



**Housing Matters!**

**VAWA 2013 Updates**

*January 2018*

*NCSHA Conference*

*Edition*

# NCSHA Conference January 2018

<b><i>VAWA – Violence Against Women Act Introduction</i></b> .....	<b>2</b>
History and Definitions .....	2
Covered Violence .....	4
Covered programs .....	5
Prohibitions and Bifurcation .....	6
VAWA Procedures .....	8
Emergency Transfers .....	10
Confidentiality .....	11
VAWA and Specific Programs .....	11
Checklist of Suggested Steps to Comply with VAWA at Tax Credit properties:.....	14
<b><i>Why Housing Matters! And You Too!</i></b> .....	<b>15</b>

## VAWA – Violence Against Women Act Introduction

### Statistics

#### HUD 2011 FHEO Notice on Domestic Violence

Domestic and dating violence, sexual assault and stalking are sad facts of modern life. An estimated **1.3 million** women in the United States are victims of assault by an intimate partner each year. Ultimately, a shocking **1 in every 4** U.S. women will experience intimate partner violence in their lifetime. Additionally, the US Department of Justice Statistics tells us that 85% of victims of violence are women, which means that an additional 15% are men. An estimated 5 million children of both genders each year are also affected, adding to the millions that experience the painful reality that such violence brings. Such statistics represent untold pain, misery and even death. The VAWA seeks to provide a safe place in affordable housing for victims who seek protection from such violence. Most of us can agree that these are worthy goals and makes discussion of how to implement VAWA an important one.



### Women Only?

Because of the name of the law, many people reasonably ask if the Violence Against Women Act only protects women. They are often concerned that would be fair housing gender discrimination, and they are right. Although the name refers to the fact that women are overwhelmingly the victims of violence covered by VAWA, the protections of VAWA apply to all victims, regardless of gender. To do differently WOULD be fair housing gender discrimination.

### History and Definitions

#### VAWA Timeline



**1994:** VAWA was drafted by the office of Senator Joe Biden, with support from a broad coalition of advocacy groups. The Act passed through Congress with bipartisan support in 1994. It was signed by President Bill Clinton on September 13, 1994.

The original Act provided \$1.6 billion toward investigation and prosecution of violent crimes. It also enhanced judicial and law enforcement tools to combat violence against women; improves services for victims; enhances services, protection, and justice for young victims of violence; strengthens the health care system's response to violence against women; and expands protections for Native American women and immigrants.

The Act also establishes the Office on Violence Against Women within the Department of Justice.

# NCSHA Conference January 2018



**2000:** VAWA was re-funded in **2000**. Also in 2000, the Supreme Court of the United States held part of VAWA unconstitutional in *United States v. Morrison* on federalism grounds. A sharply divided Court struck down the VAWA provision allowing women the right to sue their attackers in federal court as an intrusion on state's rights. The provisions providing program funding were unaffected.



**2005:** The 2005 reauthorization first introduced provisions that apply to housing. Specifically affected were section 8 programs and public housing.

**2013:** The 2013 reauthorization expanded the housing programs covered by the Act greatly to include housing funded by additional HUD programs, the Low Income Housing Tax Credit, HOME funds and Rural Development housing programs.



**2016:** On November 16th, 2016, HUD published its final VAWA regulations. These cover HUD programs including HOME Funds. Most of the regulation was to be implemented on December 16th, one month later. However, one portion relating to emergency transfer policies was given an effective date six months later on June 14, 2017.



**2017:** Rural Development followed suit with their guidance in an administrative notice on January 31, 2017. It generally applied the HUD policies. Note, many of the interpretive fine points of this document are taken from HUD regulation. The majority of properties covered by VAWA are HUD-related. Rural Development adopted HUD's regulations by administrative notice.

HUD provided further guidance in Notice H-2017-05 on June 30, 2017.

**Note:** Regulations for the tax credit may never be forthcoming (for reasons discussed in the Tax Credit section below), so the HUD regulation and guidance appears to be the best safe harbor and are quoted as authoritative throughout this manual.

## Covered Violence

### VAWA Sec 3

VAWA seeks to protect victims of four specific types of crimes, as defined below.

