



Homes and Community Renewal

HUD FINAL RULE – VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013

VAWA protects victims of domestic violence, dating violence, sexual assault, or stalking (“DVDVSAS” or “VAWA covered crimes”) from discrimination in accessing and maintaining federally-assisted housing. Applicants and tenants may not be denied admission or evicted from housing because the applicant or tenant has been the victim of a crime protected under VAWA if otherwise qualified for the housing. *See 34 U.S.C. § 12491(b)(1); 24 CFR Part 5, Subpart L.*

On November 16, 2016, HUD published its final rule regarding the requirements of the 2013 reauthorization of VAWA and updated the regulations for each HUD-covered housing program to implement VAWA. 81 Fed. Reg. 80724 (Nov. 16, 2016). Subsequently, HUD has also issued guidance documents pertaining to the implementation of VAWA. This management bulletin should be read in conjunction with HUD [Notice H 2017-05](#) and [Notice PIH-2017-08 \(HA\)](#), which are attached to this bulletin as Attachment 4.

Highlights of VAWA 2013 and the HUD final rule and regulations include, among other things:

I. Expanded VAWA-Covered Housing Programs

VAWA protections are applicable to housing that participates in the following federal housing programs:

- Low-Income Housing Tax Credit (“LIHTC”) program
- Section 202 Supportive Housing for the Elderly with implementing regulations at 24 CFR part 891
- Section 811 Supportive Housing for Persons with Disabilities with implementing regulations at 24 CFR part 891
- Housing Opportunities for Persons with AIDS (“HOPWA”) with implementing regulations at 24 CFR part 574
- HOME Investment Partnerships (“HOME”) program with implementing regulations at 24 CFR part 92
- Emergency Solutions Grants (“ESG”) program with implementing regulations at 24 CFR part 576
- Continuum of Care program with implementing regulations at 24 CFR part 578
- Rural Housing Stability Assistance program (regulations forthcoming)
- Section 221(d)(3) with below market interest rate under 221(d)(5) with implementing regulations at 24 CFR part 221
- Section 236 with implementing regulations at 24 CFR part 236
- The Housing Trust Fund with implementing regulations at 24 CFR part 93
- Project-based Section 8 and Section 8 Housing Choice Voucher programs with implementing regulations at 24 CFR chapters VIII and IX

See 34 U.S.C. § 12491(a)(3).

All developments that receive funding from HCR through the (i) 4% or 9% Low-Income Housing Tax Credit (“LIHTC”) Program, (ii) New York State Low Income Housing Trust Fund Program, (iii) New York State Low Income Housing Tax Credit (“SLIHC”) Program, (iv) New York State Turnkey/Enhanced Housing Trust Fund Program, (v) New York State Homes for Working Families Program, or (vi) New York State Low Income Housing Bond Program must comply with the VAWA requirements implemented through 24 CFR Part 5, Subpart L.

The following guidance is applicable to all HCR multifamily awardees (“Covered HCR Awardees”). Recipients of project based Section 8 funding will have received communication under separate cover regarding their obligations pursuant to VAWA.

II. VAWA Protections for Covered HCR Awardees

A. Adverse Factors

Under VAWA, an applicant to or a tenant of a Covered HCR Awardee may not be denied assistance, terminated from participation in, or evicted from housing on the basis of or as a direct result of the fact that the applicant or tenant is or has been a victim of a VAWA covered crime if such an applicant or tenant is otherwise qualified for admission, assistance, participation or occupancy.

Covered HCR Awardees must therefore take into account “adverse factors” that may directly result from an individual being a victim of a VAWA covered crime. On the surface, an adverse factor may appear unrelated to a VAWA covered crime; it may exist during the course of an abusive relationship or may only manifest itself when the victim attempts to leave or has left an abusive relationship. Examples include, but are not limited to:

1. Poor credit history. In certain circumstances, poor credit history may be a direct result of a VAWA covered crime. For example:
 - a. A perpetrator forces a victim to obtain credit, including credit cards, for the perpetrator’s use;
 - b. A perpetrator prevents a victim from obtaining and/or maintaining employment;
 - c. A victim loses his or her job or has lost wages due to missed work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime; and
 - d. A victim is hospitalized and has medical bills he or she cannot pay or cannot pay along with other bills.
2. Poor rental history. In certain circumstances, poor rental history may be a direct result of a VAWA covered crime. For example:
 - a. Property damage;
 - b. Noise complaints; and
 - c. Early lease terminations and/or short lease terms.
3. Criminal record. In certain circumstances, a criminal record may be a direct result of a VAWA covered crime. For example:
 - a. Family disturbance/trouble;

- b. 911 abuse;
 - c. Failure to protect a child from a batterer's violence and/or abuse; and
 - d. Crimes committed by a victim to defend him or herself or in defense of a third party from a VAWA covered crime.
4. Failure to pay rent. In certain circumstances, temporary failure to pay rent may be a direct result of a VAWA covered crime. For example:
- a. A victim is injured or temporarily incapacitated;
 - b. A victim is prevented from obtaining and/or maintaining employment; and
 - c. A victim is forced to turn over his or her earnings to the abuser.

