

**VIOLENCE AGAINST WOMEN
IN FEDERALLY FUNDED
RENTAL ASSISTED HOUSING**



*Learn About Your Rights
as a Victim of
Domestic Violence*

BACKGROUND

On November 16, 2016, HUD published in the Federal Register the final rule implementing housing provisions under the Violence Against Women Reauthorization Act of 2013 (VAWA) as it applies to HUD programs. The rule codifies VAWA core protections across covered HUD programs to ensure individuals are not denied assistance, evicted, or have their assistance terminated because of their status as victims of domestic violence, dating violence, sexual assault and stalking, or for being affiliated with a victim. The information contained in this brochure is intended to inform you of your rights and responsibilities under VAWA.

DEFINITIONS

Domestic violence includes felony or misdemeanor crimes of violence committed by:

1. a current or former spouse or intimate partner of the victim; the term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship,
2. a person with whom the victim shares a child,
3. a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner,
4. a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
5. any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Sexual assault means any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks capacity to consent.

Dating violence means violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - a. the length of the relationship;
 - b. the type of relationship; and
 - c. the frequency of interaction between the persons involved in the relationship.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for the person's individual safety or the safety of others; or
2. Suffer substantial emotional distress.

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 stands 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.*

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

WHO MAY RECEIVE VAWA PROTECTIONS?

VAWA protections cover tenants and assisted families, as defined under applicable program regulations. VAWA protections also cover applicants when they are applying for admission to a covered housing program.

VAWA protections are not limited to women. Victims of domestic violence, dating violence, sexual assault, or stalking are eligible to protections without regard to sex, gender identity, or sexual orientation. Victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age, and HUD programs must also be operated consistently with HUD's Equal Access Rule, which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

A PHA or owner may find instances of domestic violence, dating violence, sexual assault, or stalking against youth (those under the age of 18 years old) living in an assisted household for which the family may need to exercise VAWA protections to protect the youth victim. PHAs and owners should exercise the same documentation and confidentiality procedures in assisting a family in such a situation.

WHAT PROTECTIONS ARE PROVIDED BY VAWA?

There are two areas of protection for those persons seeking or receiving assistance under the federally funded public housing program or voucher program.

1. **Denial of Assistance** – The law provides that you cannot be denied assistance because you are a victim of domestic violence, sexual assault, dating violence, or stalking, or for being affiliated with the victim if you are otherwise qualified to receive such assistance.
2. **Termination of Tenancy or Assistance** – The law further protects those who are currently receiving federal housing assistance from losing assistance or housing solely on the basis of their status as a victim of domestic violence, sexual assault, dating violence, or stalking, or for being affiliated with the victim. VAWA 2013 adds protections for tenants remaining after the removal of an abuser, allowing them an opportunity to establish program eligibility, if necessary, or a reasonable time to find new housing. It requires HUD to adopt model emergency transfer plans for victims of abuse in its rental assistance programs and to establish policies and procedures under which a victim requesting an emergency transfer may receive a tenant protection voucher.

The final rule makes it clear that under most circumstances, a survivor need only to self-certify in order to exercise their rights under VAWA, ensuring third party documentation does not cause a barrier in a survivor expressing their rights and receiving the protections needed to keep themselves safe. HUD's model emergency transfer plan:

1. allows a survivor to self-certify their need for an emergency transfer, ensuring documentation is not a barrier to protecting their immediate safety;
2. allows the survivor to determine what is a safe unit for purposes of the transfer, ensuring that the survivor has control over their own safety planning;
3. requires housing providers to allow for a resident to move immediately if there is another safe and available unit that does not require the survivor to undergo an application process as a new tenant, ensuring quicker access to safe housing;
4. requires housing providers to explain the efforts they will take when there is not a safe and available unit available for an emergency transfer and encourages housing providers to partner with victim services and advocates and other housing providers to assist a survivor; and
5. requires housing providers to document requests for emergency transfers, including the outcome of the request, and to report annually to HUD.

The housing provider may divide (bifurcate) your lease in order to evict an individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If the housing provider chooses to remove the abuser or perpetrator, the housing provider may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, the housing provider must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, the housing provider must follow Federal, State, and local eviction procedures. In order to divide a lease, the housing provider may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault or stalking.