#### 1. Domestic violence

Domestic violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by 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. 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. Dating violence

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:
  - I. The length of the relationship;
  - II. The type of relationship; and
  - III. The frequency of interaction between the persons involved in the relationship.

#### 1. Sexual assault

Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

#### 2. Stalking

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.



---

**FAQ:** Why does the government always reference all four types of violence every time they refer to victims of violence? Couldn't it all be called "domestic violence" or "violence"?

**Answer:** HUD has determined that victims of the covered types of violence may not be able to tell that the crime against them is covered by VAWA. For instance, sexual assault is often not by an intimate partner, so using the term "domestic violence" only in relation to VAWA when addressing the public may leave the victims of sexual assault unaware that they are covered by the law. Note: as this manual is designed for practitioners of the program who are well-instructed in the covered types of violence at the outset, we will use "VAWA violence" or "VAWA-covered violence" as a term that covers all four types of violence.

---

# NCSHA Conference January 2018

## Affiliated Individual

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

Note: These individuals are mentioned under VAWA's protections which prohibits denial or termination of occupancy or assistance on the basis of that fact that a resident or *affiliated individual* is a victim of VAWA violence. If they are not applicants or residents, they do not qualify for emergency transfer or eviction protections, however.

## Covered programs

### VAWA Title VI Sec 41411 (a)(3)

The following programs are covered. They are listed by agency.

## HUD

The following programs are monitored by HUD and were covered by VAWA starting in 2005

1. HUD programs assisted under the United States Housing Act of 1937 specifically, public housing under **section 6** of the 1937 Act.
2. Tenant-based and project-based rental assistance under **section 8** of the 1937 Act and the section 8 Moderate Rehabilitation Single Room Occupancy

Starting in 2015 the following HUD programs are now covered:

3. **Section 202** Supportive Housing for the Elderly
4. **Section 811** Supportive Housing for Persons with Disabilities
5. Housing Opportunities for Persons With AIDS (**HOPWA**)
6. **HOME** Investment Partnerships (HOME) program
7. Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act, including the **Emergency Solutions Grants program**, the **Continuum of Care** program and the **Rural Housing Stability Assistance** program
8. Multifamily rental housing under section 221(d)(3) of the National Housing Act with a below-market interest rate (**BMIR**) pursuant to section 221(d)(5)
9. Multifamily rental housing under **section 236** of the National Housing Act
10. The Housing Trust Fund (**HTF**). Although not covered by the VAWA statute, HUD has applied VAWA to the HTF through its regulatory authority.

## IRS

The housing program affected by VAWA 2013 monitored by the IRS and state Housing Finance Agencies is the Low Income Housing Tax Credit (tax credit) program

## Rural Development

Programs monitored by Rural Development under the Rural Housing Services of USDA affected by VAWA 2013 are:

1. **Section 515** Rural Rental Housing
2. Section 514/516 **Farm Labor Housing**
3. **Section 538** Guaranteed Rural Rental Housing
4. **Section 533** Housing Preservation Grant programs.

## Prohibitions and Bifurcation

### VAWA prohibits...

VAWA Title VI Sec 41411 (b)

VAWA tells us that “an applicant for or tenant of housing assisted under a covered housing program may not be denied admission to” or “denied assistance...on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.”



### **EXAMPLE** Landlord References

*Notice the pictured bad landlord reference. The excessive noise and police activity at the applicant's former housing may result in a denial. However, a victim would have the right to protest under VAWA and demonstrate that their status as a victim caused the issues. Do not deny the victim if that was the case.*

**Landlord Reference**

Would you rent to this resident again?

YES  
 NO

If "NO", please provide details:

**EXCESSIVE NOISE AND POLICE CALLS TO THE UNIT.**

Approved  
 Denied

Dear Robin,

We regret to inform you that we are denying your application to our property based on a negative landlord reference per our resident selection policy.

VAWA further tells us that a “tenant of housing assisted under a covered housing program may not be terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.”



