



HUD Final Rule on VAWA Implementation

Presented by

National Center
for Housing Management



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HUD VAWA Guidance comes from:

- Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs Final Rule (Federal Register November 16, 2016)
- HUD Notice H 2017-05: VAWA 2013-Additional Guidance for Multifamily Owners and Management Agents
- Form HUD-5380
- Form HUD-5381
- Form HUD-5382
- Form HUD-5383
- NCSHA Recommended Practices (December 2017)
- Fair Housing and Equal Opportunity Pratt Memo, February 9, 2011

- 1871** Alabama makes it illegal to “beat your wife”
- 1976** Pennsylvania becomes the first state to pass legislation allowing orders of protection for battered women
- 1978** National Coalition Against Sexual Assault and National Coalition Against Domestic Violence formed
- 1984** Duluth Project introduces the first coordinated criminal justice response model to domestic violence
- 1985** Surgeon General Koop identifies domestic violence as a public health issue
- 1988** Congress amends the Victims of Crime Act requiring state victim compensation programs to make awards to victims of domestic violence

National Council on Domestic and Sexual Violence

- In the early 1990s, the Senate Judiciary Committee conducted a three-year investigation into the causes and effects of violence against women

“Through this process, I have become convinced that violence against women reflects as much a failure of our nation’s collective moral imagination as it does the failure of our nation’s laws and regulations. We are helpless to change the course of this violence unless, and until, we achieve a national consensus that it deserves our profound public outrage.”

Violence Against Women- The Response to Rape: Detours on the Road to Equal Justice
Senator Joe Biden

1994 Violence Against Women Act signed into law as part of the Violent Crime Control and Law Enforcement Act of 1994

Key Points

- First federal law against battering
- Required a coordinated community response to domestic violence, sexual assault and stalking crimes
- Strengthened federal penalties for repeat sex offenders
- Included federal “rape shield law”
- Increased funding to domestic violence service providers
- Required states and territories to enforce protective orders issued by other states/territories
- Created legal relief for battered immigrants
- **Did not** address protection in housing programs

- Even though VAWA 1994 uses the term “women”, the language used in the law is not gender specific

When questioned on why the Act specifically names women, Biden responded “The reality is that the vast majority of victims of domestic violence are women and children, and most outreach organizations take those demographics into consideration when providing services...The bottom line is – violence is violence no matter what gender the victim. Because of that, the Violence Against Women Act applies to all victims of domestic violence, irrespective of their gender. Nothing in the act denies services, programs, funding or assistance to male victims of violence.”

- VAWA was reauthorized by Congress in 2000, 2005, and 2013
- *VAWA 2005* was the first version of this law that introduced provisions that applied to affordable housing programs, specifically:
 - Section 8 (Housing Choice Voucher and Project-based)
 - Public Housing
 - Supportive Housing Program for the Homeless

- Signed into law by President Obama on March 7, 2013
- *Title VI Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking* covers housing protections
- Builds upon the protections established in VAWA 2005 covering approximately 4 million additional housing units
- Requires impacted agencies to establish their own regulations for implementing protection, including model transfer plans



*VAWA Title VI
Section 4141(b)*

SECTION 4141(b)

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

- ✓ Section 202 Supportive Housing for the Elderly (except direct loans and 202/162)
- ✓ Section 811 Supportive Housing for Persons with Disabilities
- ✓ Section 236 programs
- ✓ Section 221(d)(3) BMIR Programs
- ✓ Project-based Section 8
- ✓ Housing Choice Vouchers
- ✓ Public Housing
- ✓ Housing Opportunities for Persons with AIDS (HOPWA)

- ✓ HOME Investment Partnerships
- ✓ Homeless programs under Title IV of the McKinney-Vento Homeless Assistance Act
- ✓ The Housing Trust Fund
- ✓ Low Income Housing Tax Credit Program
- ✓ Rural Housing Section 515 Program

NOT Covered-

- ✓ Housing assisted under HUD's Indian Housing



Federal Register
November 16, 2016
(FR-5720-F-03)

(EB-2150-E-03)

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

*Effective Date: December 16,
2016*

This Final Rule covers **only** HUD Housing Programs and not the IRS's LIHTC or the Department of Agriculture's Rural Housing Program. While both of these programs are also subject to VAWA 2013 changes, HUD does not have the authority to alter the regulatory requirements of those programs.

1. An applicant cannot be denied admission/assistance based upon an ***adverse factor*** if determined to be a direct result of the applicant's status as a victim.
2. A tenant cannot be terminated from a housing program or evicted from a housing community based upon an ***adverse factor*** if determined to be a direct result of the tenant's status as a victim.
3. Criminal activity directly related to domestic violence, dating violence, sexual assault or stalking engaged in by a member of the household or guest under control of the tenant cannot be used to terminate tenancy/assistance if the tenant or ***affiliated individual*** is a victim.
4. Actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of the lease, or good cause to terminate assistance/tenancy or occupancy rights for the victim.

