

## VAWA Training Aid<sup>1</sup>

### VAWA applies to the following programs:

- HOME TBRA
- Emergency Solutions Grant (ESG)
- Continuum of Care program (COC)
- Housing Opportunities for Persons with Aids (HOPWA)
- Section 202 Supportive Housing for the Elderly
- Section 811 Supportive Housing for Persons with Disabilities
- Rural Housing Stability Assistance Program
- Multifamily rental housing under section 221 and 236 (public housing)
- Tenant –based and Project based Section 8
- Section 8 Moderate Rehabilitation Single Room Occupancy
- The Housing Trust Fund
- FHA mortgage insurance for multifamily rental housing
- Low Income Housing Tax Credit (LIHTC)
- Rural Development 515

### Who is protected?

It should be noted that, although VAWA refers to women in the title, the statute makes it clear that the protections are for all applicants/tenants regardless of sex, gender identity, sexual orientation, or age.

The VAWA provides protections to women and men who are victims of domestic violence, dating violence, sexual assault and/or stalking (collectively referred to as VAWA crimes).

VAWA protections are also provided to affiliated persons, and it includes:

- a Spouse, parent, brother, sister, or child of the victim, or a person to whom the victim stands in place of a parent or guardian (for example – the affiliated individual is a person in the care, custody or control of the victim); or
- Any individual, tenant/applicant, or lawful occupant living in the household of that individual

Your new VAWA policy must support and/or assist victims of VAWA crimes and protect victims, as well as affiliated persons, from being denied housing or from losing their HUD assisted housing as a consequence of their status as a victim of VAWA crimes.

### Limits

VAWA does not limit an agency/landlord's rights to terminate assistance/tenancy for any violation that is not related to a VAWA crime. However, the agency/landlord must not subject the victim or a person affiliated with the victim to a more demanding standard than other tenants when determining whether to terminate assistance/tenancy.

VAWA does not limit an agency/landlord's right to terminate assistance/tenancy if the agency/landlord can demonstrate an actual and imminent threat would be present if the resident or lawful occupant is not terminated. If the threat were:

- to other tenants
- to employees
- to vendors providing services

In this context, words, gestures, actions or other indicators will be considered an "actual and imminent threat" if they meet the standards provided in the definition of "actual and imminent threat."

Actual and imminent threat – refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. 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 the potential harm will occur, and the length of time before the potential harm would occur.

#### **Notification of VAWA protections**

VAWA requirements obligate the agency/landlord to provide tenants and applicants with a notice explaining their VAWA rights.

Notices (HUD 5380 & HUD 5382) should be given to:

- Every applicant when admitted to program (this started December 16, 2016)
- Every denied applicant (this started December 16, 2016)
- Every current tenant (must be completed by December 16, 2017)
- Every client at recert & at unit transfer (not required by rule, but recommended)
- Every client at termination (this started December 16, 2016)

#### **When someone is seeking VAWA protection**

When a person indicates that they are a victim of a VAWA crime and states that they want to invoke their protection, the agency and/or landlord must take certain steps.

#### **Certification as a victim of VAWA crime**

VAWA does not require an agency or landlord to request that an individual seeking VAWA protection submit documentation of that status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking. However, if an agency/landlord is going to require certification or other documentation, requests for documentation must be in writing and must conform to the rules and timelines described. HUD stresses this point in the final rule.

**Applicants and residents** decide which of the following method is used to certify their status as a victim of a VAWA crime or as someone affiliated with the victim of the VAWA crime.

The person seeking VAWA protections can complete, sign and submit the VAWA Certification Form (HUD-5382). Agency/landlords must allow at least fourteen (14) business days from the date of the request for this information.

Agency/landlord may provide additional time, but may not provide less time. This certification may be submitted in an equally effective manner, as a reasonable accommodation, if there is the presence of a disability.

If the applicant/tenant has sought assistance in addressing domestic violence, dating violence, sexual assault and/or stalking from a federal, state, local police or court, the resident **may** (but is not required) submit written proof of this outreach in lieu of the certification form.

Documentation signed and attested to by a professional (employee, agent or volunteer of a victim service provider, an attorney, medical personnel, etc.) from whom the victim has sought assistance in addressing domestic violence, dating violence, sexual assault, and/or stalking or the effects of the abuse. This document must be signed by the applicant/tenant. The signatory attests under penalty of perjury that the professional believes it is the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under the VAWA, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking.

The notice also states that examples of reports from law enforcement agencies and courts include police reports, protective orders, and restraining orders, among others. Also if the resident is currently living in a shelter established to protect victims of violence covered under the VAWA, The agency/landlord should accept verification of such living arrangement in lieu of additional documentation.

