

The Violence Against Women Act



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Violence Against Women Act



- VAWA first passed in 1994
- Reauthorized in 2000, 2005 and 2013
- VAWA protects certain classifications of victims in particular types of subsidized housing
- New Regulations (November 2016):
<https://portal.hud.gov/hudportal/HUD?src=/states/shared/working/r8/mf/whatsnew>
- New Notice to Multifamily O/As (June 2017):
<https://portal.hud.gov/hudportal/documents/huddoc?id=17-05hsgn.pdf>

Who Is Protected?

- Survivors of:
 - Domestic Violence
 - Dating Violence
 - Sexual Assault
 - Stalking
- VAWA applies to survivors regardless of their sex, gender, identity, sexual orientation, disability, or age.

Who Is Protected?

- 2013: Protections extend to "*Affiliated Individual*".
 - "Affiliated Individual" replaces 2005 designation of "immediate family member".
 - Includes immediate family or household member.
 - Protection only extends to co-tenants or individuals on the lease agreement.
- Affiliated individual may not be evicted or denied assistance or admission because of DV.

VAWA-2005

Protected Categories of Housing

I. Types of Housing Covered:

- A. Public Housing**
- B. Housing Choice Voucher (Section 8 Voucher, HCV)**
- C. Project-Based Section 8**
- D. Supportive Housing for Elderly or Disabled**

VAWA 2013 Reauthorization

II. New Categories of HUD Multifamily Housing

A. HUD 236 and 221(d)

B. HOPWA

C. HOME

D. HUD 202 (Elderly) and HUD 811 (Disabled)*

***Previously added by HUD reg in 2010, but not by Congress**

III. Other New Categories of HUD Housing

A. Homeless Assistance Programs, including Continuum of Care

VAWA 2013 Reauthorization

III. Continuum of Care Programs

- A. HEARTH Act in 2012 updated and consolidated CoC programs into:**
 - B. Permanent housing (PH)**
 - C. Permanent supportive housing (PSH)**
 - D. Rapid rehousing**
 - E. Transitional housing (TH)**
 - F. Homeless prevention**
 - G. Emergency Solutions Grant (ESG)**

VAWA 2013 Reauthorization

IV. More New Categories of Housing (Non - HUD)

A. USDA (Rural Housing) Multifamily

- A. Section 515 Rural Rental Housing (RRH)
- B. Section 514/516 Farm Labor Housing (FLH)
- C. Section 538 Guaranteed Rural Rental Housing (GRRH)
- D. Section 533 Housing Preservation Grant (HPG)

(referred to collectively as MFH programs)

B. LIHTC (Low Income Housing Tax Credit)

*** 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.

Proving Domestic Violence

- Covered Housing Provider may accept information from tenant through a verbal statement with no further documentation, or may ask for additional proof of violence
- Written Request: 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.

