

Chapter 2 Part 2.a. References in this Chapter

1(a)(iv)1 – 42 US Code § 423(d)(1):

(d)“Disability” defined

(1)The term “disability” means—

- (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
- (B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

1(a)(iv)3 -- 42 U.S. Code. § 15002(8) (formerly codified in 42 U.S. Code § 6001)

(8) Developmental disability

(A)In general The term “developmental disability” means a severe, chronic disability of an individual that—

(i) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) is manifested before the individual attains age 22;

(iii) is likely to continue indefinitely;

(iv) results in substantial functional limitations in 3 or more of the following areas of major life activity:

- (I) Self-care.
- (II) Receptive and expressive language.
- (III) Learning.
- (IV) Mobility.
- (V) Self-direction.
- (VI) Capacity for independent living.
- (VII) Economic self-sufficiency; and

(v) reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(B)Infants and young children

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

1(a)(iv)3(a)(iii) – Section 504 of the Rehabilitation Act:

Section 504 of the Rehabilitation Act of 1973 is a federal law, codified at 29 U.S.C. § 794, that prohibits discrimination on the basis of disability in federally assisted programs or activities. Specifically, Section 504 states: No otherwise qualified individual with a disability in the United States. . .shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, service or activity

receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. This means that Section 504 prohibits discrimination on the basis of disability in any program or activity that receives financial assistance from any federal agency, including HUD as well as in programs conducted by federal agencies including HUD.

1(b) 24 CFR § 5.500 - 5.528

§ 5.504 Definitions.

(a) The definitions 1937 Act, HUD, Public Housing Agency (PHA), and Section 8 are defined in subpart A of this part.

(b) As used in this subpart E:

Child means a member of the family other than the family head or spouse who is under 18 years of age.

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See § 5.508(b).)

Family has the same meaning as provided in the program regulations of the relevant Section 214 covered program.

Head of household means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Housing covered programs means the following programs administered by the Assistant Secretary for Housing:

- (1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);
- (2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program); and
- (3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program).

INS means the U.S. Immigration and Naturalization Service.

Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen means a person who is neither a citizen nor national of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit.

Public Housing covered programs means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the 1937 Act. This definition does not encompass HUD's Indian Housing programs administered under title II of the 1937 Act. Further, this term does not include those programs providing assistance under section 8 of the 1937 Act. (See definition of "Section 8 Covered Programs" in this section.)

Responsible entity means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows:

- (1) For the Section 235 Program, the mortgagee.

(2) For Public Housing, the Section 8 Rental Certificate, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD.

(3) For all other Section 8 programs, the Section 236 Program, and the Rent Supplement Program, the owner.

Section 8 covered programs means all HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8-assisted housing for which loans are made under section 202 of the Housing Act of 1959.

Section 214 means section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

Section 214 covered programs is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in § 5.500.

Tenant means an individual or a family renting or occupying an assisted dwelling unit. For purposes of this subpart E, the term tenant will also be used to include a homebuyer, where appropriate.

1(d) 24 CFR § 5.216

§ 5.216 Disclosure and verification of Social Security and Employer Identification Numbers.

(a) General. The requirements of this section apply to applicants and participants as described in this section, except that this section is inapplicable to individuals who do not contend eligible immigration status under subpart E of this part (see § 5.508).

(b) Disclosure required of assistance applicants. Each assistance applicant must submit the following information to the processing entity when the assistance applicant's eligibility under the program involved is being determined.

(1) The complete and accurate SSN assigned to the assistance applicant and to each member of the assistance applicant's household; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(c) Disclosure required of individual owner applicants. Each individual owner applicant must submit the following information to the processing entity when the individual owner applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to the individual owner applicant and to each member of the individual owner applicant's household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(d) Disclosure required of certain officials of entity applicants. Each officer, director, principal stockholder, or other official of an entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to each such individual; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each SSN.

(e) Disclosure required of participants –

(1) Initial disclosure.

(i) Each participant, except those age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, must submit the information described in paragraph (e)(1)(ii) of this section, if the participant has:

(A) Not previously disclosed a SSN;

- (B) Previously disclosed a SSN that HUD or the SSA determined was invalid;
- (C) Been issued a new SSN.

(ii) Each participant subject to the disclosure requirements under paragraph (e)(1)(i) of this section must submit the following information to the processing entity at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification for the program involved:

- (A) The complete and accurate SSN assigned to the participant and to each member of the participant's household; and
- (B) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(2) Subsequent disclosure. Once a participant has disclosed and the processing entity has verified each SSN, the following rules apply:

(i) Addition of new household member who is at least 6 years of age or under the age of 6 and has an assigned SSN. When the participant requests to add a new household member who is at least 6 years of age, or is under the age of 6 and has an assigned SSN, the participant must provide the following to the processing entity at the time of the request, or at the time of processing the interim reexamination or recertification of family composition that includes the new member(s):

- (A) The complete and accurate SSN assigned to each new member; and
- (B) The documentation referred to in paragraph (g)(1) of this section to verify the SSN for each new member.

(ii) Addition of new household member who is under the age of 6 and has no assigned SSN.

