

HOUSING CREDIT CONNECT

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Focus on Fair Housing

Renee Williams
Staff Attorney
National Housing Law Project
rwilliams@nhlp.org

nhlp

Gary Kirkman
Housing Compliance Trainer
E&A Team
gary@eandateam.com



What is VAWA 2013?

- VAWA 2013 is a federal law intended to encourage survivors receiving housing subsidies to report and seek help for the abuse committed against them, without fear of losing their housing.
- Protects applicants and tenants in federally subsidized housing from being discriminated against because of acts of domestic violence, sexual assault, dating violence, and stalking committed against them.
- Despite the name, law applies to male survivors as well.
- Only applies to **federal housing programs, including LIHTC.**
- **Protections still apply** even pending law's reauthorization.

VAWA 2013 Housing Protections

- Nondiscrimination Protections
- Notice of VAWA Rights
- Emergency Transfers
- Lease Bifurcations

VAWA 2013: Nondiscrimination Protections

- Applicants and tenants who are survivors of domestic violence, dating violence, sexual assault, or stalking cannot be discriminated against because of their status as a survivor.
 - 34 U.S.C.A. § 12491(b)
- This means that survivors cannot be denied admission to or evicted from LIHTC units because of the violence committed against them.
 - Exception for “actual and imminent threat”

VAWA 2013: Notice of VAWA Rights

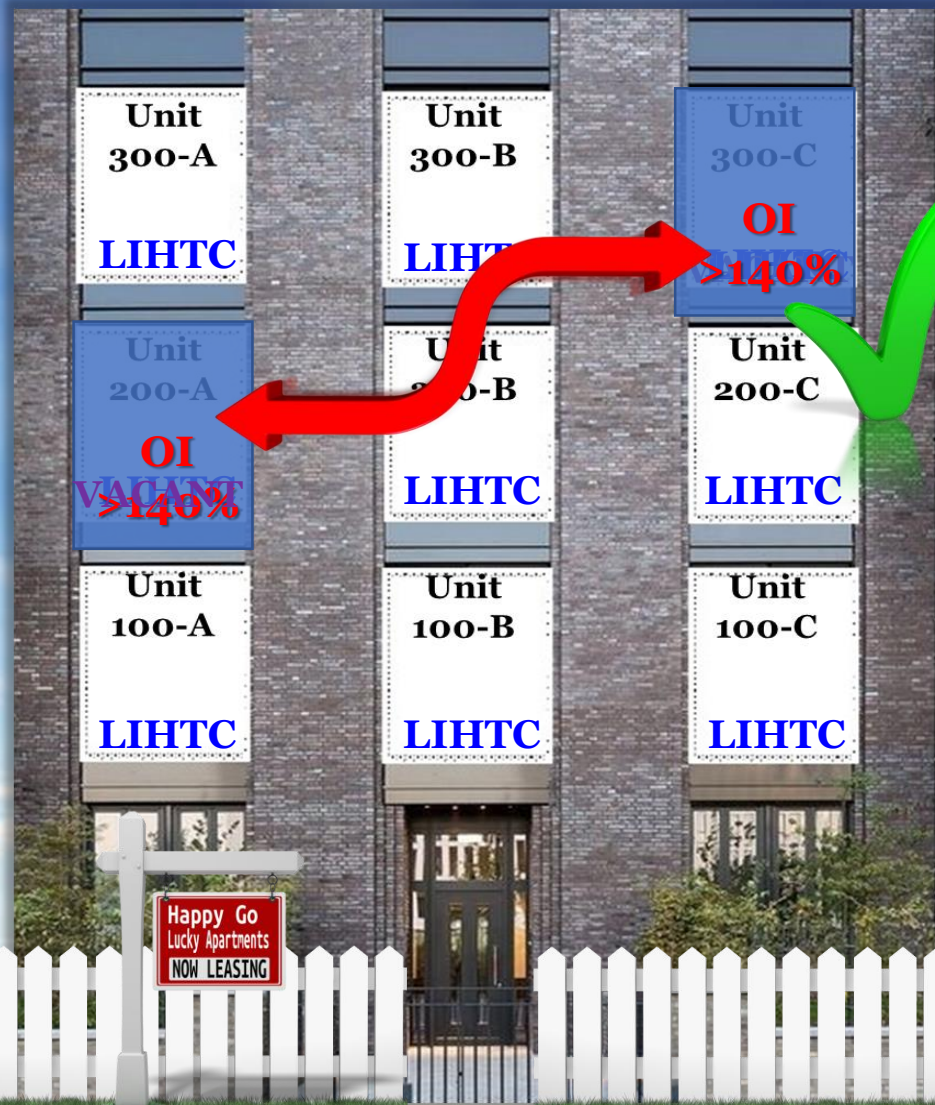
- Covered housing providers must provide all tenants and applicants **a notice describing VAWA housing rights (HUD-developed) and a VAWA self-certification form.**
 - 34 U.S.C.A. § 12491(d)
- Forms must be provided to tenants and applicants when applicants are denied assistance, when an individual receives assistance under a covered housing program, and when an individual receives a notice of eviction.
- HUD notice of VAWA rights is available in 15 languages on HUD's website.

