sites with Section 236 or Section 8:

- i. The reasonable time period is a period of 90 calendar days from the date of bifurcation of the lease unless statutory requirements for the covered housing program prohibit it (See ii. below). The 90-day calendar period also will not apply beyond the expiration of a lease, unless this is permitted by program regulations. The HA may extend this 90-calendar-day period in 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.
- ii. If the document to establish eligibility is that required to establish eligible immigration status the reasonable time period is 30 days. Specifically, Section 214 of the Housing and Community Development Act of 1980 (42 USC 1436a (d) (4)) requires that assistance under the Public Housing or Section 8 program be terminated after 30 days if the remaining family member has not submitted documentation evidencing a satisfactory immigration status or a pending appeal of a verification determination of the family members. (See VAWA Final Rule Federal Register, Volume 81, No 221 November 16, 2016, 80724, 80773.)

Also, in the case of the HCV program, the PHA is required to pay the HAP until 30 days after the owner bifurcates the lease and may pay HAP for the full month if the 30-day period will end mid-month. IBID.

	Possible eligibility limitations	Regulatory provision	Reasonable time period to remain in unit
Sections 202/811 PRAC and SPRAC.	Age (for Section 202) and Disability (for Section 811).	24 CFR 5.2009	90 days or when the lease expires, whichever is first.
Section 202/8	Age; Immigration Status	24 CFR 5.2009	90 days or when the lease expires, whichever is first; 30 days if immigration status is an eligibility limitation.
HOPWA	HIV/AIDS	24 CFR 574.460	90 days to 1 year.
HOME .....	.....	24 CFR 92.359	All residents already meet eligibility.
HTF .....	.....	24 CFR 93.356	All residents already meet eligibility.
ESG .....	.....	24 CFR 576.409	All residents already meet eligibility.
CoC	Qualifying Disability (for Permanent Supportive Housing); Chronically Homeless Status.	24 CFR 578.75	Until expiration of the lease.
RHSP .....	.....	24 CFR 5.2009	All residents already meet eligibility.
Section 221(d)(3)(d)(5) .....	.....	24 CFR 5.2009	All residents already meet eligibility.
Section 236 (including RAP)	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Public Housing	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Section 8 HCV Voucher	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Section 8 PBV Voucher	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Section 8 PBRA and Mod Rehab/SRO.	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.

3. Can the time frame for establishing eligibility for a program or finding housing be extended?

A covered housing provider who is not required to use a shorter time frame than 90-days may, in their discretion, extend the 90-day time frame for establishing eligibility by 60-days unless the time period would extend beyond expiration of the lease, provided doing so doesn't violate a statutory requirement.¹⁵⁴

4. How much rent does a family pay while establishing eligibility?

As such, as a result of the lease bifurcation a change in household composition), an Interim Recertification (IR) will need to occur immediately, the family's income re-calculated and rent adjusted in accordance with the IR rules for the applicable program.¹⁵⁵ This means that if a family's rent increases, a housing provider will need to give a 30-day notice, and if it decreases, it will be retroactive to the date

¹⁵⁴ See 24 C.F.R. §5.2009(b)(2)(iii).

¹⁵⁵ See HUD Handbook 4350.3, Chapter 7, Section 2, beginning pg. 7-22. Also, as mentioned in HUD's Multifamily Notice, on pg. 38, the perpetrator "will remain active in the Tenant Rental Assistance Certification System (TRACS) and the Enterprise Income Verification (EIV) system until the effective date of the newly performed IR."

of the lease bifurcation.¹⁵⁶ For most of the HUD programs, HUD will continue to provide subsidy during the time frame for establishing eligibility. However, in the case of a lease bifurcation under the Section 202 or 811 PRAC and the remaining family members will not be able to establish eligibility as the head, co-head or spouse, due to their age/disability status, an owner must still provide 90 days for the remaining members to remain in the unit, but HUD will not subsidize the unit. This means that the family will be paying market rent.¹⁵⁷

H. Emergency Transfer

One of the remedies that VAWA provides is emergency transfers for tenants who:

- a. request one,¹⁵⁸ **and**
- b. who reasonably believes is threatened with imminent harm from further violence if the tenant remains in their housing **or** in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises within 90-days before the request for transfer.¹⁵⁹

The statute required each “appropriate agency”¹⁶⁰ to “adopt a model emergency transfer plan for covered housing providers.”¹⁶¹ HUD created a

¹⁵⁶ IBID, Par. 7-13, beginning pg.7-27.

¹⁵⁷ **Multifamily Notice**, pg. 38.

¹⁵⁸ VAWA Statute, 34 U.S.C. § 12491(e)(1)(A).

¹⁵⁹ VAWA Statute, 34 U.S.C. § 12491(e)(1)(B).

¹⁶⁰ VAWA Statute, 34 U.S.C. [§12291 \(a\)\(2\)](#) provides:
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, United States Code) that carries out the covered housing program.

¹⁶¹ VAWA Statute, 34 U.S.C. [§12291 \(e\)](#) HUD has explicitly permitted the housing providers to change the Model Emergency Transfer Plan (form HUD-5381) and made it clear that simply adopting this plan without adding specific information will be insufficient and not meet the requirements of VAWA. See HUD **Multifamily VAWA Questions**, #16.

model emergency transfer plan (form HUD-5381),¹⁶² for use by PHAs and Owners/Agents of housing assisted under covered housing programs. HUD also required housing providers in its Final Rule to adopt an Emergency Transfer Plan, based on HUD's model plan.¹⁶³ **HUD has also made it clear that a housing provider which simply adopts the plan without making modifications to address specific requirements contained in its regulations contained in the Final Rule, will not be in compliance.**¹⁶⁴

Rural Development has a draft Emergency Transfer Plan, and permits covered housing providers to also use HUD's as a basis.¹⁶⁵ The IRS hasn't adopted or drafted a model emergency transfer plan or issued any guidance on this, and to date, DHCD hasn't given a directive on what Owners/Agents should do, except to the extent that their third-party monitor, Spectrum, has stated Owners/Agents must comply with VAWA. Owners/Agents of tax credits may proactively implement an emergency transfer plan using HUD's Model Plan. Also, many tax credit sites also have HUD assistance, in which case the O/A must follow the VAWA requirements contained in HUD's Final Rule, including the development of an Emergency Transfer Plan.¹⁶⁶ In re to the HOME program, each Participating Jurisdiction is responsible for creating an Emergency Transfer Plan. DHCD is in the process of finalizing theirs.

¹⁶² This document is available on HUDclips, https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a#4

¹⁶³ See 24 CFR 5.2005(e). Also see **Multifamily Notice**, beginning pg. 25 and **PIH Notice**, beginning pg. 21.

¹⁶⁴ See **Multifamily VAWA Questions**, #16.

¹⁶⁵ See RD Notice, RD AN No. **4814** (1944-N), January 18, 2017, pg. 3 and Attachment A.

¹⁶⁶ See **Multifamily VAWA Questions**, #18, which recommends O/As contact the IRS for Guidance.

Please see Appendix K for a list of who is considered the covered housing provider for the purpose of creating an emergency transfer plan, and the required components of the emergency transfer plan for each covered housing provider. We have also drawn attention to the specific policies where an Owner/Agent or PHA has discretion in how it addresses a topic and provided guidance on ways to maximize the effectiveness of the emergency transfer plan when utilizing these existing discretionary policies.

Transfers, emergency transfers, and transfer policies are not new to covered housing providers. It is standard operating procedure for covered housing providers to have a written transfer policy. It is a good business practice for any provider to do so because it is necessary to assure staff is treating all residents fairly and handling requests for transfers in a consistent manner based on the reason for the transfer and not who is requesting it. In addition, it is a way to prevent violations of program rules that can be impacted by transfers.¹⁶⁷

Some covered housing providers are also required by program rules to have a transfer plan or recommended to do so. For example, HUD Multifamily Housing providers' Tenant Selection Plans (TSPs) are required to contain the site's unit transfer policies, including selection of current residents versus applicants from the waiting list when vacancies occur.¹⁶⁸ Similarly, HUD has instructed PHAs that they "should" include in their Admissions and Continued Occupancy Policy (ACOP) a transfer policy that addresses specific topics.¹⁶⁹ HUD provides its covered housing

¹⁶⁷ For example, Tax Credit sites need an emergency transfer policy to assure that the transfer doesn't result in non-compliance with the tax credit rules. Whether a transfer can occur will depend on how a site is structured (whether all the units are in one "BIN", if it is a multiple building project, if it is 100% Tax credit) and whether the household's income is above 140% of area median income. See 8823 Guide, beginning 4-23. http://www.spectrumlihtc.com/wp-content/uploads/8823_2011.pdf

¹⁶⁸ See HUD Handbook 4350.3, Figure 4-2: Written Tenant Selection Plan – Topics, pg.4-5. Also see Chapter 7, Section 3, pg. 7-28.

¹⁶⁹ See Public Housing Guidebook, Chapter 11. https://www.hud.gov/sites/documents/DOC_10760.PDF

providers a lot of latitude in establishing transfer policies, provided they do not violate HUD program rules. The specifics of a covered housing provider's transfer policy will vary. Regardless of the content, the policy must be consistently followed.

Standardly, transfer policies focus on how a housing provider is going to address specific types of transfers in relation to other types of transfers, commonly referred to as ranking or "priorities" for transfers of current resident. The purpose of priorities is for the housing provider to proactively think about how to best to fill a vacant unit given competing needs, programmatic rules, and safety concerns.

As such, policies usually contain categories of transfers used to create the site/PHA's transfer list, which is sometimes referred to in the housing industry as an internal waiting list (vs. the waiting list for applicants or external waiting list). Common categories include both mandatory and optional transfers: emergency transfers¹⁷⁰; reasonable accommodation¹⁷¹; Over housed/Under Housed (Occupancy

The topics listed in Section 11.0 are as follow:

- The types of transfers recognized by the PHA;
- The priority among types of transfers;
- When transfers take precedence over waiting list admissions;
- Which transfers are mandatory and which are optional;
- Whether the PHA makes "split family" transfers;
- Eligibility requirements for transfers;
- When the costs of transfers are borne by the PHA and when the resident pays transfer costs; and
- Whether transfers will be processed centrally (by the Admissions office) or at the sites.

¹⁷⁰ There is no one definition of what constitutes an emergency in the context of transfers, leaving covered housing providers latitude in what to include in this category. Some guidance is provided in HUD's Public Housing Guidebook (Section 11.1, pg. 147), which provides that these include, "Conditions in the resident's unit, building or at the site pose an immediate, verifiable threat to the life, health or safety of the resident or family members." The Guidebook also makes clear that this category may also include other reasons, including the need to alleviate a verified medical condition of a life-threatening nature or to protect a resident from an actual threat of violence at the site due to criminal activity, as well as domestic violence (which is also discussed in chapter 19, beginning on pg. 216). Some housing providers also consider transfers necessary as a result of harassment based on protected status.

¹⁷¹ In accordance with Federal (and state) law, a transfer may be necessary to enable a resident with a disability an equal opportunity to enjoy their housing. For example, a resident with a mobility impairment who lives on an upper floor may need a transfer to a ground floor unit or a resident needs a unit with certain accessibility features, and they cannot be provided in his current unit without removing a load bearing wall or would result in an undue financial and administrative burden.

Standards)¹⁷²; resident requested transfers due to simply wanting another unit; and administrative transfers.¹⁷³

There are also different kinds of transfers: internal transfers vs. external transfers, and temporary vs. permanent transfers:

An **internal transfer** refers to when a tenant moves to another unit assisted under the same program where the tenant would not be categorized as a new applicant and undergo an application process to establish eligibility and suitability for housing.¹⁷⁴ For example:

- A move from one public housing unit to another public housing unit owned by the same PHA.
- A move from a unit in a HUD multifamily site where the survivor resides to another unit in the same HUD multifamily single or scattered site property.

¹⁷² This commonly focuses on residents being over-housing or under-housed based on family composition and the covered housing provider's occupancy standards. For HUD multifamily housing providers, see HUD Handbook 4350.3, par 7-16, beginning on pg. 7-29. The obligation to transfer under such circumstances is also included in HUD's model lease (see Section 19, pg. 9 and HUD's public housing lease requirements (see 24 CFR § 966.4 (c)(3)).

It is also important to note that PHAs have the option of adopting a "split household" policy in their ACOP which permits them to allow families that have two adults to split into two households and be transferred to two units. A split family transfer is standardly seen as a type of Occupancy Standards transfer because it is used to address large families. See pg. 149.

¹⁷³ Managers will sometimes request residents transfer for varying reasons. For example, management may request moving residents for severe maintenance conditions that cannot be repaired while the resident is in the unit. Another example is requesting a resident living in a wheelchair accessible unit who does not need the accessible features of the unit to move to a standard apartment, if another resident or applicant needs the accessible features of the wheelchair accessible unit.

¹⁷⁴ See 24 CFR 5.2005(e)(1)(i).

This determination can be complicated in a tax credit site depending on how a site is structured (whether all the units are in one "BIN", if it is a multiple building project, if it is 100% Tax credit) and whether the household's income is above 140% of area median income. See 8823 Guide, beginning 4-23.

http://www.spectrumlihtc.com/wp-content/uploads/8823_2011.pdf

In contrast, an **external transfer** refers to a transfer of a tenant to another unit or form of assistance where the tenant would be categorized as a new applicant and have to undergo an eligibility determination.¹⁷⁵ For example, a move from a public housing unit owned by one PHA to a public housing unit owned by another PHA or a transfer from one multifamily housing site to another multifamily housing site.

Sometimes in the context of an emergency situation, it is necessary to transfer a resident to a “temporary” location. Implicit in the term “temporary” is that the family will need to be transferred again to a different or “permanent” unit. A temporary transfer is required either because: 1) the resident is planning to return to their unit and they need to vacate the unit on a temporary basis due to health or safety concerns or because their unit is being rehabbed; or 2) a permanent, appropriate unit for the family to transfer to is not available, but remaining in the family’s current unit is not safe. The need for a “temporary” solution is not unusual, and neither is housing providers rising to the occasion in figuring out alternative accommodations for the resident (such as in the case of people being displaced due to fire) until the emergency passes and the family can return to their unit, or a permanent transfer is available.

¹⁷⁵ See 24 CFR 5.2005(e)(1)(ii).

1. Does HUD’s final rule require all HUD Multifamily Housing Providers and Public Housing Authorities to have an emergency transfer plan for survivors of DVDVSAS?

Yes.¹⁷⁶ Please note that for HUD Multifamily Housing Providers, failure to comply with this requirement is supposed to result in a finding on a Management and Occupancy Review.¹⁷⁷

2. What is required to be in the emergency transfer plan?

Please see Appendix K for a discussion of what must be in the plan, what a provider may include in their plan, and good business practices that should be included in the plan. It is important to remind housing providers that HUD’s model form contains only general provisions of an Emergency Transfer Plan that apply across HUD programs. This model doesn’t contain all of the required elements of the plan. A housing provider will “need to consult applicable regulations and program-specific HUD guidance when developing their own emergency transfer plans, to ensure their plans contain all required elements.”¹⁷⁸

The Emergency Transfer Plan **must**:

- Provide that a survivor qualifies for an emergency transfer provided the tenant requests the transfer and:
 - “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 if the

¹⁷⁶ See 24 CFR 5.2005(e).

¹⁷⁷ See **Multifamily Notice**, pg. 25.

¹⁷⁸ See **Multifamily VAWA Questions**, Question 16.

tenant 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.”¹⁷⁹

- Allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.¹⁸⁰
- Describe policies for assisting tenants with internal transfers¹⁸¹ and external transfers¹⁸² when a safe unit is not immediately available.
- 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 applicants.¹⁸³
 - Requests for internal emergency transfers under VAWA must receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.¹⁸⁴

¹⁷⁹ See 24 CFR 5.2005(e)(2).

¹⁸⁰ See 24 CFR 5.2005(e)(5).

¹⁸¹ See 24 CFR 5.2005(e)(6).

¹⁸² See 24 CFR 5.2005(e)(7).

¹⁸³ See 24 CFR § 5.2005(e)(3).

¹⁸⁴ See 24 CFR 5.2005(e)(6). Determining priorities is complicated. Please note that from a practical standpoint, a housing provider will need to maintain an emergency transfer list to effectively manage internal transfers and to avoid claims of favoritism, or discrimination. The guidance provides that when a housing provider maintains an emergency transfer list, a person seeking a VAWA transfer must be placed on this list or on a separate list for emergency transfers under VAWA. Any emergency transfer list must be maintained consistent with all applicable confidentiality requirements, specifically those contained in 24 CFR 5.2007(c). This means that the internal transfer list may not list why someone qualifies for a transfer

- The policy for assisting a tenant who is seeking an external emergency transfer under VAWA, including what efforts the covered housing provider will take to assist a tenant who wants to make an external emergency transfer when a safe unit is not immediately available.¹⁸⁵
- Where applicable must include policies for assisting tenants who have tenant-based rental assistance to make emergency moves with that assistance.¹⁸⁶
- Must incorporate strict confidentiality measures to ensure that the 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.¹⁸⁷
- Where applicable, the plan must describe policies for a tenant who has tenant-based rental assistance (e.g., voucher) and who meets the requirements of #1 above to move quickly with that assistance.
 - PHA's are required to include in re to the project-based voucher program:
 - When the victim has been living in a unit for less than one year; or the victim seeks to move sooner than a tenant-based voucher will be available. In such an instance, the plan must provide that if tenant-based

(the person's status as a survivor of DVDVSAS) or enter this information into a shared data base), unless written permission is provided by the tenant.

¹⁸⁵ See 24 CFR § 5.2005(e)(7).

Note that nothing in the plan may preclude a tenant from seeking an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available. See 24 CFR § 5.2005(e)(8).

¹⁸⁶ 24 CFR § 5.2005(e)(9).

¹⁸⁷ See 24 CFR § 5.2005(e)(4).

assistance is not available at the time, the family must have priority to receive the next available opportunity for tenant-based assistance, regardless whether they left the unit to protect the family's safety.¹⁸⁸

3. How does a tenant make a request for an emergency transfer?

The answer will depend on what is in the covered housing provider's Emergency Transfer Plan. The covered housing provider may choose whether it will allow for a verbal self-certification or require a written request before any transfer occurs.¹⁸⁹

4. What information may a covered housing provider require a tenant to submit to obtain an emergency transfer?

Both the verbal self-certification, if permitted by the covered housing provider's emergency transfer plan, and the written request **must** include a statement that the tenant requests an emergency transfer because the tenant:

- Reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit;
- **or**
- Was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the tenant's request for an emergency transfer.¹⁹⁰

¹⁸⁸ See **PIH Notice** pg. 26.

¹⁸⁹ See **Multifamily Notice**, pg. 28 and HUD PIH Notice, pg.23.

¹⁹⁰ **IBID**. Also please note that it does not matter when an initial act of DVDVSAS occurred if the current belief of a threat of imminent harm is reasonable, or, in cases of sexual assault, the assault occurred on the premises during the 90- calendar-day period preceding the transfer request. See **Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations 80743.

HUD has created a model Emergency Transfer Request document that O/As/PHAs requiring written request for emergency transfer may use (form HUD-5383). If a covered housing provider uses this, they must provide it to tenants.¹⁹¹

Covered housing provider may, however, request in writing that the survivor provide documentation of an occurrence of DVDVSAS **if it hasn't already been provided**.¹⁹² Please see question Section E. Documentation Requirements, Question 3 above for a discussion of the type of documentation a survivor may choose to provide to satisfy this request. **However, third party documentation may not be required to qualify the tenant for an emergency transfer.**¹⁹³

5. Is a covered housing provider required to provide an emergency transfer if a tenant submits the required documentation?

Yes. What this means from a practical standpoint is that when a tenant informs a covered housing provider that they are a survivor of DVDVSAS and that they need to transfer because they believe remaining in the unit is unsafe, the housing provider must, based on their policies:

¹⁹¹ IBID. Also see the preamble to HUD's Final Rule, which provides an excellent discussion on documentation and why HUD chose its methodology. See **Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations **80741**.

¹⁹² See 24 CFR 5.2007 for types of documentation. See Multifamily Notice, pg. 29 and PIH Notice, pg. 24.

¹⁹³ Form HUD 5383 asks the survivor to provide third party verification if available. However, it is not a requirement to qualify for an emergency transfer. It provides:

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

- Accept the survivor’s statement (if it satisfies the requirements discussed in Question 4 above), or request a written request for an emergency transfer; and
- If the person hadn’t already provided documentation of the DVDVSAS, and the provider’s policy requires such documentation, request in writing the documentation. Remember, it is up to the tenant to decide what form of documentation to provide (if it satisfies the requirements discussed in Section C. *Documentation Requirements* contained in this section of Chapter 2.)
- The Emergency Transfer Plan must describe policies for assisting a tenant in making an internal emergency transfer when a safe unit is not immediately available and describe reasonable efforts the PHA will take to assist a tenant who wishes to make an external emergency transfer when a unit that meets the victim’s safety standard is not available.

It is also important to mention that housing providers cannot impose requirements regarding being in “good standing” for survivors to receive a transfer in an emergency situation, even if they do so for other resident requested transfers.¹⁹⁴ Although you cannot impose requirements, the ability to transfer does not change the survivor’s obligations to comply with the lease terms and it would be reasonable for the Owner or PHA to provide the tenant notice that the transfer does not waive enforcement of those obligations.

¹⁹⁴ These types of requirements include but are not limited to not owing any back rent or other charges; no lease violations. This is specifically addressed in HUD’s model transfer plan which provides, “Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.” Also see PHA Guidebook, Section 11.6, pg. 150. Consult your attorney regarding the transfer of balances and continuing to hold the survivor responsible for back-rent.

6. Is a covered housing provider required to provide an emergency transfer internally if a tenant submits the required documentation?

Covered housing providers are required to allow tenants who are survivors of DVDSAS to make an internal emergency transfer under VAWA when a safe unit is **immediately** available.¹⁹⁵

The VAWA Final Rule does not define “*immediately available*”. HUD’s guidance to both PHAs and Multifamily Housing providers provide that a best practice would be to define this term “as a vacant unit, ready for move-in within a reasonable period of time”¹⁹⁶, as defined in the covered housing provider’s Emergency Transfer Plan. HUD’s recommendation is that the provider also define “*reasonable period of time*”, which according to the guidance should be based on “local factors.” Presumably, such factors would include:

- Turnover rates;
- The number of appropriate size/type units available at the site based on household composition and the site’s occupancy standards;
- The length of the current internal waiting list;
- Applicable priorities for the internal waiting list contained in the site’s Tenant Selection Plan (TSP) or PHA’s Admission and Continued Occupancy Plan (ACOP);¹⁹⁷

¹⁹⁵ See **Multifamily Notice**, pg. 26 and **PIH Notice**, pg. 22. Notably, this is unfortunately not specifically covered in HUD’s model Emergency Transfer Plan and Notice, which many providers will rely on. However, it is important to remind housing providers that HUD’s model form only contains general provisions, and that the housing provider must provide further information to meet their obligations. To do this, the housing provider must review applicable regulations and program-specific guidance as contained in the notices cited above.

¹⁹⁶ See **Multifamily Notice**, pg. 26 and **PIH Notice**, pg. 22. If a suitable unit is not vacant, or if it is but there is an internal waiting list (and the applicant is not a first priority at the top of the list), the unit would not be considered immediately available/ready for the applicant to move in.

¹⁹⁷ See **Multifamily VAWA Questions**, #20, which provides:
The VAWA Final Rule does not define transfer priorities. The O/A has discretion to set priorities for transfers. Each property’s Emergency Transfer Plan must detail the measure of any priority given

- How a site is financed, and whether a vacant unit has specific eligibility criteria which a family will not qualify for. For example, the vacant unit may be designated for a specific population based on head of household (such as an elderly/disabled household) and the family seeking the transfer doesn't satisfy the eligibility threshold; and
- Whether a vacant unit is accessible. If the vacant unit is an accessible unit, management must follow a specific process in filling the unit to maximize the use of such units by individuals who need the accessible features of the unit. Sites that receive federal dollars are required by federal law to follow a specific order when filling the unit.¹⁹⁸ The housing provider must first offer the unit to a current resident in the same project or comparable project under common control who needs the accessibility features of the vacant unit, then to the first qualified individual on the external waiting list who needs the accessible features of the unit. If no one on the list needs the accessible features of the unit, federal law allows the housing provider to then offer the unit to a household that doesn't need the features of the unit. However, in Massachusetts a housing provider may only do so if they've advertised the unit for a minimum of 15 days with MassAccess.¹⁹⁹

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. Priorities for the internal transfer waiting list and applicant preferences for the external waiting list must be identified in the property's Tenant Selection Plan.

The VAWA Final Rule does not define the term emergency, therefore, all VAWA transfer requests should be considered emergencies.

¹⁹⁸ 24 CFR §8.27 at <https://www.law.cornell.edu/cfr/text/24/8.27>

¹⁹⁹ See G.L. c. 151B, §7A(3) and MassAccess' website at <https://www.massaccesshousingregistry.org/>

Although these factors are helpful to a covered housing provider in coming up with a standard definition of what's a reasonable time frame within which a transfer should occur, the concept of "immediately" has to be considered in the context of the resident's current situation, and the danger involved if the resident remains in the unit. If it is unsafe for a person to remain in the unit, any length of time the person remains in the unit is problematic. As such, there needs to be a recognition on covered housing provider's that such transfers must occur as expeditiously as possible.

7. Who decides if a unit is safe when a survivor requests an emergency transfer?

The SURVIVOR; not the covered housing provider decides if the unit is safe.²⁰⁰ It is therefore important for a covered housing provider to have a discussion with the person who made the request (or their designee) what factors attribute to whether a unit is safe or not.

8. What is a covered housing provider required to do if an internal transfer is not available immediately or at all?

If a safe unit is not immediately available at the site based on the site's internal transfer policy, the covered housing provider will need to take specific actions depending on what the survivor believes is going to be effective. Actions include:

- a. Following the site's internal transfer policy, which standardly includes emergency transfers and available options and procedures in such instances. For example, this may include assisting the tenant with a

²⁰⁰ See 24 CFR 5.2005(e)(1)(iii).

temporary location (such as a shelter or hotel) if the tenant wants to move until a transfer is available²⁰¹;

- b. Simultaneously offer the tenant assistance with an external transfer if the tenant wants one or will accept one if an internal transfer is not available, which requires more than simply telling survivors that they have to apply to other developments on their own²⁰²;
- c. Providing contact information for local service providers who may be able to assist the tenant in identifying temporary shelter, as well as other support services, including safety planning, and emergency funding resources; and
- d. Making changes at the site to reduce the chance of violence recurring, such as changing the survivor's locks (pursuant to the site's lock replacement policy and state law); reinforcing doors and windows; installing better lighting around the perimeter of the building; increasing security measures; and
- e. Reminding the survivor that they are allowed temporary absence from the unit in accordance with the site's policies.

Likewise, if a tenant requests an external transfer because an internal transfer is not safe, then a housing provider will need to provide the tenant with assistance with an external transfer, as well as take interim actions listed in c. and d. above.

²⁰¹ Please note that the emergency transfer plan will need to address who pays for any temporary shelter costs, whether the resident is responsible for rent while living in temporary shelter, and how long the family may be absent from the unit.

²⁰² HUD's regulations specifically provide that nothing may preclude a tenant from seeking both an emergency internal transfer and an emergency external at the same time. See 24 CFR 5.2005(e)(8).

9. Is a housing provider required to guarantee a survivor of DVDVSAS that an emergency transfer will be provided within a specific time frame, or at all?

No. Nor is a housing provider permitted to violate program rules and allow a survivor into a site if they are ineligible simply to house the survivor in a timely manner or at all.²⁰³

However, a housing provider must develop effective strategies in carrying out the requirement in VAWA to provide emergency transfers. It is also a good business practice to incorporate specific time frames for actions to be taken by the Owner/Agent/PHA.

10. Is there a limit on how many emergency transfers a housing provider has to provide a victim of DVDVSAS?

No. There are many reasons relating to the cycle of violence that a survivor may need more than one emergency transfer, or multiple emergency transfers over the course of tenancy. For example:

- A survivor may choose to allow the perpetrator back into their life because the survivor believes the perpetrator has changed, all is great for a period of time, and then at a later date the survivor finds herself in need of another emergency transfer due to domestic violence.
- A perpetrator finds out the location of the survivor, again making it unsafe for the survivor to retain their current housing unit, due to imminent threat of violence.

Regardless of how many emergency transfers a person requests relating to DVDVSAS, the housing provider must invoke its emergency transfer policy, and

²⁰³ See 24 CFR 5.2005(e)(13).

not refuse to provide the transfer on the basis of the person previously making a request.

11. What are relevant Housing Choice Voucher (HCV) Program rules that PHAs must take into consideration when processing emergency transfers?

There are a number of PHA regulations that impact how a PHA can conduct an emergency transfer for a tenant with tenant-based assistance:

- **PHA's family break-up policy:**
 - If a family break-up results from an occurrence of domestic violence, dating violence, sexual assault, PHA must ensure that the victim retains assistance.²⁰⁴ As stated earlier, the PHA may establish a policy that two households retain assistance when both claim status as a survivor of DVDVSAS.²⁰⁵

- **Where a family can move with tenant-based assistance:**
 - A PHA must standardly deny portability of Section 8 assistance to outside the initial PHA jurisdiction if the family has moved out of the assisted unit in violation of the lease. However, the regulations include an exception to this requirement based on VAWA. A PHA cannot deny a request for portability if

²⁰⁴ See 24 CFR 982.315.

²⁰⁵ Many PHAs have been reluctant to adopt such a policy. However, as discussed in PIH 2017-08, pg. 15, the failure to do so may result in the actual victim being penalized. The notice provides verbatim:
Perpetrators sometimes obtain temporary restraining orders or file police reports against victims as a form of retaliation. Further, many victims are unable to timely access the courts or law enforcement due to the language barriers, disabilities, cultural norms, or fear for their safety. As a result, the fact that only one party submitted third-party documentation is not always a reliable indicator of domestic violence, dating violence, sexual assault, or stalking.

the family moves out in violation of the lease in order to protect the health or safety of a person who is or has been the victim of DV/DVSA and who reasonably believes him- or herself to be threatened with imminent harm from further violence by remaining in the dwelling unit or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move, provided the family has otherwise complied with all other obligations under the Section 8 program.²⁰⁶

- **Moves with continued tenant-based assistance**

- A PHA cannot terminate assistance if the family, **with or without prior notification to the PHA**, has already moved out of a unit in violation of a lease if such a move occurred “to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking; and who reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit, or if any family member has been the victim of sexual assault that occurred on the premises during the 90 calendar-day period preceding the family's request to move.”²⁰⁷
- PHA policies which prohibit a family from moving within the first year, or prohibit more than one move per year are

²⁰⁶ See 24 CFR 982.353. Also see **PIH Notice**, pg. 25, and PIH Notice 2016-09(HA), June 06, 2016, titled, Housing Choice Voucher (HCV) Family Moves with Continued Assistance, Family Briefing, and Voucher Term's Suspension, pg. 14.