The victim is not required to name the accused perpetrator if doing so would result in imminent threat or if the victim does not know the name of his/her accused perpetrator.

If a covered housing provider (agency or a landlord receiving HUD funds) receives documentation that contains conflicting information (including certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator), the covered housing provider may require an applicant or tenant to submit third-party documentation as described above, within thirty (30) calendar days of the date of the written request for the third party documentation. The covered housing provider **MUST** make this request to the client in writing.

### **Confidentiality Requirements**

Victims have a right to privacy when dealing with the agency/landlord regarding domestic violence, dating violence, sexual assault or stalking. All information provided by the resident must be kept confidential.

Based on HUD HSG Notice 08-07, any information about a person's status as a victim of a VAWA crime must be maintained in a separate file.

The identity of the victim and all information provided to the agency/landlord related to the incident(s) of violence must be retained in confidence by the agency/landlord and must neither be entered into any shared database nor provided to a related entity, except to the extent that the disclosure is:

1. Requested or consented to by the individual in a time-limited written release;
2. Required for use in an eviction proceeding or termination of assistance; or
3. Otherwise required by applicable law

### **What is the VAWA accommodation?**

What does the applicant/tenant want you (the agency or the landlord) to do to help them exercise their protections? That is the next question. (Note: you are not required and in some cases, you are not authorized to waive eligibility or other program requirements)

Some examples of a VAWA accommodation include:

- Waive tenant selection criteria (such as: credit screening, previous landlord screening, etc.)
- Reconsider rejection
- Modify a lease term (such as: waive the requirement to provide 30 day notice to move)
- Reconsider a lease violation
- Reconsider a termination of assistance or tenancy
- Evict a member of the household
- Emergency transfer

Most agency/landlords will consider each request on a case-by-case basis. It is good to standardize procedures to assist with the interview process to ensure that staff remembers to provide the same opportunities to all people seeking VAWA protections. Remember, though, people seeking VAWA protections cannot be required to provide specific information unless the rules states that agency/landlords have the authority to require disclosure or verification.

In order to set appropriate expectations, agency/landlords should define how they respond to request for VAWA accommodation requests. For example, you may want to include language similar to the following:

*“The agency/landlord will review and respond to requests to exercise protections provided under the VAWA as quickly as possible but within no more than ten (10) days of receiving all required documentation.”* (Note: this timeframe is not defined by the CFR. Covered housing providers should properly set expectations by defining the length of time that may be necessary to respond.)

*“The agency/landlord may provide the response in any manner acceptable to the victim and the agency/landlord. Responses include:*

- *Approval of the request for a specific VAWA accommodation*
- *Denial of the request for a specific VAWA accommodation*
- *Request for additional information*

*If the request is denied, the person seeking VAWA protections will have the right to appeal. Requests to appeal must be received within ten (10) business days of the date of the denial. When requested, the appeal will be held with someone who was not involved in the original decision to deny. The agency/landlord will grant a reasonable accommodation when there is the presence of a disability. “*

**There are a few VAWA accommodations that require a little more in depth discussion.**

1. The option to bifurcate the lease
2. Continued eligibility of remaining household members, and
3. Emergency transfers

### **Option to Bifurcate the Lease**

If the agency/landlord determines that physical abuse caused by a resident is clear and present, the law provides the agency/landlord the authority to bifurcate a lease (i.e., remove, evict, or terminate assistance to any accused perpetrator), while allowing the victim, who lawfully occupies the home to maintain tenancy.

Even in these cases, the agency/landlord may not require that the person seeking VAWA protections provide verification of their status as a victim of a VAWA crime or a person affiliated with someone who is a victim of a VAWA crime. Except for cases where there is conflicting evidence, it is the choice of the person seeking VAWA protections which form of documentation to submit.

However, when there is conflicting evidence, the agency/landlord may request, in writing, that the applicant/tenant submit specific documentation within thirty (30) calendar days of the written request. The agency/landlord may attempt to evict the accused perpetrator, but applicants and tenants should know that state/local tenant-landlord laws prevail and the agency/landlord must comply with such laws. The agency/landlord cannot guarantee that a court will award or enforce an eviction.

The tenant must keep in mind that the eviction of or the termination action against the individual must be in accordance with the procedures prescribed by federal, state, and local laws. Evictions are generally carried out through the court system and the agency/landlord cannot override or circumvent a legal decision.