Emergency Transfers

- VAWA 2013 required that each **appropriate agency** develop a model emergency transfer plan.
- Appropriate Agencies:
 - LIHTC – Department of Treasury is the Executive Department
 - HUD – Department of Housing and Urban Development
 - Includes HOME and Housing Trust Funds
 - Rural Development – Department of Agriculture is the Executive Department
- VAWA statute required that the model transfer plan allow tenants who are victims of a VAWA covered crime to transfer to another available and safe unit assisted under a covered housing program.

Emergency Transfers, cont.

- The tenant expressly requests the transfer; **and**
- The tenant reasonably believes that they are threatened with imminent harm from further violence if the tenant remains in the same unit; **or**
- In the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90-day period preceding the request to transfer.



Example –

- 100% LIHTC community, multiple building project
- All units are 2 bedrooms
- State HFA requires that the first initial recertification be completed
- February 2019, unit 200-A recertified exceeding the 140% applicable federal income limit
- May 2019, unit 200-A requests an emergency transfer under VAWA protections
- June 2019, unit 300-C becomes vacant
- Unit 200-A was permitted to transfer to unit 300-C without requalifying the unit as the units are in the same BIN



Example –

- 2 Building project and owner checks “Yes” to multiple building election
- State requires full recertifications
- March 2019, unit 100-C exceeds the 140% applicable federal income limits
- April 2019, unit 100-C requests an emergency transfer under VAWA
- May 2019, Unit 301-A becomes vacant
- Unit 100-C is not permitted to transfer to unit 301-A due to it being in a different BIN.



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Emergency Transfers, cont.

- **LIHTC** – The Department of Treasury has not yet issued regulations or guidance to implementing VAWA protections.
- **HUD** – Published a model transfer plan in their Final Rule in December of 2016.
- **Rural Development** – Requires that borrowers distribute HUD's forms (Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation) at the specified times defined in the VAWA statute.
 - Refer to RD's Administrative Notice 4814 for guidance.

Emergency Transfers, cont.

- **HOME** – Per HUD’s Final VAWA rule and regulatory changes made to 24 CFR § 92, *“The participating jurisdiction must develop and implement an emergency transfer plan and must make the determination of whether a tenant qualifies under the plan.”*
 - The requirements regarding emergency transfer plans only applies to projects committed funds on or after December of 2016.

Bifurcation of the Lease

- Covered housing providers may “*bifurcate a lease to remove, evict or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly related to a VAWA covered crime against an **affiliated individual**, without evicting, removing, terminating assistance to, or otherwise penalize a victim of such criminal criteria.*”

Bifurcation of the Lease

- **Affiliated Individual** –

“The term “affiliated individual” means, with respect to an individual:

- A. A spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis;*
- B. Any individual tenant or lawful occupant living in the household of that individual.”*

Bifurcation of the Lease, cont.