Affiliated Individual

With respect to an individual, means:

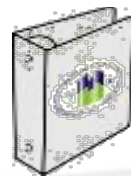
- 1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stand in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
- 2) Any individual, tenant, or lawful occupant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

Note: *VAWA protections do NOT cover guests, unassisted members, and live-in aides.*

Adverse Factor

Any factor that can be used as a basis for denying admission or assistance, terminating assistance or participation in a program, or evicting a tenant.

However, if a denial or termination of assistance or eviction is required by a federal statute, based on a particular adverse factor, the O/A must comply with the statute, even if the adverse factor is a direct result of domestic violence, dating violence, sexual assault, or stalking



Notice H 2017-05, pg. 7

Examples of Adverse Factors that might be a direct result of Domestic Violence, Dating Violence, Sexual Assault, or Stalking:

- ✓ Poor credit history
 - ✓ Placing utility bills in a victim's name and refusing to pay
 - ✓ Preventing the victim from obtaining/maintaining employment
- ✓ Poor rental history
 - ✓ Noise complaints
 - ✓ Criminal activity
- ✓ Criminal Activity
 - ✓ Forcing a victim to write bad checks
 - ✓ 911 abuse

To determine whether an adverse factor is a direct result of domestic violence, dating violence, sexual assault, or stalking:

1. The applicant or tenant must:
 - a) Inform the O/A of their status as a victim
 - b) Provide enough information for the O/A to make a determination regarding the adverse factor
2. O/A evaluates the information and makes a determination
3. If further information is needed, O/A can request as long as it:
 - a) Is in accordance with the O/A's policies
 - b) Is in accordance with VAWA regulations
 - c) Does not violate confidentiality requirements

1. When notified of a court order, the housing provider has the right to comply with the court order with respect to:
 - The right of access or control of property, including civil protection orders
 - The distribution or possession of property among members of the household

2. A housing provider can evict or terminate assistance of a tenant for any violation of the lease not related to the tenant's status as a victim
 - Housing providers need to be sure they are not holding the victim to a higher standard than other tenants

3. If the housing provider can demonstrate *actual or imminent threat* to other tenants, employees, or service providers, the housing provider is allowed to terminate assistance/evict the tenant
- Actual or imminent threats include words, gestures, actions, or other indicators if they meet the standard provided in the definition of “actual or imminent threat”
 - Eviction or termination of assistance should only be utilized when there is no other action that will reduce or eliminate this threat, including, but not limited to:
 - Transferring the victim to another unit;
 - Barring the perpetrator from the property;
 - Contacting law enforcement; or
 - Other legal remedies.

- *Notification of Occupancy Rights under the Violence Against Women Act* (Form HUD-5380); and
- *Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation* (Form HUD-5382) must be provided

to:

1. Current Tenants

- With the next annual recertification/lease renewal after 12/16/2016, or by other means if there is no AR or lease renewal by 12/15/2017
- With any notice of termination of tenancy or assistance

2. Applicants

- At move-in or issuance of assistance
- At the time the applicant is denied assistance



Occupancy
Rights

Requires personalization

- Property Information
- Program Information
- HUD Office
- Resources

Should have been provided to all current residents by 12/15/2017

If these forms are provided outside of the AR process, the MF O/A MUST document the tenant file to show when the forms were provided. (Notice H 2017-05, pg. 21)

NOTICE OF OCCUPANCY RIGHTS UNDER
THE VIOLENCE AGAINST WOMEN ACT

U.S. Department of Housing and Urban Development
OMB Approval No. 2577-0286
Expires 06/30/2017

[Insert Name of Housing Provider¹]

Notice of Occupancy Rights under the Violence Against Women Act²

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.³ The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that [insert name of program or rental assistance] is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under [insert name of program or rental assistance], you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

This form is similar to the old Form HUD 91066 published by the Office of Multifamily Housing in conjunction with VAWA 2005 regulations.

MF Housing does NOT intend to update the 91066. Instead MF O/A must use the new HUD-5382 form.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

1. Date the written request is received by victim: _____
2. Name of victim: _____
3. Your name (if different from victim's): _____
4. Name(s) of other family member(s) listed on the lease: _____

5. Residence of victim: _____
6. Name of the accused perpetrator (if known and can be safely disclosed): _____

7. Relationship of the accused perpetrator to the victim: _____
8. Date(s) and times(s) of incident(s) (if known): _____

10. Location of incident(s): _____

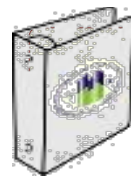
In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

- If a tenant/applicant chooses to identify him/herself as a victim of domestic violence, dating violence, sexual assault, or stalking, the housing provider **may request, in writing**, one of the following:
 - Completed Certification Form HUD-5382;
 - Signed certification by victim service provider, attorney, medical or mental health professional from whom the victim has sought assistance;
 - Must be signed by the applicant or tenant
 - Must contain a penalty statement
 - Record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
 - A statement or other evidence provided by the applicant or tenant (at the discretion of the provider).

