



Domestic violence, Dating violence, Sexual Assault, and Stalking: The Legal Framework for Housing Providers' Obligations Throughout The Occupancy Cycle

Goal Of This Session



Provide participants:

- A legal framework for understanding why domestic violence, dating violence, sexual assault and stalking are relevant to housing and housing operations throughout the occupancy cycle.

Why Is It Important For Housing Providers To Understand Their Legal Obligations and The Rights of Survivors?

- Legal requirements impact housing operations: admissions, occupancy and eviction.
- What seems like a “good management decision” could have unintended effects on individuals experiencing domestic violence, dating violence, sexual assault and stalking.
- Management policies or decisions could cause a victim/survivor of domestic violence, dating violence, sexual assault or stalking to:
 - Be denied housing for reasons related to their status
 - Have to choose between remaining in an abusive relationship, or becoming homeless, due to housing discrimination.
 - Be evicted from housing for reasons related to their status
 - Experience further harm when people not allowed to relocate or break leases for safety
- Liability for failing to comply with the laws that protect survivors

The Framework For Understanding What Owner's/Agents Are Required To Do/Not Do

- Statute (legislature)
 - Federal
 - State
- Regulations (government agencies)
- Ordinances (municipalities)
- Directive Systems
 - Handbooks
 - Notices
 - “Guidance”
- Case Law



KEY LANGUAGE: Must/Must Not; Should/Shouldn't; Can/Can't

Relevant Statutes and Guidance We Are Focusing On

Fair Housing Act (FHA)

- Guidance from HUD, Feb 9, 2011-Assessing Claims of Housing Discrimination Against Victims of Domestic Violence Under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)
- SEPTEMBER 13, 2016, Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services
- * MA State Law (M.G.L. c. 151B) has been deemed substantially equivalent to federal law, although it has more protected categories, and provides additional obligations for housing providers of market sites.

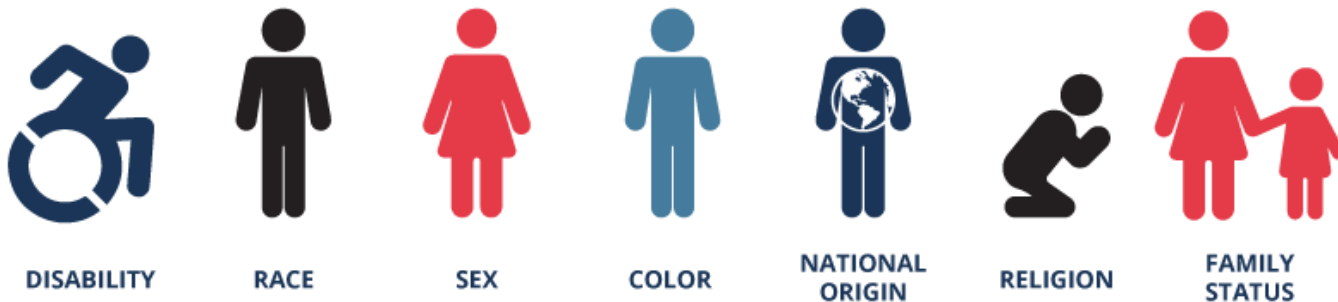
MA state law, “An Act Relative to Housing Rights for Victims of Domestic Violence, Rape, Sexual Assault and Stalking” and housing provider’s obligations

The Violence Against Women Act (VAWA) 2013

- HUD Final Rule Implementing VAWA, Federal Register/Vol. 81, No. 221/Wednesday, November 16, 2016
- Notice PIH-2017-08 (HA), May 19, 2017, Violence Against Women Reauthorization Act of 2013 Guidance
- Notice H-2017-05, June 30, 2017, Violence Against Women Act (VAWA) Reauthorization Act of 2013 –Additional Guidance for Multifamily Owners and Management Agents

The Fair Housing Act (FHA): How Does It Apply?

- Prohibits discrimination based on race, color, religion, sex, national origin, familial status and disability in virtually every type of housing.
- Survivors of domestic violence are not a protected class under the FHA.
- Housing discrimination claims re to domestic violence are generally brought on the basis of sex
 - This is because statistically women make up the vast majority of victims of domestic violence.
- May also involve claims of other types of discrimination (race, national origin) because women of certain national origin, immigrant women, and women of certain races experience domestic violence at disproportionate rates.



