COHHIO Training
How to Become Compliant with VAWA Housing Requirements

Understanding Intimate Partner Violence & Housing

In partnership with ODVN Member Programs

What is Intimate Partner Violence?
- A pattern of assultive and coercive behaviors
- Including physical, sexual and psychological attacks, as well as economic coercion
- That adults and adolescents use against their intimate partners.

What Role Does Trauma Play?
- No two survivors will respond to intimate partner trauma in the same way.
- Family members experiencing the same traumatic event can manifest very different responses among each individual.
- There is a direct relationship between the severity of the trauma and the psychological impact it has on the individual.
Manifestations of Abuse

The abuser may:

- Inflict more abuse or more severe abuse may occur
- Carry out threats to kill the victim.
- Break in & destroy victim’s belongings in the home.
- Affect victim’s job or reputation at work, church, etc.
- Have victim arrested or charged with a crime, such as drug use or child abuse.
- Harm children, pets, family or friends.
- Not allow the victim to see children
- Kill the victim and/or self.

Isolation and lack of resources:

The victim may have:

- Few or unsafe housing choices
- No money on hand for rent or deposits for new housing
- No income or savings; bad credit
- No safe place to go
- Few people to lend emotional or financial support
- No transportation
- Past convictions or evictions
Life Generated Barriers to Leaving

- Lack of money
- Individual or Religious Beliefs
- Social/Peer Pressure
- Mistrust of Authority or Police
- Discrimination
- Cultural or Religious Beliefs

Providing Support & Assistance

- Listen to the survivor
- Develop a relationship of trust so that you can check in with the survivor to get accurate information
- Avoid victim blaming & becoming judgmental
- Work through personal bias, thoughts & feelings
- Know your community resources
- Partner with local programs & organizations

Resources

- Ohio Domestic Violence Network (ODVN)
  - Odvn.org
- National Network to End Domestic Violence (NNEDV)
  - Nnedv.org
- Futures Without Violence
  - Futureswithoutviolence.org
- National Domestic Violence Hotline
  - Thehotline.org
  - 800-799-7233
The Violence Against Women Act

2019 COHHIO Conference
April 8, 2019

Hayley Kick
Legal Intern
COHHIO

Maria Bruno
Civic Engagement Coordinator & Policy Analyst
COHHIO

Violence Against Women Act (VAWA)

- Passed in 1994
- Reauthorized in 2000, 2005 and 2013
- Protects certain classifications of victims in particular types of subsidized housing
- New Regulations (November 2016)
- New Notice to Multifamily O/As (June 2017)

INTRODUCTION TO VAWA

Who is Protected?

VAWA means the “Violence Against Women Act.” As a result of its title, it is intended only to protect women.

- A) TRUE
- B) FALSE
Who is Protected?

B) FALSE

VAWA is intended to protect survivors of domestic violence, dating violence, stalking, and sexual assault regardless of their sex. Women are overwhelmingly the survivors of these types of violence, which is why the title of the statute specifically refers to women.

Who is Protected?

Survivors of:
- Domestic Violence
- Dating Violence
- Stalking
- Sexual Assault

VAWA applies to survivors regardless of their sex, gender identity, sexual orientation, disability, or age.

*Throughout this presentation, the above subcategories of violence will be collectively referred to as DV.*

Who is Protected?

2013: Protections extend to “Affiliated Individual”
- Replaces 2005 designation of “immediate family member”
- Now includes immediate family member plus other household members
- Protection only extends to co-tenants or individuals on the lease agreement.

An “Affiliated individual” may not be denied assistance or admission, nor be evicted because of DV.
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<tr>
<td>VAWA applies to:</td>
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<tr>
<td>• A) Housing providers within the HUD umbrella</td>
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<td>• B) Housing providers that provide housing under Rural Development Service</td>
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<td>• C) Housing providers that provide housing under LIHTC</td>
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<td>• D) All of the above</td>
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Under VAWA and 24 CFR §5.2003, housing providers that provide housing under HUD, RDS, and LIHTC are considered “covered housing programs.”