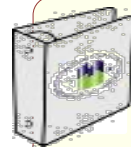
- O/As are encouraged to develop written policies and procedures that detail the following:
 - Do you accept a statement or other evidence provided by the applicant/tenant? If so, what is considered acceptable?
 - Do you require the applicant/tenant make their request in writing?
 - If a tenant/applicant fails to provide the documentation within 14 business days after the date the tenant/applicant receives the written request, will the tenant/applicant lose any protection afforded under VAWA?
 - Will the O/A extend the 14-business day deadline and for what reasons?
 - If the housing provider receives two or more completed Form HUD-5382s that conflict, does the O/A require the applicant/tenant submit third-party documentation

- How does the O/A acknowledge receipt of documents and approve or deny VAWA requests?
- What does the O/A do if the information provided by the applicant/tenant conflicts with information the O/A already has? **NOTE:** *O/A are prohibited from conducting further fact finding in or to verify the “validity” of an applicant’s or tenant’s victim status.*
- In accordance with LEP guidance, into what languages are notices and forms translated?
- What should a person with a disability do to request a reasonable accommodation to the VAWA policies and procedures?



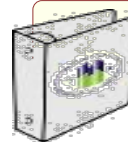
Confidentiality-

- **NO ONE** shall have access to this information unless it is absolutely necessary
- Status of a victim can not be entered into shared databases unless it is:
 - requested by the individual in a time-limited release,
 - required for use in an eviction/termination of assistance proceeding, or
 - otherwise required by law.



FR 5720-F-03, pg. 80802
Notice H 2017-05, pg. 22

- Take precautions to avoid inadvertent disclosure of confidential information to another individual
- Do NOT leave voicemail messages referring to VAWA or confidential information
- Do not send mail that references VAWA or confidential information
- Request that the victim put in writing how he/she wants you to communicate information
- Do not discuss confidential information in front of other employees or residents



Lease Bifurcation

- Splitting a lease in two so that you can evict the offender and retain the housing rights for the victim
- Does not matter if the household member is a signatory on the lease
- Must be carried out in accordance with Federal, State, or local law
- Remaining members must be given 90 calendar days from the date of bifurcation to:
 - Establish eligibility under the covered program; or
 - Establish eligibility under another covered program; or
 - Find alternative housing.
- The tenant may be given up to an additional 60 days if allowed by the program
- HUD encourages housing providers to undertake all feasible

Emergency Transfer Plan

- HUD Housing providers were required to adopt no later than June 14, 2017
- HUD has provided a Model Emergency Transfer Plan (Form HUD-5381) **and** an Emergency Transfer Request Form (Form HUD-5383)
- Two types of Emergency Transfers:
 - ***Internal Emergency Transfers***- emergency relocation to another unit where the tenant would not have to go through an application process to reside in the new unit
 - ***External Emergency Transfer***- emergency relocation to a new unit where the tenant is categorized as a new applicant and must undergo the application process

To qualify for an Emergency Transfer, the tenant must:

- Expressly request the transfer, and
- Believe 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
- In the case of sexual assault, the sexual assault occurred on the premises during the 90-calendar day period proceeding the date of the request for transfer.

Emergency Transfer Plans must include:

- Policies on whether the housing provider requires written documentation certifying the victim's status and requesting an emergency transfer
- Strict confidentiality measures

Emergency Transfer Plans must include (cont.):

- Details on any priority given and how emergency transfers are handled in relation to other transfers/move-ins (may involve updating regular Transfer Policy)
- Clause that an internal transfer can be made when a *safe unit (one that the victim deems safe)* is immediately available
- Policies on assisting tenants in making an internal emergency transfer when a safe unit is not immediately available including additional priority given
- Clause that states eligibility for an emergency transfer does not guarantee continued assistance under the current program or an external transfer to another covered housing program

Emergency Transfer Plans must include (cont.):

- Reasonable efforts the housing provider will take to assist a tenant to make an external emergency transfer when a safe unit is not immediately available including:
 - Memos of understanding with other covered housing providers
 - Outreach activities with organizations that assist/provide resources to victims
 - Providing a letter that the victim may share with prospective covered housing providers
- Clause that a tenant can seek an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available
- If applicable, policies on transferring a tenant who has tenant-based assistance to move with the assistance

Emergency Transfer Plans:

- The Emergency Transfer Plan must be available upon request and, when feasible, publically available
- HUD also recommends posting the VAWA Notice and Certification form on public bulletin boards
- The housing provider must retain a record of all emergency transfer requests and the outcome and retain this information for three years
- Requests and outcomes will be reported to HUD annually as part of a future TRACS update

Remember: *Emergency Transfer Plans were required to be implemented by June 14, 2017. HUD allowed a little leeway until December of 2017 but failure to have one now will result in a finding on a MOR.*



Thank You. For more information on our training programs, please visit www.nchm.org.