What Are the Legal Theories Of Discrimination Which Apply?

Standardly Broken Into 2:



- Disparate (Unequal) Treatment
 - Treating a person differently than another person because of a protected characteristic.
- Disparate Impact
 - Rules, policies, practices that appear neutral but have the effect of differentiating or having a greater negative effect on people in a protected class and can't be justified by a legitimate business reason.

HUD's Fair Housing Act regulations have been amended to formally include this. See 24 CFR Part 100

HUD's FHEO MEMO BREAKS IT INTO THREE

- 1) Direct Evidence
- 2) Unequal Treatment
- 3) Disparate Impact



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

February 9, 2011

MEMORANDUM FOR: FHEO Office Directors
FHEO Regional Directors

FROM: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs

SUBJECT: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA)

I. Purpose

This memorandum provides guidance to FHEO headquarters and field staff on assessing claims by domestic violence victims of housing discrimination under the Fair Housing Act (FHA). Such claims are generally based on sex, but may also involve other protected classes, in particular race or national origin. This memorandum discusses the legal theories behind such claims and provides examples of recent cases involving allegations of housing discrimination against domestic violence victims. This memorandum also explains how the Violence Against Women Act (VAWA)¹ protects some domestic violence victims from eviction, denial of housing, or termination of assistance on the basis of the violence perpetrated by their abusers.

II. Background

Survivors of domestic violence often face housing discrimination because of their history or the acts of their abusers. Congress has acknowledged that “[w]omen and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.”² Housing authorities and landlords evict victims under zero-tolerance crime policies, citing the violence of a household member, guest, or other person under the victim’s “control.”³ Victims are often evicted after repeated calls to the police for domestic violence incidents because of allegations of disturbance to other tenants. Victims are also evicted because of property damage caused by their abusers. In

¹ This guidance refers to the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), which included provisions in Title VI (“Housing Opportunities and Safety for Battered Women and Children”) that are applicable to HUD programs. The original version of VAWA, enacted in 1994, did not apply to HUD programs. Note also that HUD recently published its VAWA Final Rule. See HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246 (October 27, 2010).

² 42 U.S.C. § 14043e(3) (findings published in the Violence Against Women Act). Note that VAWA also protects male victims of domestic violence. See HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246, 66251 (“VAWA 2005 does protect men. Although the name of the statute references only women, the substance of the statute makes it clear that its protections are not exclusively applicable to women.”).

³ See 24 CFR § 5.100.

See HUD FHEO
Memo, pages 4-6:

What Is Direct Evidence Of Discrimination In The Context of Domestic Violence?

- Facially discriminatory policies based on gender stereotypes regarding women who are abused-the policy treats women differently:
 - Is there written/verbal evidence of the policy?
 - If verbal, was the statement made to others?
- Example from HUD Guidance:
 - A housing provider tells an applicant that he doesn't want to rent to women with a history of domestic violence "because she always goes back to the men who abuse them."



See FHEO Memo, pg. 4

What Is Unequal Treatment Discrimination In The Context of Domestic Violence?

- Unequal Discriminatory Treatment of victims of domestic violence vs. victims of other crimes; or
- A gender neutral policy applied unequally
 - Is there evidence women are being treated differently because of their status as a “victim” of domestic violence?
- Example from HUD Guidance:
 - A housing provider applies it’s policy of evicting residents for criminal activity in re to “victims” of domestic violence, and fails to focus on the perpetrator of the violence.



See FHEO Memo, pg. 4-5

What Is Disparate Impact Discrimination In The Context of Domestic Violence?

A neutral rule, policy, procedure, practice that has a greater impact on victims of domestic violence:

- What is the policy?
- Does it have a greater impact on women/victims of domestic violence
- What is the legitimate business necessity/goal of the rule, policy, procedure, practice?
- Is there a less discriminatory alternative available to the respondent?

Example from HUD Guidance:

- A zero tolerance policy whereby the entire HH is evicted for the criminal activity of one HH member.
 - If consistently applied women are more often impacted as the result of violence of their abuser;
 - Why was the policy enacted and followed? Health and Safety
 - Possible alternative approach: evict only the perpetrator and not victim, which protects residents without penalizing victim

What Are Types of Cases Brought Under The Fair Housing Act?