(A) When a participant requests to add a new household member who is under the age of 6 and has not been assigned a SSN, the participant shall be required to provide the complete and accurate SSN assigned to each new child and the documentation referred to in paragraph (g)(1) of this section to verify the SSN for each new child within 90 calendar days of the child being added to the household.

(B) The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the participant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant. During the period that the processing entity is awaiting documentation of a SSN, the processing entity shall include the child as part of the assisted household and the child shall be entitled to all the benefits of being a household member. If, upon expiration of the provided time period, the participant fails to produce a SSN, the processing entity shall follow the provisions of § 5.218.

(iii) Assignment of new SSN. If the participant or any member of the participant's household has been assigned a new SSN, the participant must submit the following to the processing entity at either the time of receipt of the new SSN; at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification; or at such earlier time specified by the processing entity:

- (A) The complete and accurate SSN assigned to the participant or household member involved; and
- (B) The documentation referred to in paragraph (g)(1) of this section to verify the SSN of each individual.

(f) Disclosure required of entity applicants. Each entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

- (1) Any complete and accurate EIN assigned to the entity applicant; and
- (2) The documentation referred to in paragraph (g)(2) of this section to verify the EIN.

(g) Required documentation –

(1) SSN. The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (e) of this section is:

- (i) A valid SSN card issued by the SSA;
- (ii) An original document issued by a federal or state government agency, which contains the name of the individual and the SSN of the individual, along with other identifying information of the individual; or
- (iii) Such other evidence of the SSN as HUD may prescribe in administrative instructions.

(2) *EIN*. The documentation necessary to verify an EIN of an entity applicant that is required to disclose its EIN under paragraph (f) of this section is the official, written communication from the Internal Revenue Service (IRS) assigning the EIN to the entity applicant, or such other evidence of the EIN as HUD may prescribe in administrative instructions.

(h) *Effect on assistance applicants*.

(1) Except as provided in paragraphs (h)(2) and (3) of this section, if the processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the documentation referred to in paragraph (g)(1) of this section to verify the SSN of each member of the household.

(2) For applicants to the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals under 24 CFR part 882, subpart H, the documentation required in paragraph (g)(1) of this section must be provided to the processing entity within 90 calendar days from the date of admission into the program. The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the applicant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the applicant. If, upon expiration of the provided time period, the individual fails to produce a SSN, the processing entity shall follow the provisions of § 5.218.

(3) If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household's date of admission (or, for the HCV program, the date of voucher issuance), the assistance applicant may become a participant, so long as the documentation required in paragraph (g)(1) of this section is provided to the processing entity within 90 calendar days from the date of admission into the program (or, for the HCV program, the effective date of the Housing Assistance Payment contract). The processing entity must grant an extension of one additional 90-day period if the processing entity determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation required in paragraph (g)(1) of this section within the required time period, the processing entity must follow the provisions of § 5.218.

(i) *Rejection of documentation.* The processing entity must not reject documentation referred to in paragraph (g) of this section, except as HUD may otherwise prescribe through publicly issued notice.

1(d)(i) 24 CFR § 5.508

§ 5.508 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of §§ 5.516 and 5.518 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the responsible entity.

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity may request verification of the declaration by requiring presentation of a United States passport or other appropriate documentation, as specified in HUD guidance.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of:

- (i) A signed declaration of eligible immigration status; and
- (ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

- (i) A signed declaration of eligible immigration status;
- (ii) One of the INS documents referred to in § 5.510; and
- (iii) A signed verification consent form.

(c) *Declaration.*

(1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

- (i) For each adult, the declaration must be signed by the adult.
- (ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *For Housing covered programs:* The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) *Verification consent form -*

(1) *Who signs.* Each noncitizen who declares eligible immigration status (except certain noncitizens who are 62 years of age or older as described in paragraph (b)(2) of this section) must sign a verification consent form as follows.

- (i) For each adult, the form must be signed by the adult.
- (ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by responsible entity.* The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD, as required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD.

Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend that they have eligible status.* If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance under §§ 5.516 and 5.518, or § 5.520, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify in writing to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214 -*

(1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the responsible entity as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for assistance. Applicants whose applications are pending on June 19, 1995, shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to tenants.* The notification described in paragraph (f)(1) of this section shall be given to each tenant at the time of, and together with, the responsible entity's notice of regular reexamination of income, but not later than one year following June 19, 1995.

(iii) *Timing of mortgagor's notice.* A mortgagor receiving Section 235 assistance must be provided the notification described in paragraph (f)(1) of this section and any additional requirements imposed under the Section 235 Program.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 5.514 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of §§ 5.516 and 5.518.

(g) *When evidence of eligible status is required to be submitted.* The responsible entity shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, responsible entities must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 5.512(a)).

(2) *Tenants.* For tenants, evidence of eligible status is required to be submitted as follows:

(i) For financial assistance under a Section 214 covered program, with the exception of Section 235 assistance payments, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with requirements imposed under the Section 235 Program.

(3) *New occupants of assisted units.* For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the responsible entity for a Section 214 covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.