²⁰⁷ See 24 CFR 982.354.

prohibited if the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.²⁰⁸

12. Are there specific rules when processing emergency transfers if the family has a HUD-Veterans Affairs Supportive Housing (VASH) voucher?

Yes. If a family member is a victim of DVDVSAS and the perpetrator is the veteran, the victim must continue to be assisted. In such instances, the survivor should be given a regular.

Housing Choice Voucher (HCV) if one is available. If a regular HCV is not available, the perpetrator must be terminated from assistance, and the victim will continue to utilize the HUD-VASH voucher. Upon turnover, the HUD-VASH voucher must be issued to another eligible veteran family.²⁰⁹

13. How do emergency transfers work in the project-based voucher (PBV) program?

PBV families cannot move with their project-based assistance, as the assistance is tied to the unit.

- If the victim makes a request for an emergency transfer has been living in the PBV unit for one year or more, the PHA must give the

²⁰⁸ See 24 CFR 982.354(c)(2)(iii), and **PIH Notice**, pg. 27.

²⁰⁹ See **PIH Notice**, pg. 33.

victim priority to receive the next available opportunity for continued tenant-based rental assistance.²¹⁰

- **A family or member of the family is not required to give advanced written notice, with a copy to the PHA, of intent to vacate the PBV unit if the family moved to protect the health or safety of the victim.**
- A PHA cannot terminate assistance if the family, with or without prior notification to the PHA, has already moved out of a unit in violation of a lease, if the move occurred to protect the health or safety of a family member who is or has been a victim of DVDVSAS; and who reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit, or if any family member has been the victim of sexual assault that occurred on the premises during the 90calendar-day period preceding the family's request to move.²¹¹
- PHAs **must** include in their Emergency Transfer Plan policies that address when:
 - The victim has been living in a unit for less than one year; or
 - The victim seeks to move sooner than a tenant-based voucher will be available.²¹²

²¹⁰ See 24 CFR 983.261. Also see **PIH Notice**, pg. 26.

²¹¹ See 24 CFR 983.261(c)(1). Also see **PIH Notice**, pg. 26.

²¹² See **PIH Notice**, pg. 26.

14. Is a covered housing provider required to pay for an emergency transfer?

No.

- For HUD programs that have existing guidance related to paying costs of transfers (including application fees, down payments), housing providers should follow that guidance and may follow any existing transfer policies and procedures they have, including those for repayment plans.²¹³ Also please note that if a transfer is also based on a reasonable accommodation because of the person's disability, the covered housing provider will be required to pay for the cost of the transfer unless it poses an undue financial and administrative burden.²¹⁴
- HUD encourages housing providers to take whatever actions they feasibly can to assist victims of domestic violence, dating violence, sexual assault, and stalking.
- Also keep in mind that advocacy agencies may be very helpful in accessing financial resources to assist in the costs of a transfer, as well as assisting financially in re to the initial month's rent, security deposits, and any application fees.²¹⁵

²¹³ See HUD's preamble to the Final Rule, **80744 Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations.

²¹⁴ HUD Multifamily housing providers should see HUD Handbook 4350.3, Par. 7-16 B. 2., pg. 7-30 and Par. 2-33 C., pg. 31; PHAs should see PHA Occupancy Guide, Section 11.7, pg. 150. In addition, MA state law, G.L. c. 151 B, Section 7A requires housing which is publicly assisted housing, or multiple dwelling housing consisting of ten or more units, or contiguously located housing consisting of ten or more units, to pay for physical modifications unless it would pose an undue hardship.

²¹⁵ For example, Continuum of Care (CoC) funds may be used for certain purposes.

15. Am I required to provide a tenant my emergency transfer plan upon request?

Yes.²¹⁶ It is also a good business practice to proactively provide it to advocates, as well as to residents so that everyone understands the process before a crisis occurs.

16. Does HUD's final rule require covered housing providers to track emergency transfers and report these to HUD?

Yes.²¹⁷ Housing providers are required to:

- Keep records of all emergency transfers requests and their outcomes in a confidential manner;
- Retain the records for a period of three years,²¹⁸ unless otherwise provided in the applicable program regulation²¹⁹; and
- Report the outcomes to HUD annually.

Although reporting to HUD is a requirement of the regulation, HUD hasn't implemented this, and won't until specific changes are made. This

²¹⁶ See 24 CFR 5.2005(e)(11). The regulation provides, "The covered housing provider must make its emergency transfer plan available upon request and, when feasible, must make its plan publicly available."

²¹⁷ See HUD's Final Rule provides in 24 CFR 5.2005(e)(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.

²¹⁸ The regulation doesn't state when the 3 years begins. Presumably, it is three years from the date of resolution of the emergency transfer request. Also see Multifamily Notice, beginning pg. 32 and PIH Notice, pg. 33. Also see the preamble to HUDs Final Rule, **Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations 80741.

²¹⁹ See the preamble to HUDs Final Rule, **Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations 80741 for a summary of each program's rules.

requirement will not be implemented until HUD complies with the Paperwork Reduction Act (PRA) requirements and Owners/PHAs can submit the information electronically to HUD.²²⁰

²²⁰ See **Multifamily Notice**, beginning pg. 32, and **PIH Notice** pg. 33. According to HUD's Multifamily Housing Notice, this office anticipates requesting O/As to submit via the Tenant Rental Assistance Certification System (TRACS) the following data requirements:

1. Number of emergency transfer requests received;
2. Number of requests resolved;
3. Number still pending;
4. Outcomes of requests-
5. Number of internal unit transfers (within same project);
6. Number relocated to other HUD-funded housing sites (e.g. other multifamily assisted, public housing/housing vouchers, or HOME);
- c. Number of other move-outs, and
- d. Number of tenants who chose to remain in unit.

HUD's PIH Notice provides that it will provide additional information regarding requirements at a later date. See **PIH Notice**, pg. 33.

Chapter 3

Removing Barriers

Chapter 3:

Removing Barriers

The purpose of this chapter is to provide participants a systemic approach to addressing topics related to DVDVSAS.

Let's begin with a discussion of company/PHA/Site coordination of compliance with VAWA and An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking and the importance of reviewing rules, policies and procedures in relation to your obligations under these laws, particularly VAWA.

A. Coordination of Compliance and Reviewing Rules, Policies and Procedures

There are numerous owner/agent/PHA obligations under laws which protect survivors of DVDVSA, particularly VAWA. In addition, there are specific areas of implementation where the Owner/Agent/PHA has discretion. For example, if you are a PHA, there are several discretionary areas you have when implementing policies contained in your Administrative Plans (Annual Plan¹ and 5-Year Plan²) and Admissions and Continued Occupancy Policy (ACOP).³ Likewise, an Owner/Agent of HUD Multifamily Housing has considerable discretion in many areas contained in the site's Tenant Selection Plan (TSP) and site rules and policies necessary to carry out the obligations contained in HUD's directive system, including HUD Handbook, titled **OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS (4350.3)**, commonly referred to as the 4350.3.⁴ As such, although it isn't a requirement to designate a staff person to

¹ 24 CFR 903.7

² 24 CFR 903.6

³ For a discussion of VAWA related requirements and a list of policy questions for these PHA documents see **PIH Notice**, beginning on pg.15, and Appendix I Discretionary Policies and Procedures.

⁴ See https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3 The required and optional requirements of the TSP are contained in Chapter 4, Section 1: Tenant Selection Plan, beginning on pg. 4-2.

coordinate the Owner's/Agent's/PHA's efforts to comply with Federal and State laws which protect survivors of DVDVSAS, it is an extremely good business practice.⁵ In addition to a person analyzing company-wide rules, policies, procedures and services which may be related to DVDVSAS, either directly or indirectly, it is helpful to have individuals at the site level designated as point people if applicants and residents have specific questions, or request assistance. There is no set rule on who this person must or should be. It is an important role which takes both knowledge regarding an Owner's/Agent's/PHA's responsibilities, as well as interpersonal skills and training around DVDVSAS. This is particularly true in implementing the remedies permitted under VAWA, especially emergency transfers.

We tried to identify throughout chapter 2 where Owners/Agents/PHAs have discretion when implementing a requirement, and what we consider a good business practice. However, each site/company's/PHA's business operations (financials and administrative capacity) is different, which is why it's important to engage in an assessment of a company's/PHA's rules, policies, procedures and services, which is discussed next.

B. Review of Rules, Policies, Procedures, Services, and Documents

To ensure compliance with the letter and spirit of Federal and State laws which prohibit discrimination against survivors of DVDVSAS and require protections and remedies for such individuals, it is crucial Owners/Agents/PHAs perform a self-evaluation of the owner's program, policies and procedures, and services and update these on an ongoing basis.⁶

⁵ This role is comparable to a 504 coordinator, which is required by Section 504's implementing regulations. See 24 CFR 8.51 (b), <https://www.law.cornell.edu/cfr/text/24/8.51>. The regulations requires any site that receives federal dollars that is part of a company with 15 or more employees to have a 504 coordinator to coordinate compliance efforts with Section 504. At the Owner, PHA's discretion, this coordination can be set up at a site level or company/PHA wide. Also see HUD Handbook 4350.3, Par. 2-28, pg. 2-23.

⁶ The idea of a self-evaluation is also not new to Owners and PHAs. Section 504's regulations, establish Owners'/PHAs' ongoing responsibility to operate their programs so that they are, when viewed in their entirety, accessible to and usable by persons with disabilities. See 24 CFR 8.24. To achieve this objective, HUD required Owners/PHAs to conduct a self-evaluation See 24 CFR 8.51 (a), <https://www.law.cornell.edu/cfr/text/24/8.51>

This process will require both Owners/Agents and PHAs to do the following:

- a. Reviewing and analyzing current policies, procedures, practices and services to determine if they have an adverse impact on survivors of DVDVSAS or create unnecessary barriers for survivors, preventing them from obtaining or retaining housing as a direct result of the DVDVSAS and/or promotes equal access to housing for victims of DVDVSAS⁷;
- b. Identifying and addressing discretionary positions in policies, procedures, practices and services when implementing federal and state protections and remedies, which may include working with DV/SA advocates to ascertain best business practices given your site's/PHA's business operations; and
- c. Identifying what, if any actions, your site/company/PHA may affirmatively take to facilitate access to your housing for survivors of DVDVSAS, as well as providing current residents who are survivors assistance **if they want it**.

Let's begin with a review of standard policies, procedures, protocols and services, some of which are specific to DVDVSAS, and others that on their face appear to be unrelated to DVDVSAS but may have an impact on an applicant or resident who is a survivor.

Also see HUD Handbook 4350.3, par. 2-34, pg. 2-31. Please note that the regulatory deadline for completing self-evaluations has long passed (July 1989), HUD continues to encourage Owners/Agents/PHAs to update their plans on an ongoing basis.

⁷ For multifamily housing providers this will include a review of the site's Tenant Selection Plan and the company's Operation Manual. PHAs will need to review their Housing Choice Voucher Administrative Plan (24 CFR 982.54), 5-year plan (24 CFR 903.6), Annual Plan (24 CFR 903.7) and their Public Housing Admission and Continued Occupancy Plan (ACOP).

Admission Policies/Procedures

- a. Does the Admin Plan/ACOP/TSP/Operating Procedures provide that a covered housing provider may not hold a victim of DVDVSAS to a more demanding standard than other applicants?
- b. Is there a general statement in a site's TSP and PHA's Admin Plan and ACOP that the Owner/PHA may not deny assistance or deny admission to a survivor of DVDVSAS if the applicant otherwise qualifies for assistance or admission?
- c. Is there a policy/procedure regarding assisting applicants in completing an application? This includes providing reasonable accommodations and free language assistance.
- d. Is there a policy regarding meeting applicants out of the office to assist in completing an application and/or conducting an interview?
- e. Have you evaluated your screening criteria, including criminal and credit,⁸ and negative landlord references and/or previous evictions⁹ to ensure

⁸ Please note that the U.S. Department of Housing and Urban Development's (HUD's) Office of General Counsel issued guidance regarding how the Fair Housing Act applies to the use of criminal history by providers in determining suitability for housing. The guidance, which was issued on April 4, 2016 provides that a housing provider violates the Fair Housing Act, which prohibits discrimination based on race, color, religion, sex, national origin, familial status, and disability, when the provider's policy or practice has a greater impact based on protected status and can't be justified through business necessity, which also means that there's not a less discriminatory means of achieving a necessary business purpose. This means that a housing provider's policy must "accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not." Contained in this document is also a discussion of arrests, and the inability of a housing provider to reject based on an arrest.

https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf

Please also see related guidance HUD issued on arrests that applies to both public and assisted housing providers, titled, **Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions**, Notice PIH 2015-19 / H 2015-10, which was issued on November 2, 2015, at <https://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf> and follow up questions and answers HUD's Office of Public and Indian Housing ("PIH"), Office of Housing, and Office of General Counsel issued to address questions raised by the notice, titled, **FAQs for Notice PIH 2015-19 / H 2015-10**:

https://portal.hud.gov/hudportal/documents/huddoc?id=FAQ_Exclude_Arrest_Records.pdf

⁹ As discussed in Chapter 2, it is not unusual for a survivor's negative tenancy history to be directly related to DVDVSAS. In addition, a provider will need to also consider under what circumstances a perpetrator who was

they aren't discriminatory on their face or have a disparate impact on survivors of DVDVSAS?

- f. Does the provider have a policy about applicants' disclosure of housing history, including current address?
- g. Is there a standard policy regarding how verification is obtained, and the use of alternative methods when information isn't available?
- h. Does the Owner/PHA have a written policy requiring staff to consider whether a survivor's negative tenancy history was related to DVDVSAS, and if yes, would the person be qualified but for the negative history?
 - i. If yes, what evidence would the person need to present regarding the nexus between the DVDVSAS and the negative tenancy related behavior?
 - ii. What type of documentation would someone need to present that they are otherwise qualified (able to comply with the terms of the lease)?
 - iii. What procedures are in place to enable an applicant to explain the nexus?

Occupancy/Lease Related Policies/Procedures

- a. The obligation to recertify annually on time, and the permitted use of extenuating circumstances to complete an annual certification if the resident isn't available;¹⁰

evicted/terminated from assistance or convicted of DVDVSAS would be allowed to rejoin the family upon the request of the family.

¹⁰ The obligation to recertify on an annual basis is a central lease requirement for affordable housing programs discussed in this training. For the rules governing HUD's Multifamily Housing program see 4350.3, Chapter 8, Section 1: Annual Recertification, beginning on pg. 7-3. This obligation is also contained in each HUD Multifamily lease. In most of HUD's Multifamily Housing Programs, the failure to recertify within 15 months of the recertification month will result in termination of assistance and the tenant will be required to pay the non-subsidized rent, which in most programs is the market rent, as required by HUD. See Par. 7-18 D.3.b. In contrast, in a Section 202 PRAC or Section 811 PRAC project the tenant will be evicted for failing to comply with the recertification requirements.

b. The obligation to report under specific circumstances for an interim certification, and the option to report under other circumstances;¹¹

When a tenant fails to provide the required recertification information by the recertification anniversary date, an owner must inquire whether extenuating circumstances prevented the tenant from responding prior to the anniversary date. An extenuating circumstance is a circumstance beyond the tenant's control. Examples of extenuating circumstances include, but are not limited to: hospitalization of the tenant, tenant out of town for a family emergency (such as the death or severe illness of a close family member), an adult serving in the military, students away at college, or a family member who is permanently confined to a nursing home or hospital. (4350.3, Rev-1, Change 4, Chapter 7, Paragraph 7-8.D.4, MAT User's Guide, Chapter 5, MAT Field 77 (Tenant Signed Date) pages 5-38-5-39 and MAT Field 99 (Extenuating Circumstances Code) pages 5-47-5-48). With TRACS Release 202D, owners have the ability to process recertifications that will be late due to a legitimate extenuating circumstance. The owner does not have to request the housing assistance payment, or HAP, off the old annual recertification, rather, they can process the new annual recertification and activate the Extenuating Circumstances Code. HUD has clarified that this applies to both a completed annual recertification for which an owner is only waiting on tenant signature as well as an in process annual recertification where the household's extenuating circumstance began before the owner was able to collect all of the paperwork required. When a legitimate extenuating circumstance is present, an owner may process the annual recertification with as much information as is available, activate the Extenuating Circumstances Code, and document the tenant file accordingly. It is important to note that as soon as the owner is able to gather the required documentation to calculate income and rent, the owner will process a correction to the original annual recertification, obtain tenant(s) signature, and document the tenant file accordingly. In these situations, the owner may increase the tenant's rent retroactive to the recertification anniversary date as long as the owner provides all three recertification reminder notices per HUD requirements. (HUD Handbook 4350.3, Rev-1, Change 4, Chapter 7, Paragraph 7-8.D.3.a, MAT User's Guide, Chapter 4, Section 4.39.6 (Extenuating Circumstances Codes on ARs and the impact on the 15-month rule)).

¹¹ The obligation to complete an interim certification under specific circumstance is a central lease requirement for HUD multifamily housing programs and Public Housing discussed in this training. For the rules governing HUD's Multifamily Housing program see HUD Handbook 4350.3, Chapter 8, Section 2: Interim Recertification, beginning on pg. 7-22. All tenants must notify the owner when:

1. A family member moves out of the unit;
2. The Handbook provides in Par. 7-10, pg. 7-22: The family proposes to move a new member into the unit;

NOTE: At a minimum, owners must apply screening criteria for drug abuse and other criminal activity, *including State sex offender registration, and use of the EIV Existing Tenant Search to persons proposed to be added to the household, including live-in aides. (See paragraph 7-11 B.1 and paragraph 4-7 B.5 for more information.) The owner must make sure that the person also discloses and provides verification of his or her SSN. (See Chapter 3, Paragraph 3-9 for more information on SSN disclosure requirements.)*

NOTE: See Paragraphs 7-4 D and 7-4 E for eligibility of adult children after initial occupancy in Section 202/8, Section 202 PRAC, and Section 811 PRAC projects.

3. An adult member of the family who was reported as unemployed on the most recent certification or recertification obtains employment; or
4. The family's income cumulatively increases by \$200 or more per month.

This obligation is also contained in each HUD Multifamily lease. There is nothing in the Handbook which discusses mitigating circumstances in re to reporting for interim certifications. This is an area that HUD will need to issue guidance on.

- c. Extended absences¹²
- d. Holding residents responsible for their guest's behavior
 - i. Definition of a guest¹³

¹² There are many reasons related to DVDVSAS that a person may need to temporarily relocate to a safe location, such as an emergency shelter or may otherwise be incapacitated due to injuries sustained in an attack by a perpetrator. A tenant who has been hospitalized or who enters an emergency shelter may face loss of her subsidized housing for three reasons directly connected to the hospitalization/going to a shelter: (a) because a housing manager determines that the person's unit is no longer her residence, (b) because the person is unable to pay the rent, or (c) the manager believes the unit has been abandoned. If the tenant continues to pay her rent (directly or through a representative) and intends to return to the unit, the apartment is the person's residence. Owners of HUD-financed assisted housing **MAY BUT ARE NOT REQUIRED TO** create a rule (which must be listed in house rules and must be attached to the lease) regarding extended absences. House rules may define extended absence for longer than 180 continuous days for medical reasons and owners may allow for extenuating circumstances beyond whatever they establish as a policy. See HUD Handbook 4350.3, paragraph 6-9 B.2.b.(2), page 6-21. If the owner has a house rule limiting the number of continuous days a person can be absent for medical reasons, extensions beyond the specified time frame would be considered a reasonable accommodation. Thus, to deny such a request an owner would have to show that such an extension posed an undue financial and administrative burden (the rent of course would have to be paid in any absence) or a fundamental change in the nature of the program. The latter might be a consideration if the absent tenant had no clear prognosis for coming home.

PHAs are required to terminate from the Housing Choice Voucher Section 8 Tenant Based Assistance program families who have been absent from the household for 180 consecutive days, provided no member of the household has been living in the unit during that time. See 24 C.F.R. §982.312(a), "Absence from unit". A PHA must have a policy on absenteeism in its Administrative Plan (See 24 C.F.R. §982.54(d)(10)), which may include hospitalizations or the need to temporarily vacate the unit for safety reasons and go to an emergency shelter or safe house, for the voucher program and has discretion in how to handle absences short of the 180 continuous days. PHAs may ask the person for a service provider letter indicating the resident is likely to return and an estimated date. Housing authorities, although required to administer this rule, do have some flexibility. For example, a PHA could reinstate assistance for a family whose assistance was terminated under the 180-day rule. See 24 CFR §982.312(e)(2). PHAs may also request HUD to waive the 180-day rule. Although it is unlikely that HUD will do this, it might modify the 180-day rule in appropriate circumstances as a form of reasonable accommodation, or due to extenuating circumstances.

In addition to addressing this issue in its Administrative Plan, PHAs should address the issue of being absent from a unit in relation to DVDVSAS in their ACOP as well.

If it is not possible to arrange with the tenant for continued rent payments, contact her designated emergency contact person if you have permission to do so to see if a third party, such as a relative or service provider can pay the rent provided the resident has given you one. If the person does not continue to pay her rent or if you cannot reach the tenant and she appears to have simply disappeared, you should contact your lawyer to determine how to proceed. **You should always contact your company or housing authority 504/ADA coordinator/VAWA coordinator or lawyer (depending on company protocol) immediately in all cases where significant adverse actions may involve VAWA or reasonable accommodation or other fair housing issues.**

¹³ It is important that the covered housing provider recognize that a perpetrator, although physically in the unit/on-site may not be the victim's guest given the DVDVSAS.

- ii. Violations of restraining orders¹⁴
- iii. Damages¹⁵

- e. Safety protocols¹⁶, including but not limited to:
 - i. Lock change policy¹⁷
 - ii. Reinforcement of doors and windows
 - iii. Lighting
 - iv. Cameras
 - v. Alarms
 - vi. Security
 - vii. Calling 911

Termination of Tenancy Related Policies

- a. Is the policy clear that an incident of actual or threatened DV/DVSA does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor?
 - i. Confirm any zero-tolerance/one-strike policy requiring eviction for any criminal activity conducted by a household member or guest isn’t applied in situations to evict or take any negative action against a survivor.¹⁸

¹⁴ The policy should make clear that if a perpetrator is in violation of a restraining order that they are not the victim’s guest.

¹⁵ An important policy consideration is who should be held responsible for damages which occur to a unit or common areas. It is important that a policy address this, and hold the perpetrator, not the victim responsible for damages whenever possible.

¹⁶ The review will need to include the procedure for someone to make a request, how quickly it will be done, and who will pay for the measures.

¹⁷ Owners/Agents of HUD Multifamily housing programs are permitted to address lock changes and other safety measures in their house rules, which can be attached to the lease. See Par. 6-9, beginning pg. 6-19.

¹⁸ See HUD FHEO Memorandum, Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA), February 9, 2011. See <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF>

- b. Does the Admin Plan/ACOP/TSP/Operating Procedures provide that a covered housing provider may not hold a victim of DVDVSAS who engaged in negative tenancy related behavior unrelated to the DVDVSAS to a more demanding standard than other tenants in deciding whether to evict or terminate assistance.
- c. Does the Admin Plan/ACOP/TSP/Operating Procedures provide that the covered housing provider may evict or terminate assistance to individuals who engage in violence against family members or others without penalizing the victims of such violence.
- d. Does the Admin Plan/ACOP/TSP/Operating Procedures provide that a housing provider may evict or terminate assistance to a victim only if it can demonstrate an “actual and imminent threat” to other tenants or employees of the property if the victim is not removed?
 - i. Is the term “actual and imminent threat” defined?
 - ii. Is it clear that this should occur only if no other actions would reduce or eliminate the threat?
 - iii. Does a policy lay out steps to take when staff/resident believe they are in danger prior to moving for eviction based on “actual and imminent threat” if the tenant isn’t evicted?¹⁹
- e. Do you permit lease bifurcation,²⁰ and if yes have you adopted procedures to minimize any negative impact of bifurcation on the survivor?²¹

¹⁹ See **Multifamily Notice**, beginning pg. 38 and **PIH Notice**, beginning pg. 36.

²⁰ See 24 CFR 5.2009(a). This is important in minimizing the loss of housing for survivors.

²¹ Please note that except for PHA-owned units, the PHA is not a party to the lease. As such, a PHA can’t bifurcate a lease agreement between an owner and a tenant. However, when an Owner covered under a voucher program bifurcates a lease it may impact the PHA’s determination of the appropriate number of bedrooms and amount of subsidy paid by the PHA to an owner under a voucher. The regulations permit PHAs to grant an exception to its established subsidy standards if the PHA under specific situations, including personal circumstances. (See 24 CFR 982.402(b)(8).) and to adopt a policy to include DVDVSAS under other personal circumstances. See PIH Notice, pg. 35

- i. Does an Owner/Agent participating in HUD's voucher program have a policy of referring the family to the PHA in advance of the bifurcation to enable the PHA to offer service referrals to the survivor in advance of the bifurcation, and to be prepared to consider "personal circumstances" in re to a determination of the appropriate number of bedrooms and amount of subsidy paid?
- ii. Does an Owner/Agent/PHA have a policy of providing the victim the date (and time if possible) when the perpetrator is going to be given notice of the eviction?
- iii. Does an Owner/Agent/PHA have a policy of providing the victim contact information for local victim service providers? Doing this may facilitate important safety planning decisions. This is important especially in the case of lease bifurcation because the abuser has due process rights (the right to a hearing, appeal, etc.).

Communication protocols for staff, including, but not limited to:

- a. How to provide meaningful access to applicants/residents whose primary language isn't English who, as a result, have limited English proficiency;
- b. How to effectively communicate with people with disabilities whose disabilities impact how they communicate; and
- c. How to ensure that written and telephonic communications with survivors are private and will not be revealed to the perpetrator (please see Questions 16 & 17 in Chapter 2, Part 1: Applicable Laws, the Legal Framework and General Questions.)

Certification and Documentation of DVDVSAS

- a. How and where will the covered housing provider make HUD Form 5382 (Certification of Domestic Violence, Dating Violence, Sexual Assault and Stalking and Alternative Documentation) available?
- b. Will the covered housing provider require documentation of DVDVSAS when a person claims VAWA protection?
 - i. If yes, will the provider permit “other evidence” and if yes, how will they define it?
 - ii. If yes, will the provider require that documentation be provided in 14 business days, and under what circumstances will the provider allow an extension?
 - iii. If the provider requires documentation, within what time frame will the provider acknowledge receipt, and how will they do so?
 - iv. What methods will a provider use to give the form to a person requesting it?

Notification of Occupancy Rights

- a. In addition to the required times this notice is provided, will the covered housing provider make other efforts to inform applicants/residents of their rights under VAWA?
 - i. If yes, when and how?

Confidentiality, including security of information

- a. Privacy Policy
 - i. Who at the site/within the company/PHA will have access to VAWA related information of a personal nature?
 - ii. What protocols are in place to store the information?

What method or methods will the housing provider use to establish effective communication with the victim, including requests for in person meetings at the office?

- iii. What protocols are in place to prevent people from inadvertently accessing information orally or in writing?
- iv. What training do staff undertake specific to DVDVSAS related information?

The Emergency Transfer plan:

- a. Does it contain all of the required components?
- b. Is the emergency transfer plan operational? In other words, is it effective in transferring survivors?
- c. Request for Emergency Transfer:
 - i. Does the O/A/PHA permit a verbal statement/self-certification or require a written request before any transfer occurs?²²
- d. Does the plan provide a process staff must follow to implement a request, including timeframes for actions?
- e. Priorities for Emergency Transfers Based on DVDVSAS
 - i. Does the plan adopt a preference for victims of DVDVSAS in relation to providing emergency transfers as contained in the TSP/ACOP/and Emergency Transfer Plan?
 - ii. If yes, is the priority given at the same level of other emergency transfers? It is required to be.
- f. Internal transfer policy

²² Note that regardless, the request must include specific information:

A statement that the tenant requests an emergency transfer because the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit, or
A statement that the tenant requests an emergency transfer because the tenant was sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar day period preceding the tenant's request for an emergency transfer.

- i. Given the turnover rate at the site, the current internal transfer policy, how long the internal transfer list is, and the location of the units, what is the likelihood that an internal transfer will be “immediately available” and provided to a survivor who requests an emergency transfer?²³
 - What is the definition an Owner/Agent/PHA is going to use for “immediately available?”²⁴
- ii. Is there a priority list? If yes, where do emergency transfers based on DVDVSAS fall within the list of priorities?
- iii. Is there a protocol for communicating with survivors to identify which location(s) would be safe for them to transfer to, and/or what factors impact whether a location is safe. Engaging in this will expedite a transfer that will work for the person.
- iv. Is there a protocol in place to refer victims to local service providers?
- v. If a safe unit is available, will the provider assist a tenant with the transfer, such as coordinate a moving van, assisting in obtaining replacement furniture if needed, and paying for the cost of the transfer?
- vi. If a safe unit isn’t available immediately, what action(s) will the covered housing provider take to limit any future risk to the resident’s safety?
 - What safety measures can be taken at the site?

23 Please note that the PHA Notice when discussing providing a survivor a safe unit via internal transfer, adds in certain places, “within a reasonable time frame” after immediately available. See PIH Notice, pg. 28 and pg. 44. The use of this language presumably relates to a recommended best practice “to define immediately available as a vacant unit, ready for move-in within a reasonable period of time as defined in the PHA’s Emergency Transfer Plan, where the PHA also defines reasonable period of time based on local factors.” See pg. 22.

²⁴ See pg. 44 of the PIH Notice, which also recommends PHAs define “reasonable time frame.”