Access to Housing

- Refusing to rent to someone because they were a victim of domestic violence, including police visits
- Screening: history of lease violations, bad credit, criminal record related to domestic violence
 - HUD's guidance on arrests and on criminal records
 - Mitigating circumstances

See Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions and Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions

What Are Types of Cases Brought Under The Fair Housing Act (cont'd)?

Eviction/Non-Renewal of Lease

- Allegations of disturbances/repeated calls to police
- Property damage caused by abuser
- “zero tolerance crime” policies-violence of a person, guest, HH member under the victim’s control-
- Nuisance and Crime Free housing Ordinances

See Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services, Sept. 13, 2016

Are There Other Fair Housing Obligations Owners/Agents Must Keep In Mind?

YES!



- Reasonable Accommodation: **The failure to provide this is a form of illegal discrimination.**
- Providing effective communication for persons with disabilities
 - TTY/Relay Operator
 - Auxiliary Aids and Services

Are There Other Fair Housing Obligations Owners/Agents Must Keep In Mind (cont'd)?



YES!

- Providing meaningful access to applicants and residents with LEP.
 - If your site receives federal dollars you **must** provide meaningful access to applicants and residents whose primary language isn't English who as a result have a limited ability to read, write and understand English.
 - HUD'S Office of General Counsel issued guidance under the FHA (includes market and tax credit sites)
 - It is a good business practice-remember our job as housing providers is to provide "good" customer service; you can't achieve this if you are unable to communicate with someone.

What Type of Housing Does An Act Relative to Housing Rights For Victims Of Domestic Violence, Rape, Sexual Assault & Stalking Apply To?

Applies to all types of housing and all tenants in MA:

- Market
- Tax Credit
- Public
- Multifamily
- State-Funded

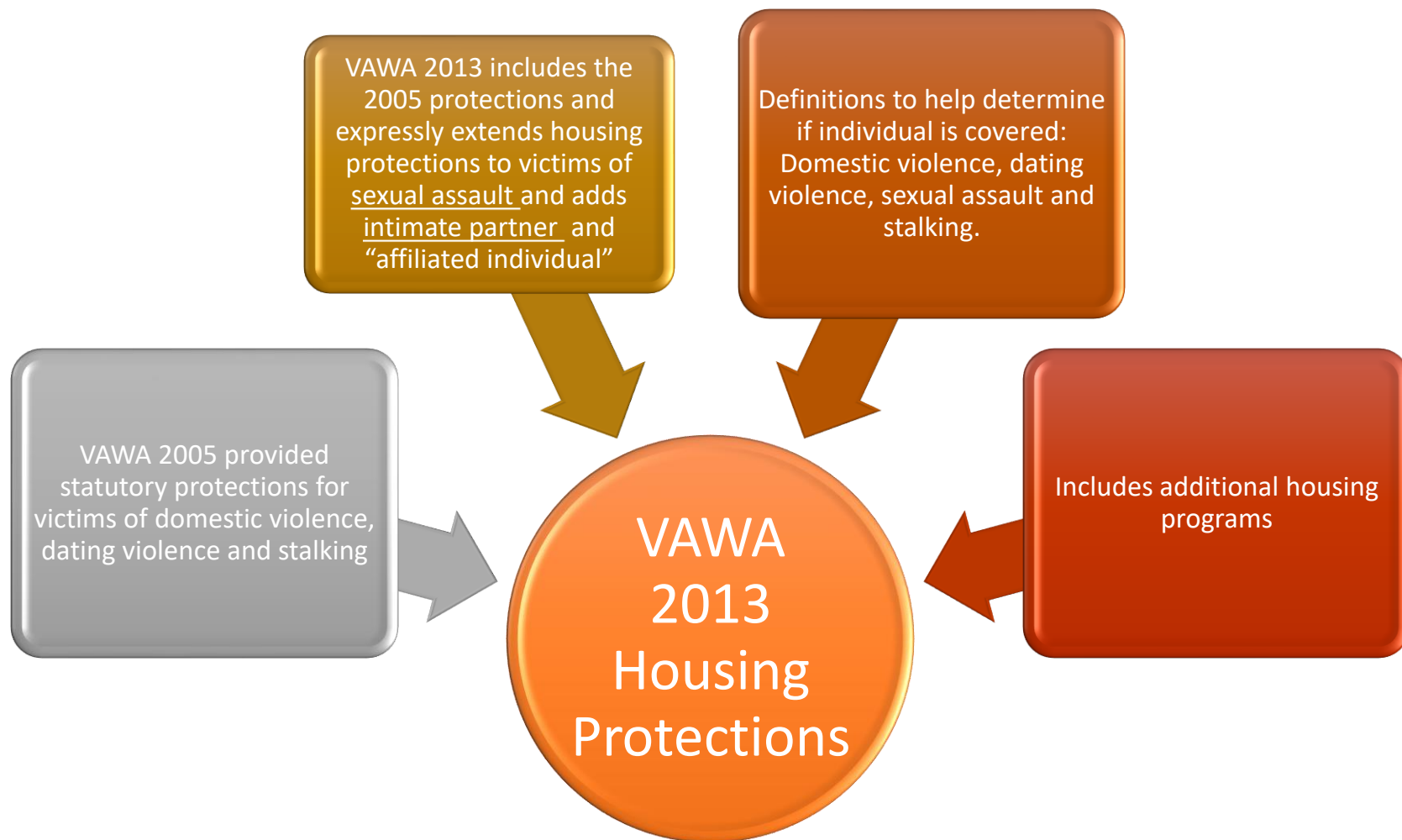


What Protections Does *An Act Relative to Housing Rights For Victims Of Domestic Violence, Rape, Sexual Assault & Stalking* Provide?

- Gives “victims” right to break a lease and/or change apartment locks
- Provides protection from:
 - Retaliation/Discrimination from a current or potential landlord for using these rights
 - Eviction because a restraining order was obtained or the police were called
 - Being forced by a landlord to waive these rights when signing a new lease
- Contains confidentiality requirements



VAWA: Enacted in 1994, reauthorized in 2000, 2005, and 2013



Housing Programs Covered By VAWA

Programs Covered by VAWA 2005	Programs Added by VAWA 2013
Public Housing	OTHER HUD PROGRAMS
Section 8 Vouchers	Section 236 Multifamily Rental Housing
Project Based Section 8	Section 221d3 BMIR
Section 202 Supportive Housing Elderly*	HOME
Section 811 Supportive Housing for People with Disabilities*	HOPWA (Housing Opportunities for people with AIDS)
* Originally added by HUD regulations. Now provided for in the VAWA 2013 Statute.	McKinney-Vento Homeless Programs
	DEPARTMENT OF AGRICULTURE
	Rural Development (RD) Multifamily
	DEPARTMENT OF TREASURY
	Low Income Housing Tax Credit (LIHTC)

The Final Rule added The Housing Trust Fund as a covered program

HUD's Final Rule, Guidance, Forms

HUD -General	<ul style="list-style-type: none">• Final Rule: Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, Federal Register/Vol. 81, No. 221/Wednesday, November 16, 2016/Rules and Regulations• Relevant Forms (available in multiple languages)<ul style="list-style-type: none">• Notice of Occupancy Rights Under the Violence Against Women Act, form HUD-5380• Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, form HUD-5381• Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation, form HUD-5382 and• Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, form HUD-5383
Multifamily	<ul style="list-style-type: none">• H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents, June 30, 2017• RHIIP LISTSERV:<ul style="list-style-type: none">• #376 - CORRECTION: Model forms for VAWA available on hud.gov• #373 - Model forms for VAWA available on hud.gov• #371 - Violence Against Women Reauthorization Act of 2013 (VAWA) Final Rule• VAWA Lease Addendum, HUD Form 91067 (Currently written for Section 8 only and outdated, available in multiple languages)• HUD Handbook 4350.3 (Currently written for Section 8 only and outdated)• HUD questions and Answers with Multifamily Staff
PHA	<ul style="list-style-type: none">• PIH-2017-08 (HA) , Violence Against Women Reauthorization Act of 2013 Guidance, May 19, 2017• VAWA Lease Addendum, HUD Form 91067 (Currently written for Section 8 only and outdated, available in multiple languages)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 91, 92, 93, 200, 247, 574, 576, 578, 880, 882, 883, 884, 886, 891, 905, 960, 966, 982, and 983

[Docket No. FR-5720-F-03]

RIN 2501-AD71

Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs

AGENCY: Office of the Secretary, HUD.
ACTION: Final rule.