- Remaining members of the household may need to establish their continued eligibility for assistance and/or tenancy.
- If a tenant cannot establish eligibility, the housing provider shall provide the tenant with a reasonable time frame, as **determined by the appropriate agency**, for the tenant:
 - a. to find new housing, or
 - b. establish eligibility for housing under another covered program.

Bifurcation of the Lease, cont.

***Example** – John and Gail moved into an LIHTC unit and are not married. Both household members were full-time students but John was formally in foster care system.*

Gail informed the manager that she wanted to bifurcate the lease after John assaulted her in their apartment and management permitted the household to do so; however, Gail is still a full-time student and on her own does not meet any of the student exceptions.

Bifurcation of the Lease, cont.

- **LIHTC** – The IRS has not issued any guidance regarding the reasonable time frame to determine eligibility.
- **HUD** – Providers who choose to bifurcate a lease must provide remaining tenants who have not already established eligibility for the program **90 calendar days** to establish eligibility or find alternate housing.
- **Rural Development** – The reasonable time period defined by VAWA for remaining tenants to establish eligibility, apply under a different covered program or find new housing is **90 days**. The 90 days begins the date of bifurcation of the lease and not at the start of the lease bifurcation period. **Borrowers are encouraged to allow an additional **60-day** extension.

Bifurcation of the Lease, cont.

- **HOME** – Per HUD’s Final VAWA rule, the reasonable time period provisions of this final rule related to lease bifurcation will never be triggered because the household’s eligibility is based on the characteristics of the household as a whole, not just of any one member.
 - The eligibility of the remaining tenants in HOME assisted units will have already been established at the time of bifurcation.

Implementation of VAWA 2013

- HUD has issued regulations (2016) and guidance, developed documents (e.g., notice of VAWA rights, self-certification form, model emergency transfer plan, emergency transfer request)
 - Remember: LITHC units with additional HUD subsidy (e.g., project-based Section 8) are covered by HUD Rule
- USDA has issued guidance, draft emergency transfer plan
- Treasury Department has not issued regulations or guidance for the field, leaving implementation up to state housing agencies
 - Advocate surveys of state housing agencies in 2016, 2018
 - *Protections Delayed: State Housing Finance Agency Compliance With the Violence Against Women Act* (May 2017) (included in materials)
 - Rachel Blake and Karlo Ng, *No Credit for Treasury: Implementing the Violence Against Women Act in the Low Income Housing Tax Credit Program* (forthcoming 2019, ABA Journal of Affordable Housing & Community Development Law)

What State Housing Agencies Have Done

- Inclusion of VAWA language in Qualified Allocation Plans
 - Compliance with VAWA requirements
 - Survivors included as “special populations”
- Lease addenda
- Inclusion of VAWA in compliance procedures

Source: Rachel Blake and Karlo Ng, No Credit for Treasury: Implementing the Violence Against Women Act in the Low Income Housing Tax Credit Program (forthcoming 2019, ABA Journal of Affordable Housing & Community Development Law)

NCSHA Recommended Policies and Procedures (2017)

- **For State Housing Agency Policies/Procedures:**
 - Reference survivors under QAP selection criterion re: special housing needs
 - Clarify DV incident is not good cause for eviction
 - Notify owners/managers of VAWA obligations
 - Amend extended use agreements
 - Modify compliance procedures
- **For State Housing Agencies to Require of Owners:**
 - Prohibiting discrimination against survivors because of violence committed against them
 - Providing notice of VAWA rights and self-certification form to tenants
 - Using lease addendum informing tenants that they have VAWA protections
 - Allowing lease bifurcation
 - Emergency transfer policies
 - Training of property management staff on VAWA

Source: NCSHA, Recommended Practices in Housing Credit Administration (2017), pages 41-42

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