This means that criminal activity directly related to violence or “an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be



construed as- a serious or repeated violation of a lease for housing assisted under a covered housing program by the victim or threatened victim of such incident; or good cause for terminating the assistance, tenancy, or occupancy rights to housing assisted under a covered housing program of the victim or threatened victim of such incident.”

### **EXAMPLE** Eviction

*The pictured eviction notice is based on violent threats made by a resident. Robin may be a victim of these threats and may have a basis to request rights under VAWA to avoid eviction.*

**Eviction Notice**

Resident(s): Robin and Bobbi Thorpe  
Unit: 101  
Cause:  
Violent threats made by Bobbi. Serious violation of lease part 1 (TVii)

## Bifurcation

VAWA Title VI Sec 41411 (b)(3)(B)



Allowing victims to stay when there are disturbances raises a concern for many owner/agents. They ask if they cannot evict violent perpetrators and criminals from a property because of the victims in the unit.

The answer is that VAWA allows for leases to be bifurcated. This is a fancy term that means *to separate*. VAWA tells us that we may “bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault,

or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.”

This allows eviction or termination of assistance for the perpetrator while retaining the victim. Remaining members are given a chance to qualify for the housing they reside in. If they do not qualify without the perpetrator, then they must be given “reasonable time” to find other housing or to establish eligibility under another covered housing program. HUD tells us in their guidance that 90 days is a *reasonable time* period with an allowable extension of up to 60 days, at the owner’s discretion.

If an owner can prove that an imminent threat to other tenants exists if the victim is not evicted, there may still be grounds for legal eviction

Victims who remain after bifurcation are not guaranteed to qualify for the program at the property on their own, although often they will.

### *EXAMPLE Failure to qualify after Lease bifurcation (see pictures on prior page)*

*(See pictures) Robin and Bobbi are the residents of a Low-Income Housing Tax Credit unit. Robin is a student, but Bobbi is not. Since the household is not made up entirely of full time students, they qualify under the tax credit student rules. However, later Robin seeks bifurcation of the lease as a protection under VAWA and is successful. Now she alone comprises a household made up completely of full-time students, which is generally not allowed under the tax credit rules. If she does not qualify under an exception to the tax credit student rules, she no longer qualifies for the housing program and the lease allows for termination based on student status, which is separate from her status as a victim. The owner is not required to violate the tax credit rules just to satisfy VAWA. They will, however, give Robin a reasonable time period to find alternative housing.*

OMB Approval No. 2502-0204 (Exp. 06/30/2017)

MODEL LEASE FOR SUBSIDIZED PROGRAMS

1. Parties and Dwelling The parties to this Agreement are CPM, referred to as the Landlord, and Robin Thorpe & Bobbi Thorpe, referred to as the Tenant. The Landlord leases

Unit: 101

**LIHTC Student Eligibility**

Resident(s): Robin and Bobbi Thorpe  
Unit: 101

Is everyone in the household a full-time student?  Yes  No

Do any of the below exceptions apply?  Yes  No

1. Married

OMB Approval No. 2502-0204 (Exp. 06/30/2017)

MODEL LEASE FOR SUBSIDIZED PROGRAMS

1. Parties and Dwelling The parties to this Agreement are CPM, referred to as the Landlord, and Robin Thorpe, referred to as the Tenant. The Landlord leases

Unit: 101

**LIHTC Student Eligibility**

Resident(s): Robin and Bobbi Thorpe  
Unit: 101

Is everyone in the household a full-time student?  Yes  No

Do any of the below exceptions apply?  Yes  No

1. Married

# NCSHA Conference January 2018

It is important to note that VAWA does allow that, if the victim also commits crimes or other lease violations, they can be evicted for those. Although issues related directly to being a victim are covered, other violations are not, whether a person is a victim or not.

## VAWA Procedures

### Notice of Rights

#### VAWA Title VI Sec 41411 (d)

VAWA is somewhat complicated and the writers of the law realized that it would be difficult for many victims to be informed of their rights under VAWA. To address this issue, the statute requires that owner/agents inform residents of their VAWA rights. This is done through a *Notice of Occupancy Rights Under VAWA*. A template of this Notice has been developed by HUD and was released in late 2016 as form *HUD-5380*. A Notice developed based on this template must be given to all residents at move-in. This way they know about VAWA right away. Additionally, at key times where an owner/agent may take negative action that may be related to the applicant or resident being a victim of violence, agents are required to give the household the notice. This includes when an application is denied, or if assistance is denied for properties with rental assistance, if rental assistance is terminated or when notifying of eviction.