(h) *Extensions of time to submit evidence of eligible status -*

(1) *When extension must be granted.* The responsible entity shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 5.508(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Thirty-day extension period.* Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or to establish eligible status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the

responsible entity shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 5.514, 5.516, and 5.518.

(ii) [Reserved]

1(d)(v)(2)(b)(2) 24 CFR § 5.218 & 1(d)(viii)(2) 24 CFR § 5.218

§ 5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility of assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or individual owner applicant in accordance with the provisions governing the program involved, if the assistance or individual owner applicant does not meet the applicable SSN disclosure, documentation, and verification requirements as specified in § 5.216.

(b) *Denial of eligibility of entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved; if:

(1) The entity applicant does not meet the EIN disclosure, documentation, and verification requirements specified in § 5.216; or

(2) Any of the officials of the entity applicant referred to in § 5.216(d) does not meet the applicable SSN disclosure, and documentation and verification requirements specified in § 5.216.

(c) *Termination of assistance or termination of tenancy of participants.*

(1) The processing entity must terminate the assistance or terminate the tenancy, or both, of a participant and the participant's household, in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation, and verification requirements specified in § 5.216.

(2) The processing entity may defer termination and provide the participant with an additional 90 calendar days to disclose a SSN, but only if the processing entity, in its discretion, determines that:

(i) The failure to meet these requirements was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant; and

(ii) There is a reasonable likelihood that the participant will be able to disclose a SSN by the deadline.

(3) Failure of the participant to disclose a SSN by the deadline specified in paragraph (c)(2) of this section will result in termination of the assistance or tenancy, or both, of the participant and the participant's household.

(d) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs covered under this subpart B for further information on the use of SSNs and EINs in determinations regarding eligibility.

2 - 24 CFR § 960.205; also 7(a)(ii)(1)

§ 960.205 Drug use by applicants: Obtaining information from drug treatment facility.

(a) Purpose. This section addresses a PHA's authority to request and obtain information from drug abuse treatment facilities concerning applicants. This section does not apply to information requested or obtained from drug abuse treatment facilities other than under the authority of section 6(t).

- (b) Additional terms used in this section are as follows:
- (1) Currently engaging in illegal use of a drug. Illegal use of a drug occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.
 - (2) Drug abuse treatment facility. An entity:
 - (i) That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and
 - (ii) That is either an identified unit within a general care facility; or an entity other than a general medical care facility.
- (c) Authorization by household member for PHA to receive information from a drug abuse treatment facility.
- (1) The PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head or spouse regardless of age, one or more consent forms signed by such household member that:
 - (i) Requests any drug abuse treatment facility to inform the PHA only whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;
 - (ii) Complies with the form of written consent required by 42 CFR 2.31; and
 - (iii) Authorizes the PHA to receive such information from the drug abuse treatment facility, and to utilize such information in determining whether to prohibit admission of the household member to the PHA's public housing program in accordance with § 960.203. (See the Public Health Service Act, 42 U.S.C. 290dd-2, and implementing regulations at 42 CFR part 2, with respect to responsibilities of the drug abuse treatment facility.)
 - (2) The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.
- (d) PHA request for information from drug use treatment facility.
- (1) The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in § 5.100 of this title).
 - (2) The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.
 - (3) A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd-2).
 - (4) The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.
 - (5) A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section. The PHA may not pass along to the applicant or tenant the costs of obtaining this information.
- (e) Prohibition of discriminatory treatment of applicants.
- (1) A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies, obtaining a signed consent form from the proposed household members:
 - (i) Policy A - Request for all families. Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with paragraph (d) of this section before admitting any family to the PHA's public housing program. For each such

family, the request must be submitted for each proposed household member described in paragraph (c)(1) of this section.

(ii) Policy B - Request for certain household members. Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:

(A) Whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission under § 960.205; or

(B) Whose prior tenancy records indicate that the proposed household member:

- (1) Engaged in the destruction of property;
- (2) Engaged in violent activity against another person; or
- (3) Interfered with the right of peaceful enjoyment of the premises of other residents.
- (4) The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.

(f) Records management and confidentiality. Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:

(1) Is maintained confidentially in accordance with section 543 of the Public Health Service Act (12 U.S.C. 290dd-2);

(2) Is not misused or improperly disseminated; and

(3) Is destroyed, as applicable:

(i) Not later than 5 business days after the PHA makes a final decision to admit the person as a household member under the PHA's public housing program; or

(ii) If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired without the filing of a civil action or until final disposition of any such litigation.

2(c)(2) 42 CFR 2.31

§ 2.31 Consent requirements.

(a) *Required elements for written consent.* A written consent to a disclosure under the regulations in this part may be paper or electronic and must include:

(1) The name of the patient.

(2) The specific name(s) or general designation(s) of the part 2 program(s), entity(ies), or individual(s) permitted to make the disclosure.

(3) How much and what kind of information is to be disclosed, including an explicit description of the substance use disorder information that may be disclosed.

(4)

(i) *General requirement for designating recipients.* The name(s) of the individual(s) or the name(s) of the entity(-ies) to which a disclosure is to be made.