- Does the resident believe they need to temporarily relocate? If yes, how is the covered housing provider going to facilitate this? Are there interim emergency transfer units?
 - Has it been made clear to the resident that they may simultaneously seek an internal transfer if one isn't immediately available and an external transfer?
- g. External Emergency Transfers:
- i. What reasonable efforts will the covered housing provider take to assist the victim to find a safe unit?
 - Will the housing provider designate a person to facilitate transfers?
 - Will the housing provider enter into a formal or informal agreement with other housing providers?
 - Is there a standard protocol in place regarding how to conduct a housing search, including reaching out to MassHousing if your site is financed by them.
 - ii. Has the covered housing provider reached out to advocacy groups to build relationships and provide feedback?
 - Has the covered housing provider established relationships with other housing providers in the area to facilitate transfers?
 - iii. Conflicting claims of abuse
 - What will the housing provider do in such instances?
 - Honoring court orders.
 - Will the decision-making process include trained third-party entities who have experience with DVDVSAS?
- h. Early termination of tenancy policy
- i. Portability Policy (PHA for vouchers)
 - j. Family Break-Up policy (PHA for vouchers)

- k. Termination of Assistance policy (PHA for vouchers)
- l. External Waiting List Policy
 - i. Does the housing provider have a family break-up policy in re to the waiting list?
 - If yes, does it:
 - Consider court actions/agreements?
 - Provide that if the break-up is due to DVDVSAS that the survivor will retain their place on the waiting list?
 - ii. Does the provider have a preference for victims seeking an external emergency move from another site? Is it limited only to sites under the control of the provider?
 - If a priority exists, how does it compare to others?

Lease (PHA)

- a. Has the lease been updated to address DVDVSAS survivors' rights under VAWA?²⁵

You must modify any policies, procedures, practices or service that are not or may not be in compliance with federal and state laws which protect and/or offer remedies to survivors of DVDVSAS and do so in a manner that incorporates good business practices.

C. Affirmative Steps

It is important to identify what, if any actions, your site/company/PHA may affirmatively take to facilitate access to your housing for survivors of DVDVSAS, as well as providing current residents who are survivors assistance **if they want it**. These include:

- a. Adopting an admission preference for survivors of DVDVSAS.²⁶

²⁵ See **PIH Notice** beginning pg. 39.

²⁶ An O/A does not need HUD approval to adopt a VAWA preference – this is an acceptable owner-adopted preference under 24 CFR 5.655(c)(4). See Multifamily Notice, beginning page 39. PHAs may also establish preference for victims of DVDVSAS. (See 24 CFR 960.206(b)(4), 982.207(b)(4).). For a discussion of this in re to a PHA's obligation to base their preferences on local housing needs and priorities and HUD's recommendation that

Please Note: unless a vast number of housing providers in Massachusetts adopt such a preference, emergency transfers in our state will not be able to occur. The majority of waiting lists for subsidized housing/PHA housing (as well as mobile vouchers) is extremely long. The waiting lists for a tax-credit site without any subsidy tend to be shorter. However, because rent for this program isn't based on a family's income, a tax credit unit may not be affordable for a family with limited income unless they have a mobile voucher.

If a decision has consciously been made not to adopt such a preference, please review why this decision was made. Was it based on assumptions about survivors?

- b. Developing an expedited application process in cases of DVDVSAS which would allow the PHA/Owner to use the prior covered housing provider's determination of eligibility and tenant screening and all related verification information, including form HUD 50058/HUD 50059. Note that this would require the written consent of the survivor.²⁷
- c. Proactively distributing information to residents about DVDVSAS services, and how to seek assistance through advocacy groups, as well as their rights for protections and remedies under VAWA and *An Act Relative to Housing Rights For Victims Of Domestic Violence, Rape, Sexual Assault And Stalking*;
- d. Establishing relationships/partnerships with Domestic Violence and Sexual Assault agencies for the purpose of developing or enhancing services and education in re to DVDVSAS for applicants and residents, as well as staff, and assisting in policy decisions. These include:
 - i. Asking local DV and SA organizations to meet with you to identify barriers and work with them to make changes, if necessary, to remove barriers, in

recommends that a PHA's local housing needs assessment specifically include people experiencing DVDVSAS, see PIH notice pg. 37.

²⁷ See 24 CFR 960.203. Also see **PIH Notice**, pg. 24

a manner that remains effective in providing decent, safe and sanitary housing.

- ii. Making referrals for residents to assist with safety planning and other supports; and
- iii. Training staff on DVDVSAS, good business practices when communicating with survivors, as approaches to complex situations, including a basic framework for a housing provider²⁸;
- iv. Providing educational opportunities for residents (as well as resident boards, PHA governing boards....) on DVDVSAS and resources available. This may include a “marketing” campaign using informational pamphlets/business cards available in the common areas (including bathrooms, elevators and laundry areas), the O/As website and social media, and having DVDVSAS advocates come to resident meetings, articles in a site’s newsletter, and posters in the common area and in the office.
- e. Participating in working group of housing providers, advocates in your area, legal aid services, and local law enforcement agencies.
- f. Training staff in DVDVSAS specific related topics (see above), as well as good customer service, and de-escalation skills.

²⁸ The framework may include---

- Know your role in re to management (manager, RSC, maintenance): Not all sites have RSCs.

Often times residents confide in maintenance staff.

- Build a uniform, impartial relationship with all residents based on customer service:
- Take personal out of it.
- If a situation arises, what’s the business piece: approach with compassion.
- Don’t make assumptions/draw conclusions that aren’t based on fact or assume you know what’s best for an applicant or resident.
- Identify roles (who is the resident comfortable working with), objective, and goal.
- Fact find and determine what needs to occur based on an individualized assessment.
- Do not judge status, action and inaction. You are not the person. What may seem a simple decision for you may not be for the resident.
- Trauma may influence a resident’s interactions with management responding to calls regarding disturbances, lease violations, non-payment of rent, maintenance calls, staff entering a unit with/without a resident home. Do not assume a resident is uncooperative.

- g. Identifying and implement steps to reduce the threat of further violence against a survivor which can be taken immediately, and over-time based on administrative and financial burden. What a provider can do will be impacted by a number of factors, including the physical structure of the building/common areas (if structural changes need to occur to install effective lighting/cameras), the short term and long-term capital needs plan, and whether the site has on-site safety personnel.
- h. If you are a PHA: identifying opportunities to provide notice and/or training to owners participating in the HCV program of their rights and obligations under VAWA (as opposed to only relying on the information contained in the HAP contract) as well as attaching the PHA's Emergency Transfer Plan, and form HUD-5382 to the notice you provide to owners. HUD has provided a template attached to its guidance that can be changed to include local needs.
- i. If you are a PHA with a project-based voucher contract, working with the Owner to make sure they are informing residents who make a request for an emergency transfer and who are living in a PBV unit to contact the PHA, **and** facilitate the contact. In addition, the PHA informing survivors of their rights under the program, including the right of a survivor who has lived in a PBV unit over a year can get a mobile voucher.
- j. In re to emergency transfers:
 - i. Defining key terms in the emergency transfer plan:
 - Immediately available: HUD recommends defining this as “a vacant unit, ready for move-in within a reasonable period of time” as defined in the PHA’s Emergency Transfer Plan”, where the housing provider “also defines reasonable period of time based on local factors.”²⁹

²⁹ See **PIH Notice**, pg. 22.

- ii. Categorizing DVDVSAS transfer requests as a priority. Owners/PHAs need to think of this not as a mandatory transfer equal to being overhoused/under housed, or a transfer a tenant is making because they want to move, but rather a transfer they “need” as a result of the DVDVSAS, comparable to a transfer necessary as a reasonable accommodation.
 - This means amending the site’s/PHA’s internal transfer policy accordingly.³⁰
- iii. Identifying one person in the company/PHA to help facilitate external emergency transfers, which includes going beyond simply handing a survivor a list of housing sites that have the same funding:
 - Understanding the multifamily site’s funding source(s) and the survivor’s capacity to pay rent;
 - Developing a relationship with other housing providers who have a preference for DVDVSAS survivors to help facilitate emergency transfers. This could include a memorandum of understanding or be more informal;
 - Developing a relationship with service providers to help facilitate emergency transfers;
 - Creating a form to be completed by you (the current housing provider) that the survivor may provide to advocates assisting them and prospective housing providers stating the person is eligible for an emergency transfer due to DVDVSAS and is seeking

³⁰ The **PIH Notice** states PHAs “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.” See, pg. 24. In contrast, HUD’s Multifamily guidance states this is solely at the discretion of the housing provider and must be reflected in the site’s Emergency Transfer Plan and Tenant Selection Plan. See **Multifamily VAWA Questions**, Question 20.

an external emergency transfer because a safe unit is not immediately available at the housing provider's site/PHA.³¹

- Knowing how to use applicable search engines to identify vacant units (see appendix L).

³¹ See **PIH Notice**, pg.25.

Appendix

DOMESTIC VIOLENCE

A GLOBAL & LOCAL EPIDEMIC

DOMESTIC VIOLENCE (also known as Intimate Partner Violence (IPV) or Partner Abuse) is a pattern of coercive, controlling behavior that can include physical, emotional, psychological, sexual or financial abuse (using money and financial tools) to impact someone else's thoughts, actions and beliefs without their consent. Domestic violence is pervasive, life-threatening, and affects millions of individuals across the United States regardless of age, economic status, race, religion, education, gender identity, or sexual orientation. While factors such as substance abuse, financial stress and unemployment, and illness may exacerbate existing abusive behavior, they do not cause domestic violence and are often used as excuses to allow violent behavior to go unchecked - sometimes enough to result in fatalities.

HELPING SURVIVORS

In Massachusetts, more than 50 domestic violence programs provide a range of free and confidential individual and community emergency and advocacy services for survivors and their families.

Community-Based Programs

In FY18, MA Department of Public Health (DPH) funded general community-based programs served more than 11,052 adults and 1,621 children.

S/DV programs for Communities Experiencing Inequities served 1,196 clients and provided 610 outreach and education sessions.

Children Exposed to DV programs served 481 adults/760 children; Supervised Visitation programs served 1,019 adults/874 children.

Residential Programs

In FY18, DPH funded emergency domestic violence shelters served more than 726 adults and 570 children. Transitional housing programs served more than 126 adults and 99 children. DV, Substance Misuse and Trauma shelters served 29 client.

Hotlines

In FY18, SafeLink - the statewide domestic violence hotline operated through Casa Myrna - received 27,067 calls, 24,848 of which were requests for shelter. Shelter was available for fewer than 6% of callers.

SafeLink's multilingual advocates and secure, confidential translation service make hotlines accessible in more than 130 languages.

In addition, community-based domestic violence programs operate local hotlines



MASSACHUSETTS SNAPSHOT

In Massachusetts, **1 in 3 women & 1 in 5 men** reported having experienced rape, physical violence, or stalking by an intimate partner in their lifetime.

In Massachusetts, over 1/3 of trans people report threats of violence by an intimate partner compared to 13.6% of cis people, and LGBTQ adults experience a lifetime IPV rate of 29% compared to 11% of heterosexual adults.

In 2018, JDI identified 15 incidents of domestic violence homicide which 15 women were killed. An additional 4 perpetrators committed suicide.

In one day in 2018, Massachusetts domestic violence programs served 1,785 victims and were unable to meet 298 requests, of which 77% were for housing.



NATIONAL SNAPSHOT

1 in 4 women and 1 in 9 men were victims of intimate partner violence resulting in impact such as injury, fear, concern for safety, and/or needing services.

Intimate partner violence, rape, and stalking is estimated to cost society **\$8.3 billion annually**.

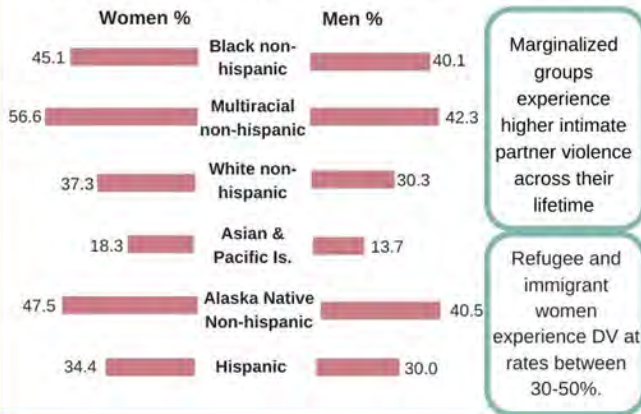
Current or former intimate (romantic) partners commit **14% of all homicides in the US**, with over 70% of the victims being female--disproportionately women of color.

AT THE INTERSECTIONS

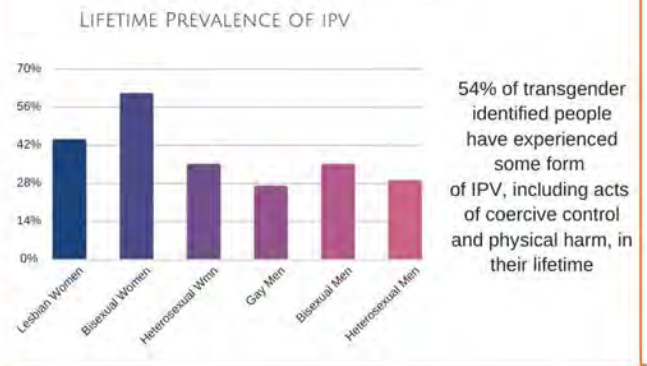
THE MULTI-LAYERED OPPRESSION OF DOMESTIC VIOLENCE SURVIVORS

Anyone can be a victim or perpetrator of **domestic violence**, but the most marginalized members of our society - people of color, low income individuals and families, indigenous peoples, LGBTQ+ folks, mentally or physically disabled people, immigrants, refugees, women, and children - are at the greatest risk. Higher incidences of domestic violence in already-marginalized populations point to societal factors that reinforce social stratification, power, and control. Therefore, JDI engages in many areas of policy to address the root causes and persistent inequities that impact the lives of all survivors and their families.

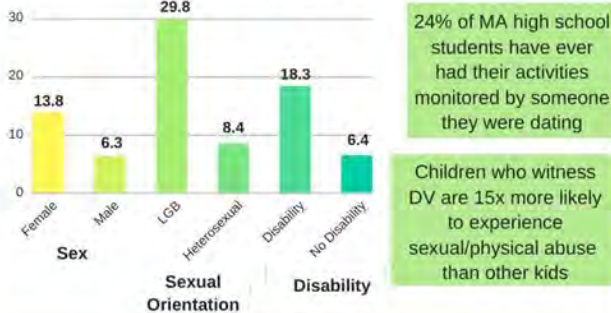
RACIAL AND ETHNIC IDENTITY



GENDER IDENTITY AND SEXUAL ORIENTATION



AGE



SOCIOECONOMIC STATUS



HOUSING



DISABILITY



Language used in this document reflects that of cited data sources. Citations available upon request.

SEXUAL VIOLENCE

A GLOBAL & LOCAL EPIDEMIC

SEXUAL VIOLENCE is any unwanted sexual attention, contact or activity. It violates a person's trust, autonomy, and sense of safety. It causes many survivors to suffer emotional, physical, financial, and social consequences. Stigma surround sexual violence often contributes to the trauma experienced by survivors, preventing many from seeking services or reporting the assault. Sexual violence occurs at both the individual and societal level in the context of rape culture, wherein it is connected to and influenced by other forms of oppression, thus disproportionately affecting the most under-served and marginalized populations. Survivors and advocates in Massachusetts and around the globe are working tirelessly to provide life-saving services and to prevent sexual violence once and for all.

HELPING SURVIVORS

In Massachusetts, 16 Department of Public Health (DPH) funded Rape Crisis Centers (RCCs) provide life-saving and healing services to survivors. These programs offer free and confidential 24-hour crisis hotlines, prevention, education and training, individual and group counseling, and accompaniment for survivors in hospitals, police stations, courts, and more.

Hotlines

In FY18, RCC hotlines throughout the Commonwealth answered 14,112 calls: 8,889 calls from survivors and 5,223 from significant others and professionals. Thirty-four calls were answered by the statewide Spanish-language hotline.

Prevention Education & Training

In FY18, RCCs conducted 2,112 outreach and education activities.

Counseling & Client Accompaniment

In FY18, RCCs provided direct, in-person services to 4,365 individuals, which included counseling, legal accompaniment, medical accompaniment and other advocacy services.

SANE & Medical Accompaniment

The MA Sexual Assault Nurse Examiner (SANE) program is a nationally recognized forensic nursing care model for sexual assault patients. In FY18, the MA SANE program provided direct services to 2,388 patients, including 1,220 children and 1,168 adults and adolescents across the Commonwealth.



NATIONAL SNAPSHOT

In a CDC survey, 43.9% of women & 23.4% of men, reported experiencing sexual violence in their lifetime. 47% of transgender people reported experiencing sexual violence in their lifetime.

The Department of Justice estimates that only 23% of sexual assaults were reported to the police in 2016.

Based on FBI crime statistics, rape accounted for 1 in 10 violent crimes reported to law enforcement in 2014.

Among college students, 18% of females, 4% of males, and 21% of transgender and gender-queer people reporting being sexually assaulted while in school



MASSACHUSETTS SNAPSHOT

In FY18, there were 2,423 incidents of sexual assault reported to MA Rape Crisis Centers.

This is a 15.4% increase over FY17

According to the 2017 Massachusetts State Health Assessment, 17% of women and 6% of men in the state reported ever experiencing sexual violence.

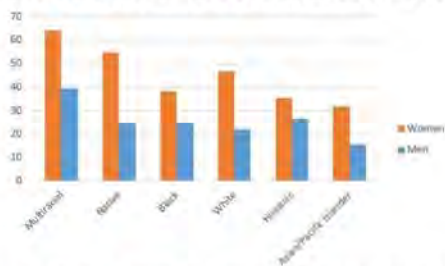
Sufficient data is not available to determine rates of sexual violence in transgender and non-binary populations.

AT THE INTERSECTIONS

MULTI-LAYERED OPPRESSION OF SURVIVORS OF SEXUAL VIOLENCE

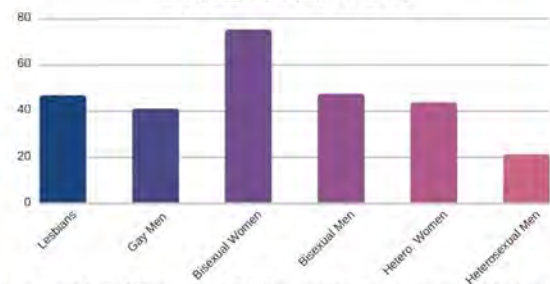
Sexual violence disproportionately affects the most marginalized members of our society. Jane Doe Inc. engages in many areas of policy to address the intersectional oppressions that impact the lives of all survivors and their families, and to ensure that cultural and identity specific resources are comprehensive and accessible to all communities. Please note, this is not a complete review of the intersectionality of all identities and oppressions impacting survivors of sexual violence.

RACIAL AND ETHNIC IDENTITY



Women experience sexual violence at a higher lifetime prevalence than men across racial/ethnic identities. People who identify as multiracial experience sexual violence at the highest prevalence.

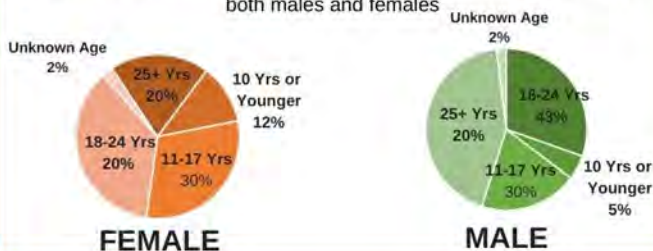
GENDER IDENTITY AND SEXUAL ORIENTATION



Persons identifying as LGBTQ experience a greater lifetime prevalence of sexual violence compared to heterosexual men and women.

AGE

Age of **first victimization** is most common between the ages of **11-17** for both males and females



FEMALE

MALE

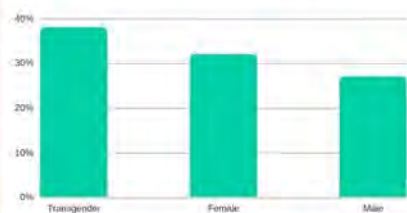
SOCIOECONOMIC STATUS

Women earning <\$7,500 per year experience **6x** more than women earning \$75,000+ per year sexual violence

Single mothers experience sexual violence at a rate:

- 2.3x** higher than single women with no children
- 3.6x** higher than married mothers
- 9.1x** higher than married women with no children

HOUSING



92% of homeless mothers experience sexual violence in their lifetimes

Transgender homeless persons experience the highest rate of sexual victimization

DISABILITY

People with intellectual disabilities experience **7x** more than people without disabilities rape or sexual assault

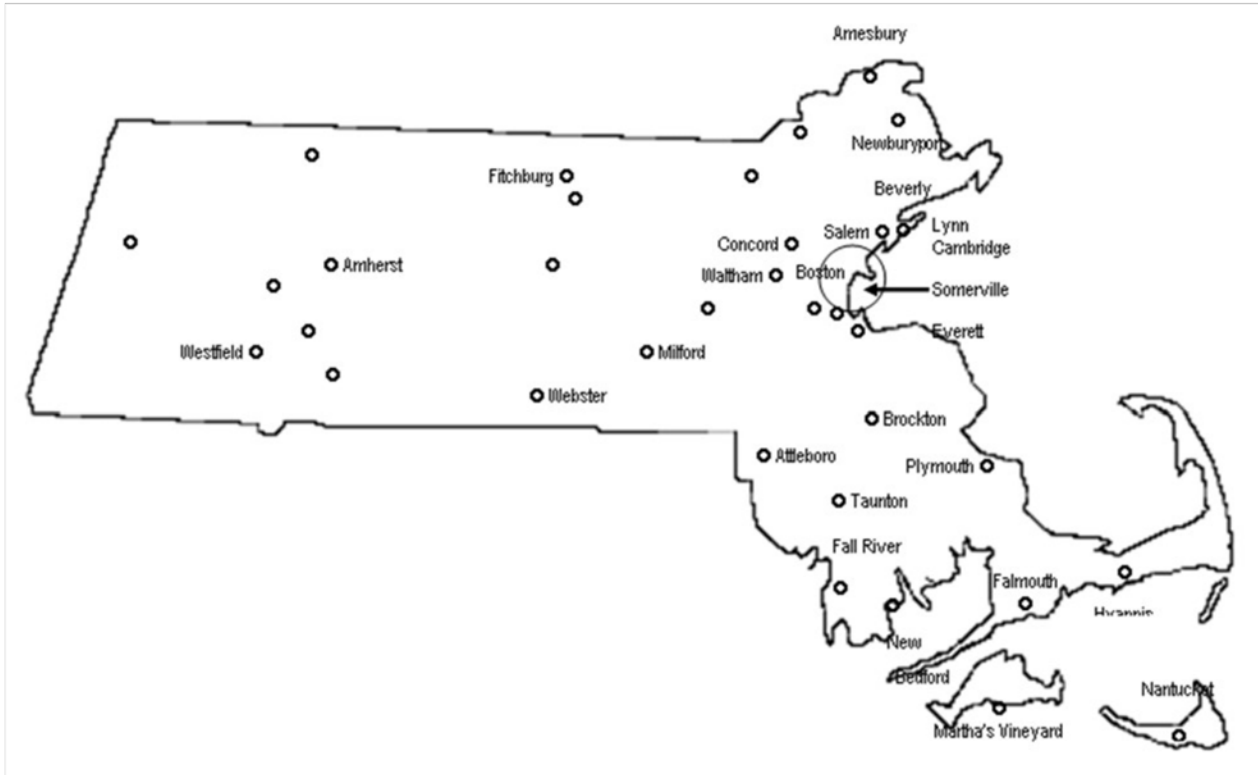
Female child sexual abuse victims are **4x** more likely to abuse drugs and alcohol and **3x** more likely to suffer psychological disorders

Network of Sexual Assault & Domestic Violence Service Providers in Massachusetts

Use this map to find free and confidential support and services at a sexual or domestic violence program near you.

You can also find programs by visiting www.janedoe.org/find_help/search for an interactive

There are over 60 community-based sexual assault and domestic violence service providers in the state of Massachusetts. They advocate on behalf of victims and offer confidential, crisis and long-term support and services to tens-of-thousands of victims and survivors of sexual and domestic violence and their families each year.








SYMBOL KEY			
☒	Domestic Violence Program	☎	24 Hour Free & Confidential Hotline
★	Sexual Assault / Rape Crisis Program	ES	Emergency Domestic Violence Shelter
JDI members in bold			

www.JaneDoe.org



Statewide & National Resources

STATEWIDE & NATIONAL RESOURCES		
<p>If you are not sure where to call for help, call 411.</p> <p>To reach TTY Off-hours, call MassRelay at 711; English TTY: 800-439-2370; Spanish TTY: 866-930-9252 and ask to be connected to a hotline number.</p>	<p>Deaf, Deaf Blind and Hard of Hearing National Hotline </p> <p>1-800-787-3224 (TTY)</p> <p>1-855-812-1001 (Video Phone)</p>	<p>Our Deaf Survivors Center</p> <p>978-451-7225</p> <p>(Cultural Broker)</p>
<p>▣ SafeLink</p> <p>Toll-free statewide Domestic Violence Hotline</p> <p>PH: 877-785-2020 </p> <p>TTY: 877-521-2601 </p>	<p>▣ Asian Task Force Against Domestic Violence (ATASK)</p> <p>24-Hour Multilingual Helpline</p> <p>617-338-2355 ES </p>	<p>★ Llámanos y hablemos</p> <p>Toll-free Spanish Sexual Assault Helpline</p> <p>800-223-5001</p>
<p>▣ MA Alliance of Portuguese Speakers</p> <p>617-864-7600</p>	<p>▣ The Network/ La Red</p> <p>Ending partner abuse in LGBTQ/T, SM and Poly communities</p> <p>PH: 617-742-4911 ES </p> <p>TTY: 617-338-SAFE (7833)</p>	<p>▣ SAHELI: Friendship for South Asian Women</p> <p>866-472-4354</p>
<p>To learn about other services, like Intimate Partner Abuse education, services for children impacted by violence, and supervised visitation, see a list of programs at https://www.mass.gov/sexual-and-domestic-violence-prevention-and-services</p>		

Statewide Resources

A Network of Sexual Assault & Domestic Violence Service Providers in Massachusetts

METRO BOSTON		CENTRAL & METROWEST	
	Association of Haitian Women in Boston Dorchester: (617) 287-0096	⊙ ES	HarborCOV Chelsea: 617-884-9909 ☎
	AWAKE Program (Children's Hospital) Boston: 617-355-6369	⊙	On The Rise, Inc. Cambridge: 617-497-7968
⊙	Boston Medical Center Domestic Violence Program Boston: 617-414-5457	⊙	HAVEN at MGH Boston: 617-724-0054
★	Boston Area Rape Crisis Center (BARCC) Cambridge: 800-841-8371 ☎	⊙	Passageway at Brigham & Women's Hospital Boston: 617-732-8753
⊙	Brookview House Dorchester: 617-265-2965	⊙ ES	Unitarian Universalist Urban Ministry Roxbury / Boston: 617-566-6881 ☎
⊙ ES	Casa Myrna Boston: 877-785-2020 ☎	⊙ ES	RESPOND Inc. Somerville: 617-623-5900 ☎
⊙ ★	Center for Violence Prevention and Recovery at Beth Israel Deaconess Medical Center Boston: 617-667-8141	⊙	The Second Step Newton: 617-965-3999
⊙	Community Advocacy Program of CCHERS Boston: 617-373-4591	⊙ ES	Transition House Cambridge: 617-661-7203 ☎
⊙ ES	DOVE Inc. Quincy: 888-314-3683 ☎	⊙ ★	Violence Recovery Program (Fenway Health) Greater Boston: 617-927-6250
⊙ ES	The Elizabeth Stone House Jamaica Plain / Boston: 617-427-9801 ☎		
⊙ ES	FINEX House Jamaica Plain / Boston: 617-288-1054 (Also TTY) ☎		
⊙		⊙	Domestic Violence Services Network Concord: 888-399-6111 ☎
⊙ ★		⊙	The Domestic Violence/Sexual Assault Program of Newton Wellesley Hospital Newton: 617-243-6521
⊙		⊙	Journey to Safety (JFCS) Waltham: 781-647-5327
⊙ ★		⊙ ES	New Hope, Inc. South County / Webster: 800-323-4673 ☎
⊙ ES		⊙ ES	REACH Beyond Domestic Violence Waltham: 800-899-4000 ☎
★		★	Pathways for Change (Rape Crisis Center of Central Massachusetts) Worcester: 800-870-5905 ☎
⊙		⊙	Spanish American Center Leominster: 978-534-3145
⊙ ★		⊙ ES	Voices Against Violence Framingham: 800-593-1125 ☎
⊙ ★		⊙	Wayside Trauma Intervention Services Milford: 800-511-5070 ☎
⊙ ES		⊙ ES	YWCA Central Massachusetts Domestic Violence Services: BWR and Daybreak Worcester: 508-755-9030 ☎ Leominster: 508-755-9030 ☎

Symbol Key	
⊙	Domestic Violence Program
★	Sexual Assault / Rape Crisis Program
☎	24 Hour Free & Confidential Hotline
ES	Emergency Domestic Violence Shelter
Jane Doe Inc. Member Organization	

Statewide Resources—Continued

A Network of Sexual Assault & Domestic Violence Service Providers in Massachusetts