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

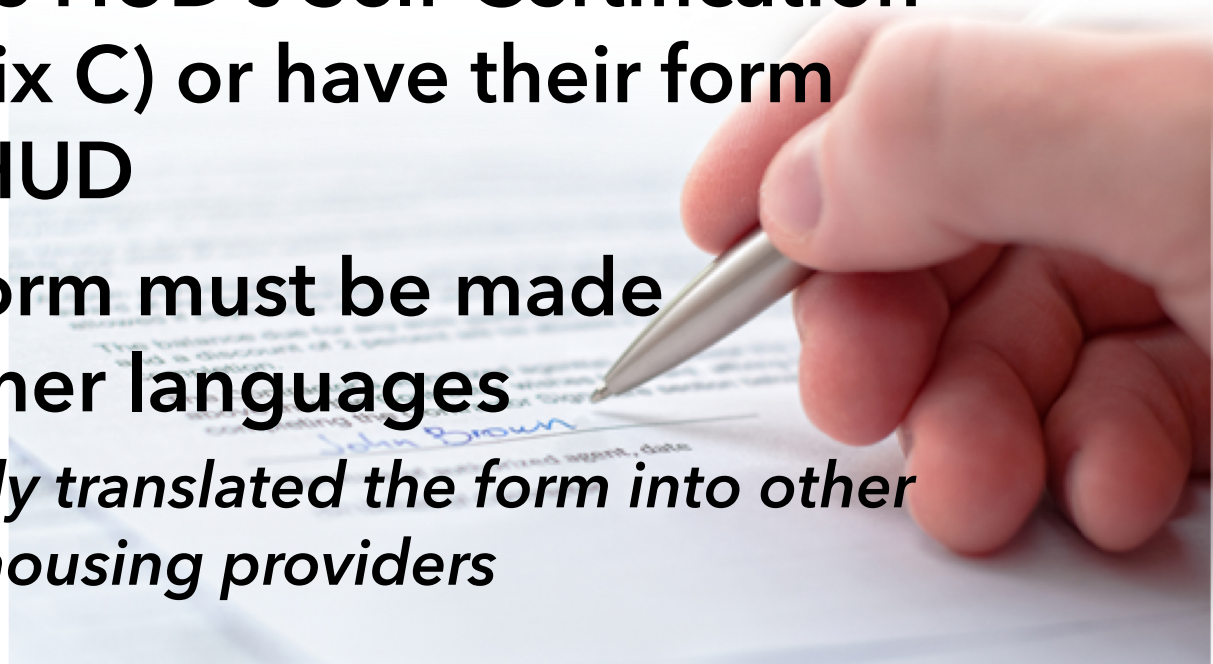
1. Self-Certification Form (Appendix C to New HUD Rule)
2. Police, Court or Administrative Record
3. Statement from Third Party
 - May consist of documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of abuse, in which the professional attests under penalty of perjury to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation

Proving Domestic Violence

- Housing Providers **CANNOT** require an individual requesting VAWA protection to provide third-party documentation
- However, where a housing provider receives conflicting certifications, the provider *may* require third-party documentation
- *In cases of conflicting evidence, tenants have 30 days to provide third party documentation*

Self-Certification Form

- If Housing Providers decided to use a self-certification form, Housing Providers **must** either use HUD's Self-Certification form (Appendix C) or have their form approved by HUD
- Certification form must be made available in other languages
 - *HUD has already translated the form into other languages for housing providers*



Confidentiality Must Be Maintained

- Certifications 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

- Any information submitted to a housing provider by an applicant or tenant “shall be maintained in strict confidence” and the housing provider “may not enter [confidential information] into any shared database or disclose... except to the extent disclosure 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)

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.

Notice of Occupancy Rights

- Covered housing providers **must** give all **current tenants** the Notice of Occupancy Rights and self-certification form at:
 - Annual recertification or lease renewal, **OR**
 - 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 OR as a result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking

Evictions and Terminations

- PHAs, landlords and owners may not deny assistance under, terminate a tenant from participation in or evict a tenant from housing *on the basis of or as a direct result of the fact that* that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking

Evictions and Terminations

- HUD Example: if an individual has a poor rental or credit history, or a criminal record, or other adverse factors that *directly result* from being a victim of domestic violence, dating violence, sexual assault, or stalking, 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**

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"

"...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 potential harm will occur,
- And the length of time before the potential harm would occur."

(Defined in 24 CFR 5.2003)

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.

Limitations: 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))

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))

Family Breakups and Section 8 Vouchers

- Housing authority can terminate Housing Choice (Section 8) Voucher assistance to the abuser while preserving assistance to survivor.
- Housing Choice (Section 8) Vouchers:
 - If a family breakup results from occurrence of VAWA crime, "the PHA must ensure that the victim retains assistance." 24 C.F.R. § 982.315(a)(2).
 - Survivors can request that vouchers be transferred to their names because of abuse.

