



THE VIOLENCE AGAINST WOMEN ACT OF 2013

A. Overview

What is the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), and how is it different from the Violence Against Women Act of 2005 (VAWA 2005)?

VAWA 2013 is a law that provides protections for victims of domestic violence, dating violence, sexual assault, and stalking who are seeking to access or maintain federally-assisted housing. VAWA 2013 continues VAWA 2005's housing safeguards and significantly expands housing protections for victims.

Key changes include covering more federal housing programs; covering sexual assault victims and LGBT victims; requiring emergency transfer policies; providing victims time to establish program eligibility after an abuser has been removed from a lease; and notification of VAWA housing rights to applicants and tenants upon admission, upon denial of admission/assistance, and upon termination/eviction.¹

When did VAWA 2013 become effective?

VAWA 2013 was signed into law on March 7, 2013.

However, there are a few aspects of the law that require federal agency action before implementation can occur, such as the development of certain forms (*e.g.*, a notice of VAWA rights). The basic protections of VAWA 2013, however, are in effect. Basic protections include the prohibition against the denial of admission/assistance, eviction, or subsidy termination of an individual based on his or her status as a victim of abuse.² HUD regulations implementing VAWA 2005 continue to be in effect until further notice.³ Furthermore, HUD has also taken certain steps such as issuing an updated VAWA certification form HUD-50066 to reflect changes made by VAWA 2013.

¹ See generally 42 U.S.C.A. § 14043e-11.

² 42 U.S.C.A. § 14043e-11(b)(1).

³ See generally 78 Fed. Reg. 47,717 (Aug. 6, 2013); 75 Fed. Reg. 66,246 (Oct. 27, 2010).

On April 1, 2015, HUD published its proposed VAWA regulations in the Federal Register.⁴ Those regulations have not been finalized.

Who is required to comply with the law?

Public housing authorities and owners and managers of housing programs covered by VAWA must comply with the law.⁵

B. Coverage

Who does VAWA protect?

VAWA protects anyone who is: (a) a victim of actual or threatened domestic violence, dating violence, sexual assault, or stalking, or an “affiliated individual” of the victim; AND (b) living in, or seeking admission to, a federally assisted housing unit covered by VAWA.⁶

How does VAWA 2013 define “domestic violence,” “dating violence,” “sexual assault,” and “stalking”?

- “Domestic violence” includes felony or misdemeanor crimes of violence committed by:
 - A current or former spouse or intimate partner of the victim;
 - A person with whom the victim shares a child;
 - A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
 - A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or
 - Any other person who committed a crime against an adult or youth victim who is protected under the domestic or family violence laws of the jurisdiction.⁷
- “Dating violence” is violence committed by a person:
 - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

⁴ See generally Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, Proposed Rule, 80 Fed. Reg. 17,548 (Apr. 1, 2015), <http://www.gpo.gov/fdsys/pkg/FR-2015-04-01/pdf/2015-06781.pdf>.

⁵ See generally 42 U.S.C.A. § 14043e-11.

⁶ See generally 42 U.S.C.A. § 14043e-11.

⁷ 42 U.S.C.A. § 13925(a)(8).

- The existence of such a relationship is determined based on the following factors:
 - Length of the relationship
 - Type of relationship
 - Frequency of interaction between the persons involved in the relationship.⁸
- “Sexual assault” means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.⁹
- “Stalking” is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for his or her safety or others; or
 - Suffer substantial emotional distress.¹⁰

Who is an “affiliated individual” for the purposes of VAWA 2013?

An “affiliated individual” can be: a victim’s spouse, parent, sibling, or child; an individual to whom that victim “stands in loco parentis”; or an “individual, tenant, or lawful occupant” living in the victim’s household.¹¹

Under VAWA 2013, “affiliated individuals” do not necessarily have to be related to the victim by blood or marriage.

What types of housing does VAWA 2013 cover?

The law only provides protections for federally-subsidized housing units, and does not apply to private housing without federal subsidies. VAWA 2013 expanded the list of federal housing programs covered by the statute.¹² The following is a list of housing programs covered by VAWA 2013:

- U.S. Department of Housing and Urban Development
 - public housing
 - Section 8 Housing Choice Voucher program
 - project-based Section 8 housing
 - Section 202 supportive housing for the elderly
 - Section 811 supportive housing for persons with disabilities

⁸ 42 U.S.C.A. § 13925(a)(10).

⁹ 42 U.S.C.A. § 13925(a)(29).

¹⁰ 42 U.S.C.A. § 13925(a)(30).

¹¹ 42 U.S.C.A. § 14043e-11(a)(1)(A)-(B).