NORTHEAST REGION		WESTERN REGION	
⊙ ES	Alternative House Lowell: 888-291-6228 ①	⊙ Behavioral Health Network Ware: 413-967-6241	⊙ Safe Passage Northampton: 888-345-5282 ① TTY: 413-586-5066 ①
★	Center for Hope & Healing (Rape Crisis Services of Greater Lowell) Lowell: 800-542-5212 ①	★ Center for Women & Community Amherst: 413-545-0800 ① TTY: 413-577-0940	⊙ Womanshelter/Compañeras Holyoke: 877-536-1628 ①
⊙ ES	HAWC – Healing Abuse Working for Change Salem: 978-744-6841 ①	⊙ Elizabeth Freeman Center ★ Pittsfield: 866-401-2425 ①	⊙ The Salasin Project (Western Mass Training Consortium, Inc.) Greenfield: 413-774-4307
⊙	Jeanne Geiger Crisis Center Newburyport / Amesbury: 978-388-1888 ①	⊙ NELCWIT ★ Greenfield: 413-772-0806 ①	⊙ YWCA Western Massachusetts ★ Springfield: 800-796-8711 ① TTY: 413-733-7100
⊙ ES	Supportive Care, Inc. Lawrence: 978-686-1300		
⊙	YWCA Northeastern Massachusetts ★ (formerly YWCA Greater Lawrence) Lawrence: ★ 877-509-9922 ① ⊙ 844-372-9922 ①		
★	YWCA North Shore Rape Crisis Center Lynn: 800-922-8772 ① TTY: 781-477-2315		
SOUTHEASTERN REGION			
⊙ ★ ES	A New Day/Penelope's Place (Health Imperatives) Brockton / Quincy: 508-588-8255 ★ ① 508-588-2041 ⊙ ①	⊙ New Hope, Inc. ★ Attleboro/Taunton: 800-323-4673 ①	
⊙ ★	A Safe Place Nantucket: 508-228-2111 ① TTY: 508-228-7095	⊙ South Shore Resource and Advocacy Center (formerly South Shore Women's Resource Center) Plymouth: 508-746-2664 ① 888-746-2664 ①	
⊙ ★	CONNECT to End Violence Vineyard Haven: 508-696-7233 ① TTY: 774-549-9659	⊙ SSTAR Women's Center Fall River: 508-675-0087 ①	
⊙	Family & Community Resources Brockton: 800-281-6498 ①		
⊙ ★	Independence House, Inc. Hyannis: 800-439-6507 ①	⊙ The Women's Center ★ New Bedford / Fall River: 888-839-6636 ①	ES

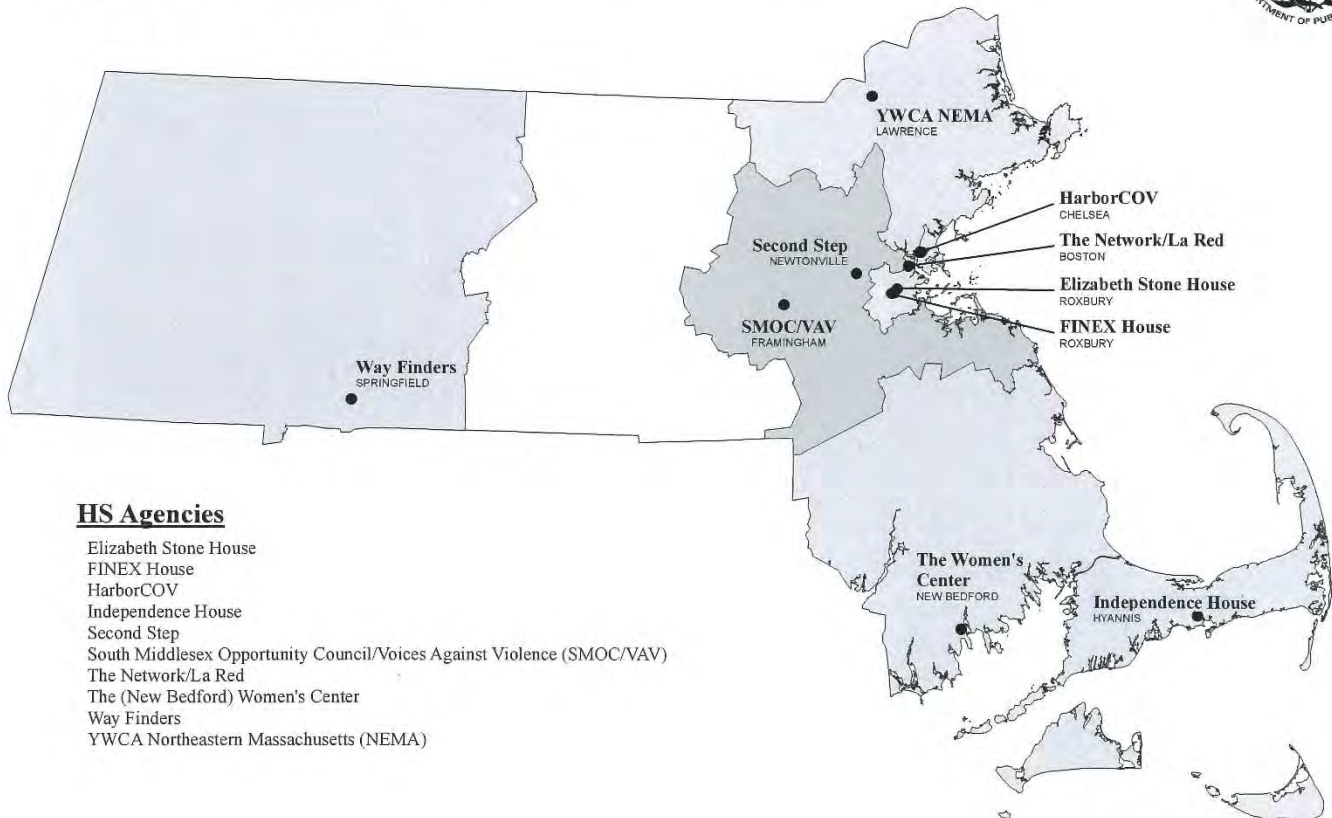
Symbol Key	
⊙	Domestic Violence Program
★	Sexual Assault / Rape Crisis Program
①	24 Hour Free & Confidential Hotline
ES	Emergency Domestic Violence Shelter
Jane Doe Inc. Member Organization	

Appendix D

Massachusetts Department of Public Health Division of Sexual and Domestic Violence Prevention and Services (DSDVPS)

Massachusetts Department of Public Health
Division of Sexual and Domestic Violence Prevention and Services (DSDVPS)

Housing Stabilization (HS) Services

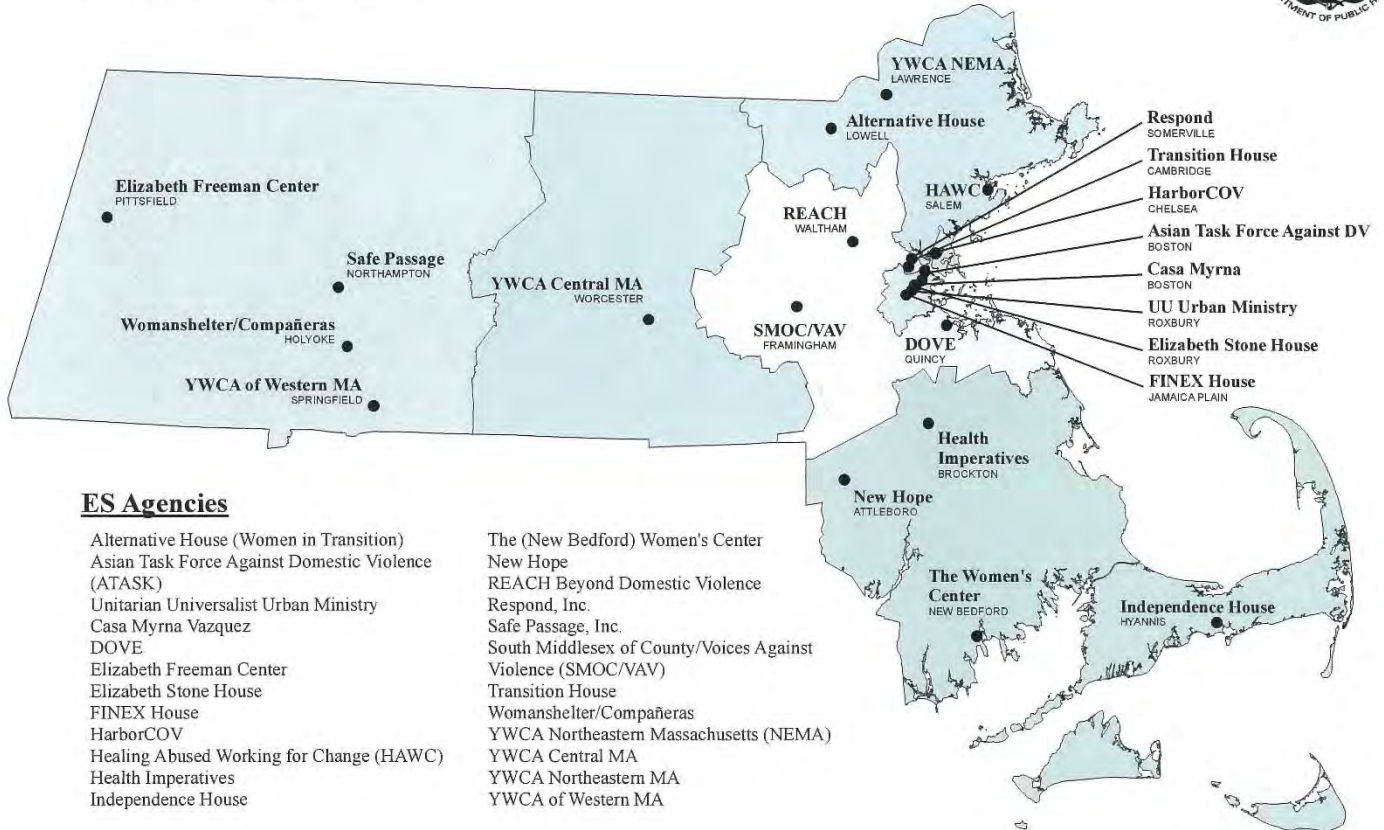


HS Agencies

- Elizabeth Stone House
- FINEX House
- HarborCOV
- Independence House
- Second Step
- South Middlesex Opportunity Council/Voices Against Violence (SMOC/VAV)
- The Network/La Red
- The (New Bedford) Women's Center
- Way Finders
- YWCA Northeastern Massachusetts (NEMA)

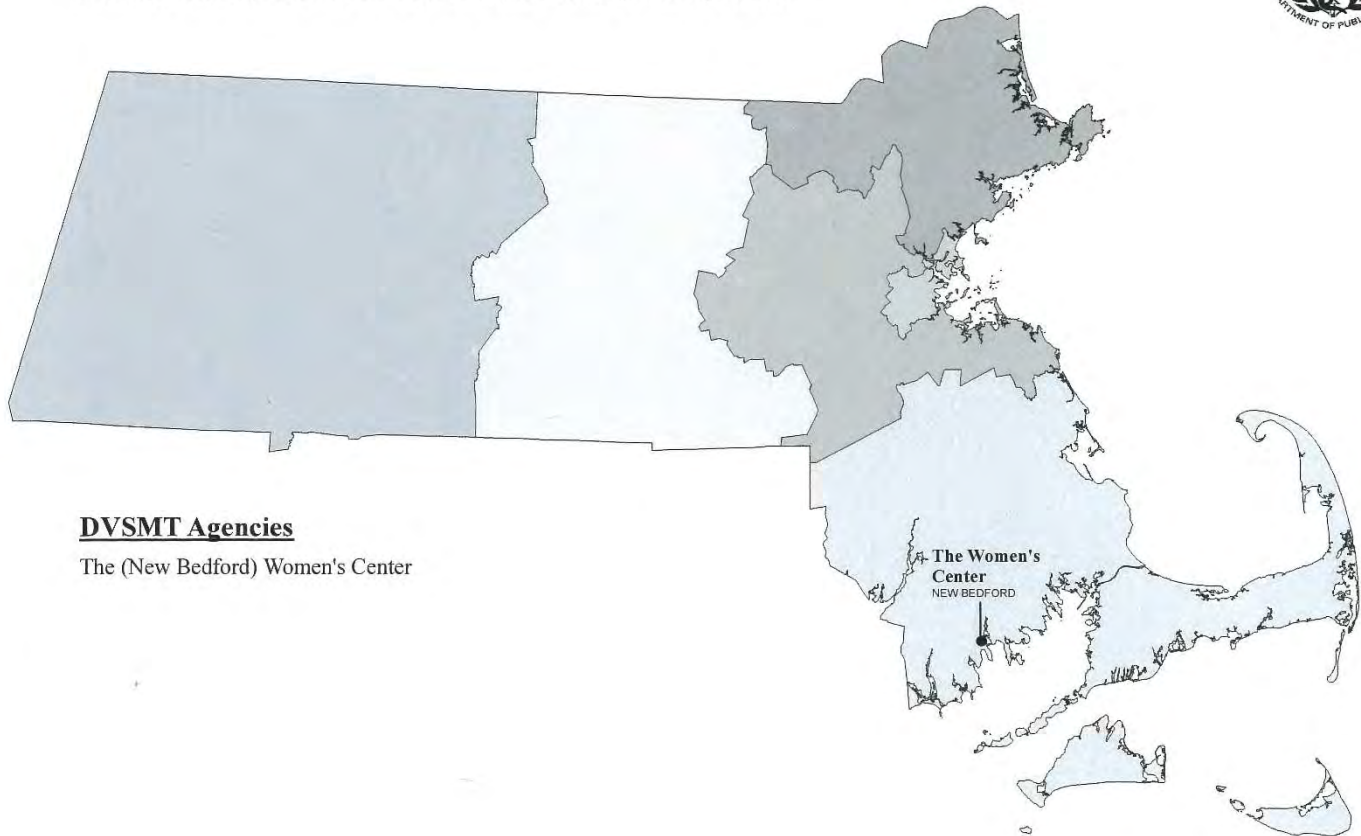
1 in = 19 miles

**Massachusetts Department of Public Health
Division of Sexual and Domestic Violence Prevention and Services (DSDVPS)
Emergency Shelter (ES) Services**



1 in = 19 miles

Massachusetts Department of Public Health
Division of Sexual and Domestic Violence Prevention and Services (DSDVPS)
Domestic Violence, Substance Misuse, and Trauma Shelter (DVSMT) Services

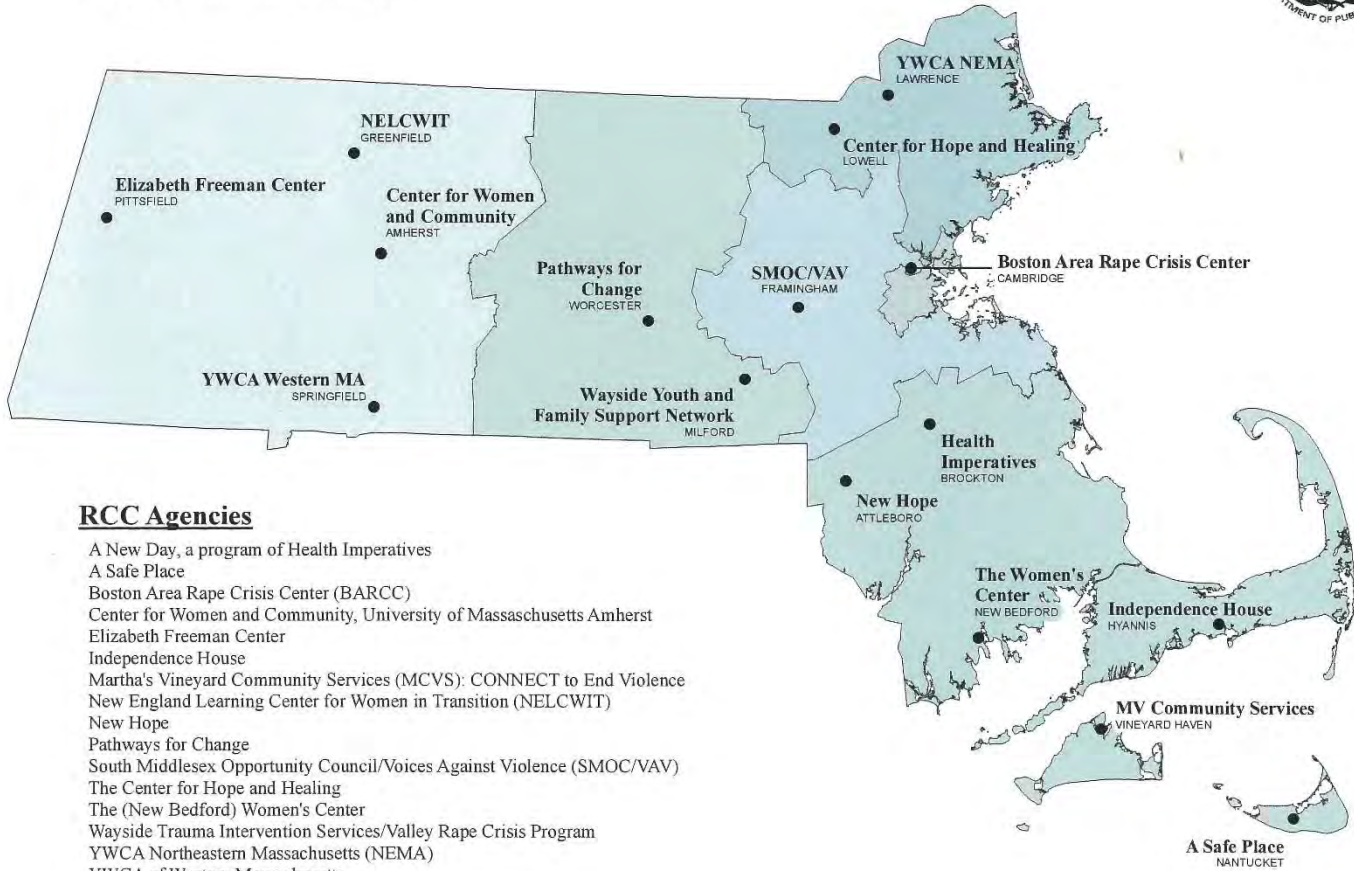


DVSMT Agencies

The (New Bedford) Women's Center

1 in = 19 miles

**Massachusetts Department of Public Health
Division of Sexual and Domestic Violence Prevention and Services (DSDVPS)
Rape Crisis Center (RCC) Services**



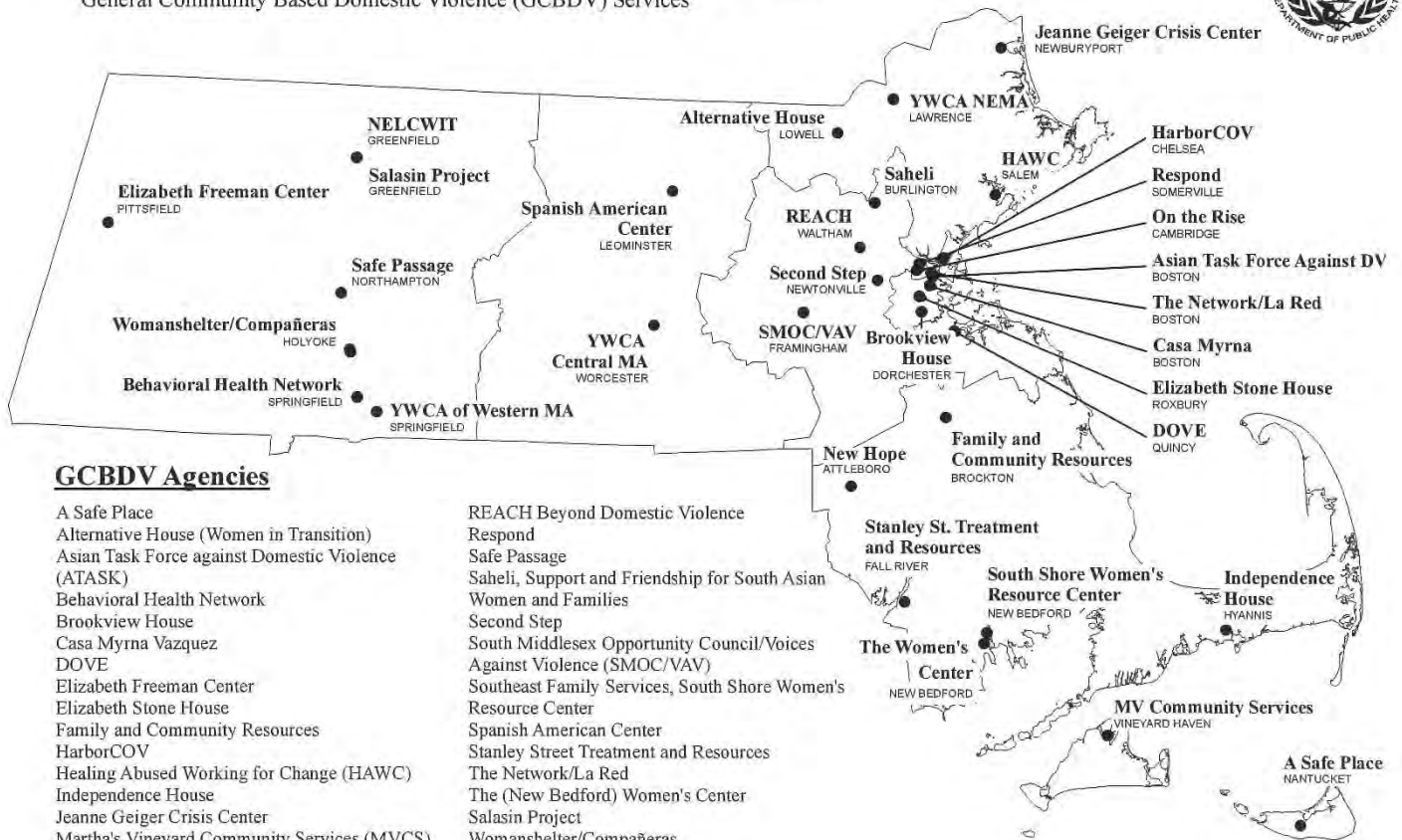
RCC Agencies

- A New Day, a program of Health Imperatives
- A Safe Place
- Boston Area Rape Crisis Center (BARCC)
- Center for Women and Community, University of Massachusetts Amherst
- Elizabeth Freeman Center
- Independence House
- Martha's Vineyard Community Services (MCVS): CONNECT to End Violence
- New England Learning Center for Women in Transition (NELCWIT)
- New Hope
- Pathways for Change
- South Middlesex Opportunity Council/Voices Against Violence (SMOC/VAV)
- The Center for Hope and Healing
- The (New Bedford) Women's Center
- Wayside Trauma Intervention Services/Valley Rape Crisis Program
- YWCA Northeastern Massachusetts (NEMA)
- YWCA of Western Massachusetts

1 in = 19 miles *Note: Satellite locations are not depicted.*

**Massachusetts Department of Public Health
Division of Sexual and Domestic Violence Prevention and Services (DSDVPS)**

General Community Based Domestic Violence (GCBDV) Services



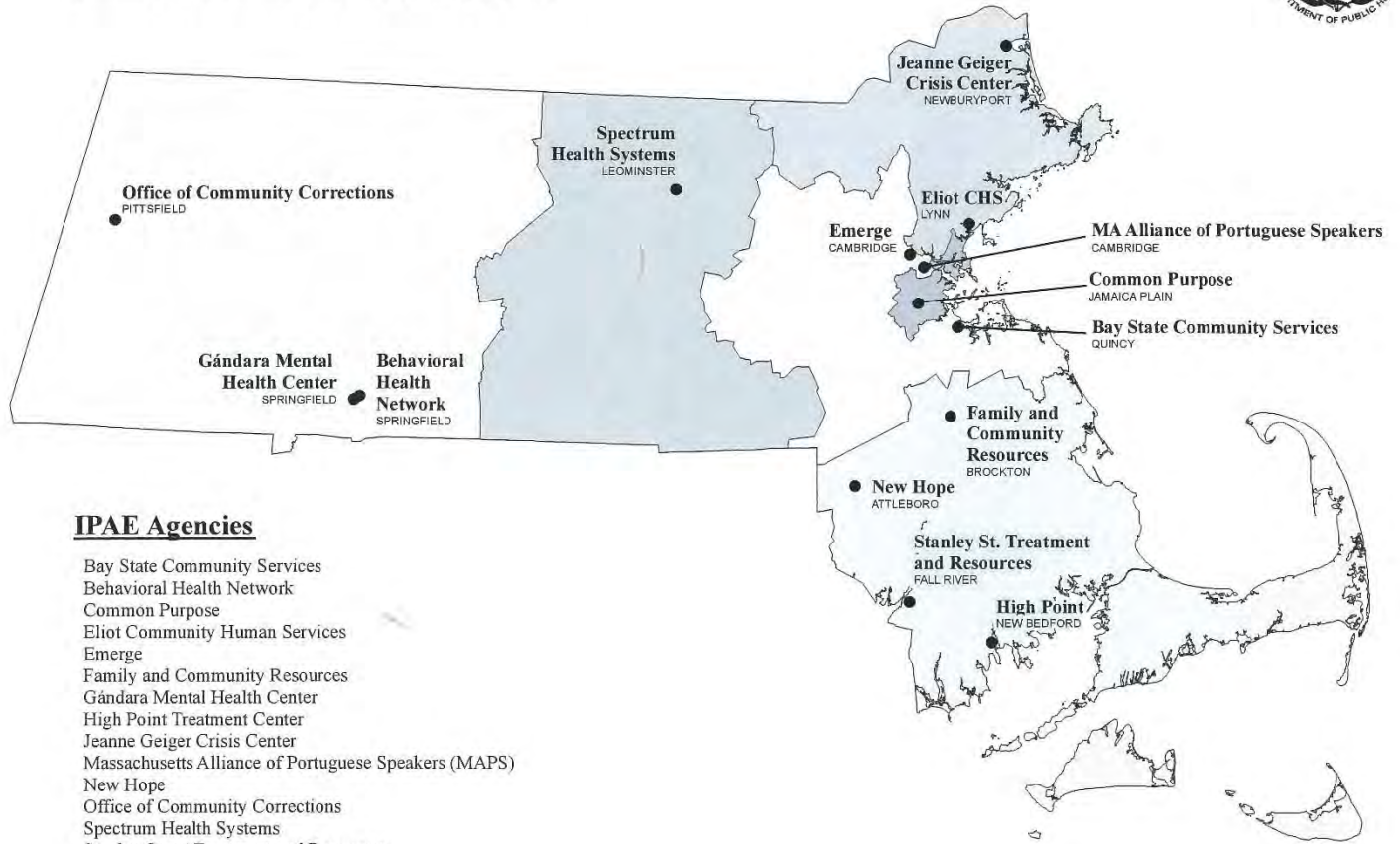
GCBDV Agencies

- A Safe Place
- Alternative House (Women in Transition)
- Asian Task Force against Domestic Violence (ATASK)
- Behavioral Health Network
- Brookview House
- Casa Myrna Vazquez
- DOVE
- Elizabeth Freeman Center
- Elizabeth Stone House
- Family and Community Resources
- HarborCOV
- Healing Abused Working for Change (HAWC)
- Independence House
- Jeane Geiger Crisis Center
- Martha's Vineyard Community Services (MVCS)
- New England Learning Center for Women in Transition (NELWCIT)
- New Hope
- On the Rise

- REACH Beyond Domestic Violence
- Respond
- Safe Passage
- Saheli, Support and Friendship for South Asian Women and Families
- Second Step
- South Middlesex Opportunity Council/Voices Against Violence (SMOC/VAV)
- Southeast Family Services, South Shore Women's Resource Center
- Spanish American Center
- Stanley Street Treatment and Resources
- The Network/La Red
- The (New Bedford) Women's Center
- Salasin Project
- Womanshelter/Compañeras
- YWCA Central Massachusetts
- YWCA Northeastern Massachusetts (NEMA)
- YWCA of Western Massachusetts

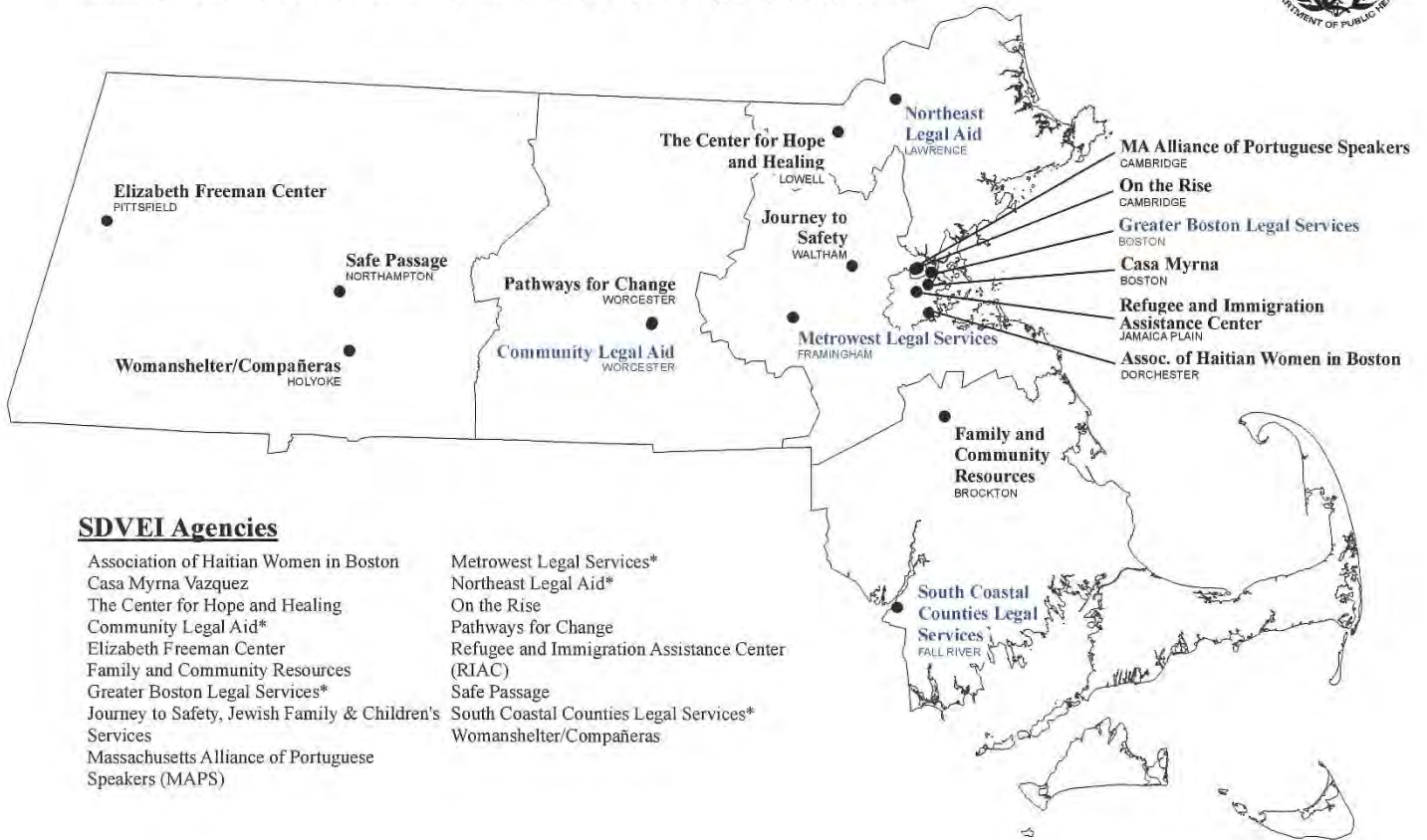
1 in = 19 miles

**Massachusetts Department of Public Health
 Division of Sexual and Domestic Violence Prevention and Services (DSDVPS)
 Intimate Partner Abuser Education (IPAE) Programs**