The HUD Notice is a template and cannot be used it as-is. It requires customization to a property and area. For one thing, the last page of the Notice template requires that we provide the name and contact information for national victim service agencies as well as local agencies. The national information is provided on the template, but we need to complete the local contact information.

To customize the HUD Notice template the owner/agent must:

1. Customize the document with the housing provider, property and program, as directed on the template. Please note that the Notice mentions *assistance* many times. That refers to *rental assistance*, and if your property does not provide rental subsidy (such as many HOME and tax credit properties), you may consider removing that term.
2. Research and list local victim assistance agencies.
3. Keep the list of agencies updated.

As long as these steps are taken, HUD has done much of the hard work in developing this template Notice.

## Procedure

### VAWA Title VI Sec 41411 (c)

VAWA prescribes a set of actions that are triggered between and owner and an applicant or resident. These are listed below.

**1. Owner takes negative action**

These actions can include denying an applicant occupancy or assistance. They can also include terminating rental assistance or eviction. These are taken as usual per the owner/agent's normal policies and procedures. The agent will provide for the applicant or resident the VAWA Notice of Rights, and a Certification of Violence, which will be discussed in greater detail in a bit. Note that providing this often will satisfy step 3 below.

**2. Victim explains status**

Since the applicant/resident now has the Notice explaining their rights and a copy of the Certification of Violence, they will often provide the Certification and satisfy the next two steps immediately.

**3. Owner requests documentation**

This request must be in writing. Again, providing the Certification of Violence often will often satisfy this step, *as long as it is accompanied with a dated letter*. If the victim does not supply the Certification immediately (steps 2 and 4), they may be given 14 business days to provide documentation. Business days do not include weekends and holidays. Depending on the circumstances, the owner/agent may, but is not required to, allow for more time. If the documentation is not provided in the 14 days, the owner is under no further obligation, and may proceed with the negative action.

**4. Victim provides documentation**

This can include the completed Certification of Violence or other documentation that the applicant/resident may choose. VAWA is designed to allow flexibility of verification. Documentation should not be a barrier to getting a victim the assistance that they need. Various options are mentioned in the law. Below are further details on the three major categories of possible documentation. The first and primary method is self-certification by the victim.

### VAWA Title VI Sec 41411 (d)

**A. Certification of violence.** This is a self-affidavit and is the primary method that a victim can use to declare their status. HUD has expressed their legal opinion that the statute only requires self-certification. There is an exception when there is are conflicting stories from residents. Those situations will be covered later in this manual, but other than conflicting evidence, agents will usually accept self-certification using the Certification form or similar. If an owner does not use the Certification supplied by HUD, VAWA says that the victim cert must include the victim's certification that they are a victim of violence, and that the violence is a type covered by VAWA. They can do this by explaining the incident or incidents on the form. They also need to provide the name of the perpetrator of violence, as long as it is known and they feel that it is safe to do so.

**B. 3rd-party Documentation.** A victim may document their status using a document that is signed by an employee, agent, or volunteer of a victim service provider, an attorney, a medical or a mental health professional from whom an applicant or tenant has sought assistance relating to violence, or the effects of the abuse. The applicant or tenant must also sign this statement. The document must state under penalty of perjury that the professional believes that the incident of violence meets the requirements to be covered by VAWA.

**C. Law enforcement or other.** If we have a record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency; or at the discretion of the manager of housing, a statement or other evidence provided by an applicant or tenant. The point to walk away from is that VAWA does not want lack of documentation to be an issue that results in further harm to victims. Great flexibility is given us to use a wide variety of documentation a victim may be able to supply.