¹² 42 U.S.C.A. § 14043e-11(a)(3) (listing covered housing programs).

- Section 236 multifamily rental housing
- Section 221(d)(3) Below Market Interest Rate housing (BMIR)
- HOME
- Housing Opportunities for Persons with AIDS (HOPWA)
- McKinney-Vento Act programs for the homeless
- U.S. Department of Agriculture
 - Rural Development (RD) multifamily housing programs
 - Section 515 rural rental housing (42 U.S.C. § 1485)
 - Section 514 and 516 Farm Labor housing (42 U.S.C. §§ 1484, 1486)
 - Section 533 Housing Preservation Grant Program (42 U.S.C. § 1490p)
 - Section 8 multifamily rental housing (42 U.S.C. § 1490p-2)
- U.S. Department of the Treasury
 - Low-Income Housing Tax Credit program (LIHTC)

Note that VAWA coverage was *not* extended to the RD Voucher program, authorized by Section 542 (42 U.S.C. § 1490r). Additionally, VAWA coverage does not include Indian housing programs.

C. Admissions and Evictions/Terminations

How does VAWA affect admissions and terminations?

Under VAWA, a housing provider cannot deny admission or assistance, evict, or terminate housing assistance because a person is a victim of domestic violence, dating violence, sexual assault, or stalking.¹³

Additionally, under VAWA 2013, actual or threatened criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking does not constitute grounds for terminating assistance, tenancy, or occupancy rights of the victim or an affiliated individual of the victim.¹⁴ Furthermore, an abuser's acts of domestic violence, dating violence, sexual assault, or stalking cannot be considered a "serious or repeated" lease violation, or "good cause" for evicting or terminating assistance to the victim or an affiliated individual.¹⁵

What if the abuser is a threat to my staff or other residents?

Despite VAWA's protections, a housing provider may still be able to evict the victim if the housing provider demonstrates the existence of an "actual and imminent threat" to other tenants or employees of the property if the tenant is not evicted or assistance is not

¹³ 42 U.S.C.A. § 14043e-11(b)(1).

¹⁴ 42 U.S.C.A. § 14043e-11(b)(3)(A).

¹⁵ 42 U.S.C.A. § 14043e-11(b)(2)(A)-(B).

terminated.¹⁶ However, as the next question discusses, such evictions or subsidy terminations should be used as a last resort.

What does “actual or imminent threat” mean?

Neither VAWA 2005 nor VAWA 2013 defines “actual and imminent threat.” HUD regulations implementing VAWA 2005 define “actual and imminent threat” as “a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm.”¹⁷ The regulation notes that “words, gestures, actions, or other indicators” constitute such a threat *if they also meet this definition*.¹⁸ The regulation calls for a balancing of factors—such as duration of risk, the seriousness of potential harm, likelihood of the harm occurring, and the time before a harm would occur—to determine if an actual and imminent threat exists.¹⁹

Additionally, the same HUD regulations remind housing providers that eviction or termination on these grounds should be a last resort taken when “no other actions” could be taken to alleviate the threat.²⁰ Other actions may include banning the abuser from the property, providing the victim with a transfer, increasing police presence on the property, or pursuing legal remedies to stop the abuser from acting on threats.²¹

What about criminal activity unrelated to abuse?

VAWA does not protect tenants if the criminal incident for which they are being evicted or denied admission is unrelated to domestic violence, dating violence, sexual assault, or stalking. In determining whether to evict, a housing provider may not hold a victim to a higher standard than other tenants.²²

Am I able to evict the abuser while allowing the victim to remain in the unit?

Yes. A housing provider may bifurcate a lease to evict or terminate assistance to a tenant or occupant who commits acts of violence against family members or others.²³ This action may be taken without evicting or terminating assistance to the victim who is also a tenant or lawful occupant. Bifurcation is applicable to all leases in the covered housing programs. The eviction or termination of the abuser must comply with federal, state, and local law.

¹⁶ 42 U.S.C.A. § 14043e-11(b)(3)(C)(iii).

¹⁷ 24 C.F.R. § 5.2005(e).

¹⁸ 24 C.F.R. § 5.2005(d)(2).

¹⁹ 24 C.F.R. § 5.2005(e).

²⁰ 24 C.F.R. § 5.2005(d)(3).

²¹ 24 C.F.R. § 5.2005(d)(3).

²² 42 U.S.C.A. § 14043e-11(b)(3)(C)(ii).

²³ 42 U.S.C.A. § 14043e-11(b)(3)(B)(i).