1 in = 19 miles

Massachusetts Department of Public Health
Division of Sexual and Domestic Violence Prevention and Services (DSDVPS)
Sexual and Domestic Violence Services for Communities Experiencing Inequities (SDVEI)

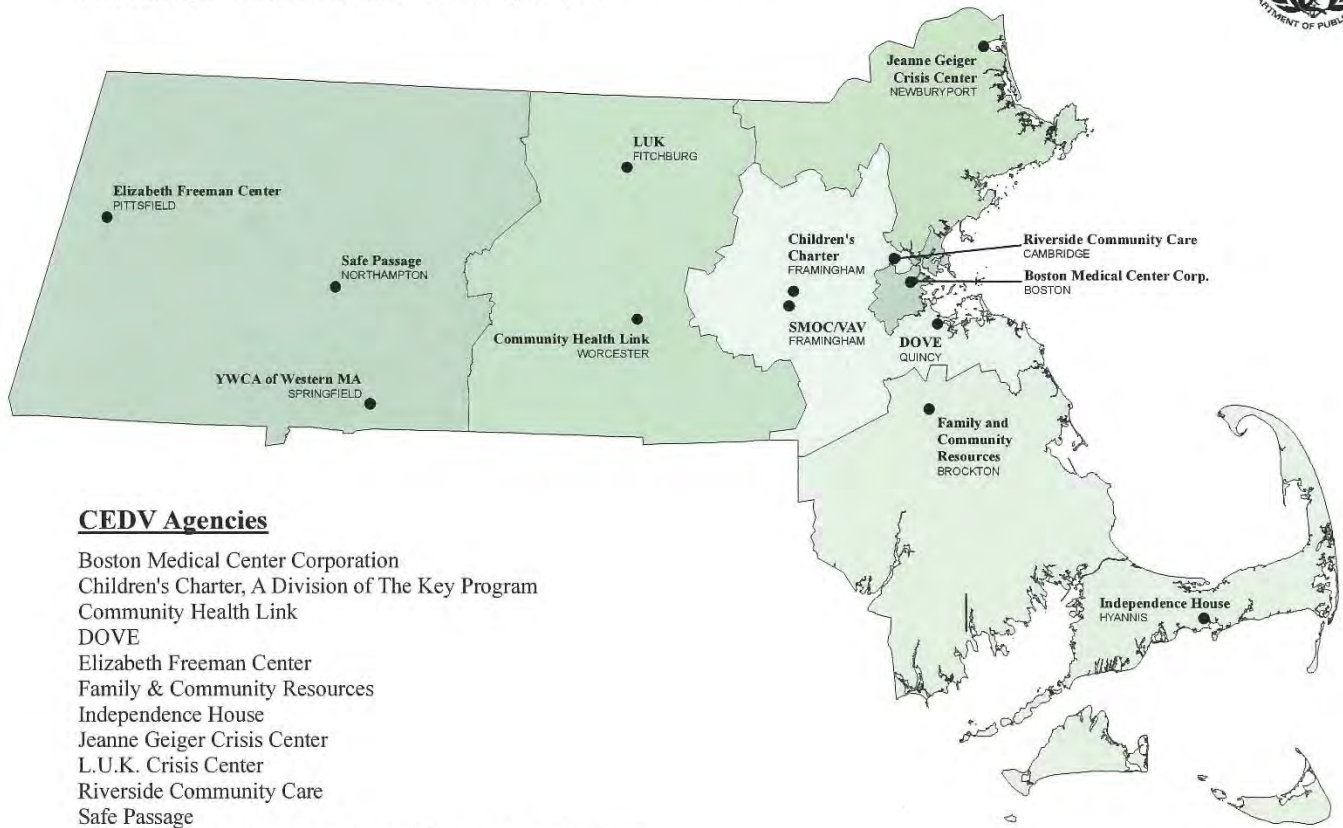


SDVEI Agencies

- | | |
|--|--|
| Association of Haitian Women in Boston | Metrowest Legal Services* |
| Casa Myrna Vazquez | Northeast Legal Aid* |
| The Center for Hope and Healing | On the Rise |
| Community Legal Aid* | Pathways for Change |
| Elizabeth Freeman Center | Refugee and Immigration Assistance Center (RIAC) |
| Family and Community Resources | Safe Passage |
| Greater Boston Legal Services* | South Coastal Counties Legal Services* |
| Journey to Safety, Jewish Family & Children's Services | Womanshelter/Compañeras |
| Massachusetts Alliance of Portuguese Speakers (MAPS) | |

1 in = 19 miles *Agencies providing legal services through the SDVEI contract are depicted on the map in blue.

Massachusetts Department of Public Health
Division of Sexual and Domestic Violence Prevention and Services (DSDVPS)
 Children Exposed to Domestic Violence (CEDV) Services

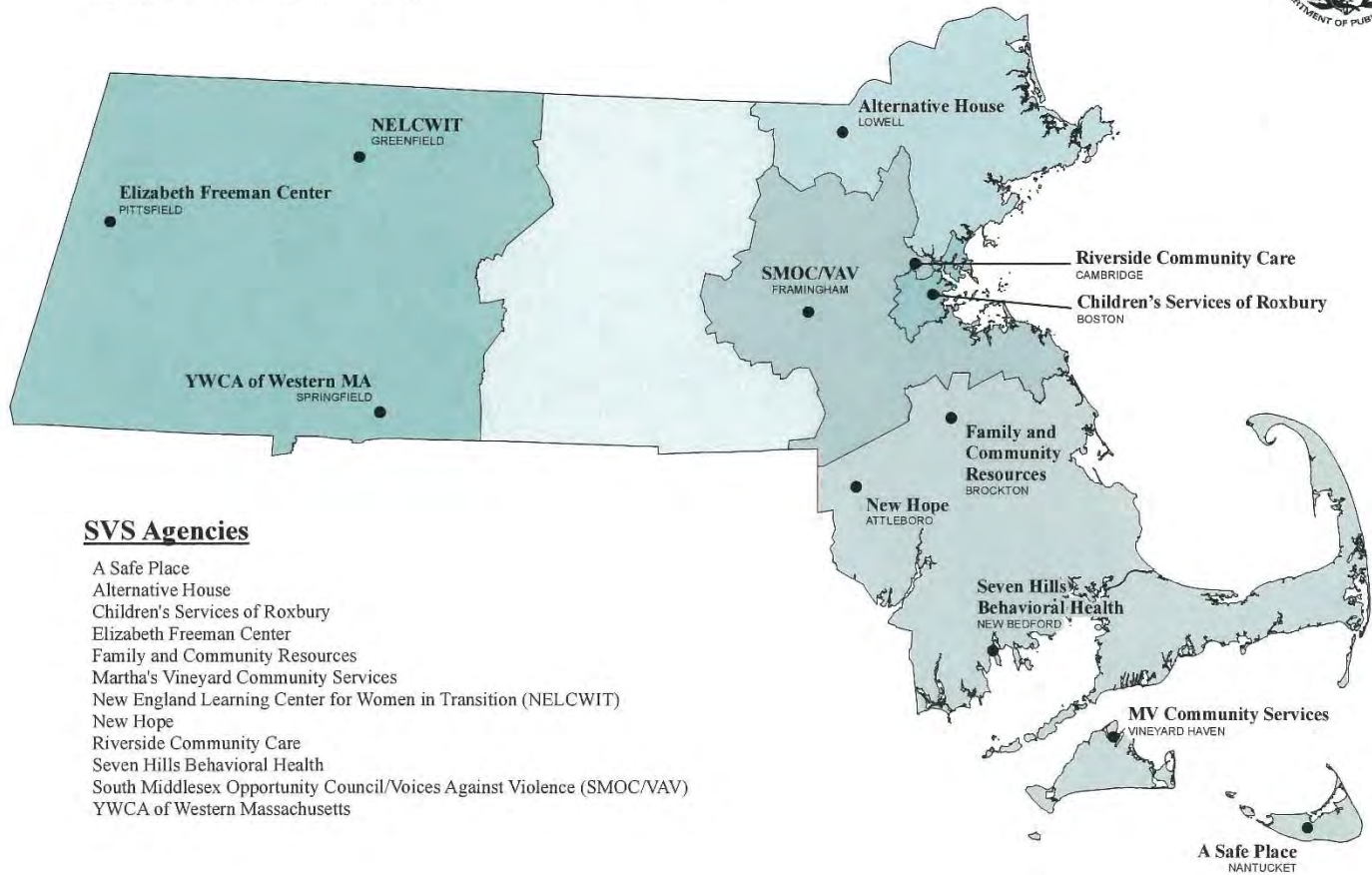


CEDV Agencies

- Boston Medical Center Corporation
- Children's Charter, A Division of The Key Program
- Community Health Link
- DOVE
- Elizabeth Freeman Center
- Family & Community Resources
- Independence House
- Jeanne Geiger Crisis Center
- L.U.K. Crisis Center
- Riverside Community Care
- Safe Passage
- South Middlesex Opportunity Council/Voices Against Violence
- YWCA of Western Massachusetts

1 in = 19 miles

**Massachusetts Department of Public Health
 Division of Sexual and Domestic Violence Prevention and Services (DSDVPS)
 Supervised Visitation Services (SVS)**



SVS Agencies

- A Safe Place
- Alternative House
- Children's Services of Roxbury
- Elizabeth Freeman Center
- Family and Community Resources
- Martha's Vineyard Community Services
- New England Learning Center for Women in Transition (NELCWIT)
- New Hope
- Riverside Community Care
- Seven Hills Behavioral Health
- South Middlesex Opportunity Council/Voices Against Violence (SMOC/VAV)
- YWCA of Western Massachusetts

1 in = 19 miles



Appendix E

Sexual Assault Nurse Examiner (SANE) Program Services

Every sexual assault patient deserves the best possible care. The MA Department of Public Health Sexual Assault Nurse Examiner (SANE) Program provides compassionate, trauma-informed care to sexual assault patients, including the option of a forensic examination, evidence collection and medications to reduce the risk of assault-related pregnancy or Sexually Transmitted Infections (STIs) within 5 days of a sexual assault. Patients may receive MA SANE services whether or not they choose to report their assault to the police, at no cost to the patient. Sexual assault survivors should be encouraged to seek care as soon as possible following a sexual assault.

- **In-person SANE Services** are currently available for sexual assault survivors **12 years and older** at 29 hospitals statewide. Please see link for current locations of in-person SANE services <https://www.mass.gov/service-details/adultadolescent-sane-services>
- **TeleSANE Services** are provided through the MA SANE Program's National TeleNursing Center. Expert MA SANEs using secure, encrypted Video Conferencing Technology to provide "real time" expert guidance and support to sexual assault patients, **12 years and older**, and the clinicians caring for them, at designated locations across the state. **Please see link for current locations of TeleSANE services** <https://www.mass.gov/info-details/about-the-national-telenursing-center>

Pediatric SANE services are available for children 11 years and younger following an acute sexual assault, within 3 days, in 4 hospitals. In addition, Pediatric SANE services are available in 8 of the state's 12 Children's Advocacy Centers (CAC) where multi-disciplinary team members investigate reports of child sexual abuse. Pediatric SANEs offer children (17 years and younger) and their families the option of a non-invasive examination, and testing for Sexually Transmitted Infections, focused to the health and well-being of the child. Referrals to CAC Pediatric SANEs are most commonly done by filing a Child Abuse Report (51A) with the Department of Children and Families (DCF). **Please see link for location of Pediatric SANE Services** <https://www.mass.gov/service-details/pediatric-sane-program>



Appendix F

Resource Guide for Survivors of Domestic Violence, Sexual Assault, Stalking, and Dating Violence

VAWA Resources

1. **Name:** 2013 reauthorization of the Violence Against Women Act (VAWA Pub. L. 113–4, 127 Stat. 54, approved March 7, 2013,

Description: “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 Reauthorization of VAWA in 2005 (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.”

Web Address: <https://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf>

2. **Name:** Federal Register / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations

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

Docket Name: FR–5720–P–02 Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs

Description: 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.

Web Address: <https://www.govinfo.gov/content/pkg/FR-2016-11-16/pdf/2016-25888.pdf>

PHA Notices

3. **Name:** *Notice PIH-2017-08 (HA) Violence Against Women Reauthorization Act of 2013 Guidance, May 19, 2017*
Supersedes: PIH Notice 2007-5; PIH Notice 2006-42; PIH Notice 2006-23

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

Web Address: <https://www.hud.gov/sites/documents/PIH-2017-08VAWRA2013.PDF>

4. **Name:** *PIH- 2015-19, November 2, 2015, Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*

Description: “The purpose of this Notice is to inform PHAs and owners of other federally-assisted housing that arrest records may not be the basis for denying admission, terminating assistance or evicting tenants, to remind PHAs and owners that HUD does not require their adoption of “One Strike” policies, and to remind them of their obligation to safeguard the due process rights of applicants and tenants.

The Notice also reminds PHAs and owners of their obligation to ensure that any admissions and occupancy requirements they impose comply with applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105.”

Finally, the Notice provides best practices and peer examples for PHAs and owners to review.”

Web Address: <https://www.hud.gov/sites/documents/PIH2015-19.PDF>

Fair Housing Resources

5. **Name:** Fair Housing Act Guidance

Description: This guidance primarily focuses on the impact these ordinances may have on domestic violence victims, but the Act and the standards described herein apply equally to victims of domestic violence and other crimes and to those in need of emergency services who may be subjected to discrimination prohibited by the Act due to the operation of these ordinances.

Web Address: <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>

6. **Name:** FHEO domestic violence memo

Description: “This memo from HUD’s Office of Fair Housing and Equal Opportunity provides guidance to HUD staff on assessing claims by domestic violence victims of housing discrimination under the Fair Housing Act. According to HUD, claims of discrimination against domestic violence victims are generally based on sex, but may also involve other protected classes such as race or national origin. The memo discusses the legal theories behind these claims and provides examples of cases involving alleged housing discrimination against domestic violence victims.”

Web Address: <http://nhlp.org/files/FHEO%20domestic%20violence%20memo.pdf>

7. **Name:** *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transaction, April 4, 2016.*

Description: “HUD’s Office of General Counsel issues this guidance concerning how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions. Specifically, this guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual’s criminal history.”

Web Address: https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

8. **Name:** *Disparate Impact 24 CFR Part 100 Implementation of the Fair Housing Act’s Discriminatory Effects Standard; Final Rule, Federal Register/Vol. 78, No. 32/Friday, February 15, 2013/Rules and Regulations*

Note: many of the other HUD notices include a discussion of disparate impact

Description: “Through this final rule, HUD formalizes its long-held recognition of discriminatory effects liability under the Act (FHA) and, for purposes of providing consistency nationwide, formalizes a burden-shifting test for determining whether a given practice has an unjustified discriminatory effect, leading to liability under the Act. This final rule also adds to, and revises, illustrations of discriminatory housing practices found in HUD’s Fair Housing Act regulations.”

Web Address: <https://www.hud.gov/sites/documents/DISCRIMINATORYEFFECTRULE.PDF>

Multifamily Notices/Resources

9. **Name:** Notice: H 2017-05 ‘Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents’
Remains in effect until amended, revoked or superseded. This notice supersedes H 2010-23; H 2009-15

Description: “This notice provides guidance to owners and management agents (O/As) of HUD multifamily assisted housing on the requirements of the Violence Against Women

Reauthorization Act of 2013: Implementation in HUD Housing Programs, Final Rule, published in the Federal Register on November 16, 2016, (81 Fed. Reg. 80724 (November 16, 2016)) (VAWA Final Rule). This notice does not encompass every aspect of the VAWA Final Rule and should be used in conjunction with the VAWA Final Rule.”

Web Address: <https://www.hud.gov/sites/documents/17-05HSGN.PDF>

10. **Name:** Q&A’s with Multifamily Staff – Part I

Description: The following is a summary of questions/scenarios presented to the HUD Multifamily Office of Asset Management and Portfolio Oversight regarding the Violence Against Women Act (VAWA) Final Rule and Notice H 2017-05.

Web Address: https://www.hud.gov/sites/dfiles/Housing/documents/Revised_VAWA_QA.pdf

MA State Law and Resources

11. **Name:** MA State Law: *An Act relative to housing rights for victims of domestic violence, rape, sexual assault and stalking*
Bill S.2402 187th (2011 - 2012)

Web Address: <https://malegislature.gov/Bills/187/S2402>

A victim’s advocate explanation and links to resources can be found on the April 3, 2013 posting, “New Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking” by the Boston Area Rape Crisis Center, Greater Boston Legal Services, Jane Doe Inc., and the Victim Rights Law Center.

Web Address: http://www.challiance.org/Resource.ashx?sn=Final_402_FAQ_Housing_Law_4-3-13

12. **Name:** Guidelines for Law Enforcement Response to Domestic Violence

Description: “The purpose of this document is to establish guidelines for law enforcement officers and police agencies when responding to domestic violence calls. The primary focus shall be on victim safety, followed closely by offender accountability; accordingly, a proactive, pro-arrest approach in responding to domestic violence is a priority.”

Web Address: <http://www.mass.gov/eopss/docs/eops/2017-dv-law-enforcement-guidelines-final-07-06-2017.pdf>

13. **Name:** Adult Sexual Assault Law Enforcement Guidelines 2017

Description: “Although each investigation will undoubtedly present with different circumstances and challenges, these guidelines are intended to serve as a guide for law enforcement professionals when investigating adult sexual assaults. A timely, pragmatic, and sensitive law enforcement response is paramount. It improves a community's confidence in the police, increases reporting levels, and strengthens investigations thereby facilitating more successful prosecutions. The goal is to establish a standard or best practice to which investigations are conducted thereby creating a thorough, trauma-informed response regardless of the investigative jurisdiction.”

Web Address: <https://www.mass.gov/files/documents/2018/07/31/2017-sexual-assault-law-enforcement-guidelines.pdf>

HUD Forms

14. **Relevant Forms (available in multiple languages)**

- Notice of Occupancy Rights Under the Violence Against Women Act, form *HUD-5380*
- Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, form *HUD-5381*
- Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation, form *HUD-5382*
- Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, form *HUD-5383*

Web Address: https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a

General/Professional Resources

15. **Name:** Simmons College School of Social Work: Domestic Violence Training

Description: “Simmons School of Social Work offers a self-paced online domestic violence training geared to professionals (e.g., social workers, human service providers, first responder) at all levels of experience. The training is free, easily accessible, and organized into seven distinct units that cover a range of topics related to working with people affected by domestic violence. If interested, you can receive a total of 10 CEUs for completing the training. Please note that, although the training itself is free, the cost of the 10 CEUs is \$50. Please see the training for more information.”

Web Address: <https://sites.google.com/a/simmons.edu/dv-training/home>

16. **Name:** Northeastern University, Institute for Health Equity and Social Justice Research: Vicarious Trauma Toolkit

Description: “The Vicarious Trauma Toolkit (VTT) is a first-of-its-kind online resource that helps guide first responder and victim service agencies in becoming vicarious trauma-informed. It contains a Compendium of Resources of nearly 500 existing and new resources including policies, research literature, training materials and links to websites, podcasts, and videos.”

Web Address: https://bouve.northeastern.edu/institute-of-health-equity-social-justice-research/?ihesjr_projects=vicarious-trauma-toolkit

17. **Name:** HOUSING RIGHTS OF DOMESTIC VIOLENCE SURVIVORS A STATE AND LOCAL LAW COMPENDIUM

*Massachusetts: pages 88-95

Description: “The following is a compendium of state and local laws that affect domestic violence survivors’ housing rights. This compendium is designed to serve as a starting point for advocates seeking to conduct research on the housing protections that their state laws offer for domestic violence survivors. Advocates should review provisions affecting domestic violence survivors’ housing rights on a case-by-case basis to ensure their validity and enforceability in each state. For purposes of brevity, in some instances statutes are excerpted to include only the information that is relevant to domestic violence and housing.”

Web Address:

<http://nhlp.org/files/Domestic%20violence%20housing%20compendium%20FINAL7.pdf>

18. **Name:** Safe Housing Partnerships (website)

Description: “The Safe Housing Partnerships is new website for the Domestic Violence and Housing Technical Assistance Consortium! We hope you find useful resources and tools that advance your work at the critical intersection of domestic violence, sexual assault, homelessness, and housing.” Resources are added/updated regularly.

Web Address: <https://safehousingpartnerships.org/>

19. **Name:** “Maintaining Safe and Stable Housing for Domestic Violence Survivors A Manual for Attorneys and Advocates”

Description: Produced by the National Housing Law Project. “This Manual is designed for advocates and attorneys assisting domestic violence survivors who are at risk of losing their housing or who need to improve the safety of their housing. Survivors often return to abusive partners because they cannot maintain a safe and secure housing on their own. As a result, housing advocacy is a critical part of holistic services for domestic violence survivors. The purpose of this Manual is to provide background information and sample documents that can be used to advocate on behalf of survivors facing evictions, rental subsidy terminations, and other

forms of housing instability. This Manual does not address the housing application process or strategies for assisting survivors who have been denied access to housing.”

Web Address:

<http://www.nhlp.org/files/NHLP%20Domestic%20Violence%20and%20Housing%20Manual%202.pdf>

MA-Based Resources for Survivors

20. **Name:** Massachusetts Office for Victim Assistance (MOVA) (website)

Description: MOVA serves all crime victims, witnesses, their family members and direct victim service providers throughout the Commonwealth of Massachusetts.

- MOVA also runs the SAFEPLAN Program (Safety Assistance For Every Person Leaving Abuse Now). SAFEPLAN is MOVA’s statewide court-based program that provides specially trained advocates to help victims of domestic violence, sexual assault, and stalking who are seeking protection from abuse. SAFEPLAN currently serves 50 district and probate courts throughout the state. SAFEPLAN Advocates are employed by 14 local community-based domestic violence and sexual assault agencies. For more information about SAFEPLAN, visit <https://www.mass.gov/service-details/safeplan-program>.
- Victim’s Compensation is also offered through MOVA. Can provide up to \$25,000 for victims & family members of any violent crime that occurred in MA. Eligibility
 - Crime must have occurred in MA
 - Claim must be submitted within 3 years
 - Either an evidence collection kit must be done, or a police report must be filed

Victim’s Compensation can include the following:

- Medical, dental, lost wages, and counseling expenses
- Professional crime scene cleanup services up to \$1,500
- Replacement of bedding or clothing up to \$250
- Security measures to reasonably address the safety concerns of a victim or family member up to \$500
- Mental health counseling expenses for a non-offending parent of an eligible child victim

For more information see: <http://www.mass.gov/ago/public-safety/resources-for-victims/victims-of-violent-crime/victim-compensation.html>

Web Address: <https://www.mass.gov/orgs/massachusetts-office-for-victim-assistance>

21. **Name:** Jane Doe, Inc. (website)

Description: “JDI is a coalition of 60 local member programs working together with our allies to find lasting solutions that promote the safety, liberty, and dignity for victims and survivors of sexual and domestic violence. We work for social change to help create a world free of violence and abuse.”

Web Address: <http://www.janedoe.org/>

22. **Name:** Department of Public Health: Violence Prevention and Intervention Services (website)

Description: “Information on programs and services offered by the Commonwealth, including but not limited to training opportunities and protective services for children, adolescents, victims of sexual and domestic violence, juvenile crimes, elderly abuse/exploitation, and violence committed against the disabled.”

Lists programming and resources including Batterer Intervention services, Sexual Assault Nurse Examiner (SANE), Refugee And Immigrant Safety And Empowerment (RISE), Sexual and Domestic Violence Programs for Gay, Lesbian, Bisexual and Transgender Communities, Youth Violence Prevention Program, and Bullying Prevention Resources.

Web Address: <http://www.mass.gov/dph/violence>

Resources and Tools Which Help Owners and Agents Provide Persons with LEP Meaningful Access to Housing Programs and Related Services

Legal Guidance

[Executive Order 13166](#)

This webpage provides [Frequently Asked Questions on HUD LEP Guidance](#) Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" and resources connected to it.

[Guidance for LEP for Different Federal Agencies](#)

This webpage provides links to the guidance issued on LEP for all Federal Agencies. HUD's final guidance was issued in 2007, and the Department of Agriculture's was issued in 2014.

[Frequently Asked Questions on HUD LEP Guidance](#)

These questions and answers specifically addressed HUD's LEP guidance and appeared in the Federal Register.

[Questions and Answers Regarding Executive Order 13166 and LEP In General](#)

These questions and answers are general in nature and address Executive Order 13166 and implementation of it. Some of these are redundant to the Frequently Asked Questions on HUD LEP Guidance.

[HUD LEP Frequently Asked Questions](#)

These questions and answers are specific to HUD programs and activities.

[HUD General Counsel Guidance on LEP and the Fair Housing Act](#)

This guidance discusses how disparate treatment and discriminatory effects methods of proof apply in Fair Housing Act cases in which a housing provider bases an adverse housing action on an individual's limited ability to read, write, speak or understand English.

Helpful Assessment Tools

[Language Access Assessment and Planning Tool](#)

This is an excellent planning tool for any company/site seeking to identify and implement a plan for providing meaningful access for persons with LEP.

[Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs](#)

Although this document is geared towards federally conducted and assisted programs, it contains a lot of helpful information which applies to providing persons with LEP meaningful access to housing sites and their programs.

Websites

[Federal Gov't Interagency LEP Website](#)

Clearinghouse for LEP information and tools developed by the Federal government.

[MassHousing](#)

Contains both Federal Guidance and materials developed by MassHousing, and Massachusetts specific resources.

[HUD LEP Materials](#)

Contains HUD guidance and translated documents.

[National Housing Law Project](#)

Provides general materials, cases relating to LEP, and links to other websites.

[The Migration Policy Institute Language Access Project](#)

Designed to provide information on ways to provide high-quality and cost-effective translation and interpretation services.

Multilingual Glossaries

[Legal Glossaries](#)

These glossaries for legal terms, which include multiple languages, were created by the Superior Court of CA, Sacramento.

[Spanish Language Style Guide and Glossaries for U.S Government Web Sites](#)

A resource on language use and terminology for Web managers dealing with websites in Spanish and/or Spanish language contractors.

Online Translation Tools/Apps

These tools can be helpful in communicating with applicants and residents with LEP. These translation tools sometimes provide inaccurate translations. They should be used as a way to facilitate first contact with someone with LEP and to translate simple sentences, words, and concepts.

- [Googletranslate](#), Google's free service instantly translates words, phrases, and web pages between English and over 100 other languages.
 - [translation2](#), includes online translator, dictionary, text-to-speech (text to voice), virtual keyboard, spell-checker, Russian decoder, back translation, and translators comparison tool.
 - [Sayhitranslate](#), a speech translation App for iPhone, iPod Touch or iPad.
 - [icommunicate](#), an app allows you to create pictures, flashcards, storyboards, routines, visual schedules and record custom audio in any language.
-

Interpreter and Translator Resources

[languageLine](#)

Provides comprehensive language assistance, such as telephonic interpreting, video remote interpreting, and onsite interpreting as well as accurate document translation and language testing and training.

[ABS Interpreter](#)

ABS (Alliance Business Solutions) Language Services, provides clients with Translation, Interpretation and Transcription services.

[umasstranslation](#)

UMass Translation Center offers an array of [translation](#), [interpreting](#) and language consulting services.

[Court Interpreters Program](#)

[American Translators Association](#)

Provides information on over 9,500 translators and interpreters.

[Catholic Charities](#)

Community Interpreter Services (CIS) provides both [oral interpretation](#) (face-to-face and [telephonic interpretation](#)) and [written translation](#)

Day To Day

[Wallet cards for How to Use Telephone Communication](#)

Provide wallet cards for staff, such as maintenance providers, who need to access telephone interpretation, both during and after normal business hours. This card should provide directions on how to access the applicable service.

[A language identification board/poster available at sites](#)

This helps staff in a face-to-face situation to identify which language the person with LEP speaks. The Language ID board should list at minimum the most frequently used languages in the state. An alternative is the ["I Speak Cards"](#) which have been used by census workers and government agencies.

[Mass Legal Services Editable Interpreter Poster](#)

This website allows the creation of a poster in editable horizontal and vertical formats to meet the needs of your applicants and residents. PDF versions are also attached. The English text reads, "You have the right to an interpreter at no cost to you. Please point to your language. An interpreter will be called. Please wait." The text is translated into 34 languages.

Appendix G – Regulations Reference Guide

§ 5.2001 - Applicability:

§ 5.2001(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.

"§ 5.2001(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.

§ 5.2001(b)(2) The regulations in this subpart are supplemented by the specific regulations for the HUD-covered housing programs listed in § 5.2003. The program-specific regulations address how certain VAWA requirements are to be implemented and whether they can be implemented (for example, reasonable time to establish eligibility for assistance as provided in § 5.2009(b)) for the applicable covered housing program, given the statutory and regulatory framework for the program. When there is conflict between the regulations of this subpart and the program-specific regulations, the program-specific regulations govern. Where assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes."

§ 5.2003 - Definitions:

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

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

Affiliated individual, with respect to an individual, means:

"(1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or

(2) Any individual, tenant, or lawful occupant living in the household of that individual."

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

§ 5.2003 - Definitions (continued):

Covered housing program consists of the following HUD programs:

"(1) Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), (24 CFR part 891)

(2) Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), (24 CFR part 891)

(3) Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 et seq.), (24 CFR part 574)

(4) HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 et seq.), (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 ESG program (24 CFR part 576), the CoC program (24 CFR part 578), and the Rural Housing Stability Assistance program (regulations forthcoming).