Family Breakups and Vouchers (Continued)

- **VAWA states - In deciding who gets the voucher, housing authority can 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 domestic violence, dating violence, sexual assault, or stalking.
 - Whether any family member is receiving protection as a victim of domestic violence, dating violence, sexual assault, or stalking.
 - Other factors specified by PHA. 24 C.F.R. § 982.315(b).

Remedies for Survivors: Emergency Transfer Plan

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



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 in the 90 days preceding the request.

Mandatory Internal Emergency Transfer Plan

- HUD has adopted a model emergency transfer plan for use by covered housing providers (Appendix B to HUD's new rule)
- *Transfer plan must ensure strict confidentiality so that PHA or owner does not disclose location of new unit to abuser*
- 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

- 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 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*

Mandatory Internal Emergency Transfer Plan

The Emergency Transfer Plan **must**:

- incorporate strict confidentiality measures
- 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****

Mandatory Internal Emergency Transfer Plan

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 the covered housing providers program or project, and a tenant who is seeking an external emergency transfer under VAWA into the covered housing provider s program or project

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

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 domestic violence program on tenant's behalf



Chicago **Voluntary** External Emergency Transfer Plan

- After tenants inform HUD where it may be safe or unsafe for them to move, staff within the HUD office then identify potential available and safe project-based Section 8 dwelling units
- To make the transfer program work, HUD heavily relies on larger property owners



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

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)

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
 - Coalition on Homelessness & Housing in Ohio (COHHIO);
 - local legal aid office;
 - local domestic violence program;
 - Ohio Domestic Violence Network (ODVN)



Ohio **Voluntary** External Emergency Transfer Plan

- HUD has assembled an internal team for organizing external emergency transfers
- Each Legal Aid office across Ohio has a designated point person responsible for transfers
- The Ohio Domestic Violence Network is a partner in this plan
 - COHHIO will be training their local DV organizations about VAWA



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SAMPLE

Tenant Selection Plan Amendment

- DRAFT---Suggested Model Language for Adopted Admissions Preferences for VAWA, by Janice Shriver

“[Name of owner/ corporation] is adding an Owner-Adopted admissions preference pertaining to the Violence Against Women’s Act (VAWA). VAWA provides protections to victims of domestic violence, dating violence, sexual assault, and stalking. An applicant is eligible for this preference by completing HUD form 5382 and the Emergency Transfer Request (if applicable) HUD form 5383.”

SAMPLE Tenant Selection Plan Amendment

**"This admissions preference will include the following:
Effective [insert date].**

- 1. The current waiting list for each property will be maintained consistent with HUD Handbook 4350.3 "Occupancy Requirements of Subsidized Multifamily Housing Programs" guidelines and the property's Affirmative Fair Housing Marketing Plan (AFHMP).**

SAMPLE

Tenant Selection Plan Amendment

- "2. Current persons on the waiting list will be notified of the new admissions preference and will be instructed on the necessary procedure to qualify. They will be granted a first right to an available unit under the preference should they enact their rights under VAWA and complete form 5382. Notice to persons on the waiting list will be done by mail thirty (30) days prior to adoption of the preference.
3. Upon unit turnover, one in every____vacancies will be offered to a person who meets the criteria of the admissions preference and who is on the existing waiting list."

SAMPLE Tenant Selection Plan Amendment

"4. Upon unit turnover, one in every ____vacancies who is referred to the respective property for emergency placement.

HUD forms 5382 and 5383 must be completed.

All applicants must comply with current admissions requirements at the specific property, including income, age, and criminal/credit screening criteria.

Applicants who are denied will be provided with the basis of the denial in writing and notified of their right to request a meeting to dispute the rejection."

SAMPLE Tenant Selection Plan Amendment

"5. This preference can be amended as needed and/or removed with proper notification of such to all affected parties, including written notification to HUD."

Ohio Domestic Violence Network

- The Ohio Domestic Violence Network's toll free number:

800-934-9840

How to Stay in Touch

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How to Stay in Touch

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Thank you!