(ii) *Special instructions for entities that facilitate the exchange of health information and research institutions.* Notwithstanding paragraph (a)(4)(i) of this section, if the recipient entity facilitates the exchange of health information or is a research institution, a written consent must include the name(s) of the entity(-ies) and

(A) The name(s) of individual or entity participant(s); or

(B) A general designation of an individual or entity participant(s) or class of participants that must be limited to a participant(s) who has a treating provider relationship with the patient whose information is being disclosed. When using a general designation, a statement must be included on the consent form that the patient (or other individual authorized to sign in lieu of the patient), confirms their understanding that, upon their request and consistent with this part, they must be provided a list of entities to which their information has been disclosed pursuant to the general designation (see § 2.13(d)).

(5) The purpose of the disclosure. In accordance with § 2.13(a), the disclosure must be limited to that information which is necessary to carry out the stated purpose.

(6) A statement that the consent is subject to revocation at any time except to the extent that the part 2 program or other lawful holder of patient identifying information that is permitted to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third-party payer

(7) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is provided.

(8) The signature of the patient and, when required for a patient who is a minor, the signature of an individual authorized to give consent under § 2.14; or, when required for a patient who is incompetent or deceased, the signature of an individual authorized to sign under § 2.15. Electronic signatures are permitted to the extent that they are not prohibited by any applicable law.

(9) The date on which the consent is signed.

(b) *Expired, deficient, or false consent.* A disclosure may not be made on the basis of a consent which:

(1) Has expired;

(2) On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section;

(3) Is known to have been revoked; or

(4) Is known, or through reasonable diligence could be known, by the individual or entity holding the records to be materially false.

3. 24 CFR § 960.203 Standards for PHA Tenant selection criteria.

§ 960.203 Standards for PHA tenant selection criteria.

(a) The tenant selection criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member. The PHA may use local preferences, as provided in § 960.206.

(b) Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures, and can document that they successfully screen out and deny admission to certain applicants with unfavorable criminal histories receive points. (See 24 CFR 902.43(a)(5).) This policy takes into account the importance of screening to public housing communities and program integrity, and the demand for assisted housing by families who will adhere to lease responsibilities.

(c) In selection of families for admission to its public housing program, or to occupy a public housing development or unit, the PHA is responsible for screening family behavior and

suitability for tenancy. The PHA may consider all relevant information, which may include, but is not limited to:

- (1) An applicant's past performance in meeting financial obligations, especially rent;
 - (2) A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety, or welfare of other tenants; and
 - (3) A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety, or welfare of other tenants. (See § 960.204.) With respect to criminal activity described in § 960.204:
 - (i) The PHA may require an applicant to exclude a household member in order to be admitted to the housing program where that household member has participated in or been culpable for actions described in § 960.204 that warrants denial.
 - (ii) The PHA may, where a statute requires that the PHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, choose to continue that prohibition for a longer period of time.
 - (4) PHA tenant selection criteria are subject to 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). In cases of requests for emergency transfers under VAWA, with the written consent of the victim of domestic violence, dating violence, sexual assault, or stalking, the receiving PHA may accept and use the prior covered housing provider's determination of eligibility and tenant screening and all related verification information, including form HUD 50058 (Family Report).
- (d) In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense).
- (1) In a manner consistent with the PHA's policies, procedures and practices referenced in paragraph (b) of this section, consideration may be given to factors which might indicate a reasonable probability of favorable future conduct. For example:
 - (i) Evidence of rehabilitation; and
 - (ii) Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs;
 - (2) Consideration of rehabilitation.
 - (i) In determining whether to deny admission for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the PHA may require the applicant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.
 - (ii) If rehabilitation is not an element of the eligibility determination (see § 960.204(a)(1)), the PHA may choose not to consider whether the person has been rehabilitated.

[66 FR 28799, May 24, 2001, as amended at 73 FR 72344, Nov. 28, 2008; 75 FR 66262, Oct. 27, 2010; 81 FR 80815, Nov. 16, 2016]

3(a) 24 CFR § 960.206 Waiting list: Local preferences in admission to public housing program.

§ 960.206 Waiting list: Local preferences in admission to public housing program.

(a) Establishment of PHA local preferences.

(1) The PHA may adopt a system of local preferences for selection of families admitted to the PHA's public housing program. The PHA system of selection preferences must be based on local housing needs and priorities as determined by the PHA. In determining such needs and priorities, the PHA shall use generally accepted data sources. Such sources include public comment on the PHA plan (as received pursuant to § 903.17 of this chapter), and on the consolidated plan for the relevant jurisdiction (as received pursuant to part 91 of this title).

(2) The PHA may limit the number of applicants that qualify for any local preference.

(3) PHA adoption and implementation of local preferences is subject to HUD requirements concerning income-targeting (§ 960.202(b)), deconcentration and income-mixing (§ 903.7), and selection preferences for developments designated exclusively for elderly or disabled families or for mixed population developments (§ 960.407).

(4) The PHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(b) Particular local preferences -

(1) Residency requirements or preferences.

(i) Residency requirements are prohibited. Although a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area ("residency preference area"). A county or municipality may be used as a residency preference area. An area smaller than a county or municipality may not be used as a residency preference area.