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

(7) Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1), (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) (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) (24 CFR chapters VIII and IX), and the Section 8 Moderate Rehabilitation Single Room Occupancy (24 CFR part 882, subpart H).

(9) The HTF (12 U.S.C. 4568) (24 CFR part 93). Covered housing provider refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities. The program-specific regulations for the covered housing programs identify the individual or entity that carries out the duties and responsibilities of the covered housing provider as set forth in part 5, subpart L. For any of the covered

housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be the same individual or entity."

Dating violence means violence committed by a person:

"(1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:"

"(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship."

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

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

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

"(1) Fear for the person's individual safety or the safety of others; or

(2) Suffer substantial emotional distress."

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

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

§ 5.2007(a) Request for documentation.

(1) Under a covered housing program, if an applicant or tenant represents to the covered housing provider that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking entitled to the protections under §5.2005, or remedies under §5.2009, the covered housing provider may request,

in writing, that the applicant or tenant submit to the covered housing provider the documentation specified in paragraph (b)(1) of this section.

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

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

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

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

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

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

§ 5.2007(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."

§ 5.2007 - Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking (continued):

§ 5.2007(c) Confidentiality. Any information submitted to a covered housing provider under this section, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking (confidential information), shall be maintained in strict confidence by the covered housing provider.

"(1) The covered housing provider shall not allow any individual administering assistance on behalf of the covered housing provider or any persons within their employ (e.g., contractors) or in the employ of the covered housing provider to have access to confidential information unless explicitly authorized by the covered housing provider for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

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

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

(ii) Required for use in an eviction

proceeding or hearing regarding termination of assistance from the covered program; or

(iii) Otherwise required by applicable law."

§ 5.2007(d) A covered housing provider's compliance with the protections of § 5.2005 and 5.2009, based on documentation received under this section shall not be sufficient to constitute evidence of an unreasonable act or omission by the covered housing provider. However, nothing in this paragraph (d) of this section shall be construed to limit the liability of a covered housing provider for failure to comply with §§ 5.2005 and 5.2009.

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

§ 5.2009(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.

§ 5.2009 - Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking (continued):

§ 5.2009(b) Reasonable time to establish eligibility for assistance or find alternative housing following bifurcation of a lease—

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

(2) Reasonable time to establish eligibility assistance or find alternative housing. (i) If a covered housing provider exercises the option to bifurcate a lease as provided in paragraph (a) of this section, and the individual who was evicted or for whom assistance was terminated was the eligible tenant under the covered housing program, the covered housing provider shall provide to any remaining tenant or tenants that were not already eligible a period of 90 calendar days from the date of bifurcation of the lease to:"

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

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

(C) Find alternative housing."

"(ii) The 90-calendar-day period provided by paragraph (b)(2) of this section will not be available to a remaining household member if the statutory requirements for the covered housing program prohibit it. The 90-day calendar period also will not apply beyond the expiration of a lease, unless this is permitted

by program regulations. The 90-calendar-day period is the total period provided to a remaining tenant to establish eligibility under the three options provided in paragraphs (b)(2)(i)(A), (B), and (C) of this section.

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

§ 5.2009(c) Efforts to promote housing stability for victims of domestic violence, dating violence, sexual assault, or stalking. Covered housing providers are encouraged to undertake whatever actions permissible and feasible under their respective programs to assist individuals residing in their units who are victims of domestic violence, dating violence, sexual assault, or stalking to remain in their units or other units under the covered housing program or other covered housing providers, and for the covered housing provider to bear the costs of any transfer, where permissible.

§ 5.2011 - Effect on other laws:

§ 5.2011(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.

§ 5.2011(b) All applicable fair housing and civil rights statutes and requirements apply in the implementation of VAWA requirements. See § 5.105(a).

§ 5.2003 - Definitions:

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

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

Affiliated individual, with respect to an individual, means:

"(1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or

(2) Any individual, tenant, or lawful occupant living in the household of that individual."

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD- covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can

continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Covered housing program consists of the following HUD programs:

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

(2) Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.

(3) Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 et seq.), with implementing regulations at 24 CFR part 574.

(4) HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 et seq.), with implementing regulations at 24 CFR part 92.

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

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

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

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

(9) The Housing Trust Fund (12 U.S.C. 4568) (with implementing regulations at 24 CFR part 93). Covered housing provider refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities. The program-specific regulations for the covered housing programs identify the individual or entity that carries out the duties and responsibilities of the covered housing provider as set forth in part 5, subpart L. For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be the same individual or entity."

Dating violence means violence committed by a person:

"(1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:"

"(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship."

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

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

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

"(1) Fear for the person's individual safety or the safety of others; or

(2) Suffer substantial emotional distress."

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

§ 5.2005 VAWA Protections:

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

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

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

(ii) A certification form, in a form

approved by HUD, to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault or stalking, and that:"

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

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

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

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

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

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

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

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

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

(4) For the Housing Choice Voucher program under 24 CFR part 982, the project-based voucher program under 24 CFR part 983, the public housing admission and occupancy requirements under 24 CFR part 960, and renewed funding or leases of the Section 8 project-based program under 24 CFR parts 880, 882, 883, 884, 886, as well as project-based section 8 provided in connection with housing under part 891, the HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, sexual assault, or stalking, as provided in this subpart.

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

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

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

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

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

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

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

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

(d) Limitations of VAWA protections.

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

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

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

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

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

(4) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section should be utilized by a covered housing provider only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents."

(e) Emergency transfer plan. Each covered housing provider, as identified in the program-specific regulations for the covered housing program, shall adopt an emergency transfer plan, no later than June 14, 2017 based on HUD's model emergency transfer plan, in accordance with the following:

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

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

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

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

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

"(i) The tenant expressly requests the transfer; and

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

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

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

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

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

(6) The emergency transfer plan must describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available, and these policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.

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

seeking an external emergency transfer under VAWA into the covered housing provider's program or project. These policies may include:"

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

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

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

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

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

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

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

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

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

(12) The covered housing provider must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. Requests and outcomes of such requests must be reported to HUD annually.

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

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

§ 5.2007(a) Request for documentation.

(1) Under a covered housing program, if an applicant or tenant represents to the covered housing provider that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking entitled to the protections under § 5.2005, or remedies under § 5.2009, the covered housing provider may request,

in writing, that the applicant or tenant submit to the covered housing provider the documentation specified in paragraph (b)(1) of this section.

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

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

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

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

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

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

§ 5.2007(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."

§ 5.2007(c) Confidentiality. Any information submitted to a covered housing provider under this section, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking (confidential information), shall be maintained in strict confidence by the covered housing provider.

"(1) The covered housing provider shall not allow any individual administering assistance on behalf of the covered housing provider or any persons within their employ (e.g., contractors) or in the employ of the covered housing provider to have access to confidential information unless explicitly authorized by the covered housing provider for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

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

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

(ii) Required for use in an eviction

proceeding or hearing regarding termination of assistance from the covered program; or

(iii) Otherwise required by applicable law."

§ 5.2007(d) A covered housing provider's compliance with the protections of § 5.2005 and 5.2009, based on documentation received under this section shall not be sufficient to constitute evidence of an unreasonable act or omission by the covered housing provider. However, nothing in this paragraph (d) of this section shall be construed to limit the liability of a covered housing provider for failure to comply with §§ 5.2005 and 5.2009.

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

(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.

Appendix H – Covered Housing Provider

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

Division:	Program:	Who is the "Covered Housing Provider" and for What Purposes?	Program Regulations:
<p>HUD's Office of Community Planning and Development</p>	<p>Continuum of Care Program (CoC), which include:</p> <ul style="list-style-type: none"> •Supportive Housing Program (SHP); •Shelter Plus Care Program (S+C); •Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program 	<p>The requirements set forth in 24 CFR part 5, subpart L apply to:</p> <ul style="list-style-type: none"> •All <u>permanent housing and transitional housing</u> for which CoC program funds are used for acquisition, rehabilitation, new construction, leasing, rental assistance, or operating costs; •Where CoC funds are used for homelessness prevention, but only where the funds are used to provide short- and/or medium-term rental assistance. <p>The requirements set forth in 24 CFR part 5, subpart L, do not apply to:</p> <p><u>Safe havens, however</u>; no individual may be denied admission to or removed from the safe haven on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or occupancy.</p> <p>The owner or landlord, which may be the recipient or subrecipient, for the purposes of 24 CFR:</p> <ul style="list-style-type: none"> •§5.2005(d)(1) •§5.2009(a) <p>The recipient, subrecipient, and owner or landlord for the purposes of 24 CFR:</p> <ul style="list-style-type: none"> •§5.2005(d)(2) •§5.2005(d)(3) •§5.2005(d)(4) <p>The recipient, subrecipient, and owner or landlord for the purposes of 24 CFR:</p> <ul style="list-style-type: none"> •§5.2007. However, the recipient or subrecipient may limit documentation requests under 24 CFR 5.2007 to only the recipient or subrecipient, provided that: <ul style="list-style-type: none"> (i) This limitation is made clear in both the notice described under 24 CFR 5.2005(a)(1) and the rental assistance agreement; (ii) The entity designated to receive documentation requests determines whether the program participant is entitled to protection under VAWA and immediately advise the program participant of the determination; and (iii) If the program participant is entitled to protection, the entity designated to receive documentation requests must notify the owner in writing that the program participant is entitled to protection under VAWA and work with the owner on the program participant's behalf. Any further sharing or disclosure of the program participant's information will be subject to the requirements in 24 CFR 5.2007. 	<p>Continuum of Care Program (CoC):</p> <ul style="list-style-type: none"> •24 CFR 578 <p>SHP:</p> <ul style="list-style-type: none"> •24 CFR 583 <p>S+C:</p> <ul style="list-style-type: none"> •24 CFR <p>Sec 8 Mod Rehab SRO:</p> <ul style="list-style-type: none"> •24 CFR Part 882, Subpart H
	<p>Emergency Solutions Grants Program (ESG):</p>	<p>The VAWA regulatory requirements under 24 CFR part 5, subpart L, as supplemented by § 576.409, apply to all eligibility and termination decisions that are made with respect to ESG rental assistance on or after December 16, 2016. The recipient must ensure that the requirements under 24 CFR part 5, subpart L, are included or incorporated into rental assistance agreements and leases as provided in § 576.106(e) and (g).</p> <p>The recipient or subrecipient that administers the rental assistance for the purposes of 24 CFR:</p> <ul style="list-style-type: none"> •§5.2005(e) <p>The housing owner for the purposes of 24 CFR:</p> <ul style="list-style-type: none"> •§5.2005(d)(1) •§5.2005(d)(3) •§5.2005(d)(4) and •§5.2009(a) <p>The housing owner and the recipient or subrecipient that administers the rental assistance for the purposes of 24 CFR:</p> <ul style="list-style-type: none"> •§5.2005(d)(2) <p>The housing owner and the recipient or subrecipient that administers the rental assistance for the purposes of 24 CFR:</p> <ul style="list-style-type: none"> •§5.2007. However, the recipient or subrecipient may limit documentation requests under 24 CFR 5.2007 to only the recipient or subrecipient, provided that: <ul style="list-style-type: none"> (i) This limitation is made clear in both the notice described under 24 CFR 5.2005(a)(1) and the rental assistance agreement; (ii) The entity designated to receive documentation requests determines whether the program participant is entitled to protection under VAWA and immediately advise the program participant of the determination; and (iii) If the program participant is entitled to protection, the entity designated to receive documentation requests must notify the owner in writing that the program participant is entitled to protection under VAWA and work with the owner on the program participant's behalf. Any further sharing or disclosure of the program participant's information will be subject to the requirements in 24 CFR 5.2007. 	<p>24 CFR part 576</p>

Division:	Program:	Who is the "Covered Housing Provider" and for What Purposes?	Program Regulations:
<p style="text-align: center;">HUD's Office of Community Planning and Development</p>	<p>HOME Investments Partnerships Program (HOME):</p>	<p>The requirements set forth in 24 CFR part 5, subpart L apply to:</p> <ul style="list-style-type: none"> •All HOME tenant-based rental assistance; •All rental housing assisted with HOME funds, as supplemented by section § 92.359 <p>The housing owner for the purposes of 24 CFR:</p> <ul style="list-style-type: none"> •§5.2005(d)(1) •§5.2005(d)(3) •§5.2005(d)(4) and •§5.2009(a) <p>The participating jurisdiction and the owner for the purposes of 24 CFR:</p> <ul style="list-style-type: none"> •§5.2005(d)(2) •§5.2005(e) and •§5.2007, except as otherwise provided in paragraph (g) of § 92.359 	<p>24 CFR part 92</p>
	<p>Housing Opportunities for Persons with AIDS (HOPWA):</p>	<p>The requirements set forth in 24 CFR part 5, subpart L apply to:</p> <ul style="list-style-type: none"> •Housing assisted with HOPWA grant funds for acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing; new construction; and operating costs, as provided in §574.300 •Project-based and tenant-based rental assistance, as provided in §§ 574.300 and 574.320, and community residences, as provided in § 574.340. <p>The requirements set forth in 24 CFR part 5, subpart L, do not apply to:</p> <p>Short-term supported housing, however; no individual may be denied admission to or removed from the short-term supported housing on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or occupancy.</p> <p>The HOPWA grantee, project sponsor, or housing or facility owner, or manager</p> <ul style="list-style-type: none"> •For HOPWA-assisted Units: The HOPWA grantee is responsible for ensuring that each project sponsor undertakes the responsibilities (or, if administering the HOPWA assistance directly, the grantee shall undertake the following actions). •For HOPWA tenant-based rental assistance: The HOPWA grantee is responsible for ensuring that each project sponsor providing tenant-based rental assistance undertakes the responsibilities (or, if administering the HOPWA assistance directly, the grantee shall undertake the following actions) 	<p>24 CFR part 574</p>
	<p>Housing Trust Fund:</p>	<p>The VAWA requirements set forth in 24 CFR part 5, subpart L, apply to all rental housing assisted with HTF funds, as provided in section §93.356</p> <p>The owner of HTF-assisted rental housing for the purposes of 24 CFR</p> <ul style="list-style-type: none"> •§5.2005(d)(1) •§5.2005(d)(2) •§5.2005(d)(3) •§5.2005(d)(4) and •§5.2009(a) <p>The owner and the grantee for purposes of 24 CFR</p> <ul style="list-style-type: none"> •§5.2005(e) and •§5.2007, except as otherwise provided in paragraph (f) of § 93.356 	<p>24 CFR part 93</p>

Division:	Program:	Who is the "Covered Housing Provider" and for What Purposes?	Program Regulations:
	<p>FHA Programs, which include:</p> <ul style="list-style-type: none"> •Section 221(d)(3) / (d)(3) (BMIR); •Section 236 	<p>The requirements set forth in 24 CFR part 5, subpart L apply to:</p> <ul style="list-style-type: none"> •Multifamily rental housing under section 221(d)(3) of the National Housing Act with a below-market interest rate (BMIR) pursuant to section 221(d)(5). The program is no longer active, but Section 221(d)(3) BMIR properties that remain in existence are covered by VAWA. •Multifamily rental housing under section 236 of the National Housing Act. <p>The requirements set forth in 24 CFR part 5, subpart L, do not apply to:</p> <ul style="list-style-type: none"> •Section 221(d)(3) and (d)(5) BMIR projects that refinance under section 223(a)(7) or 223(f) of the National Housing Act where the interest rate is no longer determined under section 221(d)(5). <p>The mortgagor or owner (generally the mortgagor), as applicable, is responsible for all purposes related to the rule: granting VAWA protections, providing notice of VAWA protections, administering emergency transfer plans, or bifurcating leases.</p> <p>NOTE: When an existing mortgagor/owner sells the project to a new entity, the new entity would own the project but not be the mortgagor under the mortgage, therefore the owner would be the covered housing provider. If a project is participating in RAD or receives Section 8 funding, the requirements for those programs would govern the treatment of tenants for purposes of VAWA. In cases where there is no Section 8 funding, and a 236 project is entering into a new contract with HUD, the owner must ensure that VAWA requirements are being followed.</p>	<p>Intro to FHA Programs:</p> <ul style="list-style-type: none"> •24 CFR part 200 <p>Section 221(d)(3) / (d)(3) (BMIR):</p> <ul style="list-style-type: none"> •24 CFR part 221 <p>Section 236:</p> <ul style="list-style-type: none"> •24 CFR part 236
<p>HUD's Office of Multifamily Housing</p>	<p>Section 8 Housing Assistance Payment Program for New Construction:</p>	<p>The O/A is responsible for all purposes related to the rule: granting VAWA protections, providing notice of VAWA protections, administering emergency transfer plans, or bifurcating leases.</p> <p>Where PHAs are owners of projects under this program, they will be the covered housing provider for all purposes related to this rule.</p>	<p>24 CFR part 880</p>
<p>Housing</p>	<p>Section 8 Housing Assistance Payments Program, New Construction Set-Aside for Section 515 Rural Rental Housing:</p>	<p>The O/A is responsible for all purposes related to the rule: granting VAWA protections, providing notice of VAWA protections, administering emergency transfer plans, or bifurcating leases.</p> <p>Where PHAs are owners of projects under this program, they will be the covered housing provider for all purposes related to this rule.</p>	<p>24 CFR part 884</p>
	<p>Section 8 Housing Assistance Payments Program - Special Allocations:</p>	<p>The O/A is responsible for all purposes related to the rule: granting VAWA protections, providing notice of VAWA protections, administering emergency transfer plans, or bifurcating leases.</p> <p>Where PHAs are owners of projects under this program, they will be the covered housing provider for all purposes related to this rule.</p>	<p>24 CFR part 886</p>
	<p>Supportive Housing for the Elderly and Persons with Disabilities:</p> <ul style="list-style-type: none"> •Section 202; •Section 811 	<p>The O/A is responsible for all purposes related to the rule: granting VAWA protections, providing notice of VAWA protections, administering emergency transfer plans, or bifurcating leases.</p> <p>*Specific to the 811 PRA program, covered housing provider is the state housing agency, i.e., Grantee.</p> <p>Unless a PHA is the owner of a project, PHAs plays no role under in responsibilities pertaining to granting VAWA protections, providing notice of VAWA protections, administering emergency transfer plans, or bifurcating leases. Where PHAs are owners of projects under these programs, they will be the covered housing provider for all purposes related to this rule.</p>	<p>24 CFR part 891</p>

Division:	Program:	Who is the "Covered Housing Provider" and for What Purposes?	Program Regulations:
	Housing Choice Voucher (HCV) Program:	<p>The PHA must apply the requirements in 24 CFR part 5, subpart L, however; for the purposes of compliance with HUD's regulations in 24 CFR part 5, subpart L, PHAs and owners each have certain responsibilities as covered housing providers.</p> <p>The PHA for the purposes of 24 CFR: •§5.2005(a)</p> <p>The Owner for the purposes of 24 CFR: •§5.2009(a)</p> <p>The PHA and Owner for the purposes of 24 CFR •§5.2005(e) •§5.2005(b) •§5.2005(c) •§5.2005(d)</p>	24 CFR part 982
	Project-Based Voucher (PBV) Program:	<p>PHAs and owners each have certain responsibilities as covered housing providers.</p> <p>The PHA for the purposes of 24 CFR: •§5.2005(a)</p> <p>The Owner for the purposes of 24 CFR: •§5.2009(a)</p> <p>The PHA and Owner for the purposes of 24 CFR •§5.2005(e) •§5.2005(b) •§5.2005(c) •§5.2005(d)</p>	24 CFR part 983
HUD's Office of Public and Indian Housing	Public Housing & Mixed Financed Units:	<p>The PHA is responsible for all purposes related to the rule: granting VAWA protections, providing notice of VAWA protections, administering emergency transfer plans, or bifurcating leases.</p> <p>The PHA remains the covered housing provider for all purposes related to the rule for mixed finance units and public housing developments that received public housing assistance under the Choice Neighborhoods and HOPE VI programs' NOFAs because these units are generally administered in the same manner as other public housing units.</p>	24 CFR part §960 24 CFR part §966 24 CFR part §905
	•Section 8 Moderate Rehabilitation Program: •Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program:	<p>PHAs and owners each have certain responsibilities as covered housing providers. The PHA administers these programs; therefore, the PHA that has primary oversight responsibilities under VAWA.</p> <p>The PHA for the purposes of 24 CFR: •§5.2005(a)</p> <p>The Owner for the purposes of 24 CFR: •§5.2009(a)</p> <p>The PHA and Owner for the purposes of 24 CFR •§5.2005(e) •§5.2005(b) •§5.2005(c) •§5.2005(d)</p>	24 CFR part 882
	Section 8 Housing Assistance Payments Programs - State Housing Agencies:	<p>PHAs and owners each have certain responsibilities as covered housing providers. The PHA (which would be a state agency for part 883) administers these programs; therefore, the PHA that has primary oversight responsibilities under VAWA.</p> <p>The PHA for the purposes of 24 CFR: •§5.2005(a)</p> <p>The Owner for the purposes of 24 CFR: •§5.2009(a)</p> <p>The PHA and Owner for the purposes of 24 CFR •§5.2005(e) •§5.2005(b) •§5.2005(c) •§5.2005(d)</p>	24 CFR part 883

Division:	Program:	Who is the "Covered Housing Provider" and for What Purposes?	Program Regulations:
<p>Department of Agriculture, Rural Development</p>	<p>Multi-Family Housing (MFH) Programs:</p> <ul style="list-style-type: none"> •Section 515 Rural Rental Housing (RRH); •Section 514/516 Farm Labor Housing (FLH); •Section 538 Guaranteed Rural Rental Housing (GRRH); •Section 533 Housing Preservation Grant (HPG) 	<p>Rural Development (RD) hasn't promulgated VAWA regulations to ensure that survivors accessing and maintaining housing are afforded the same protections across all RD's covered programs. RD issued an administrative notice, which follows the policies outlines in HUD's Final Rule, informing State Directors, Program Directors, Borrowers, and Management Agents of the agency's policies on implementing and administering VAWA 2013.</p> <p>When there is conflict between the VAWA 2013 and RD program regulations, VAWA 2013 requirements shall govern. Additionally, where VAWA assistance is provided under more than one Federal housing program, MFH will not prevent tenants who are seeking the VAWA 2013 protections or remedies from choosing to use the protections or remedies under any or all of those programs, as long as the protections or remedies chosen are feasible and permissible under MFH's regulations and statutes.</p> <p>When a property receives both HUD and RD funding, HUD rules apply. When there is no HUD rule, the RD rule applies.</p>	<p>Administrative notice: RD AN No. 4814 (1944-N)</p>
<p>Treasury Department, IRS</p>	<p>LIHTC:</p>	<p>"...properties funded with Low-Income Housing Credits (LIHTCs) are also subject to VAWA requirements, and housing providers should look to the regulatory agency responsible for LIHTCs—the Department of Treasury— for how to implement VAWA protections in those properties." HUD VAWA Final Rule at 80,731.</p> <p>To date, the IRS has not issued any regulations or guidance regarding VAWA implementation for the tax credit program.</p> <p>MA: Spectrum acknowledges that although legislation doesn't incorporate VAWA into Section 42 of the IRC, and therefore, no enforcement mechanism has been put in place, Spectrum "expects LIHTC properties to incorporate compliance with VAWA requirements into their day to day operations."</p>	

Appendix I – Notice Requirements

Division:	HUD's Office of Community Planning and Development Notice Requirements:			
	Program:	"Covered Housing Provider"?:	Topic / Responsibilities:	Program Regulations:
HUD's Office of Community Planning and Development	Continuum of Care Program (CoC):	Recipient or Subrecipient	The recipient or subrecipient must provide each individual or family applying for permanent housing and transitional housing and each program participant the notice and the certification form described in 24 CFR 5.2005(a) at each of the following times: (1) When an individual or family is denied permanent or transitional housing; (2) When a program participant is admitted to permanent or transitional housing; (3) When a program participant receives notification of eviction; and (4) When a program participant is notified of termination of assistance.	§ 578.99(j)(4)(i)
			•When grant funds are used for rental assistance: The recipient or subrecipient must ensure that the owner or manager of the housing provides the notice and certification form described in 24 CFR 5.2005(a) to the program participant with any notification of eviction. This commitment and the confidentiality requirements under 24 CFR 5.2007(c) must be set forth in a contract with the owner or landlord.	§ 578.99(j)(4)(ii)
	Emergency Solutions Grants Program (ESG):	Recipient or Subrecipient	Each recipient or subrecipient that determines eligibility for or administers ESG rental assistance is responsible for ensuring that the notice and certification form described under 24 CFR 5.2005(a)(1) is provided to each applicant for ESG rental assistance and each program participant receiving ESG rental assistance at each of the following times: (1) When an individual or family is denied ESG rental assistance; (2) When an individual or family's application for a unit receiving project-based rental assistance is denied; (3) When a program participant begins receiving ESG rental assistance; (4) When a program participant is notified of termination of ESG rental assistance; (5) When a program participant receives notification of eviction.	§ 576.409(c)
	HOME Investments Partnerships Program (HOME):	Participating Jurisdiction / Owner	•For HOME-assisted units: The participating jurisdiction must provide the notice and the certification form described in 24 CFR 5.2005(a) to the owner of HOME-assisted rental housing. The owner of HOME-assisted rental housing must provide the notice and certification form to the applicant for a HOME-assisted unit at the time the applicant is admitted to a HOME-assisted unit, or denied admission to a HOME-assisted unit based on the owner's tenant selection policies and criteria. The owner of HOME-assisted rental housing must also provide the notice and certification form with any notification of eviction from a HOME-assisted	§ 92.359(c) § 92.359(c)(1)
		Participating Jurisdiction	•For HOME tenant-based rental assistance: The participating jurisdiction must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for HOME tenant-based rental assistance when the applicant's HOME tenant-based rental assistance is approved or denied. The participating jurisdiction must also provide the notice and certification form to a tenant receiving HOME tenant-based rental assistance when the participating jurisdiction provides the tenant with notification of termination of the HOME tenant-based rental assistance, and when the participating jurisdiction learns that the tenant's housing owner intends to provide the tenant with notification of eviction.	§ 92.359(c)(2)
	Housing Opportunities for Persons with AIDS (HOPWA):	Grantee or Project Sponsor	The grantee is responsible for ensuring that the notice of occupancy rights and certification form described in 24 CFR 5.2005(a) is provided to each person receiving <u>project-based or tenant-based rental assistance under HOPWA</u> or residing in rental housing assisted under the eligible activities described in § 574.604(a) at the following times: (1) At the time the person is denied rental assistance or admission to a HOPWA-assisted unit; (2) At the time the person is admitted to a HOPWA-assisted unit or is provided rental assistance; (3) With any notification of eviction from the HOPWA-assisted unit or notification of termination of rental assistance; and (4) During the 12-month period following December 16, 2016, either during annual recertification or lease renewal, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.	§ 574.604(d)
			For each tenant receiving HOPWA <u>tenant-based rental assistance</u> , the grantee is responsible for ensuring that the owner or manager of each tenant's housing unit provide the notice of occupancy rights and certification form with any notification of eviction that the owner or manager provides to the tenant during the period for which the tenant is receiving HOPWA tenant-based rental assistance. This commitment must be set forth in the VAWA lease term/addendum required under paragraph (f) of §574.604.	§ 574.604(d)(1)
				§ 574.604(d)(2)
	Housing Trust Fund:	Grantee / Owner	The grantee must provide a notice and certification form that meet the requirements of 24 CFR 5.2005(a) to the owner of HTF-assisted rental housing.	§ 93.356(b)
		Owner	The owner of HTF-assisted rental housing must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for a HTF-assisted unit at the time the applicant is admitted to an HTF-assisted unit, or denied admission to a HTF-assisted unit based on the owner's tenant selection policies and criteria. The owner of HTF-assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HTF-assisted unit.	