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<tr>
<td>- Housing Choice Voucher (Section 8 Voucher, HCV)</td>
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<tr>
<td>- Project-Based Section 8</td>
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<tr>
<td>- Supportive Housing for Elderly or Disabled</td>
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VAWA 2013 Reauthorization

New Categories of HUD Multifamily Housing:
• HUD 236 and 221(d)
• Housing for Persons With Aids (HOPWA)
• HOME Investment Partnerships Program (HOME)
• HUD 202 (Elderly) and HUD 811 (Disabled)*
  *Previously added by HUD regulation in 2010, but not by Congress

Other New Categories of HUD Housing
• Homeless Assistance Programs, including Continuum of Care

VAWA 2013 Reauthorization

Continuum of Care Programs
• HEARTH Act in 2012 updated and consolidated CoC programs into:
  • Permanent housing (PH)
  • Permanent supportive housing (PSH)
  • Rapid rehousing
  • Transitional housing (TH)
  • Homeless prevention
  • Emergency Solutions Grant (ESG)
• Almost all housing that is subject to HUD authority is also subject to VAWA*

Applicable Categories of Housing

VAWA 2013 Reauthorization

More New Categories of Housing (Non-HUD):
• USDA (Rural Housing) Multifamily
  • Section 515 Rural Rental Housing (RRH)
  • Section 514/516 Farm Labor Housing (FLH)
  • Section 538 Guaranteed Rural Rental Housing (GRRH)
  • Section 533 Housing Preservation Grant (HPG)
• Low Income Housing Tax Credit (LIHTC)
  These two categories alone add an estimated four million more units that now have VAWA protections*
"Covered Housing Provider":

**MUST:**
- Not discriminate against survivors or affiliated individuals;
- Provide Notice of rights and certification form;
- Adopt emergency transfer plan;
- Comply with court orders.

**MAY:**
- Authorize lease bifurcation;
- Determine whether to evict/terminate assistance;
- Request documentation of abuse.

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**Notice of Occupancy Rights**

A landlord must give notice of Occupancy Rights when:

- A) An applicant is admitted as a new tenant
- B) An applicant is denied residency
- C) The landlord proposes termination of the tenancy
- D) All of the above

See 24 C.F.R. §5.2005(a)(2)

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These are all crucial places in the process where a tenant/applicant may need to know their rights
Notice of Occupancy Rights

• Covered housing providers must provide the Notice of Occupancy Rights (Appendix A to new HUD Rule) and self-certification form to applicants and tenants:
  – at the time an applicant is denied residency;
  – at the time the individual is admitted; and
  – with any notification of eviction or termination of assistance.

Obligations of Housing Providers

Notice of Occupancy Rights

• Covered housing providers must give all current tenants the Notice of Occupancy Rights and self-certification form at:
  o Annual recertification or lease renewal, OR
  o If there is no annual recertification or lease renewal, then at some other time, during the 12-month period following the effective date of the new rule (December 15, 2017)

Admissions

PHAs, landlords and owners shall not deny any applicant housing:

on the basis of

OR

as a result of

the fact that the applicant is or has been a victim of DV
Evictions and Terminations

Although a landlord may not terminate the tenancy of a survivor claiming VAWA protections, there are exceptions to this rule, including:

- A) When there was an incident that created property damage to the unit or common area
- B) When there was an assault in the unit or the common area
- C) When there was an incident that created noise that disturbed the neighbors
- D) A&B, but NOT C
- E) All of the above
- F) None of the above

Termination of tenancy should be a LAST RESORT that is only used when an individual poses an “actual and imminent threat” to other tenants or employees.

See 24 C.F.R. §5.2003 and §5.2005(d)(4)

Evictions and Terminations

• PHAs, landlords and owners may not
  – deny housing assistance,
  – terminate a tenant from participation, or
  – evict a tenant from housing

on the basis of or as a direct result of the fact that the tenant is or has been a victim of DV
 Hud Example:
If an individual has a poor rental or credit history, a criminal record, or other adverse factors that directly result from being a victim of DV, the individual cannot be denied assistance under a HUD program if the individual otherwise qualifies for the program.