**5. Owner reevaluates negative action and upholds or withdraws it.**



## Conflicting Stories

### VAWA Title VI Sec 41411 (c)(7)

When there are conflicting stories, such as when multiple residents in a unit claim to be a victim of the other residents, then the owner/agent can require 3<sup>rd</sup>-party documentation. HUD considers 30 days a reasonable time for the owner to give the victim to provide alternative documentation.



---

### **EXAMPLE** Evictions & VAWA

*An owner takes action to evict a couple for excessive noise from a unit and a pattern of police visits. Both Robin and Bobbi claim that they are victims of the other and provide completed Certifications of Violence naming their spouse as the perpetrator of violence against them. In the face of conflicting certifications, the manager requires additional documentation. Police reports supplied by Robin establish that officers witnessed Bobbi punching Robin on one occasion and threatening with a golf club on another. Bobbi produces nothing. The manager determines that Robin is the victim with rights under VAWA and Bobbi is the perpetrator.*

---

If documentation is inconclusive, HUD suggests allowing both residents to exercise their rights. An example would be allowing both to continue to get assistance in separate units.

## Emergency Transfers

### VAWA Title VI Sec 41411 (e)

VAWA allows victims who feel that they are in imminent danger of violence if they remain in their current unit to request an emergency transfer to a unit where they will feel safer. This can be on the same property or to another. A special rule also allows victims of sexual assault that occurred on the property to automatically request a transfer within 90 days if they wish. Of course, they also can also request a transfer any time after the 90 days, if they feel they are in imminent danger in the future, as is true with all VAWA victims. The owner may request, but not require that the request be in writing.

---

### **EXAMPLE** VAWA emergency transfer request

*In 1994, Bobbi beat Robin nearly to death. Bobbi went to prison for the attempted murder. In 2017, Bobbi is released and becomes aware of Robin's location. Robin submits a Certification of Violence and describes the past incident of violence. In fear of imminent danger, Robin also submits a Request for Transfer. The owner must apply their VAWA transfer policy.*

---

VAWA makes Agencies responsible for carrying out a housing program responsible for drafting a sample emergency transfer plan to meet VAWA and program-specific requirements. Owners must then implement a plan for each property based on the model.

# NCSHA Conference January 2018

Owner/agents are not required to violate a program requirement to allow the transfer. They are also not required, although they are encouraged, to give victims preference to occupy newly vacant units over others to facilitate these transfers. It is also strongly encouraged that a network of agencies and other housing owners be cultivated to work together to assist victims in covered housing. For transfers within a property or between properties within an owner's control, steps should be taken to minimize the application process as much as allowed by the program.

Costs to transfer are the responsibility of the household, but owners are encouraged to help them locate agencies or resources to assist. Money may be available through the DOJ Office of Justice Programs' Victim's Defense Fund.

## Confidentiality

### VAWA Title VI Sec 41411 (c)(4)

Because a victim's life can be in danger if information is disclosed about their status, personal documentation relating to VAWA must be kept confidential and must not be entered into any shared database or disclosed to any other entity. Shared databases include property management software, **unless it secures sensitive personally identifiable information (PII) under the Privacy Act of 1974 (5 U.S.C. sec. 552a) and 24 CFR 5.2007(c).**



There are exceptions when sharing information outside of those who need to know within a property management company are allowed. Exceptions to this disclosure rule apply when any of the below apply:

- 1) the victim requests or consents to disclosure or
- 2) the documentation is required in a bifurcation eviction proceeding or
- 3) otherwise required by applicable law.

## VAWA and Specific Programs

### Fair Housing

#### HUD 2011 FHEO Notice on Domestic Violence

As discussed in the introduction to this manual, 85% of all victims of domestic violence in the United States are women. Ultimately one in every four U.S. women will experience violence by an intimate partner in their lifetime. HUD's Office of Fair Housing Equal Opportunity explained in a Notice in 2011 that "statistics show that women are overwhelmingly the victims of domestic violence." For example, "in 2009, women were about five times as likely as men to experience domestic violence. These statistics show that discrimination against victims of domestic violence is almost always discrimination against women. Thus, domestic violence survivors who are denied housing, evicted, or deprived of assistance based on the violence in their homes may have a cause of action for sex discrimination under the Fair Housing Act.