The direct result analysis is triggered when an applicant or tenant informs a Covered HCR Awardee that he or she is a victim of a VAWA covered crime and provides information to the Covered HCR Awardee sufficient to allow a determination to be made regarding whether the adverse factor was a direct result of a VAWA covered crime. If it is determined that an adverse factor is a direct result of a VAWA covered crime, the victim cannot be denied housing on this basis. Additional information on adverse factors and the direct result analysis may be found in HUD [Notice H 2017-05](#) and [Notice PIH-2017-08 \(HA\)](#). Additional guidance on assessing adverse factors may be forthcoming.

It is the responsibility of each Covered HCR Awardee to periodically check the HUD website in order to be kept apprised of the issuance of any additional guidance.

B. Notification of Occupancy Rights Under VAWA and Certification Form

Covered HCR Awardees **must** provide to its applicants and current tenants:

- Notification of Occupancy Rights under VAWA, which explains the VAWA Protections; and
- Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternative Documentation to be completed by victim to document an incident of DVDSAS.

See 24 CFR § 5.2005(a)(1).

HCR has developed model forms for use by its Covered HCR Awardees, which are attached to this bulletin as Attachment 1 and Attachment 2. All Covered HCR Awardees are encouraged to use these forms.

HCR may update these requirements and forms from time-to-time in accordance with guidance received from HUD. **It is the responsibility of each Covered HCR Awardee to periodically check both the HUD website and the HCR website to ensure that no changes have been made to these model forms and that they are utilizing the most recent versions of such model forms.**

The notice and certification forms **must** be provided by Covered HCR Awardees:

- when the individual applies for housing (*i.e.*, with the application);
- at the time the applicant is admitted to or denied housing; and
- with any notice of eviction or termination of housing.

For Covered HCR Awardees with tenants already in place, the notice and certification forms **must** be provided no later than December 16, 2017.

The notice and certification form **must** be made available in multiple languages pursuant to each development's Language Access Plan.¹

C. Emergency Transfer Plan

Each Covered HCR Awardee that participates in a covered HUD housing program is to adopt an emergency transfer plan as soon as possible, if it has not already done so. *See* 24 CFR § 5.2005(e). Developments covered by VAWA because they receive LIHTCs from HCR **shall** adopt an emergency transfer plan based on HCR's model plan no later than sixty (60) days after the date of this letter.

HCR has developed a model emergency transfer plan which is attached to this bulletin as Attachment 3. The model emergency transfer plan sets forth the minimum information that must be included in a transfer plan. Owners/agents are encouraged to customize the model emergency transfer plan to include details on specific additional assistance that will be provided under the particular housing program and to the relevant program operations that may pertain to or effect the emergency transfer provisions.

Included with the emergency transfer plan is the HCR VAWA Local Service Provider List to be utilized by Covered HCR Awardees as a resource. Covered HCR Awardees should provide this List to tenants who are requesting an emergency transfer. All Covered HCR Awardees are encouraged to use these forms as a model in developing their own plans.

In the event a current tenant requests an emergency transfer outside of properties under a particular Covered HCR Awardees' control (an "external transfer"), Covered HCR Awardees should assist in facilitating such a transfer. This assistance by the Covered HCR Awardee should include, but not be limited to, working with organizations on the HCR VAWA Local Service Provider List and utilizing NYHousingSearch.gov to help tenants identify rental housing suitable for an external emergency transfer. Additionally, from time to time, New York State Homes and Community Renewal will provide Covered HCR Awardees with a list of geographically proximate housing developments that may contain vacancies. Covered HCR Awardees should provide this

¹ HUD has translated the notice of housing rights and certification form and posted them on its website. Available at <https://goo.gl/iLZ9wL>. Housing providers who have limited English proficient ("LEP") applicants and tenants who do not read a language that HUD has translated the form and notice into may have to provide those applicants and tenants with a notice and form translated into languages they do understand, in accordance with HUD's LEP guidance. *See* 81 Fed. Reg. 80724.

list to tenants requesting an external transfer and help to facilitate contacting such developments.

Where an individual is seeking an emergency transfer into a Covered HCR Awardees' portfolio, the Covered HCR Awardee is strongly encouraged to create an admissions preference for victims seeking an external emergency transfer from another covered housing provider. This would allow a victim to more quickly access an available unit administered by the Covered HCR Awardee without being placed on the bottom of an applicant waiting list.

HCR may update these requirements and forms from time-to-time in accordance with guidance received from HUD. **It is the responsibility of each Covered HCR Awardee to periodically check both the HUD website and the HCR website to ensure that no changes have been made to these requirements and model forms and that they are utilizing the most recent versions of such.**

It is impermissible for a Covered HCR Awardee to penalize a tenant who seeks an emergency transfer to a different unit or development, regardless of whether such unit or development is under the control of the Covered HCR Awardee. A tenant is permitted to seek an internal transfer and an external transfer concurrently.