Importantly, under HUD's regulations implementing VAWA 2005, in situations where a family has a Section 8 tenant-based voucher and family break-up occurs due to domestic violence, dating violence, or stalking, the public housing authority *must* ensure that the victim retains the Section 8 voucher assistance.²⁴

What happens when the abuser is evicted or terminated and the victim remains in the unit?

If the abuser was the only household member receiving housing assistance, VAWA 2013 states that the victim must be afforded the opportunity to demonstrate eligibility for the housing program.²⁵ If the victim cannot establish eligibility for that program, then the housing provider must allow the victim reasonable time to show that he or she qualifies for another covered housing program, or to relocate to other housing.²⁶ The agency administering the housing program at issue (HUD, USDA, or Treasury) will determine what constitutes a reasonable amount of time.

What if the victim needs to leave a unit for safety reasons?

Section 8 voucher holders can move to another jurisdiction, even during a lease term, to protect the health and safety of someone who has been a victim of domestic violence, dating violence, or stalking.²⁷ Preserving portability for victims was part of VAWA 2005, and was unchanged by VAWA 2013. Thus, sexual assault victims are not explicitly included in this pre-VAWA 2013 protection. However, this should be viewed as an oversight by the authors of VAWA 2013.

VAWA 2013 requires federal agencies administering programs covered by the statute to adopt model emergency transfer policies.²⁸ Once adopted, these policies will be used by housing providers to allow victims of domestic violence, dating violence, sexual assault, and stalking to find safe, alternative housing through one of the covered housing programs. Under these policies, housing providers must allow a victim to transfer if: the tenant requests the transfer, and the tenant either (a) reasonably believes he or she is threatened by imminent harm by more violence, or (b) was a victim of sexual assault on the property up to 90 days before the request.²⁹

Under VAWA 2013, HUD must establish policies and procedures enabling victims who request an emergency transfer to receive a tenant protection voucher. However, the law is not clear if the victim would be entitled to a tenant protection voucher if no transfer policies

²⁴ 24 C.F.R. § 982.315(a)(2).

²⁵ 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii).

²⁶ 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii).

²⁷ See 42 U.S.C.A. § 1437f(r)(5).

²⁸ 42 U.S.C.A. § 14043e-11(e).

²⁹ 42 U.S.C.A. § 14043e-11(e)(1)(A)-(B).

are established.³⁰ Additionally, note that USDA Rural Development (RD) has circulated a model emergency transfer plan in a January 5, 2015 administrative notice.³¹

Proof of Abuse

Can I ask for proof of the abuse?

Housing providers may, *but are not required to*, ask an individual for documentation that he or she is a victim in order to assert VAWA's protections.³² At their discretion, housing providers may apply VAWA to an individual based solely on the individual's statement.³³ However, if the housing provider would like documentation, this request must be made in writing.³⁴

How long does the victim have to produce documentation once it's requested?

The victim has fourteen business days to respond.³⁵ If the individual fails to respond in that timeframe, a housing provider may take an adverse action against the individual. The housing provider is free to extend this timeframe if it is needed by the individual.³⁶

What types of documentation can a victim provide to demonstrate abuse?

If a housing provider requests documentation, the victim may provide:

- a certification form that is approved by the agency administering the program (HUD, USDA, or Treasury), which must state: that the tenant or applicant is a victim of domestic violence, dating violence, sexual assault, or stalking; that the abuse cited is covered by the statute; and the name of the abuser, if the name is known and safe to provide. Form HUD-50066 (public housing, Housing Choice Voucher program) has been updated by HUD post-VAWA 2013, and is included with these materials. Form HUD-91066 (HUD multifamily housing programs) was developed by HUD under VAWA 2005, but has not yet been updated. It is also included with these materials. USDA/Rural Development (RD) has stated its intent to get HUD's permission to use the updated version of Form HUD-91066, when available; RD has also created a suggested alternative certification form that it included in its January

³⁰ See 42 U.S.C.A. § 14043e-11(f).

³¹ See RD AN No. 4778 (1944-N), Attachment B.

³² 42 U.S.C.A. §§ 14043e-11(c)(5), (c)(1).

³³ 42 U.S.C.A. § 14043e-11(c)(3)(D).

³⁴ 42 U.S.C.A. § 14043e-11(c)(1).

³⁵ 42 U.S.C.A. § 14043e-11(c)(2)(A).

³⁶ 42 U.S.C.A. § 14043e-11(c)(2)(B).

2015 notice.³⁷

- documentation signed by the victim and a victim service provider, an attorney, a medical professional, or a mental health professional in which the professional declares under penalty of perjury the professional's belief that the victim has experienced a form of abuse covered by the statute ("third-party documentation"); OR
- a federal, state, tribal, territorial, or local police, court, or administrative record.³⁸

Can I specifically request third-party documentation?