(iii) Any PHA residency preferences must be included in the statement of PHA policies that govern eligibility, selection and admission to the program, which is included in the PHA annual plan (or supporting documents) pursuant to part 903 of this chapter. Such policies must specify that use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(iv) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(v) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The PHA may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) Preference for working families. The PHA may adopt a preference for admission of working families (families where the head, spouse, or sole member, is employed). However, an applicant must be given the benefit of the working family preference if the head and spouse, or sole member is age 62 or older, or is a person with disabilities.

- (3) Preference for person with disabilities. The PHA may adopt a preference for admission of families that include a person with disabilities. However, the PHA may not adopt a preference for persons with a specific disability.
- (4) Preference for victims of domestic violence, dating violence, sexual assault, or stalking. The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence, dating violence, sexual assault, or stalking.
- (5) Preference for single persons who are elderly, displaced, homeless or a person with disabilities. The PHA may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.
- (c) Selection for particular unit. In selecting a family to occupy a particular unit, the PHA may match characteristics of the family with the type of unit available, for example, number of bedrooms. In selection of families to occupy units with special accessibility features for persons with disabilities, the PHA must first offer such units to families which include persons with disabilities who require such accessibility features (see §§ 8.27 and 100.202 of this title).
- (d) Housing assistance limitation for single persons. A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.
- (e) Selection method.
 - (1) The PHA must use the following to select among applicants on the waiting list with the same priority for admission:
 - (i) Date and time of application; or
 - (ii) A drawing or other random choice technique.
 - (2) The method for selecting applicants must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the PHA plan.

[66 FR 28799, May 24, 2001, as amended at 81 FR 80815, Nov. 16, 2016]

3(b) 24 CFR § 902.43 Management operations performance standards.

§ 902.43 Management operations performance standards.

(a) *Management operations subindicators.* The following subindicators listed in this section will be used to assess the management operations of projects and PHAs, consistent with section 6(j)(1) of the Act (42 U.S.C. 1437d(j)(1)). Individual project scores for management operations, as well as overall PHA management operations scores, will be issued.

(1) *Occupancy.* This subindicator measures the occupancy for the project's fiscal year, adjusted for allowable vacancies.

(2) *Tenant accounts receivable.* This subindicator measures the tenant accounts receivable of a project against the tenant charges for the project's fiscal year.

(3) *Accounts payable.* This subindicator measures the money that a project owes to vendors at the end of the project's fiscal year for products and services purchased on credit against total operating expenses.

(b) *Assessment under the Management Operations Indicator.* Projects will be assessed under this indicator through information that is electronically submitted to HUD through the FDS.

3(c)(iv) & 6 - 24 CFR Part 5 Subpart L – Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

§ 5.2001 Applicability.

(a) This subpart addresses the protections for victims of domestic violence, dating violence, sexual assault, or stalking who are applying for, or are the beneficiaries of, assistance under a HUD program covered by the Violence Against Women Act (VAWA), as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e *et seq.*) (“covered housing program,” as defined in § 5.2003). Notwithstanding the title of the statute, protections are not limited to women but cover victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation. Consistent with the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a), victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD programs must also be operated consistently with HUD's Equal Access Rule at § 5.105(a)(2), which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

(b)

(1) The applicable assistance provided under a covered housing program generally consists of two types of assistance (one or both may be provided): Tenant-based rental assistance, which is rental assistance that is provided to the tenant; and project-based assistance, which is assistance that attaches to the unit in which the tenant resides. For project-based assistance, the assistance may consist of such assistance as operating assistance, development assistance, and mortgage interest rate subsidy.

(2) The regulations in this subpart are supplemented by the specific regulations for the HUD-covered housing programs listed in § 5.2003. The program-specific regulations address how certain VAWA requirements are to be implemented and whether they can be implemented (for example, reasonable time to establish eligibility for assistance as provided in § 5.2009(b)) for the applicable covered housing program, given the statutory and regulatory framework for the program. When there is conflict between the regulations of this subpart and the program-specific regulations, the program-specific regulations govern. Where assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

§ 5.2003 Definitions.

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

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

Affiliated individual, with respect to an individual, means:

(1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or

(2) Any individual, tenant, or lawful occupant living in the household of that individual.

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

Covered housing program consists of the following HUD programs:

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

(2) Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.

(3) Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 *et seq.*), with implementing regulations at 24 CFR part 574.

(4) HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 *et seq.*), with implementing regulations at 24 CFR part 92.

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

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

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

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

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

Covered housing provider refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities. The program-specific regulations for the covered housing programs identify the individual or entity that carries out the duties and responsibilities of the covered housing provider as set forth in part 5, subpart L. For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be

performed by a covered housing provider, the covered housing provider may not always be the same individual or entity.

Dating violence means violence committed by a person:

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

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

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

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

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

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

§ 5.2005 VAWA protections.