SUMMARY: This final rule implements in HUD's regulations the requirements of the 2013 reauthorization of the Violence Against Women Act (VAWA), which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements. The 2013 reauthorization (VAWA 2013) expands housing protections to HUD programs beyond HUD's public housing program and HUD's tenant-based and project-based Section 8 programs (collectively, the Section 8 programs) that were covered by the 2005 reauthorization of the Violence Against Women Act (VAWA 2005). Additionally, the 2013 law provides enhanced protections and options for victims of domestic violence, dating violence, sexual assault, and stalking. Specifically, this rule amends HUD's generally applicable regulations, HUD's regulations for the public housing and Section 8 programs that already pertain to VAWA, and the regulations of programs newly covered by VAWA 2013.

In addition to this final rule, HUD is publishing a notice titled the Notice of Occupancy Rights under the Violence Against Women Act (Notice of Occupancy Rights) that certain housing providers must give to tenants and applicants to ensure they are aware of their rights under VAWA and these implementing regulations, a model emergency transfer plan that may be used by housing providers to develop their own emergency transfer plans, a model emergency transfer request form that housing providers could provide to tenants requesting an emergency transfer under these regulations, and a new certification form for documenting incidents of domestic violence, dating violence, sexual assault, and stalking that must be used by housing providers.

This rule reflects the statutory changes made by VAWA 2013, as well

as HUD's recognition of the importance of providing housing protections and rights to victims of domestic violence, dating violence, sexual assault, and stalking. By increasing opportunities for all individuals to live in safe housing, this will reduce the risk of homelessness and further HUD's mission of utilizing housing to improve quality of life.

DATES: *Effective Date:* These regulations are effective on December 16, 2016.

Compliance Date: Compliance with the rule with respect to completing an emergency transfer plan and providing emergency transfers, and associated recordkeeping and reporting requirements, is required no later than May 15, 2017.

FOR FURTHER INFORMATION CONTACT: For information about: HUD's Public Housing program, contact Monica Shepherd, Director Public Housing Management and Occupancy Division, Office of Public and Indian Housing, Room 4204, telephone number 202-402-5687; HUD's Housing Choice Voucher program and Project-Based Voucher, contact Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4216, telephone number 202-402-6050; HUD's Multifamily Housing programs, contact Yvette M. Viviani, Director, Housing Assistance Policy Division, Office of Housing, Room 6138, telephone number 202-708-3000; HUD's HOME Investment Partnerships program, contact Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Room 7164, telephone number 202-708-2684; HUD's Housing Opportunities for Persons With AIDS (HOPWA) program, contact Rita Flegel, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, Room 7248, telephone number 202-402-5374; and HUD's Homeless programs, contact Norman Suchar, Director, Office of Special Needs Assistance, Office of Community Planning and Development, telephone number 202-708-4300. The address for all offices is the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. The telephone numbers listed above are not toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Relay Service, toll-free, at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action

This rule implements the HUD housing provisions in VAWA 2013, which are found in Title VI of the statute. (See Pub. L. 113-4, 127 Stat. 54, approved March 7, 2013, at 127 Stat. 101). VAWA 2005 (Pub. L. 109-162, 119 Stat. 2959, approved January 5, 2006) applied VAWA protections to certain HUD programs by amending the authorizing statutes for HUD's public housing and section 8 programs to provide protections for victims of domestic violence, dating violence, and stalking. VAWA 2013 removes these amendments from the public housing and section 8 authorizing statutes, and in its place provides stand-alone VAWA protections that apply to these programs, as well as additional HUD programs, and also to victims of sexual assault. In addition, VAWA 2013 expands protections for victims of domestic violence, dating violence, sexual assault, and stalking by amending the definition of domestic violence to include violence committed by intimate partners of victims, and by providing that tenants cannot be denied assistance because an affiliated individual of theirs is or was a victim of domestic violence, dating violence, sexual assault, or stalking (collectively VAWA crimes). The new law also expands remedies for victims of domestic violence, dating violence, sexual assault, and stalking by requiring covered housing providers to have emergency transfer plans, and providing that if housing providers allow for bifurcation of a lease, then tenants should have a reasonable time to establish eligibility for assistance under a VAWA-covered program or to find new housing when an assisted household has to be divided as a result of the violence or abuse covered by VAWA.