Examples of Prohibited Evictions:
• Assault by a family member
• Assault by a significant other not living in the household
• Damage to the unit during a domestic violence incident
• Noise that occurs during a domestic violence incident

Eviction and Terminations:
• Termination should = LAST RESORT
  (24 CFR 5.2005(d)(4))
• Termination to be used “only when there are no other actions that could be taken...including but not limited to”:
  – Transferring the victim to 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.
Proving Domestic Violence

Covered Housing Provider may:
- Accept information from tenant through a verbal statement with no further documentation, OR
- Ask for additional proof of violence*

*Written Request to Tenant is Required: any request to tenant for additional documentation must be in writing;
- Tenant has 14 business days from receipt of the request to provide documentation;
- Housing provider may allow more time.

Documentation Options

VAWA permits a landlord to require documentation, however, the choice of which documentation will be used comes from:
- A) Tenant
- B) Landlord
- C) Mutual agreement between tenant & landlord
- D) VAWA is silent on this question

A) Tenant

Pursuant to 24 C.F.R §5.2007(b)(1), tenants and applicants get to choose which form of documentation to provide to the covered housing program.
Proving Domestic Violence

Documentation:
Tenants and applicants must be able to choose which of the forms of documentation listed in VAWA to give to housing providers to document the occurrence of a VAWA crime. (See 24 C.F.R. 5.2007(b)(1))

Documentation Options

A landlord may require written documentation from the tenant. Acceptable forms of documentation are:

- A) CPO or TPO
- B) Police Report
- C) HUD self certification form
- D) Statement from a lawyer
- E) All of the above
- F) A, B, and C, but NOT D

A tenant may choose to provide ANY of the aforementioned forms of documentation (yes, even a statement from a lawyer) in response to a covered housing program’s request for documentation.
Proving Domestic Violence

1. Self-Certification Form (Appendix C to New HUD Rule)
2. Police, Court or Administrative Record
3. Statement from Third Party - May consist of documentation signed by the applicant or tenant AND:
   a) An employee, agent, or volunteer of a victim service provider OR
   b) An attorney, medical professional, or mental health professional (collectively, “professional”) from whom the victim has sought assistance in addressing DV or the effects of abuse

The professional must attest under penalty of perjury: the professional’s belief that the incident(s) in question is a bona fide incident of abuse, and the victim of DV has signed or attested to the documentation.

Documentation Options

Third Party Documentation

A landlord can require 3rd party documentation when:

• A) The landlord believes the tenant is lying
• B) There is no proof
• C) When a landlord receives conflicting documentation
• D) All of the above

A landlord may ONLY request 3rd party documentation when the landlord receives conflicting documentation. Otherwise, the landlord CANNOT require an individual requesting VAWA protection to provide 3rd party documentation.
Proving Domestic Violence

- Housing Providers cannot require an individual requesting VAWA protection to provide third-party documentation

**EXCEPTION:**
- However, where a housing provider receives conflicting certifications, the provider may require third-party documentation

*In cases of conflicting evidence, tenants have 30 calendar days from the date of the request for third-party documentation to provide the documentation*

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Proving Domestic Violence

**Self-Certification Form**

- If the tenant decides to use a self-certification form, Housing Providers must either:
  - Provide HUD's Self-Certification form (Appendix C), OR
  - Provide their own form, which must be approved by HUD

- Certification form must be made available in other languages (*HUD has already translated the form into other languages for housing providers*)

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Confidentiality Must Be Maintained

**Certifications are required to be kept confidential**

**Housing Provider shall:**
- Limit which employees have access to info;

**Housing Provider shall not:**
- Put data into any shared database;
- Disclose to any third parties (some limited exceptions)
Confidentiality Must Be Maintained

Narrow exceptions to confidentiality requirement
- Housing providers may disclose information that is:
  - Requested or consented to in writing (by the tenant);
  - Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
  - Otherwise required by applicable law.