Generally, a housing provider must accept any of the above-listed forms of certification that the victim chooses to provide. However, an exception applies if there are conflicting certifications (*e.g.*, two people claim to be the victim while accusing the other person of being the perpetrator). In these limited circumstances, the housing provider can require the victim to provide third-party documentation.³⁹

What steps must I take to protect the victim's privacy?

Any information provided regarding an individual's status as a victim must be kept confidential. Housing providers may not enter the information into any shared database or provide it to any other entity or person.⁴⁰ The only exceptions are: (1) the victim requests or consents to disclosure in writing; (2) the information is "required for use in an eviction proceeding"; or (3) disclosure is otherwise required by law.⁴¹ HUD regulations implementing VAWA 2005 restrict access to victim information to authorized employees who need such information to perform job duties.⁴²

D. Housing Provider Obligations

Do I have additional VAWA obligations?

VAWA 2013 requires HUD to develop a written notice of an applicant or tenant's rights under the statute.⁴³ Once the notice is developed, VAWA 2013 requires covered housing providers to distribute the notice at three points: (1) upon denial of admission; (2) upon admission; or (3) with a notice of eviction or subsidy termination.⁴⁴ The notice must be accompanied by the federal agency-approved certification form, and must be available in

³⁷ See RD AN No. 4778 (1944-N), Attachment C.

³⁸ See 42 U.S.C.A. § 14043e-11(c)(3).

³⁹ 42 U.S.C.A. § 14043e-11(c)(7).

⁴⁰ 42 U.S.C.A. § 14043e-11(c)(4).

⁴¹ 42 U.S.C.A. § 14043e-11(c)(4)(A)-(C).

⁴² 24 C.F.R. § 5.2007(b)(4)(ii).

⁴³ 42 U.S.C.A. § 14043e-11(d)(1).

⁴⁴ 42 U.S.C.A. § 14043e-11(d)(2)(A)-(C).

non-English languages for persons with limited English proficiency.⁴⁵ However, this notice has not yet been developed by HUD.

Under HUD's regulations implementing VAWA 2005, public housing authorities must provide notice to public housing and Section 8 tenants of their rights under VAWA, including the right to confidentiality, as well as provide notice to owners and managers of covered housing of their rights and obligations under VAWA. In addition, owners and managers of project-based Section 8 units must provide notice to Section 8 tenants of their rights and obligations under VAWA.⁴⁶

E. Guidance and Resources

What guidance is available concerning VAWA 2013?

- The VAWA 2013 housing protections are codified at 42 U.S.C.A. § 14043e-11.
- 75 Fed. Reg. 66,246 (Oct. 27, 2010) (VAWA 2005 regulations): HUD's regulations implementing VAWA 2005 are still in effect until the agency indicates otherwise.
- 78 Fed. Reg. 47,717 (Aug. 6, 2013): This notice provides an overview of key aspects of VAWA 2013.
- 80 Fed. Reg. 17,548 (Apr. 1, 2015): This notice includes HUD's proposed regulations regarding implementation of VAWA 2013's housing protections in HUD-covered programs. This notice is available at: <http://www.gpo.gov/fdsys/pkg/FR-2015-04-01/pdf/2015-06781.pdf>
- USDA, RD AN No. 4778 (1944-N) (Jan. 5, 2015): Rural Development Administrative Notice (AN) addressed to RD multifamily housing program directors concerning implementation of VAWA 2013; includes a model emergency transfer plan and suggested VAWA certification notice; updates and clarifications since prior AN on VAWA, available at: <http://www.rd.usda.gov/files/an4778.pdf>
- HUD Office of Community and Planning Development (CPD), *HOMEfires* Newsletter (Dec. 2013): outlining VAWA 2013 housing protections while telling housing providers not to wait for HUD rulemaking to extend basic VAWA protections, available at: <https://www.onecpd.info/resources/documents/HOMEfires-Vol11-No1-Violence-Against-Women-Reauthorization-Act-2013.pdf>
- Letter from HUD PIH to PHAs regarding VAWA 2013 (Sept. 2013): Describes VAWA 2013 housing protections and reminds PHAs to update planning documents to reflect new housing protections, available at: <http://nhlp.org/files/Sept%202013%20VAWA%20letter%20to%20PHAs.pdf>

⁴⁵ 42 U.S.C.A. § 14043e-11(d)(2)(D).

⁴⁶ 24 C.F.R. § 5.2005(a)(1)-(3).

What about other resources?

- NHLP has a summary of the key provisions of VAWA 2013, which formed the basis of this Q&A. To see the full article, please visit:
http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated_1.pdf