Division:	HUD's Office of Multifamily Housing Notice Requirements:		
	The applicable Covered Housing Provider must provide The VAWA Notice of Occupancy Rights, form HUD-5380 along with the attached certification form HUD-5382 in accordance with notification requirements at 24 CFR 245.15 no later than each of the following times (Notice H 2017-05, pg. 20-22)		
	•For applicants : <u>a.</u> At the time the household is provided assistance or admission (i.e., at move-in or initial certification), and <u>b.</u> At the time the applicant is denied assistance or admission.		
	•For existing households: <u>a.</u> Through December 15, 2017, at each household's AR, and <u>b.</u> With any notification of eviction or termination of assistance, (but not with subsequent eviction or termination notices sent for the same infraction).		
	•If households have already had their AR for 2017 and they were not provided with the forms, the O/A must provide the forms to those households through other means by 12/15/2017. A note or documentation must be made in those tenant files indicating when the forms were provided to the household. After that date, HUD assumes all current households will have received the forms and the VAWA rule does not require O/As to provide the notice and certification form at future ARs.		
	Program:	"Covered Housing Provider"?:	Topic / Responsibilities:
	FHA Programs, which include: •Section 221(d)(3) / (d)(3) (BMIR); •Section 236	Mortgagor or Owner	The Mortgagor or Owner is responsible for providing the VAWA Notice of Occupancy Rights, form HUD-5380 along with the attached certification form HUD-5382 to existing households, applicants, and new move-ins/initial certifications.
			Program Regulations: •24 CFR part 200 •24 CFR part 221 •24 CFR part 236
HUD's Office of Multifamily Housing	Section 8 Housing Assistance Payment Program for New Construction:	O/A	The O/A is responsible for providing the VAWA Notice of Occupancy Rights, form HUD-5380 along with the attached certification form HUD-5382 to existing households, applicants, and new move-ins/initial certifications. The O/A must customize the Notice to reflect the specific assistance provided under the covered housing program and specify the program operations that may pertain to or affect the VAWA Notice of Occupancy Rights. This may include additional language, so long as the language does not make changes to the core protections and confidentiality rights.
			24 CFR part 880
	Section 8 Housing Assistance Payments Program, New Construction Set-Aside for Section 515 Rural Rental Housing:	O/A	The O/A is responsible for providing the VAWA Notice of Occupancy Rights, form HUD-5380 along with the attached certification form HUD-5382 to existing households, applicants, and new move-ins/initial certifications. The O/A must customize the Notice to reflect the specific assistance provided under the covered housing program and specify the program operations that may pertain to or affect the VAWA Notice of Occupancy Rights. This may include additional language, so long as the language does not make changes to the core protections and confidentiality rights.
			24 CFR part 884
	Section 8 Housing Assistance Payments Program - Special Allocations:	O/A	The O/A is responsible for providing the VAWA Notice of Occupancy Rights, form HUD-5380 along with the attached certification form HUD-5382 to existing households, applicants, and new move-ins/initial certifications. The O/A must customize the Notice to reflect the specific assistance provided under the covered housing program and specify the program operations that may pertain to or affect the VAWA Notice of Occupancy Rights. This may include additional language, so long as the language does not make changes to the core protections and confidentiality rights.
			24 CFR part 886
	Supportive Housing for the Elderly and Persons with Disabilities: •Section 202; •Section 811	O/A *811 PRA, the state housing agency, i.e., Grantee	The O/A is responsible for providing the VAWA Notice of Occupancy Rights, form HUD-5380 along with the attached certification form HUD-5382 to existing households, applicants, and new move-ins/initial certifications. The O/A must customize the Notice to reflect the specific assistance provided under the covered housing program and specify the program operations that may pertain to or affect the VAWA Notice of Occupancy Rights. This may include additional language, so long as the language does not make changes to the core protections and confidentiality rights.
			24 CFR part 982

Division:	HUD's Office of Public and Indian Housing Notice Requirements:		
	The VAWA Notice of Occupancy Rights, form HUD-5380 along with the attached certification form HUD-5382 to:		
	<ul style="list-style-type: none"> ▪Adult applicants of public housing, HCV, and PBV; and ▪Each adult tenant of public housing, HCV and PBV adult participant. 		
	The applicable Covered Housing Provider must provide the VAWA Notice of Occupancy Rights, form HUD-5380 along with the attached certification form HUD-5382 no later than each of the following times (Notice PIH-2017-08 (HA), pg. 18-19):		
	*For applicants : <u>a.</u> At the time the individual is provided assistance or admission, and <u>b.</u> At the time the applicant is denied assistance or admission.		
	*For tenants/participants: <u>a.</u> With any PHA notification of eviction or termination of assistance; and <u>b.</u> By December 16, 2017, either during the PHA annual recertification or lease renewal process (as applicable). If there will be no recertification or lease renewal		
	Program:	"Covered Housing Provider"?:	Topic / Responsibilities:
HUD's Office of Public and Indian Housing	Housing Choice Voucher (HCV) Program:	PHA	PHAs must issue the VAWA Notice of Occupancy Rights and Certification Form without changes to the core protections and confidentiality rights in the Notice. PHAs must customize the Notice to reflect the specific assistance provided under the particular covered housing program, and to their program operations that may pertain to or affect the VAWA Notice of Occupancy Rights.
	Program Regulations:		24 CFR part 982
	Project-Based Voucher (PBV) Program:	PHA	PHAs must issue the VAWA Notice of Occupancy Rights and Certification Form without changes to the core protections and confidentiality rights in the Notice. PHAs must customize the Notice to reflect the specific assistance provided under the particular covered housing program, and to their program operations that may pertain to or affect the VAWA Notice of Occupancy Rights.
	Program Regulations:		24 CFR part 983
	Public Housing & Mixed Financed Units:	PHA	PHAs must issue the VAWA Notice of Occupancy Rights and Certification Form without changes to the core protections and confidentiality rights in the Notice. PHAs must customize the Notice to reflect the specific assistance provided under the particular covered housing program, and to their program operations that may pertain to or affect the VAWA Notice of Occupancy Rights.
	Program Regulations:		24 CFR part §960 24 CFR part §966 24 CFR part §905
	*Section 8 Moderate Rehabilitation Program:	PHA / Owner	The PHA may provide this notice and form to owners, and charge owners with distributing the notice and form to tenants.
	*Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program:		The Covered Provider must issue the VAWA Notice of Occupancy Rights and Certification Form without changes to the core protections and confidentiality rights in the Notice. PHAs must customize the Notice to reflect the specific assistance provided under the particular covered housing program, and to their program operations that may pertain to or affect the VAWA Notice of Occupancy Rights.
	Program Regulations:		24 CFR part 882
	Section 8 Housing Assistance Payments Programs - State Housing Agencies:	PHA	PHAs must issue the VAWA Notice of Occupancy Rights and Certification Form without changes to the core protections and confidentiality rights in the Notice. PHAs must customize the Notice to reflect the specific assistance provided under the particular covered housing program, and to their program operations that may pertain to or affect the VAWA Notice of Occupancy Rights.
	Program Regulations:		24 CFR part 883

Appendix J—Lease Bifurcation

Division:	HUD's Office of Community Planning and Development Lease Bifurcation Requirements:			
	<p>In accordance with 24 CFR 5.2009(a), the Covered Housing Provider identified below may exercise the option to bifurcate a lease 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.</p> <p>Reasonable Time to Establish Eligibility Following Bifurcation of a Lease: In accordance with 24 CFR 5.2009(b), a reasonable time period must be established for remaining family member(s) who, prior to the lease bifurcation, had not established eligibility for the housing assistance. This is applicable to mixed families, where assistance was provided to the perpetrator and the victim is a member of the household who did not meet the program eligibility requirements. The Covered Housing Provider must award the remaining family member(s) the time period (from the date of lease bifurcation) identified in the chart below to establish eligibility for the same housing program that provided assistance to the evicted or terminated tenant; establish eligibility under another covered housing program, or find alternative housing.</p> <p>The chart below identifies the Covered Housing Provider responsible for complying with the regulations relating to lease bifurcation, and explains the limitations to eligibility for each program and the reasonable time period to remain in the unit, if applicable:</p>			
	Program:	"Covered Housing Provider"?:	Topic / Responsibilities:	Program Regulations:
HUD's Office of Community Planning and Development	Continuum of Care Program (CoC):	The owner or landlord, which may be the recipient or subrecipient	<p>•Possible Eligibility Limitations: Qualifying Disability (for Permanent Supportive Housing); Chronically Homeless Status.</p> <p>•Reasonable Time Period to Remain in Unit: Until expiration of the lease. The following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):</p> <p>The following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):</p> <p>•For families receiving tenant-based rental assistance: The family's tenant-based rental assistance and any utility assistance shall continue for the family member(s) who are not evicted or removed</p> <p>•For families living in permanent supportive housing: If a family's eligibility for the housing was based on the evicted individual's disability or chronically homeless status, the remaining tenants may stay in the project until the expiration of the lease in effect at the time of the qualifying member's eviction; Otherwise, if a family living in a project funded under this part separates under 24 CFR 5.2009(a), the remaining tenant(s) will be eligible to remain in the project.</p> <p>REMINDER: Lease Bifurcation does not apply to Safe Havens.</p>	<p>§ 578.99(j)(7)(i) § 578.99(j)(7)(ii) § 578.75(i)(2)</p>
	Emergency Solutions Grants Program (ESG):	The Owner	<p>•Possible Eligibility Limitations: N/A</p> <p>•Reasonable Time Period to Remain in Unit: All residents already meet eligibility.</p> <p>The following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):</p> <p>•For families receiving tenant-based rental assistance: The family's tenant-based rental assistance and utility assistance, if any, shall continue for the family member(s) who are not evicted or removed.</p> <p>•For families in a unit with project-based rental assistance: The family member(s) who are not evicted or removed can remain in the assisted unit without interruption to the rental assistance or utility assistance provided for the unit.</p>	<p>§ 576.409(e)(1) § 576.409(e)(2)</p>
	HOME Investments Partnerships Program (HOME):	The Owner	<p>•Possible Eligibility Limitations: N/A</p> <p>•Reasonable Time Period to Remain in Unit: All residents already meet eligibility.</p> <p>The following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):</p> <p>•For HOME-assisted units: The remaining tenant(s) may remain in the HOME-assisted unit.</p> <p>•For HOME tenant-based rental assistance: The tenant(s) who are not removed will retain the HOME tenant-based rental assistance, and the participating jurisdiction must determine whether a tenant who was removed from the unit will receive HOME tenant-based rental assistance.</p>	<p>§ 92.359(d)(1) § 92.359(d)(2)</p>
	Housing Opportunities for Persons with AIDS (HOPWA):	Grantee, project sponsor, or housing or facility owner, or manager	<p>•Possible Eligibility Limitations: HIV/AIDS</p> <p>•Reasonable Time Period to Remain in Unit: 90 days to 1 year.</p> <p>•For HOPWA-assisted units and supportive services: Grantees and project sponsors will work with the housing or facility owner or manager to facilitate protections on the tenant's behalf. Project sponsors must follow the documentation specifications in 24 CFR 5.2007, including the confidentiality requirements in 24 CFR 5.2007(c).</p> <p>•For HOPWA tenant-based rental assistance: The project sponsor will work with the housing owner or manager to facilitate protections on the tenant's behalf. Project sponsors must follow the documentation specifications in 24 CFR 5.2007, including the confidentiality requirements in 24 CFR 5.2007(c). The project sponsor (or the grantee if the grantee is directly administering HOPWA assistance) is also responsible for determining on a case-by-case basis whether to provide new tenant-based rental assistance to a remaining tenant if lease bifurcation or an emergency transfer results in division of the household.</p> <p>REMINDER: Lease bifurcation does not apply to short-term supported housing.</p>	<p>§574.460 §574.604</p> <p>§574.604(b)(1)(ii)</p> <p>§574.604(b)(2)(ii)</p>
	Housing Trust Fund:	The Owner	The requirements of 24 CFR 5.2009(b) do not apply. If a family who lives in a HTF-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HTF-assisted unit.	§ 93.356(c)

Division:	HUD's Office of Multifamily Housing Lease Bifurcation Requirements: See Notice H 2017-05, XVI and XVII			
HUD's Office of Multifamily Housing	In accordance with 24 CFR 5.2009(a), the Covered Housing Provider identified below may exercise the option to bifurcate a lease 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. The Covered Housing Provider should provide the perpetrator with no more than 30 days (in most cases) notice of termination (24 CFR 247.4(c)). If the eviction process is upheld, the Covered Housing Provider processes the IR to remove the household member and completes the bifurcation of the lease agreement.			
	Reasonable Time to Establish Eligibility Following Bifurcation of a Lease: In accordance with 24 CFR 5.2009(b), a reasonable time period must be established for remaining family member(s) who, prior to the lease bifurcation, had not established eligibility for the housing assistance. This is applicable to mixed families, where assistance was provided to the perpetrator and the victim is a member of the household who did not meet the program eligibility requirements. The Covered Housing Provider must award the remaining family member(s) the time period (from the date of lease bifurcation) identified in the chart below to establish eligibility for the same housing program that provided assistance to the evicted or terminated tenant; establish eligibility under another covered housing program, or find alternative housing.			
	Adjustments to Tenant Rent & Unit Size Following Bifurcation of a Lease: Tenant rent payments must be modified for the remaining family members during the applicable time period. The Covered Housing Provider must conduct an Interim Recertification (IR) to reflect a change in family composition and to determine the new rent computations at the same time the lease bifurcation is done. The effective date of the IR should be in accordance with HUD Handbook 4350.3, REV-1, Chapter 7. In the event that the lease bifurcation result in an increase in tenant rent (or TTP) the Covered Housing Provider must ensure the remaining tenant is provided the proper notice of increase in accordance with HUD Handbook 4350.3 REV-1, Chapter 7, Section 2 and/or local and state laws.			
	If the remaining family member will not be able to establish eligibility (for example a 55-year old remaining in a Section 202 PRAC), the household is not eligible to receive subsidy. In this case, the remaining family member must then pay market rent for the duration of the time period or move-out, whichever comes first. Lastly, as a result of lease bifurcation, it may be necessary to transfer the existing household to an appropriate unit size in accordance with the lease.			
	The chart below identifies the Covered Housing Provider responsible for complying with the regulations relating to lease bifurcation, and explains the limitations to eligibility for each program and the reasonable time period to remain in the unit, if applicable:			
	Program:	"Covered Housing Provider"?:	Topic / Responsibilities:	Program Regulations:
	Section 221(d)(3) / (d)(3) (BMIR):	Mortgagor or Owner	<ul style="list-style-type: none"> •Possible Eligibility Limitations: N/A •Reasonable Time Period to Remain in Unit: All residents already meet eligibility 	24 CFR part 221
	Section 236:	Mortgagor or Owner	<ul style="list-style-type: none"> •Possible Eligibility Limitations: Immigration Status •Reasonable Time Period to Remain in Unit: 30-calendar days to meet eligibility 	24 CFR part 236
	Section 8 Housing Assistance Payment Program for New Construction:	O/A	<ul style="list-style-type: none"> •Possible Eligibility Limitations: Immigration Status •Reasonable Time Period to Remain in Unit: 30-calendar days to meet eligibility 	24 CFR part 880
	Section 8 Housing Assistance Payments Program, New Construction Set-Aside for Section 515 Rural Rental Housing:	O/A	<ul style="list-style-type: none"> •Possible Eligibility Limitations: Immigration Status •Reasonable Time Period to Remain in Unit: 30-calendar days to meet eligibility 	24 CFR part 884
Section 8 Housing Assistance Payments Program - Special Allocations:	O/A	<ul style="list-style-type: none"> •Possible Eligibility Limitations: Immigration Status •Reasonable Time Period to Remain in Unit: 30-calendar days to meet eligibility 	24 CFR part 886	
Section 202:	O/A	<ul style="list-style-type: none"> •Possible Eligibility Limitations: Age (62 or older) *If 202/8, age or disability <i>and</i> Immigration Status •Reasonable Time Period to Remain in Unit: 90-calendar days or when the lease expires, whichever is first *If 202/8, 30-calendar days if immigration status is an eligibility limitation 	24 CFR part 982	
Section 811:	O/A *811 PRA, the state housing agency, i.e., Grantee	<ul style="list-style-type: none"> •Possible Eligibility Limitations: Disability •Reasonable Time Period to Remain in Unit: 90-calendar days or when the lease expires, whichever is first 	24 CFR part 982	

Division:	HUD's Office of Public and Indian Housing Lease Bifurcation Requirements: See Notice PIH-2017-08 (HA), sections 16 and 17			
HUD's Office of Public and Indian Housing	In accordance with 24 CFR 5.2009(a), the Covered Housing Provider identified below may choose to bifurcate a lease, or remove a household member or lawful occupant from a lease to evict, remove, terminate occupancy rights, or terminate assistance to such member who engage in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual.			
	Owner Lease Bifurcation: Except for PHA-owned units, the PHA is not a party to the lease and therefore cannot bifurcate a lease agreement between an owner and a tenant. It is up to the owner to bifurcate the family's lease to evict or remove the perpetrator from the unit. If the owner does bifurcate the lease, the owner must immediately notify the PHA of the change in the lease and provide a copy of all such changes to the PHA. Notably, the owner should refer the family to the PHA in advance of the bifurcation. This may allow the PHA to offer assistance or otherwise provide service referrals to the victim in advance of the bifurcation.			
	To the extent that the change would adversely impact the subsidy standard for the family, PHAs may grant an exception to its established subsidy standards if the PHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members, or other personal circumstances. (See 24 CFR 982.402(b)(8).) A PHA may adopt a policy to include an instance of domestic violence, dating violence, sexual assault, or stalking under other personal circumstances.			
	Reasonable Time to Establish Eligibility Following Bifurcation of a Lease: In accordance with 24 CFR 5.2009(b), a reasonable time period must be established for remaining family member(s) who, prior to the lease bifurcation, had not established eligibility for the housing assistance. This is only applicable to mixed families, where assistance is being provided to the perpetrator and the victim is a member of the household who hasn't contended eligible immigration status. The Covered Housing Provider must provide to any remaining tenant or tenants that were not already eligible a period of 30 calendar days from the date of bifurcation of the lease to establish eligibility for the same housing program that provided assistance to the evicted or terminated tenant; establish eligibility under another covered housing program, or find alternative housing.			
	Assistance is limited to 30 days for all covered PIH programs if the remaining family member has not submitted documentation evidencing a satisfactory immigration status or a pending appeal of a verification determination of the family member's immigration status.			
	Program:	"Covered Housing Provider"?:	Topic / Responsibilities:	Program Regulations:
	Housing Choice Voucher (HCV) Program:	Owner	<ul style="list-style-type: none"> •Possible Eligibility Limitations: Immigration Status •Reasonable Time Period to Remain in Unit: 30-calendar days to meet eligibility The PHA <u>must not</u> stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month. If the victim requests to move, the PHA should not issue a new voucher until eligibility has been determined. The victim and PHA do not have to wait for an owner to bifurcate the lease for the PHA to offer continued assistance for the unit. While the family would not have to wait for bifurcation to occur, it would have to wait for eligibility to be determined if the victim was planning on moving with the assistance.	24 CFR 5.2009
	Project-Based Voucher (PBV) Program:	Owner	<ul style="list-style-type: none"> •Possible Eligibility Limitations: Immigration Status •Reasonable Time Period to Remain in Unit: 30-calendar days to meet eligibility The PHA <u>must not</u> stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month. If the victim requests to move, the PHA should not issue a new voucher until eligibility has been determined. The victim and PHA do not have to wait for an owner to bifurcate the lease for the PHA to offer continued assistance for the unit. While the family would not have to wait for bifurcation to occur, it would have to wait for eligibility to be determined if the victim was planning on moving with the assistance.	24 CFR 5.2009
Public Housing & Mixed Financed Units:	PHA	<ul style="list-style-type: none"> •Possible Eligibility Limitations: Immigration Status •Reasonable Time Period to Remain in Unit: 30-calendar days to meet eligibility The PHA must not initiate eviction procedures until 30 days after the lease bifurcation.	24 CFR 5.2009	
Section 8 Mod Rehab (1): Section 8 Mod Rehab SRO (2):	Owner	<ul style="list-style-type: none"> 1) •Possible Eligibility Limitations: Immigration Status •Reasonable Time Period to Remain in Unit: 30-calendar days to meet eligibility 2) •Possible Eligibility Limitations: Chronically Homeless Status AND Immigration Status •Reasonable Time Period to Remain in Unit: 30 days b/c immigration status is an eligibility limitation The PHA <u>must not</u> stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month. If the victim requests to move, the PHA should not issue a new voucher until eligibility has been determined. The victim and PHA do not have to wait for an owner to bifurcate the lease for the PHA to offer continued assistance for the unit. While the family would not have to wait for bifurcation to occur, it would have to wait for eligibility to be determined if the victim was planning on moving with the assistance.	24 CFR 5.2009	
Section 8 Housing Assistance Payments Programs - State Housing Agencies:	Owner	<ul style="list-style-type: none"> •Possible Eligibility Limitations: Immigration Status •Reasonable Time Period to Remain in Unit: 30-calendar days to meet eligibility The PHA <u>must not</u> stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month. If the victim requests to move, the PHA should not issue a new voucher until eligibility has been determined. The victim and PHA do not have to wait for an owner to bifurcate the lease for the PHA to offer continued assistance for the unit. While the family would not have to wait for bifurcation to occur, it would have to wait for eligibility to be determined if the victim was planning on moving with the assistance.	24 CFR 5.2009	

Appendix K—Emergency Transfer

Division:	HUD's Office of Community Planning and Development Emergency Transfer Requirements:			
	Program:	"Covered Housing Provider"?:	Topic / Responsibilities:	Program Regulations:
HUD's Office of Community Planning and Development	Continuum of Care Program (CoC):	The recipient or subrecipient	<p>Developing Emergency Transfer Plan: The CoC must develop an emergency transfer plan for the CoC, and recipients and subrecipients in the CoC must follow that plan. As a reminder, Emergency Transfer does not apply to Safe Havens. The plan must comply with 24 CFR 5.2005(e) and include the following program requirements:</p> <ul style="list-style-type: none"> •For families receiving tenant-based rental assistance: The plan must specify what will happen with respect to the non-transferring family member(s), if the family separates in order to effect an emergency transfer. Recipients and subrecipients of grants for tenant-based rental assistance may use grant funds to pay amounts owed for breaking the lease if the family qualifies for an emergency transfer. •For families in a units that are otherwise assisted: The required policies must provide that for program participants who qualify for an emergency transfer but a safe unit is not immediately available for an internal emergency transfer, the individual or family shall have priority over all other applicants for rental assistance, transitional housing, and permanent supportive housing projects funded under this part, provided that: <ul style="list-style-type: none"> •The individual or family meets all eligibility criteria required by Federal law or regulation or HUD NOFA; •The individual or family meets any additional criteria or preferences established in accordance with §578.93(b)(1), (4), (6), or (7). •The individual or family shall not be required to meet any other eligibility criteria or preferences 	§ 578.99(j)(8)
	Emergency Solutions Grants Program (ESG):	The recipient or subrecipient	<p>Developing Emergency Transfer Plan: The recipient must develop the emergency transfer plan under 24 CFR 5.2005(e) or, if the recipient is a state, require its subrecipients that administer ESG rental assistance to develop the emergency transfer plan(s) required under 24 CFR 5.2005(e). If the state's subrecipients are required to develop the plan(s), the recipient must specify whether an emergency transfer plan is to be developed for:</p> <ul style="list-style-type: none"> (i) The state as a whole; (ii) Each area within the state that is covered by a Continuum of Care; or (iii) Each subrecipient that administers ESG rental assistance. <p>Once the applicable plan is developed, the recipient and each subrecipient that administers ESG rental assistance must implement the plan in accordance with 24 CFR 5.2005(e).</p> <ul style="list-style-type: none"> •For families in a unit with project-based rental assistance: The required policies must provide that if a program participant qualifies for an emergency transfer, but a safe unit is not immediately available for an internal emergency transfer, that program participant shall have priority over all other applicants for tenant-based rental assistance, utility assistance, and units for which project-based rental assistance is provided. •For families receiving tenant-based rental assistance: The required policies must specify what will happen with respect to the non-transferring family member(s), if the family separates in order to effect an emergency transfer. •For program participant receiving short- or medium-term rental assistance: ESG funds may be used to pay amounts owed for breaking a lease to effect an emergency transfer if a program participant receiving short- or medium-term rental assistance under § 576.106 meets the conditions for an emergency transfer under 24 CFR 5.2005(e). These costs are not subject to the 24-month limit on rental assistance under § 576.106. 	§ 576.409(d) § 576.105(a)(7)
	HOME Investments Partnerships Program (HOME):	PJ	<p>Developing Emergency Transfer Plan: The participating jurisdiction must develop and implement an emergency transfer plan and must make the determination of whether a tenant qualifies under the plan. The plan must meet the requirements in 24 CFR 5.2005(e), as supplemented by § 92.359(g).</p>	§ 92.359(g)(1)
	Owner Involvement	<p>Individual project owners, however, will be involved in implementing the emergency transfer plan, including at a minimum transferring tenants to other units as provided in the emergency transfer plan and the written agreements required under section 92.504.</p>	80759	
	PJ	<p>External emergency transfers when a safe unit is not immediately available: For the purposes of § 5.2005(e)(7), the PJ must provide a list of properties in the jurisdiction that include HOME-assisted units for qualified tenants to transfer to. The list must include each property's address, contact information, the unit sizes (number of bedrooms) for the HOME-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HOME-assisted units. In addition, the PJ may:</p> <ul style="list-style-type: none"> (i) Establish a preference under the PJ's HOME program for tenants who qualify for emergency transfers under 24 CFR 5.2005(e); (ii) Provide HOME tenant-based rental assistance to tenants who qualify for emergency transfers under 24 CFR 5.2005(e); or (iii) Coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units. 	§ 92.359(g)(2)	

Division: HUD's Office of Community Planning and Development Emergency Transfer Requirements:			
Program:	"Covered Housing Provider"?:	Topic / Responsibilities:	Program Regulations:
HUD's Office of Community Planning and Development	Housing Opportunities for Persons with AIDS (HOPWA):	<p>Developing Emergency Transfer Plan: The Grantee or Project Sponsor must develop and implement an emergency transfer plan, as developed by the grantee in accordance with 24 CFR 5.2005(e), and facilitate emergency transfers. Must also maintain the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant's housing location consistent with §574.440 and 24 CFR 5.2007(c).</p> <p>If a tenant seeks VAWA protections The tenant must submit such request through the project sponsor (or the grantee if the grantee is directly administering HOPWA assistance).</p> <p>*For HOPWA-assisted units: Grantees and project sponsors will work with the housing or facility owner or manager to facilitate protections on the tenant's behalf. Project sponsors must follow the documentation specifications in 24 CFR 5.2007, including the confidentiality requirements in 24 CFR 5.2007(c).</p> <p>*For HOPWA tenant-based rental assistance: The project sponsor will work with the housing owner or manager to facilitate protections on the tenant's behalf. Project sponsors must follow the documentation specifications in 24 CFR 5.2007, including the confidentiality requirements in 24 CFR 5.2007(c). The project sponsor (or the grantee if the grantee is directly administering HOPWA assistance) is also responsible for determining on a case-by-case basis whether to provide new tenant-based rental assistance to a remaining tenant if lease bifurcation or an emergency transfer results in division of the household.</p> <p>REMINDER: Emergency Transfer does not apply to short-term supported housing.</p>	§574.604(b)(1) §574.604(b)(2)
		Grantee, project sponsor, or housing or facility owner, or manager	
	Housing Trust Fund:	<p>Developing Emergency Transfer Plan: The grantee must develop and implement an emergency transfer plan and must make the determination of whether a tenant qualifies under the plan. The plan must meet the requirements in 24 CFR 5.2005(e).</p> <p>External emergency transfers when a safe unit is not immediately available: For the purposes of § 5.2005(e)(7), the grantee must provide a list of properties in the jurisdiction that include HTF-assisted units for qualified tenants to transfer to. The list must include each property's address, contact information, the unit sizes (number of bedrooms) for the HTF-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HTF-assisted units. In addition, the grantee may:</p> <p>(1) Establish a preference under the grantee's HTF program for tenants who qualify for emergency transfers under 24 CFR 5.2005(e); and</p> <p>(2) Coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units.</p>	§ 93.356(f)
		Grantee	

Division:	HUD's Office of Multifamily Housing Emergency Transfer Requirements: See Notice H 2017-05, pg. 25-36		
HUD's Office of Multifamily Housing	The Covered Housing Provider is responsible for adopting an Emergency Transfer Plan, in accordance with 24 CFR 5.2005(e), and based on HUD's model Emergency Transfer Plan (form HUD-5381), no later than June 14, 2017. Key Points:		
	•Qualifying for an emergency transfer does not guarantee continued assistance under the current program or an external transfer to another covered housing program. The emergency transfer requirements do not supersede any eligibility or occupancy requirements that may apply under a covered housing program.		
	•The Emergency Transfer Plan must indicate how a tenant may request an emergency transfer. Either a verbal statement/self-certification or a written request is required before any transfer occurs. The Covered Housing Provide should include in its Emergency Transfer Plan and related VAWA policies whether verbal statements/self-certification is sufficient to initiate an emergency transfer.		
	HUD has created a model Emergency Transfer Request document (form HUD-5383) that O/As requiring written request for emergency transfer may use. O/As using the emergency transfer request document must make it available to the tenant. O/As are encouraged to customize the model Emergency Transfer Request document to reflect the specific assistance provided under the particular housing program and to the relevant program operations that may pertain to or affect the emergency transfer provisions.		
	•The Emergency Transfer Plan must establish policies for internal and external emergency transfers		
	Emergency Transfer Example:		
	<u>Scenario:</u> A tenant informs the property manager that she is a victim of dating violence and fearful of further violence. The household consists of the victim (head of household) and two children under the age of 18.		
	<u>Step 1:</u> The O/A provides the victim with the VAWA Notice of Occupancy Rights (form HUD-5380) and certification form (form HUD-5382) to ensure that she understands the rights and protections afforded her (the O/A can decide to accept the victim's verbal statement for VAWA protections or may request documentation per 24 CFR 5.2007.).		
	<u>Step 2:</u> The O/A accepts the verbal statement requesting VAWA protections.		
<u>Step 3:</u> The victim informs the O/A that she is seeking an emergency transfer (the O/A can decide to accept the victim's verbal request for an emergency transfer or can ask for a written request for the transfer.).			
<u>Step 4:</u> The O/A accepts a written request, as provided in 24 CFR 5.2005(e)(10), for the emergency transfer.			
<u>Step 5:</u> The O/A refers to its Emergency Transfer Plan to work with the victim and inform her of options (as set forth in the Emergency Transfer Plan).			
• <u>Internal Transfer:</u> The O/A offers to put the victim on an internal transfer waiting list. A safe unit is not immediately available. Because a safe unit is not immediately available, the O/A also explains external emergency transfer options.			
• <u>External Transfer:</u> The O/A provides or tells the victim how to obtain a list of O/As in the community as well as a list of O/As with which the O/A has partnered to serve victims of domestic violence, dating violence, sexual assault, or stalking.			
<u>Step 6:</u> The O/A informs the victim that local victim service providers may be able to assist her in identifying temporary shelter. The providers may have resources such as safety planning, counseling, and emergency funding. The O/A provides the victim with contact information.			
<u>Step 7:</u> The victim decides to stay in her current assisted housing unit until she is able to secure another assisted housing unit. The O/A takes steps to reduce the threat of further violence against the victim, including changing the victim's locks, installing better lighting around the perimeter of the building, and reminding the victim that she is allowed temporary absence from the unit in accordance with the O/A's policies.			
<u>Step 8:</u> An assisted unit becomes available at the property. The O/A notifies the victim of the availability and provides a tour of the unit.			
<u>Step 9:</u> The victim determines the unit to be safe. The O/A expeditiously follows its policies for the internal transfer.			
Program:	"Covered Housing Provider"?:	Topic / Responsibilities:	Program Regulations:
•Section 221(d)(3) / (d)(3) (BMIR) •Section 236	Mortgagor or Owner	The Owner or Mortgagor must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).	24 CFR part 221
Section 8 Housing Assistance Payment Program for: •New Construction; •New Construction Set-Aside for Section 515 Rural Rental Housing; •Special Allocations	O/A	The Owner must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e). When a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, the Owner must: <u>(1)</u> Review the Owner's existing inventory of units and determine when the next vacant unit may be available; and <u>(2)</u> Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.	\$880.613; \$884.226; \$886.139
Supportive Housing for the Elderly and Persons with Disabilities: •Section 202; •Section 811		In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, the Owner has discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities. Each year, the Owner must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.	\$891.190