24 CFR 5.2007(c)

Limitations of VAWA Protection

Limitations - “Actual and Imminent Threat”
- PHAs and owners can still evict if they can demonstrate an “actual and imminent threat” to other tenants or employees at the property if the survivor is not evicted.
- Defined in 24 CFR 5.2003:
  “a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm...”

Eviction should occur only if there is no other action to be taken that would reduce or eliminate threat

“Actual and Imminent Threat”

24 CFR 5.2003: “…In determining whether an individual would pose an actual and imminent threat,

Factors to be considered include:
- The duration of the risk,
- The nature and severity of the potential harm,
- The likelihood that potential harm will occur,
- And the length of time before the potential harm would occur.”
**Court Orders**

- Notwithstanding VAWA requirements, Covered Housing Provider must comply with Court Orders related to:
  - The rights of access or control of property, including civil protection orders; or
  - The distribution or possession of property among members of a household in a case. (24 CFR 5.2005(d)(1)(i)&(ii))

**Survivor Eligibility**

If the abuser was the head of household and the abuser is evicted or abandons the unit, the survivor is permitted to establish eligibility in their name and to do this must be given:

- A) 30 days
- B) 60 days
- C) 90 days
- D) 120 days

**Survivor Eligibility**

C) 90 days

Under 24 C.F.R. §5.2009(b)(2), the survivor must be given 90 days to establish eligibility in their name.
Family Breakups and Section 8 Vouchers

Housing authority can terminate Housing Choice (Section 8) Voucher assistance to the abuser while preserving assistance to the survivor.

- If a family breakup results from an occurrence of domestic violence, “the PHA must ensure that the victim retains assistance.” 24 C.F.R. § 982.315(a)(2).
- Survivors may request that vouchers be transferred to their names because of abuse.

VAWA states - In deciding who gets the voucher, housing authority may consider:

- Whether remaining family members should get the assistance.
- Interest of minor children or of ill, elderly, or disabled family members.
- Whether family members were forced to leave unit because of DV.
- Whether any family member is receiving protection as a victim of DV.
- Other factors specified by PHA. 24 C.F.R. § 982.315(b).

Removing the Abuser from the Household

- PHA or Multifamily landlord may “bifurcate” a lease to evict a tenant who commits DV while preserving the survivor’s tenancy rights.
- If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant an opportunity to establish eligibility or a reasonable time to move or establish for another covered housing program. 90 days to establish program eligibility, or find additional housing (24 CFR 5.2009(b)(2)).
Transfers

A landlord may decide to transfer a survivor to another unit of the landlord’s, but VAWA does not require a transfer policy.

- A) TRUE
- B) FALSE

B) FALSE

Covered housing programs MUST have an internal emergency transfer policy for tenants seeking VAWA protections.

Mandatory Internal Emergency Transfer Plan

VAWA 2013 increased protection for survivors by requiring covered housing providers to adopt an internal emergency transfer plan.

HUD has adopted a model emergency transfer plan for covered housing providers (Appendix B to HUD’s new rule)
Mandatory Internal Emergency Transfer Plan

Emergency Transfer Plan must allow survivors to transfer to another safe and available unit if:

a) The tenant expressly requests the transfer; AND

b) The tenant reasonably believes they are threatened with imminent harm if they remain in the same unit; or if the tenant was a victim of sexual assault that occurred on the premises during the 90 calendar days preceding the date of the emergency transfer request.

Mandatory Internal Emergency Transfer Plan

- Housing Providers must:
  - Give priority to victims in relation to other categories of individuals seeking transfers or placement on waiting lists
  - Allow for a tenant to transfer to a new unit when a safe unit is immediately available and the tenant does not have to apply in order to occupy the new unit
  - Not require third party documentation to prove VAWA protection
  - Provide the emergency transfer plan upon request and the plan must be publicly available whenever feasible

Mandatory Internal Emergency Transfer Plan

- Housing Provider must have adopted an emergency transfer plan by June 14, 2017

- There is no limit on the number of transfer requests a victim may make
**Mandatory Internal Emergency Transfer Plan**

The Emergency Transfer Plan must:

- Ensure strict confidentiality so that PHA or owner does not disclose location of new unit to abuser
- 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

**Turning down a transfer cannot be a basis for termination**

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**Mandatory Internal Emergency Transfer Plan**

Housing Providers may:

- Require tenants to document an occurrence of domestic violence, dating violence, sexual assault, or stalking before transfer
- Require tenants to submit a written request before a transfer occurs certifying they meet the criteria for an emergency transfer

HUD has developed a model Emergency Transfer Request form- Appendix D to HUD’s New Rule

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**Mandatory Internal Emergency Transfer Plan**

Remedies for Survivors

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
- Include policies for assisting a tenant who is seeking an external emergency transfer under VAWA out of or into the covered housing provider’s program or project
Tenant Selection Plan

HUD encourages covered housing providers "to review their transfer waiting list policies in their Tenant Selection Plans, to determine if revisions are necessary to facilitate emergency transfers."

"In determining whether changes to the existing waiting list policies are necessary, O/As may want to consider the following:

- Availability and location of units at the tenant’s property;
- Demand by applicants for assistance;
- Frequency of internal transfer requests; and
- Availability of alternative housing opportunities."

HUD Notice H 2017-05 (Issued on June 30, 2017)

Who Pays for the Emergency Transfer Plan?

Housing Providers pay for:

- Unit turnover costs
- (PHAs can utilize the limited vacancy provision of 24 CFR 990.150 that allows operating subsidy to be paid for a limited number of vacant units under an annual contributions contract (ACC))

Tenants pay for:

- Moving costs (includes application fees, security deposits)
- HUD encourages housing providers to bear these costs where possible, or to work with victims to identify possibilities for funding transfers

Remember: If it is an internal transfer, a housing provider cannot require a new security deposit and application fees

Voluntary External Emergency Transfer Plan

HUD strongly encourages housing providers to:

- Make arrangements, including memos of understanding, with other O/As or PHAs to facilitate moves
- Provide a letter that the victim may share with prospective covered housing providers, indicating the victim is eligible for an emergency transfer and is seeking an external emergency transfer because a safe unit is not immediately available at the O/A’s property
- Create an admissions preference for victims seeking an external emergency transfer from another covered housing provider

*Internal and external transfer requests can be concurrent*
EXAMPLE:
Chicago Voluntary External Emergency Transfer Plan

In Chicago, HUD created a voluntary network among Project-based Multifamily properties for external emergency transfers; owners encouraged to amend TSPs.

A tenant can directly apply to the HUD office for a transfer or a transfer can be sought by a local legal aid office or DV program on tenant’s behalf.

Ohio Voluntary External Emergency Transfer Plan

In Ohio, we’re creating a voluntary external emergency transfer plan.

A tenant or owner can contact the following organizations to pursue a transfer:
- HUD
- COHHIO

Through collaboration, Ohio has plans to protect DV survivors:
- HUD has assembled an internal team for organizing external emergency transfers
- The HUD contact person is Bonnie Spurling:
  - Bonnie Spurling, Asset Resolution Specialist, U.S. Dept. of HUD
  - 614-280-6130
  - BONNIE.SPURLING@hud.gov
VAWA Network Contacts

HUD

Bonnie Spurling
Asset Resolution Specialist
U.S. Dept. of HUD
614-280-6130
BONNIE-SPURLING@hud.gov

Janice Shriver, Branch Chief
Columbus Office
U.S. Dept. of HUD
Multifamily Asset Management
614-280-6120
Janice.M.Shriver@hud.gov

Ohio Domestic Violence Network

• The Ohio Domestic Violence Network’s toll free number:

   800-934-9840

Questions About VAWA Compliance & Housing Law

Joe Maskovyak, COHHIO
Direct: 614-280-1984 x133
joemaskovyak@cohhio.org
Toll Free: 888-485-7999
(Housing Information Line)
Email: rentinfo@cohhio.org

Questions About Scheduling VAWA Training

Maria Bruno, COHHIO
Direct: 614-280-1984 x121
mariabruno@cohhio.org

Thank you!