Generally speaking, the emergency transfer plan requires, among other things, the owner/agent:

- **must** allow a tenant to make an emergency transfer to a different unit under such Covered HCR Awardee's control (an "internal emergency transfer") when a safe unit is immediately available.
- **must** describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available; policies must ensure that requests for internal transfer receive additional priority similar to other emergency transfer requests. Victims of a VAWA covered crime **should** rise to the top of the internal transfer waiting list.
- **must** describe the reasonable efforts the owner/agent will take to assist a tenant who wants to make an external emergency transfer into and out of the property under VAWA, which may include (i) arrangements with other owners/agents; (ii) outreach to organizations that assist victims of VAWA protected crimes.
- owner/agents **must** keep a record of all emergency transfers requested and the outcomes of those requests. Owner/agent must retain these records for three years, unless otherwise specified under the applicable program regulations.

D. Confidentiality

Given the significant safety issues faced by victims of VAWA covered crimes, owners/agents must establish or update existing policies to maintain the confidentiality

and privacy of victims who seek protections under VAWA. VAWA stipulates that any information submitted to an owner/agent pertaining to VAWA, including the fact that an applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in confidence by the owner or agent.

Additionally:

- Employees of the owner/agent (or those who administer assistance on their behalf, e.g., contractors) must not have access to the information unless explicitly authorized by the owner/agent or specifically call for them to have access under relevant law;
- Owner/agent must not enter any information into any shared database or disclose this information, unless requested or consented to in writing by the victim in a time-limited release; required for use in an eviction proceeding or hearing terminating assistance, or otherwise required by applicable law.
- Owners/agents must take precautions when communicating with an applicant or tenant who has requested VAWA protections to avoid inadvertent disclosure of confidential information. Unless given permission from the victim to do so, the owner/agent must not leave messages that contain confidential information, or refer to VAWA, VAWA protections or the incident of a VAWA covered crime on a victim's voicemail or with another individual or household member. Owners/agents should also not send any mail regarding the incident of a VAWA covered crime to the victim's address if the perpetrator may have access to the victim's mail.
- When discussing these matters directly with the victim, owners/agents must take reasonable precautions to ensure that no one can overhear the conversation.

E. Record-Keeping

The VAWA final rule requires that owners/agents keep confidential records of all emergency transfers requested and the outcomes of such requests, and to retain these records for a period of three years, or as long as is required by specific program regulations. Additional information regarding reporting may be communicated by HCR or by HUD, as applicable, at a later date.

Additional information regarding the Emergency Transfer Plan requirements, the strict confidentiality requirements concerning VAWA-related documents, record-keeping and reporting can be found at HUD [Notice H 2017-05](#) and [Notice PIH-2017-08 \(HA\)](#).

III. Remedies and Resources Available to Victims

A. Lease Bifurcation

The owner/agent may bifurcate the lease or remove a household member from the lease to evict or terminate assistance to a household member who perpetrates a VAWA covered crime against an affiliated individual or other household member. See 24 CFR §

5.2009. Furthermore, the owner/agent may bifurcate the lease even if the evicted household member is a signatory of the lease. *Id.*

The owner/agent must also provide victims with reasonable time to establish eligibility for assistance or to find alternative housing following bifurcation of a lease. *Id.* In such a situation, the remaining family member(s), prior to the lease bifurcation, had not established eligibility for the housing assistance. For example, a “reasonable time” is required to allow a mixed family, where assistance was provided to the perpetrator and the victim has not contended eligible immigration status, or a remaining family member who did not otherwise meet the program eligibility requirements, to demonstrate eligibility or find alternate housing. In most cases, the owner/agent is required to provide the remaining family member(s) a period of 90-calendar days to establish eligibility, however, HUD has provided program-specific guidance concerning the “reasonable time” requirement, available at 81 Fed. Reg. 80724, and in HUD [Notice H 2017-05](#) and [Notice PIH-2017-08 \(HA\)](#).

B. Promoting Housing Stability and Access for Victims of DVDSAS

The owner/agent is encouraged, but not required, to bear the costs of a transfer. To help mitigate these costs, it should be noted that there are U.S. Department of Justice-administered programs that provide funding for victims covered by VAWA.

Developments that participate in a covered HUD housing program should consult HUD regarding the specific program’s guidance for implementing VAWA, including paying costs of transfers. HUD has provided additional information on this topic available at HUD [Notice H 2017-05](#) and [Notice PIH-2017-08 \(HA\)](#).

C. HCR VAWA Resource List and Local Listings of HCR-funded Housing

HCR’s model emergency transfer plan requires Covered HCR Awardees to assist tenants who request an external emergency transfer under VAWA out of the housing provider’s project.

To facilitate this assistance, HCR has created the HCR VAWA Local Service Provider List, a county-by-county listing of non-profit and legal services organizations that provide both residential and non-residential domestic violence services in New York. Furthermore, Covered HCR Awardees should utilize NYHousingSearch.gov, a free service to find affordable, accessible homes and apartments, to help tenants who request an external emergency transfer identify local rental housing.

ATTACHMENTS

HCR Model Notification of Occupancy Rights under VAWA

HCR Model Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternative Documentation

HCR Model Emergency Transfer Plan

HCR VAWA Local Service Provider List

HUD Notice H 2017-05 and Notice PIH-2017-08 (HA)