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

- (1) A covered housing provider must provide to each of its applicants and to each of its tenants the notice of occupancy rights and the certification form as described in this section:
 - (i) A "Notice of Occupancy Rights under the Violence Against Women Act," as prescribed and in accordance with directions provided by HUD, that explains the VAWA protections under this subpart, including the right to confidentiality, and any limitations on those protections; and
 - (ii) A certification form, in a form approved by HUD, to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault or stalking, and that:
 - (A) States that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;
 - (B) States that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under this subpart meets the applicable definition for such incident under § 5.2003; and
 - (C) Includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide.

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

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

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

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

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

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

(4) For the Housing Choice Voucher program under 24 CFR part 982, the project-based voucher program under 24 CFR part 983, the public housing admission and occupancy requirements under 24 CFR part 960, and renewed funding or leases of the Section 8 project-based program under 24 CFR parts 880, 882, 883, 884, 886, as well as project-based section 8 provided in connection with housing under part 891, the HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, sexual assault, or stalking, as provided in this subpart.

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

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

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

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

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

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

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

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

(d) *Limitations of VAWA protections.*

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

- (i) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or
- (ii) The distribution or possession of property among members of a household.

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

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

(4) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section should be utilized by a covered housing provider only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

(e) *Emergency transfer plan.* Each covered housing provider, as identified in the program-specific regulations for the covered housing program, shall adopt an emergency transfer plan, no later than June 14, 2017 based on HUD's model emergency transfer plan, in accordance with the following:

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

- (i) *Internal emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would not be categorized as a new applicant; that is, the tenant may reside in the new unit without having to undergo an application process.
- (ii) *External emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would be categorized as a new applicant; that is the tenant must undergo an application process in order to reside in the new unit.
- (iii) *Safe unit* refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe.

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

- (i) The tenant expressly requests the transfer; and
- (ii)
 - (A) The tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying; or
 - (B) In the case of a tenant who is a victim of sexual assault, either the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.
- (3) The emergency transfer plan must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of tenants seeking transfers and individuals seeking placement on waiting lists.
- (4) The emergency transfer plan must incorporate strict confidentiality measures to ensure that the covered housing provider does not disclose the location of the dwelling unit of the tenant to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.
- (5) The emergency transfer plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.
- (6) The emergency transfer plan must describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available, and these policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.
- (7) The emergency transfer plan must describe reasonable efforts the covered housing provider will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available. The plan must include policies for assisting a tenant who is seeking an external emergency transfer under VAWA out of the covered housing provider's program or project, and a tenant who is seeking an external emergency transfer under VAWA into the covered housing provider's program or project. These policies may include:
 - (i) Arrangements, including memoranda of understanding, with other covered housing providers to facilitate moves; and
 - (ii) Outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking.
- (8) Nothing may preclude a tenant from seeking an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available.
- (9) Where applicable, the emergency transfer plan must describe policies for a tenant who has tenant-based rental assistance and who meets the requirements of paragraph (e)(2) of this section to move quickly with that assistance.
- (10) The emergency transfer plan may require documentation from a tenant seeking an emergency transfer, provided that:
 - (i) The tenant's submission of a written request to the covered housing provider, where the tenant certifies that they meet the criteria in paragraph (e)(2)(ii) of this section, shall be sufficient documentation of the requirements in paragraph (e)(2) of this section;

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

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

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

(12) The covered housing provider must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. Requests and outcomes of such requests must be reported to HUD annually.

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

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

(a) *Request for documentation.*

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

(2)

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

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

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

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

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

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

(b) *Permissible documentation and submission requirements.*

(1) In response to a written request to the applicant or tenant from the covered housing provider, as provided in paragraph (a) of this section, the applicant or tenant may submit, as documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking, any one of the following forms of documentation, where it is at the discretion of the tenant or applicant which one of the following forms of documentation to submit:

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

(ii) A document:

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

(B) Signed by the applicant or tenant; and

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

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

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

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

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

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

(1) The covered housing provider shall not allow any individual administering assistance on behalf of the covered housing provider or any persons within their employ (*e.g.*, contractors) or in the employ of the covered housing provider to have access to confidential information unless explicitly authorized by the covered housing provider for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

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

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

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

(iii) Otherwise required by applicable law.

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

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

(a) *Lease bifurcation.*

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

- (i) Without regard to whether the household member is a signatory to the lease; and
- (ii) Without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.

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

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

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

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

(i) If a covered housing provider exercises the option to bifurcate a lease as provided in paragraph (a) of this section, and the individual who was evicted or for whom assistance was terminated was the eligible tenant under the covered housing program, the covered housing provider shall provide to any remaining tenant or tenants that were not already eligible a period of 90 calendar days from the date of bifurcation of the lease to:

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

or

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

(C) Find alternative housing.

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

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

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

housing providers, and for the covered housing provider to bear the costs of any transfer, where permissible.

§ 5.2011 Effect on other laws.

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

(b) All applicable fair housing and civil rights statutes and requirements apply in the implementation of VAWA requirements. See § 5.105(a).

3(d)(ii)(1) 42 U.S. Code § 13661 – Screening of applicants for federally assisted housing

(a) Ineligibility because of eviction for drug crimes

Any tenant evicted from federally assisted housing by reason of drug-related criminal activity (as such term is defined in section 1437a(b) of this title) shall not be eligible for federally assisted housing during the 3-year period beginning on the date of such eviction, unless the evicted tenant successfully completes a rehabilitation program approved by the public housing agency (which shall include a waiver of this subsection if the circumstances leading to eviction no longer exist).