PROTECTIONS AGAINST THE ADVERSE EFFECTS OF ABUSE

Domestic violence can often have negative economic and criminal consequences on a survivor. The perpetrator may take out credit cards in a survivor's name, ruining their credit history, or may cause damage to survivor's property causing eviction and poor rental history. The perpetrator may force a survivor to participate in criminal activity or a survivor may be arrested as part of policies that require arresting both parties in a domestic disturbance. The final rule ensures that covered housing providers do not

deny tenancy or occupancy rights based solely on these adverse factors that are a direct result of being a survivor.

CERTIFICATION OF VICTIM STATUS

The housing provider is free to take the tenant at their word, but they can ask the tenant to prove VAWA crime if there is conflicting information. Any request by the housing provider for proof must be made in writing. The tenant has 14 business days from the request to provide proof. The housing provider is free to grant an extension if the tenant needs more time. The documentation options include:

1. self-certification (using HUD Forms 5382, 50066, and 91066),
2. police, court or administrative records,
3. statement from a third party (such as a victim service provider, a medical professional, a mental health professional or an attorney) (signed by both the third party and the survivor under the penalty of perjury),
4. statement or other evidence (housing provider's discretion).

The survivor gets to choose the documentation option, except when there is conflicting evidence. Then the housing provider can ask for third-party documentation. However, the housing provider cannot judge the merits of claims of VAWA crime.

Failure on the part of the victim to provide certification within the allotted time voids the protections provided by VAWA.

CONFIDENTIALITY

Any information or documentation provided to a housing agency or owner by a victim of domestic violence, sexual assault, dating violence, or stalking must be kept in confidence. No information or documentation may be (a) entered into any shared databases or (b) disclosed to "any related entity" except under the following conditions:

1. The victim requests or consents to the disclosure in writing.
2. The disclosure is required for use in an eviction proceeding.
3. The disclosure is otherwise required by applicable law.

FOR ADDITIONAL INFORMATION ON VAWA

*National Domestic Violence Hotline
1-800-799-SAFE (7233) • 1-800-787-3224 (TTY)
<http://www.ndvh.org/>

*HUD Housing Discrimination Hotline
1-800-669-9777

*For Complete text of VAWA 2013 see Public Law 113-4
and/or 81 FR 80724.

WHAT ARE THE LIMITATIONS OF VAWA?

Housing agencies and owners retain the authority to terminate the tenancy, occupancy, or program assistance of a victim under either of the following conditions:

1. The termination is for a lease violation premised on something other than an act of domestic violence, sexual assault, dating violence, or stalking against the victim and the housing agency or owner is holding the victim to a standard no more “demanding” than the standard to which other tenants are held.
2. The housing agency or owner can demonstrate an “actual and imminent threat to other tenants or those employed at or providing service to the property” if the tenancy, occupancy, or program assistance of the victim is not terminated.

In summary, VAWA prevents housing agencies and owners from considering actual or threatened domestic violence, sexual assault, dating violence, or stalking as a cause for terminating the tenancy, occupancy, or program assistance of the victim. Such violence or stalking may not be considered (1) as a serious or repeated violation of the lease by the victim, (2) as other good cause for terminating the tenancy or occupancy rights of the victim, or (3) as criminal activity justifying the termination of the tenancy, occupancy rights, or program assistance of the victim. VAWA 2013 requires a HUD-developed notice of rights under VAWA to be provided at the time of denial or admission, upon notification of eviction or termination of assistance, and in multiple languages.

DISCLAIMER

Housing Forms, Inc., has prepared this brochure for informational purposes only. It should not be used as a legal guide. If you have specific legal questions concerning your unique situation, you should consult an attorney, legal aid, or an official agency qualified to assist you.

For information in your area:

Boone County Housing & Redev. Auth.
824 Lick Creek, Black Dia. Arbors
Danville, WV 25053
Phone: (304) 369-3442

This brochure was originally designed to meet the requirements of HUD Notice PIH-2006-23. It has been updated to meet new additions to the final rule of VAWA 2013 (rev. 11-6-16).