VAWA 2013 provides protections for both applicants for and tenants of assistance under a VAWA-covered housing program. VAWA 2013 covers applicants, as well as tenants, in the statute's nondiscrimination and notification provisions. However, the emergency transfer and bifurcation provisions of the rule are applicable solely to tenants. The statutory provisions of VAWA that require a notice of occupancy rights, an emergency transfer plan, and allow for the possibility of bifurcation of a lease, support that it is a rental housing situation that is the focus of the VAWA protections. However, as described in this final rule, the core statutory protections of VAWA that prohibit

HUD's Final Rule was published Nov. 16, 2016 and became effective December 16, 2016. Compliance with the rule re: completing an emergency transfer plan/providing emergency transfers, and associated recordkeeping and reporting requirements, was required by June 14, 2017.

HUD issued a correction in the Federal Register on December 6, 2016 because of an incorrect compliance date in the preamble and an incorrect paragraph designation in the regulatory text.

Programs Impacted by HUD's Final Rule

- Only HUD Covered Programs
- Not programs which HUD doesn't oversee: Tax Credits and Rural Development



Important Focal Points Contained In HUD's Notice



- Non-Discrimination (regardless of sex, marital status, gender identity, or sexual orientation)
- Negative Tenancy Related Behavior That Is **As A Result Of** Domestic Violence which can impact admission (including poor credit, rental history, criminal) and tenancy (Failure to recertify or report for an interim when required; Failure to report income; Unauthorized occupant; Interference with other resident's quiet enjoyment; Property damage; and Non-payment of rent)
- Documentation of Domestic Violence, Dating Violence, Sexual Assault or Stalking (*Form for Certification Of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking, And Alternate Documentation-[HUD-5382](#)*)
- General Notice Requirements (*Notice of Occupancy Rights Under the VAWA-[HUD-5380](#)*)
- Confidentiality
- Lease Bifurcation (establishing eligibility)
- Emergency Transfers (*Form for Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking-[HUD-5383](#) and Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking-[HUD-5381](#)*)

How Do I Comply With The Letter And Spirit Of The Law?

- **Identify who is responsible for Implementation/Over-site**
 - Similar to a 504 Coordination
- **Conduct a “self-evaluation” of admission, occupancy and eviction process: rules, policies, procedures and services to determine if they discriminate on their face or have a disparate impact and that they’ve incorporated VAWA requirements.**
 - We will be developing a sample
 - This includes a review of your sites Tenant Selection Plan (TSP)/Admissions and Continued Occupancy Policy (ACOP).
- **Ask local DV organizations to meet with you to discuss barriers and work with them to make changes, if necessary to remove barriers, in a manner that remains effective in providing decent, safe and sanitary housing.**



How Do I Comply With The Letter And Spirit Of The Law? (cont'd)

- **Apply established, written criteria in a neutral, non-discriminatory manner.**
 - This includes not discriminating against victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation
 - Don't ask illegal, unnecessary questions
- **Follow Notice Requirement in a meaningful manner:**
 - Explain the protections to all applicants throughout the application process: not just in writing, but orally—remember, some people don't know how to read, even in their own language, during the application interview, not just when accepting/denying an applicant.
 - Do the same at recertification even though it's not a requirement.
 - Post it, Newsletter.....



How Do I Comply With The Letter And Spirit Of The Law? (cont'd)

- **Follow Confidentiality Requirements**
 - Someone's status as a victim/survivor is protected
 - Follow best business practices (See HUD's Best practices)
- **Implement Emergency Transfer Plan**
 - Must be customized and procedures must be clear
 - Staff trained
- **Train Staff**
 - Customer service (this includes specific issues for survivors, effective communication skills, de-escalation skills)
 - Policies and Procedures





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