(b) Ineligibility of illegal drug users and alcohol abusers

(1) **In general** Notwithstanding any other provision of law, a public housing agency or an owner of federally assisted housing, as determined by the Secretary, shall establish standards that prohibit admission to the program or admission to federally assisted housing for any household with a member—

(A) who the public housing agency or owner determines is illegally using a controlled substance; or

(B) with respect to whom the public housing agency or owner determines that it has reasonable cause to believe that such household member's illegal use (or pattern of illegal use) of a controlled substance, or abuse (or pattern of abuse) of alcohol, may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) **Consideration of rehabilitation** In determining whether, pursuant to paragraph (1)(B), to deny admission to the program or federally assisted housing to any household based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, a public housing agency or an owner may consider whether such household member—

(A) has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable);

(B) has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable); or

(C) is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable).

(c) **Authority to deny admission to criminal offenders** Except as provided in subsections (a) and (b) of this section and in addition to any other authority to screen applicants, in selecting among applicants for admission to the program or to federally assisted housing, if the public housing agency or owner of such housing (as applicable) determines that an applicant or any member of the applicant's household is or was, during a reasonable time preceding the date when

the applicant household would otherwise be selected for admission, engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees, the public housing agency or owner may—

- (1) deny such applicant admission to the program or to federally assisted housing; and
- (2) after the expiration of the reasonable period beginning upon such activity, require the applicant, as a condition of admission to the program or to federally assisted housing, to submit to the public housing agency or owner evidence sufficient (as the Secretary shall by regulation provide) to ensure that the individual or individuals in the applicant's household who engaged in criminal activity for which denial was made under paragraph (1) have not engaged in any criminal activity during such reasonable period.

3(d)(ii)(2) 24 CFR § 960.204 – Denial of admission for criminal activity or drug abuse by household members.

§ 960.204 Denial of admission for criminal activity or drug abuse by household members.

(a) *Required denial of admission -*

(1) *Persons evicted for drug-related criminal activity.* The PHA standards must prohibit admission of an applicant to the PHA's public housing program for three years from the date of the eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

- (i) The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or
- (ii) The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(2) *Persons engaging in illegal use of a drug.* The PHA must establish standards that prohibit admission of a household to the PHA's public housing program if:

- (i) The PHA determines that any household member is currently engaging in illegal use of a drug (For purposes of this section, a household member is "currently engaged in" the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current); or
- (ii) The PHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) *Persons convicted of methamphetamine production.* The PHA must establish standards that permanently prohibit admission to the PHA's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(4) *Persons subject to sex offender registration requirement.* The PHA must establish standards that prohibit admission to the PHA's public housing program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, the PHA must perform necessary criminal history background checks in the State where the housing is located and in other States where household members are known to have resided. (See part 5, subpart J of this title for provisions concerning access to sex offender registration records.)

(b) *Persons that abuse or show a pattern of abuse of alcohol.* The PHA must establish standards that prohibit admission to the PHA's public housing program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Use of criminal records.* Before a PHA denies admission to the PHAs public housing program on the basis of a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record. (See part 5, subpart J of this title for provisions concerning access to criminal records.)

(d) *Cost of obtaining criminal record.* The PHA may not pass along to the applicant the costs of a criminal records check.

6(b) 42 U.S. Code 290dd-2 also 8(a)

42 U.S. Code § 290dd-2 - Confidentiality of records

(a) Requirement

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance use disorder education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b).

(b) Permitted disclosure

(1) Consent The following shall apply with respect to the contents of any record referred to in subsection (a):

(A) Such contents may be used or disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained.

(B) Once prior written consent of the patient has been obtained, such contents may be used or disclosed by a covered entity, business associate, or a program subject to this section for purposes of treatment, payment, and health care operations as permitted by the HIPAA regulations. Any information so disclosed may then be redisclosed in accordance with the HIPAA regulations. Section 17935(c) of this title shall apply to all disclosures pursuant to subsection (b)(1) of this section.

(C) It shall be permissible for a patient's prior written consent to be given once for all such future uses or disclosures for purposes of treatment, payment, and health care operations, until such time as the patient revokes such consent in writing.

(D) Section 17935(a) of this title shall apply to all disclosures pursuant to subsection (b)(1) of this section.

(2) Method for disclosure Whether or not the patient, with respect to whom any given record referred to in subsection (a) is maintained, gives written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(D) To a public health authority, so long as such content meets the standards established in section 164.514(b) of title 45, Code of Federal Regulations (or successor regulations) for creating de-identified information.

(c) Use of records in criminal, civil, or administrative contexts—Except as otherwise authorized by a court order under subsection (b)(2)(C) or by the consent of the patient, a record referred to in subsection (a), or testimony relating the information contained therein, may not be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority, against a patient, including with respect to the following activities:

(1) Such record or testimony shall not be entered into evidence in any criminal prosecution or civil action before a Federal or State court.