In the event that one household member is removed from the unit because of engaging in acts of domestic violence, dating violence, sexual assault and/or stalking against another household member or an affiliated person, an appropriate certification (i.e., recert) must be processed reflecting the change in household composition.

Agency/landlord may also establish policies to execute a new lease or to provide a HUD approved lease addendum.

Special consideration will be given if the remaining household members are not qualified to remain in the unit as a "remaining household member". This is program specific; please see your specific program rule.

### **Continued Eligibility**

In some cases, when a tenant leaves a unit, the agency/landlord is required to determine if remaining household members are eligible for subsidy or for housing.

The agency/landlord must determine eligibility of remaining family members when the qualifying member leaves. Please check your specific program rule for time frames related to this eligibility determination.

In standard cases, the agency/landlord is required to provide a 30-day notice of termination of tenancy or assistance.

If the accused perpetrator leaves the unit or is terminated and was the eligible/qualifying tenant under the covered housing program, the agency/landlord will provide to any remaining tenant(s) that were not already eligible a period of 90 calendar days from the date of bifurcation of the lease to:

- Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient or assistance at the time of bifurcation of the lease; or
- Establish eligibility under another covered housing program; or
- Find alternative housing

The 90- Calendar-day period will not be available to a remaining household member if the statutory requirements for the covered housing program prohibit it. The 90-calendar-day period will not apply beyond the expiration of a lease, unless this is permitted by program regulations.

The covered housing provider may extend the 90-calendar-day period up to an additional 60-calendar-days, unless prohibited from doing so by statutory requirements of the covered program or unless the time period would extend beyond the expiration of the lease.

Since there is no governing timeframe, as long as the remaining member(s) are party to the lease and is of legal age to sign, we assume that the person may remain in the unit and continue to receive subsidy for at least 90 days and potentially for an additional 60 days unless the lease expires.

### **Emergency Transfers**

Agency/landlords must develop and implement an Emergency Transfer Plan, no later than June 14, 2017 based on HUD's model Emergency Transfer Plan.

The plan must include policies for assisting

- A tenant who is seeking an external emergency transfer under VAWA out of the agency/landlord's program or project
- A tenant who is seeking an external emergency transfer under VAWA into the agency/landlord's program or project.

Definitions:

Internal emergency transfer – refers to an emergency relocation of a tenant to another unit where the tenant would not be categorized as a new applicant; that is, the tenant may reside in the new unit without having to undergo an application process.

External emergency transfer – refers to an emergency relocation of a tenant to another unit where the tenant would be categorized as a new applicant; that is the tenant must undergo an application process in order to reside in the new unit.

Safe Unit – refers to a unit that the victim believes is safe.

### **Qualifications for VAWA emergency transfer**

The emergency transfer plan must explain that an applicant/tenant qualifies for an emergency transfer if:

- The tenant requests the transfer
- If the tenant reasonably believes that there is a threat to imminent harm if the tenant remains within the same unit
- If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar day period preceding a request for an emergency transfer.

This is true even if the tenant is not a tenant in good standing.

The tenant's submission of a written request to the agency/landlord, where the tenant certifies that they meet the criteria shall be sufficient documentation of the requirements (i.e., self-certification).

The agency/landlord may ask an individual seeking an emergency transfer to document the occurrence of domestic violence, dating violence, sexual assault, or stalking if the individual has not already provided documentation of that occurrence. No other documentation is required to qualify the tenant for an emergency transfer.

### **Requirements for the Emergency Transfer Plan**

The VAWA Emergency Transfer Plan (ETP) must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.

The ETP must describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available, and these policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that agency/landlords may already provide to other types of emergency transfer requests.

The ETP must describe reasonable efforts the agency/landlord will take to assist a resident who wishes to make an external emergency transfer when a safe unit is not immediately available.

Nothing may preclude a tenant from seeking an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available.

The ETP must detail any preference given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of applicants and/or tenants requesting transfers. Please keep in mind that this may also require the agency/landlord to edit existing tenant selection plans.

The ETP must incorporate strict confidentiality measures to ensure that the agency/landlord does not disclose the location of the dwelling unit of the tenant to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

The agency/landlord must make the ETP available upon request and, when feasible, must make its plan publicly available, such as posting on a bulletin board.

The agency/landlord must:

- Keep a record of all emergency transfer requested under its ETP and the outcomes of such requests
- Retain these records for a period of three (3) years or for a period of time as specified in the program regulations
- Report request and outcomes of such request to HUD annually.

At this time, there is no HUD form which can be used to track this information.

<sup>1</sup>- Majority of the information in this document was borrowed from 2017 Ross Business Development, Inc. publication.