Division:	HUD's Office of Public and Indian Housing Emergency Transfer Requirements: See Notice PIH-2017-08 (HA), pg. 21-34
	<p>The Covered Housing Provider: PHAs to adopt an Emergency Transfer Plan, based on HUD's model Emergency Transfer Plan (form HUD-5381), no later than June 14, 2017. Owners of assisted housing or HCV (including PBV) properties that are not PHAs or considered "PHA-Owned" are not the covered housing provider under this provision, and therefore, are not required to adopt an Emergency Transfer Plan. If an owner receives a request for an emergency transfer, the owner is encouraged to explain to the victim that the PHA is the covered housing provider for this activity, and that the PHA should be contacted directly. PHAs administering Public Housing, HCV (including PBV), and Section 8 Mod Rehab must ensure that their Emergency Transfer Plan covers these programs.</p> <p>General Key Points:</p> <ul style="list-style-type: none"> •Qualifying for an emergency transfer does not guarantee continued assistance under the current program or an external transfer to another covered housing program. The emergency transfer requirements do not supersede any eligibility or occupancy requirements that may apply under a covered housing program. •The Emergency Transfer Plan must indicate how a tenant may request an emergency transfer. Either a verbal statement/self-certification or a written request is required before any transfer occurs. The Covered Housing Provide should include in its Emergency Transfer Plan and related VAWA policies whether verbal statements/self-certification is sufficient to initiate an emergency transfer. HUD has created a model Emergency Transfer Request document (form HUD-5383) that PHAs requiring written request for emergency transfer may use. PHAs using the emergency transfer request document must make it available to the tenant. PHAs are encouraged to customize the model Emergency Transfer Request document to reflect the specific assistance provided under the particular housing program and to the relevant program operations that may pertain to or affect the emergency transfer provisions. •The Emergency Transfer Plan must establish policies for internal and external emergency transfers <p>Key Points for the Public Housing Program: See pg. 27 of Notice PIH-2017-08(HA) for Emergency Transfer specific to the Public Housing Program.</p> <ul style="list-style-type: none"> •PHAs have discretion to establish policies for how they will treat transfer requests by a tenant. A PHA may categorize these transfer types in a way that allows them to prioritize or otherwise make determinations about the urgency of a transfer. Common PHA terminology for transfers includes, but is not limited to: mandatory transfers, tenant requested transfers, and emergency transfers. •The plan must describe policies for assisting tenants when a safe unit is not immediately available for an internal transfer. •The Plan must describe reasonable efforts the PHA will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available. •A tenant must be allowed to seek an internal and external emergency transfer concurrently if an internal safe unit is not immediately available.
HUD's Office of Public and Indian Housing	<p>Key Points for the Housing Choice Voucher (HCV) Program: See pg. 28 of Notice PIH-2017-08(HA) for Emergency Transfer specific to the HCV Program.</p> <ul style="list-style-type: none"> •The Emergency Transfer Plan must describe policies for a tenant who has tenant-based assistance and who meets the requirements for an emergency transfer. •If the victim requests to move outside of the PHA's jurisdiction, the portability regulations apply (See Notice PIH 2016-09.) •PHAs are strongly encouraged to consider the following policies for inclusion in their Emergency Transfer Plan for participants with tenant-based assistance: <ul style="list-style-type: none"> o Expediting administrative processes for participants who wish to move with their tenant-based assistance, including when the victim and perpetrator are members of the same household. o References to the following: <ul style="list-style-type: none"> •PHA's family break-up policy. (See 24 CFR 982.315.) •Where a family can move with tenant-based assistance. (See 24 CFR 982.353.) •Moves with continued tenant-based assistance. (See 24 CFR 982.354.) •Preferences in other housing programs administered by the PHA.
	<p>Key Points for the Project-Based Voucher (PBV) Program: See pg. 29 of Notice PIH-2017-08(HA) for Emergency Transfer specific to the PBV Program.</p> <ul style="list-style-type: none"> •The PHA that must have emergency transfer policies for PBV participants. •PBV families cannot move with their project-based assistance, as the assistance is tied to the unit. If a victim makes an emergency transfer request and has been living in the PBV unit for one year or more, the PHA must give the victim priority to receive the next available opportunity for continued tenant-based rental assistance. (See 24 CFR 983.261.) A family or member of the family is not required to give advanced written notice, with a copy to the PHA, of intent to vacate the PBV unit if the family moved to protect the health or safety of the victim. •The Plan must include policies that address when the victim has been living in a unit for less than one year; or the victim seeks to move sooner than a tenant-based voucher will be available. •PHAs are strongly encouraged to consider the following policies for inclusion in their Emergency Transfer Plan for participants with project-based assistance: <ul style="list-style-type: none"> o Expediting administrative processes for participants who wish to move to another available PBV unit administered by the PHA. o Expediting administrative processes for participants wishing to move with tenant-based assistance. o Establishing preferences in other housing programs administered by the PHA.
	<p>Handling Moves with Continued Tenant-Based Assistance</p> <p>In accordance with 24 CFR 982.354(c)(2)(iii), the PHA's policies on restricting timing and number of moves do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member.</p> <p>The VAWA Final Rule at 24 CFR 982.354 (HCV) and 24 CFR 983.261(c)(1) (PBV) provides that a PHA may not terminate assistance if the family, with or without prior notification to the PHA, has already moved out of a unit in violation of a lease, if such a move occurred to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking; and who reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit, or if any family member has been the victim of sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.</p>

Appendix L—Housing Search Resources

Many resources are available to assist you in learning more about housing, finding housing, and obtaining housing. This appendix draws on citations that are contained in the body of this document, online handbooks, as well as assistance organizations websites. The appendix is meant as a guide for those who are need of further information and a how-to-guide.

General Affordable Housing Resources

These resources should be used to learn more about housing programs and services in the specific areas of interest to you.

The Official Website of the Executive Office of Housing and Economic Development/DHCD

Link: <http://www.mass.gov/hed/economic/eohed/dhcd/contacts/development-partners-listing.html>

About: The purpose of this resource is to provide further information on understanding the financing partners for affordable housing in the state of MA and nationally.

Federal Housing Resources Guide

Link: <http://www.tacinc.org/media/27844/Federal%20Housing%20Programs.pdf>

About: This guide highlights a few of the programs administered by HUD that are relevant to the housing needs of low-income people with disabilities including people who are homeless or at risk of homelessness. This summary includes resources administered by public housing agencies, state and local community development officials, continuum of care planning groups, and state housing agencies.

National (and MA) Public Housing Authority Contact Information

Link:

https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha/contacts

About: When on the national website, click on the state of choice to be taken to a full list of contact information for each local housing authority in the state. This list of contact information also provides a quick list of the types of programs administered by that particular housing authority such as Section 8 or voucher programs.

Local Housing Board Training Manual

Link: <http://www.mass.gov/hed/docs/dhcd/ph/lharesources/lha-board-training-manual-2014.pdf>

About: This resource was developed to educate individuals who are joining a local housing authority board. The resource has further explanations of much of the content in this document as well as additional topics.

MA Community Action Agencies

Link: <http://www.mass.gov/hed/economic/eohed/dhcd/contacts/community-action-agency-listing.html>

About: Community Action Agencies serve local residents needs in a variety of ways through the operation of multiple programs and the assistance with accessing services. A local community action agency may provide prevention, stabilization, or case management services. Some CAAs but not all provide housing and housing search assistance.

Housing Consumer Education Centers

Link: <http://www.regionalhousing.net/index.html>

About: Housing consumer education centers offer answers to a wide range of questions about all types of housing problems. Tenants, landlords, prospective buyers, and homeowners can access information designed to maximize and preserve housing stability, strengthen investments, and minimize disputes. There are multiple centers throughout the state of Mass.

Housing Search Guidance

These resources provide guidance on the housing search process for residents, professionals, and their allies. Resources like MassHousing's website can also be used to further understand the fair housing program and how it may be applicable to searches you need to do or the people you work with.

How to Obtain Public Housing

Link: <https://www.mass.gov/guides/a-guide-to-obtaining-housing-assistance>

About: This reference guide, provided by the Massachusetts Department of Housing and Community Development (DHCD) is for Massachusetts residents seeking information on housing for low- and moderate-income families and individuals. It summarizes the numerous agencies and organizations that provide lower cost, subsidized housing for those who cannot afford market rate rents or home prices, as well as where to go to find out more about each type of housing within MA.

Mass Legal Help (Housing)

Link: <http://www.masslegalhelp.org/housing/where-to-begin>

About: This website provides an overview of housing programs, where to look for housing within that program, and agencies that can provide assistance within MA. There is specific information for different types of residents including the elderly, families with children, and those who may be in a fragile situation due to domestic violence or other issues. From this website you can access some of the search websites we have listed here.

HousingWorks

Link: <http://www.infoweb.org>

About: This website provides information for both individuals seeking housing and organizations that work directly in, or whose work intersects with the affordable housing world. For individuals seeking housing, this website features a number of resources, but most notably, allows users to search for, locate and apply to all subsidized and affordable housing options at once. HousingWorks also provides numerous services targeted towards housing advocates and housing providers to streamline their software, compliance and training-related needs.

Search Based Websites

These websites provide direct access to search tools or databases that are helpful in identifying housing and providing contact information to get a resident into housing.

Common Housing Application for Massachusetts Public-Housing (CHAMP)

Link: <https://publichousingapplication.ocd.state.ma.us/>

About: This site allows individuals to apply for state-aided (in MA) public housing, and search for any existing applications. Through this site, applicants can also update information listed on

their application, such as changes in mailing address or other contact information. This information will then be updated at the housing authority to which to applicant applied.

MassHousing Website

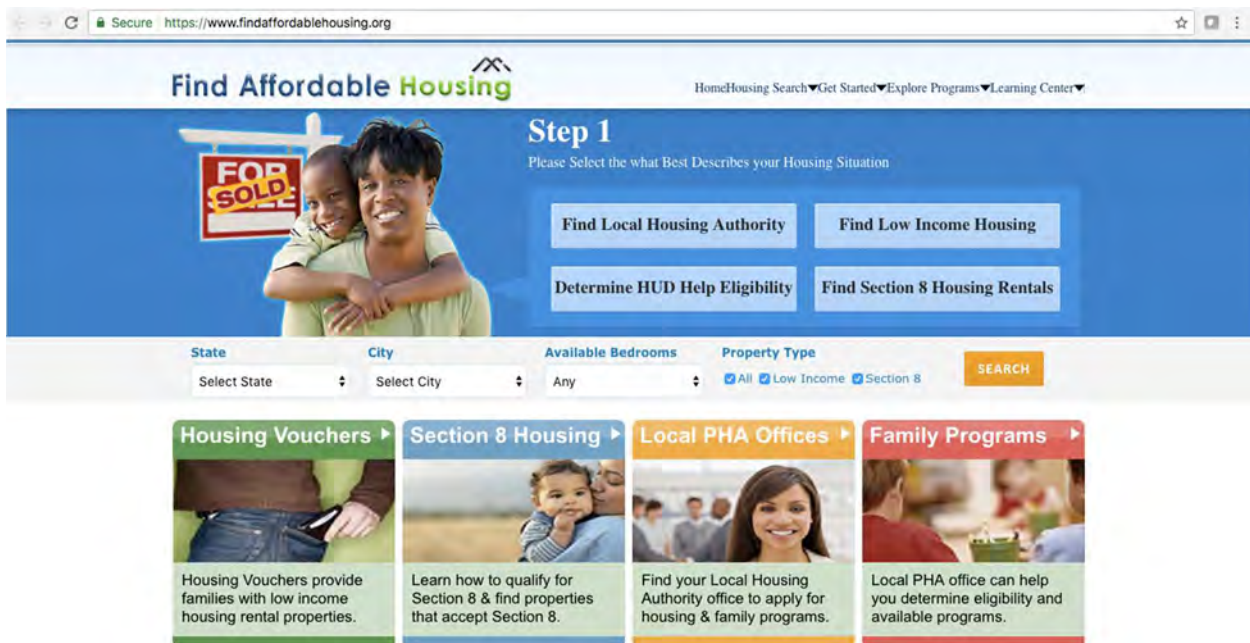
Link: <https://masshousing.com/en/renters/housing-list>

About: Masshousing, a quasi-state agency that finances assisted housing developments in MA, has a list of the developments it has financed. This list includes the contact information, what company manages the site, whether it has a project-based subsidy, if it is “family” or “elderly” housing, the unit size based on number of bedrooms and how many accessible units the site has.¹ There is both an online search function and PDF version of this resource.

Find Affordable Housing

Link: <https://www.findaffordablehousing.org/>

About: This site provides numerous ways to search for specific types of housing including vouchers, Section 8 housing, local PHAs, and more. Their homepage is below.

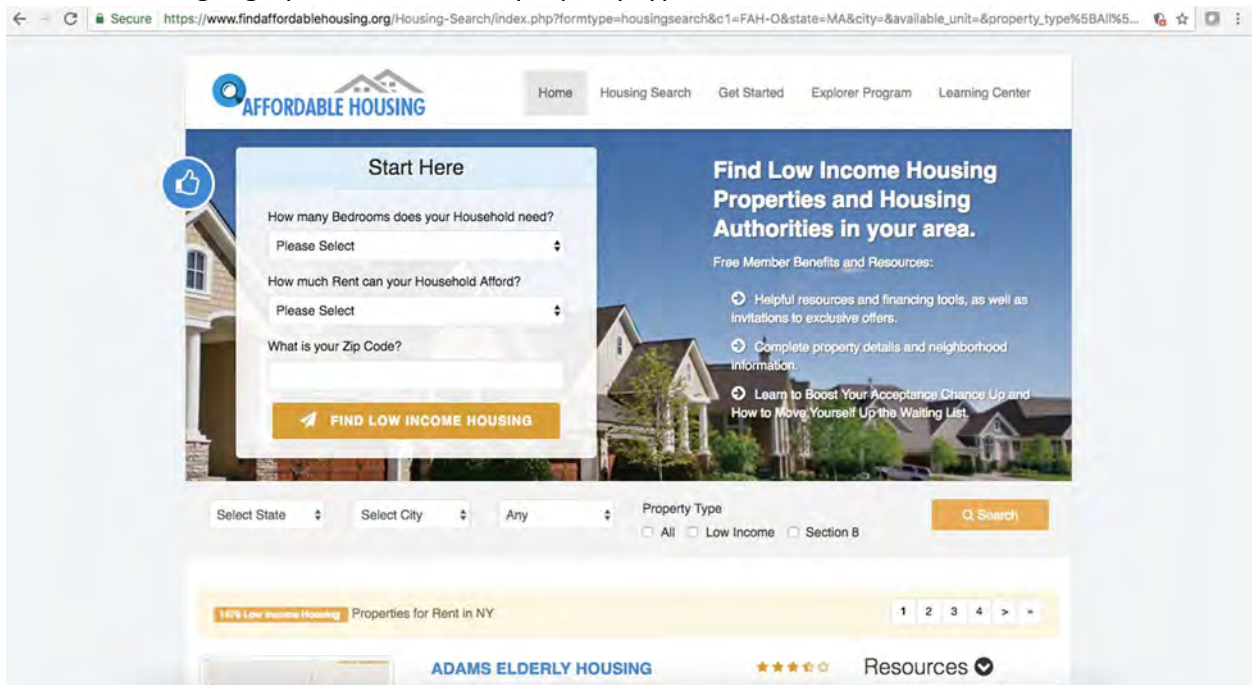


¹ See file:///C:/Users/Owner/Downloads/HousingList_Full.pdf

Also on the homepage are links to access state by state resources.



If you were to use the search bar on the front page, and search for all types of housing in MA, you would be taken to a page that looks like this. You can then narrow down the search criteria to the desired geographic location and property type.



If you were to click on the Massachusetts state resources (from the MA icon on the homepage), you would be taken to a page that looks like the photo below. From there, you could be more specific about the type of housing resources you want or move forward with a property search.



Affordable Housing Online

Link: <https://affordablehousingonline.com/>

About: Affordable housing online provides the most complete database of federal housing assistance and exhaustive affordable housing data for each state, county and city in America. There are multiple ways to use the site. Option one to begin to use this site by typing in the geographic location you are interested in. You can see the search bar below. You can also click on the headings at the top of the site



If you are interested in “Section 8 Wait Lists” for example and click on that category at the top of the homepage, you will be brought to a page that looks like the one below. You can then click on the section titled “Open Section 8 Waiting Lists by State” to get to the MA list or whichever state’s list you are interested in.

SECTION 8 WAITING LISTS

Section 8 Waiting Lists

There are 2,426 housing authorities across the country which offer the Section 8 Housing Choice Voucher Program. For more on the Section 8 Housing Choice Voucher program visit the [Housing Choice Voucher](#) section of our [Low Income Housing Renters's Guide](#)

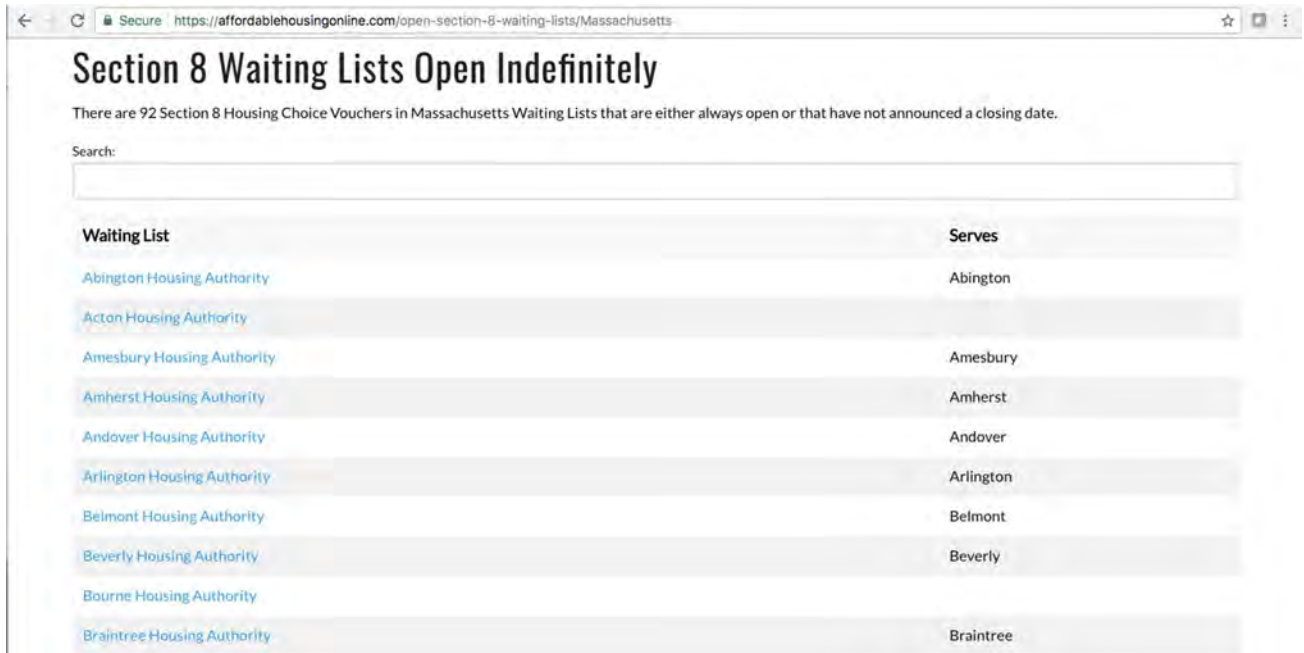
Jump to:

- [Guide](#)
- [Closing Soon Waiting Lists](#)
- [Opening Soon Waiting Lists](#)
- [Open Section 8 Waiting Lists By State](#)

When you click on “Open Section 8 Waiting Lists by State” you will be taken to the part of the page that looks like the image below. Though MA does not appear in this shot, you can see what is provided on a state by state basis.

State	Open / Opening Soon	Closed
Alabama	14	11
Alaska	1	0
Arizona	3	9
Arkansas	14	4
California	18	61
Colorado	6	18
Connecticut	1	27
Delaware	0	4
District Of Columbia	0	1
Florida	4	53
Georgia	4	15
Hawaii	0	5

When you select a particular state, in this case, MA, you will be taken to a page that resembles this and be able to contact a housing authority from there.



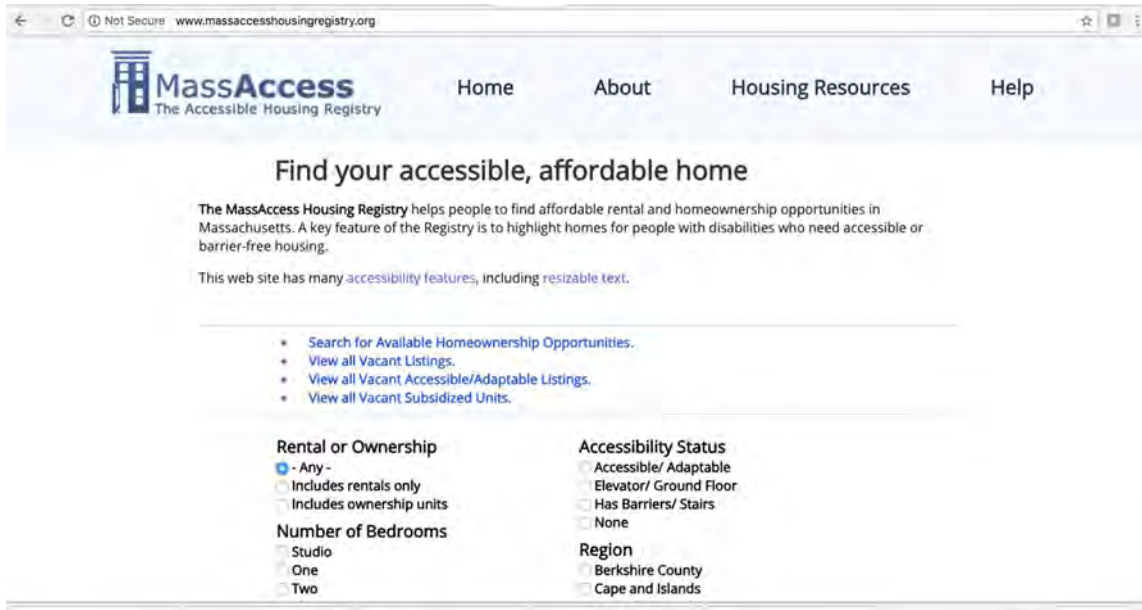
The steps listed above is just one overall example of how to use this site. There are multiple ways, and you can use the search bar at any time if you know what you are looking to find.

Mass Access: The Affordable Housing Registry

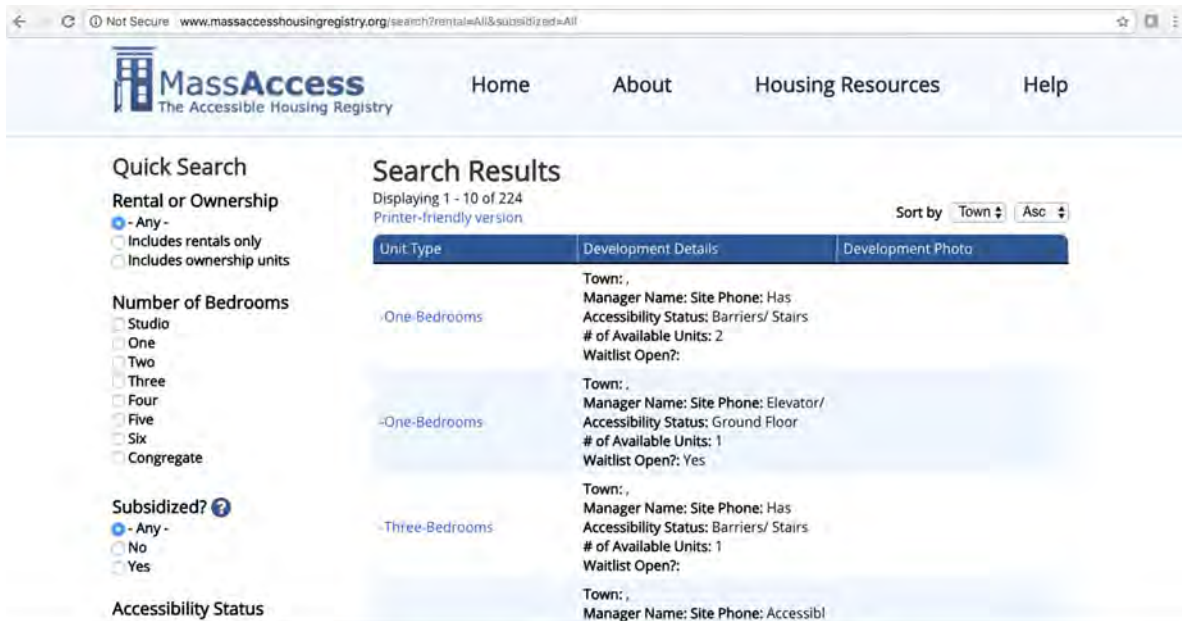
Link: <http://www.massaccesshousingregistry.org/>

About: The MassAccess Housing Registry helps people to find affordable rental and homeownership opportunities in Massachusetts. A key feature of the Registry is to highlight homes for people with disabilities who need accessible or barrier-free housing. The site can be searched by vacant unit, vacant subsidy unit, or various accommodations.

Below is a view of the homepage. You will note the options to sort by ownership type, number of bedrooms, accessibility, and region. There is an option to sort by subsidy as well.



An unlimited housing search returns the following results.



This database is housed on the Citizens’ Housing and Planning Association’s website. This organization’s mission is to “encourage the production and preservation of housing that is affordable to low and moderate income families and individuals and to foster diverse and sustainable communities through planning and community development.”

Note: This website also has a number of other helpful links, and a helpful publication titled [Housing Search Guide for People with Disabilities](#).

See: <http://www.chapa.org/sites/default/files/CHAPAHousingSearchGuide2014.pdf>

HUD's National Subsidized Apartment Search

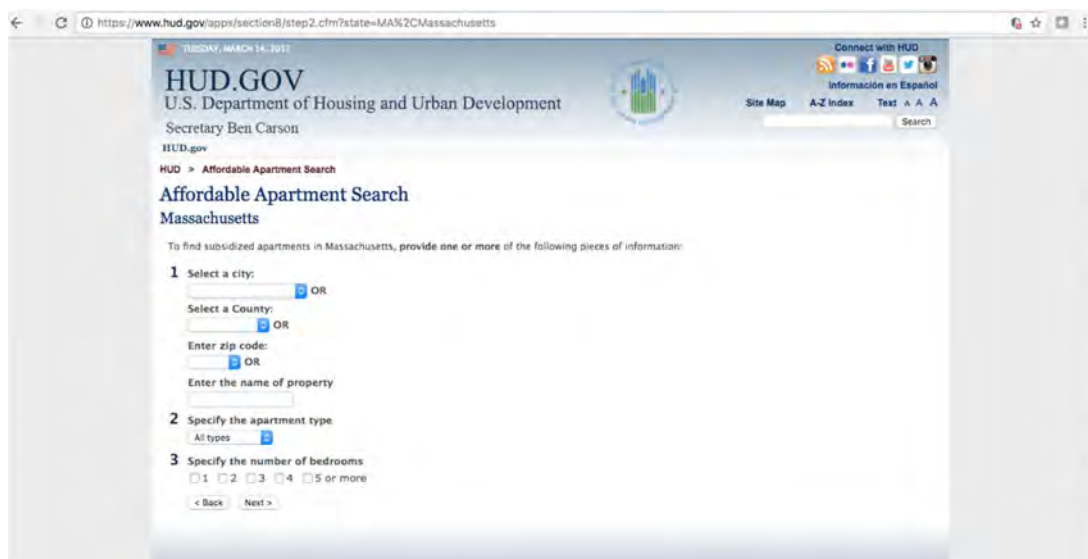
Link: <https://www.hud.gov/apps/section8/>

About: HUD's inventory of units for the elderly and persons with disabilities website is designed to assist prospective applicants with locating units in HUD insured and HUD subsidized multifamily properties that serve the elderly and/or persons with disabilities.

In the below image you can see that you must first select a state to begin your search. You may frequently be looking in Massachusetts, but in the event that someone needs to be relocated out of state, you may be interested in searching in a different state.



On the above page after selecting “next”, you are brought to the below page. You may have specific criteria to enter in the search terms and you would enter those terms at this point. In the event you are open to any form of housing, simply leave all the forms blank and click “next”.



You are next brought to a search results page that looks like the below.



Technical Assistance Collaborative (TAC)

Link: <http://www.tacinc.org/knowledge-resources/vouchers-database/?state=ma&submit.x=15&submit.y=9>

About: Using all available federal data, TAC has developed a comprehensive up-to-date database of vouchers targeted to people with disabilities and other special needs. You can select the state you are interested in (MA for example) and will then be provided with a list of agencies administer these vouchers in the state.

Metropolitan Boston Housing Partnership Online Apartment Listing Service

Link: <https://www.metrohousingboston.org/apartment-listings/>

About: This site connects prospective tenants with affordable housing options in the Metropolitan Boston Housing Partnership's region; rents are within government-set affordability ranges and apartments are located in MBHP's 30-community service area. These communities are Arlington, Bedford, Belmont, Boston, Braintree, Brookline, Burlington, Cambridge, Chelsea, Everett, Lexington, Lynn, Malden, Medford, Melrose, Milton, Newton, North Reading, Quincy, Reading, Revere, Somerville, Stoneham, Wakefield, Waltham, Watertown, Wilmington, Winchester, Winthrop And Woburn.

Mass211 Help Search

Link: <https://mass211.org/>

About: Mass211 is a free online service that works to connect people to the help that they need including housing. You can use their search page by typing in a key term such as “housing section 8” or “housing assistance,” etc. This will take you to a long list of resources that may be helpful to you. This search is the most general of the options listed on this page as Mass211 is not housing specific. You may have an easier time using one of the other resources.

Fair Housing Accessibility FIRST

Link: <http://fairhousingfirst.org/>

About: Fair Housing Accessibility FIRST is an initiative sponsored by the U.S. Department of Housing and Urban Development (HUD). It promotes compliance with the Fair Housing Act design and construction requirements by offering a comprehensive training program, online web resources, and a toll-free information line to provide technical guidance and support to the public.





Massachusetts Housing Finance Agency
One Beacon Street, Boston, MA 02108

TEL: 617.854.1000 | www.masshousing.com

Videophone: 866.758.1435 or Mass Relay 711