(2) Such record or testimony shall not form part of the record for decision or otherwise be taken into account in any proceeding before a Federal, State, or local agency.

(3) Such record or testimony shall not be used by any Federal, State, or local agency for a law enforcement purpose or to conduct any law enforcement investigation.

(4) Such record or testimony shall not be used in any application for a warrant.

(d) Application

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when such individual ceases to be a patient.

(e) Nonapplicability—The prohibitions of this section do not apply to any interchange of records—

(1) within the Uniformed Services or within those components of the Department of Veterans Affairs furnishing health care to veterans; or

(2) between such components and the Uniformed Services.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalties—The provisions of sections 1176 and 1177 of the Social Security Act [42 U.S.C. 1320d–5, 1320d–6] shall apply to a violation of this section to the extent and in the same manner as such provisions apply to a violation of part C of title XI of such Act [42 U.S.C. 1320d et seq.].

In applying the previous sentence—

(1) the reference to “this subsection” in subsection (a)(2) of such section 1176 shall be treated as a reference to “this subsection (including as applied pursuant to section 290dd–2(f) of this title)”; and

(2) in subsection (b) of such section 1176—

(A) each reference to “a penalty imposed under subsection (a)” shall be treated as a reference to “a penalty imposed under subsection (a) (including as applied pursuant to section 290dd–2(f) of this title)”; and

(B)each reference to “no damages obtained under subsection (d)” shall be treated as a reference to “no damages obtained under subsection (d) (including as applied pursuant to section 290dd–2(f) of this title)”.

(g)Regulations

Except as provided in subsection (h), the Secretary shall prescribe regulations to carry out the purposes of this section. Such regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C), as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(h)Application to Department of Veterans Affairs

The Secretary of Veterans Affairs, acting through the Under Secretary for Health, shall, to the maximum feasible extent consistent with their responsibilities under title 38, prescribe regulations making applicable the regulations prescribed by the Secretary of Health and Human Services under subsection (g) to records maintained in connection with the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from substance use disorder. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs shall, from time to time, consult with the Secretary of Health and Human Services in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

(i)Antidiscrimination

(1)In generalNo entity shall discriminate against an individual on the basis of information received by such entity pursuant to an inadvertent or intentional disclosure of records, or information contained in records, described in subsection (a) in—

(A)admission, access to, or treatment for health care;

(B)hiring, firing, or terms of employment, or receipt of worker’s compensation;

(C)the sale, rental, or continued rental of housing;

(D)access to Federal, State, or local courts; or

(E)access to, approval of, or maintenance of social services and benefits provided or funded by Federal, State, or local governments.

(2)Recipients of Federal funds

No recipient of Federal funds shall discriminate against an individual on the basis of information received by such recipient pursuant to an intentional or inadvertent disclosure of such records or information contained in records described in subsection (a) in affording access to the services provided with such funds.

(j)Notification in case of breach

The provisions of section 17932 of this title shall apply to a program or activity described in subsection (a), in case of a breach of records described in subsection (a), to the same extent and in the same manner as such provisions apply to a covered entity in the case of a breach of unsecured protected health information.

(k)DefinitionsFor purposes of this section:

(1)Breach

The term “breach” has the meaning given such term for purposes of the HIPAA regulations.

(2)Business associate

The term “business associate” has the meaning given such term for purposes of the HIPAA regulations.

(3) Covered entity

The term “covered entity” has the meaning given such term for purposes of the HIPAA regulations.

(4) Health care operations

The term “health care operations” has the meaning given such term for purposes of the HIPAA regulations.

(5) HIPAA regulations

The term “HIPAA regulations” has the meaning given such term for purposes of parts 160 and 164 of title 45, Code of Federal Regulations.

(6) Payment

The term “payment” has the meaning given such term for purposes of the HIPAA regulations.

(7) Public health authority

The term “public health authority” has the meaning given such term for purposes of the HIPAA regulations.

(8) Treatment

The term “treatment” has the meaning given such term for purposes of the HIPAA regulations.

(9) Unsecured protected health information

The term “unprotected [1] health information” has the meaning given such term for purposes of the HIPAA regulations.

(July 1, 1944, ch. 373, title V, § 543, formerly Pub. L. 91–616, title III, § 321, Dec. 31, 1970, 84 Stat. 1852, as amended Pub. L. 93–282, title I, § 121(a), May 14, 1974, 88 Stat. 130; Pub. L. 94–371, § 11(a), (b), July 26, 1976, 90 Stat. 1041; Pub. L. 94–581, title I, § 111(c)(1), Oct. 21, 1976, 90 Stat. 2852; renumbered § 522 of act July 1, 1944, and amended Pub. L. 98–24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181; renumbered § 543, Pub. L. 100–77, title VI, § 611(2), July 22, 1987, 101 Stat. 516; Pub. L. 102–321, title I, § 131, July 10, 1992, 106 Stat. 368; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 105–392, title IV, § 402(c), Nov. 13, 1998, 112 Stat. 3588; Pub. L. 116–136, div. A, title III, § 3221(a)–(h), Mar. 27, 2020, 134 Stat. 375–378.)

6(b) 42 U.S. Code 290dd-2