In addition, certain other protected classes experience disproportionately high rates for domestic violence...this means that victims of domestic violence may also have a cause for action for race or national origin discrimination under the Fair Housing Act."

The 2011 FHEO Notice also listed 10 example cases where victims of domestic violence successfully pursued action under Fair Housing discrimination. Some of these cases also involved VAWA protections. This makes concerns over VAWA a serious potential Fair Housing issue and owners of properties covered by VAWA should take implementation of VAWA, including training of staff, seriously.

**MOU between the IRS, HUD & DOJ, reproduced in 8823 Guide, Exhibit 13-2**

# NCSHA Conference January 2018

However, if HUD, a substantially equivalent agency or the DOJ find that violations of VAWA rights lead to Fair Housing Act discrimination, tax credits are at risk under section 42 general public use rules. *Note: an actual final determination of discrimination results in credit loss. However, if DOJ or HUD initiates an investigation, they will inform the state HFA, who will report it to the IRS on form 8823.*

## HUD

### VAWA 2005

HUD sections 8 Multi-family and voucher programs as well as Public Housing had implemented VAWA 2005 rules by Notice. The HUD Handbook 4350.3 Change 4, released in 2013, implemented VAWA 2005 for Multi-family section 8.

**HUD 4350.3 4-4 A, B, E & F & 4-4 Figure 4-2 A**

Tenant selection policies need to include VAWA provisions.

**HUD 4350.3 4-6 C 4 & 4-9 A**

Owner-adopted occupancy preferences may be established for victims of violence. Applicants and tenants must not have admission or assistance denied solely because of an incidence of violence of which they or members of their immediate family were a victim.

**HUD 4350.3 4-4 C 9 b 6-4 C & Figure 6-3**

The form HUD 91066 was the original Certificate of Violence. VAWA HUD Form 91067 is a lease addendum designed to apply VAWA 2005. The addendum must be completed and attached to each section 8 lease.

**HUD 4350.3 6-5 G**

A lease may be “bifurcated” to remove an offending household member from the unit without removing the victim(s). The owner is to honor court-orders regarding the distribution of property as a result of the eviction

### VAWA 2013

HUDs regulations in response to the 2013 law revision were released in November 2016. Accompanying them soon thereafter were four forms in support of VAWA. They are forms:

1. HUD-5380 - Sample Notice of Rights Under VAWA
2. HUD-5381 - Model Emergency Transfer Plan
3. HUD-5382 - Certification of Violence and Alternate Documentation (replaces form HUD 91066)
4. HUD-5383 - Emergency Transfer Request

The first form was required by statute for all covered programs. It replaced the old Multi-family form HUD-91006. The others are HUD-specific. The existing VAWA lease addenda (form HUD-91067 for HUD Multi-family housing) were still being developed for future release at the time of the release of the other forms. Implementation was required by December 15, 2016 for most of the rule. All new move-ins will receive the Notice of Rights required under the law. To inform current residents of their VAWA rights, owners were required to provide the Notice of Rights either to all residents at once or during all annual income recertifications conducted for the following year. Emergency transfer plan development and implementation was given a deadline of June 14, 2017.

## Rural Development

**RD AN-4814**

On January 31, 2017, Rural Development issued an administrative notice essentially adopting the HUD regulations. RD encouraged owners to change Management Plans to include emergency transfer



# NCSHA Conference January 2018

provisions. They also suggest altering Tenant Selection Policies and Occupancy Rules to incorporate VAWA provisions. They mandated the use of the HUD forms except the lease addendum, which they strongly suggest using.

## **HB-2-3560 6-18 C and 6-22**

Tenants who are victims and request a Letter of Priority Entitlement (LOPE) will be granted this as RD considers the circumstances to be beyond their control.

## **HB-2-3560 6.30**

Handling of tenants after bifurcation of a lease are covered under existing RD surviving household member and ineligible tenant rules.

## **Tax Credits**

### **VAWA Title VI Sec 41411 (a)(2) & (g)(3)(C) & (b) CONFORMING AMENDMENTS (C)(3)**

#### **§42 (g)(9) IRS Reg 1.42-9(a) 8823 Guide Chapter 13**

The VAWA statute requires certain things from the federal agency that “carries out” each type of covered housing. Clearly HUD and RD carry out housing programs that they regulate, from financing to compliance monitoring. However, the IRS’ verbally stated position is that they do not “carry out” the tax credit program in the same way. They simply monitor owner tax compliance with section 42 of the Internal Revenue Code. State allocating agencies seem to more closely fit the description of ‘carrying out’ the housing, but they are not federal agencies. Additionally, the VAWA law explicitly states that owners are not required to violate section 42 rules to satisfy VAWA and it does not amend section 42 at all. All of this leaves the IRS and state agencies without clear responsibility under VAWA. A lack of a federal agency with responsibility leaves owners without rulemaking guidance for three provisions of VAWA where federal agencies are required to provide guidance. These are listed below.

#### **VAWA Title VI Sec 41411 (b)(3)(B)(ii) 8823 Guide 4-5**

1. The definition of “reasonable time” for households to establish eligibility or to move after lease bifurcation under VAWA. *Note: HUDs definition of 90 days appears to be a safe harbor. However, the effect on tax credits of having a noncompliant household where the 90 days crosses the last day of a taxable year would seem to limit the reasonable time in those cases so as not to create section 42 noncompliance. Because of the way tax credit rules are structured, ineligible student households or those where all original household members have exited the unit and income eligibility needs to be reassessed are the biggest risks after bifurcation.*

#### **VAWA Title VI Sec 41411 (c)(3)(A)**

2. The Certificate of Violence to use. *Note: HUDs form would appear to be sufficient for tax credit purposes.*

#### **VAWA Title VI Sec 41411 (e)**

3. A model emergency transfer plan. *Note: There would appear to be no objection to using HUD’s model.*

Until (and if) the IRS speaks to these issues, the HUD final rule would appear to provide the best safe harbor for applying VAWA to tax credit properties, with the reasonable time provision after bifurcation being limited to the earlier of the time allowed by HUD or the end of the taxable year that the household becomes noncompliant.



## Checklist of Suggested Steps to Comply with VAWA at Tax Credit properties

- Adopt VAWA as guided by HUD if property has HUD (including HOME) or RD funding.

### If not a HUD, HOME or RD property

- Adopt the HUD *Victim Cert* and *Transfer Request* forms.
- Adapt the model HUD *Notice of Rights and Emergency Transfer Plan* to the property and the tax credit rules.
- Provide all current residents the *Notice of Rights* with the *Victim Cert*. These will be provided to all new move-ins and whenever a notice of denial or termination of occupancy or assistance is served.
- Modify tenant selection criteria for VAWA policies.
- Provide staff that interact with applicants and tenants training in VAWA.



## VAWA FAQ:

### HUD Final Rule on VAWA 11-2016

The new regulation answered several questions regarding VAWA, including:

- Q. If a criminal background or bad credit history of an applicant to a property can be tied to the fact that a person is a victim of VAWA violence, is there reason to overturn a denial?
  - A. Possibly. Based on the facts of a case, VAWA may well cover these factors in a victim's life if they directly result from VAWA violence. They may be required to document (including self-affidavit, at the victim's discretion) how the history directly resulted from their victim status to enable the owner/agent to understand the connection.
- Q. Must victims of sexual assault have experienced the assault on the property and within 90 days to qualify for an emergency transfer?
  - A. No. Any victim of violence covered by VAWA qualifies for a transfer if the victim reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same unit that the tenant is currently occupying. This is regardless of how long ago the violence took place. In addition, victims of sexual assault have an additional protection allowing a right to transfer if the assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.
- Q. Must owners give priority to victims of violence seeking to move into their property?
  - A. Owners are encouraged to give preference to victims moving from other properties, but are not required to do so.

## Why Housing Matters! And You Too!



Affordable housing programs can't work without YOU! That's why you're a V.I.P. Keep up the good work that you are doing. These programs that make housing affordable affect the lives and futures of millions of children and adults and the communities that they live in.