

Connecticut Housing Finance Authority
2013 Reauthorization of the Violence Against Women Act (VAWA)
4th Edition, 2017

The Connecticut Housing Finance Authority (CHFA) provides the following as an overview of the HUD 'Final Rule' pertaining to the 2013 Reauthorization of the Violence Against Women Act, or "VAWA." It is intended to provide only a snapshot of the VAWA framework; there are various circumstance specific permutations, definitions, exceptions or mandates of VAWA not covered or intended to be covered here. This material is provided solely as a reference; it should not be used or construed as legal advice or as a legal document or a legally binding or official interpretation of VAWA. CHFA assumes no liability or responsibility for any use of this document beyond its intended purpose as a general reference tool only. Users are cautioned to seek qualified assistance in specifically applying or interpreting requirements of VAWA to their own circumstances.

***On June 30, 2017 HUD issued Notice H 2017-05 – "Violence Against Women Act (VAWA) Reauthorization Act of 2013 - Additional Guidance for Multifamily Owners and Management Agents." This Notice is available at www.hud.gov This Notice supersedes Notice H 2010-23 and H 2009-15.*

***On May 19, 2017 HUD issued Notice PIH-2017-08 (HA), "Violence Against Women Reauthorization Act of 2013 Guidance." That Notice is available at www.hud.gov*

Part 1: Overview

Originally signed into law in 1994

- VAWA codifies "core protections across covered HUD programs to ensure individuals are not denied assistance, evicted, or have their assistance terminated because of their status as victims of domestic violence, dating violence, sexual assault and stalking, or for being affiliated with a victim."¹
- Despite its title, VAWA is gender neutral and its protections apply to ALL persons covered by VAWA in any HUD protected class regardless of gender, gender identity, sexual orientation, marital status or age.
- VAWA presently covers anyone who is the victim of:
 - Actual or threatened domestic violence*
 - Dating violence*
 - Sexual Assault*
 - Stalking *

* See Appendix A for definitions and important disclaimer information.

- The law has been "reauthorized" several times.

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¹ National Council of State Housing Agencies (NCSHA), *HUD Announces VAWA Final Rule*, November 17, 2016, <https://www.ncsha.org/blog/hud-announces-vawa-final-rule> (Accessed March 22, 2017)

- The most recent iteration was the reauthorization of 2013.
 - The Final Rule implementing the expanded mandates of the 2013 reauthorization was published in the Federal Register in November 2016.
 - The reauthorized and expanded VAWA became effective December 16, 2016.
 - It is important for PHA's, affected property owners and managers ("the housing provider") to understand and follow the requirements of the 2013 reauthorization.
- **Effective 12/16/2016**, the housing provider covered by VAWA must provide, *at the time of denial, admittance, eviction, or notice of termination*:
 - A current copy of HUD's Notice of Occupancy Rights, HUD Form 5380*
 - A current copy of HUD's Certification as a Victim, HUD Form 5382*
 - **For current residents, these required notices must be furnished (only once) at Annual Recertification (AR) or at the time of lease renewal, however no later than 12/16/2017.**
 - HUD does not require proof of receipt of these documents.
 - HUD encourages, but does not require, that the Notice of Occupancy Rights be posted in public areas or to the housing provider's website.
 - Both the Occupancy Rights and Victim Certification documents should be made readily available upon request.
 - A readily available point of contact at each property for VAWA related issues should be identified.

**All HUD forms listed in this resource are available at www.hud.gov*

- **No later than 05/15/2017**, the housing provider must also adopt an *Emergency Transfer Plan (ETP) aka VAWA Emergency Transfer Plan (VETP)*
 - The ETP details protocols by which victims can request an emergency transfer along with the obligations and reasonable expectations placed upon the PHA/owner/manager.
 - HUD provides a Model Emergency Transfer Plan, HUD Form 5381.

Part 2: Programs Covered by VAWA

- Under HUD
 - 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
 - Section 236 Multifamily Rental Housing
 - Section 221(d)(3) Below Market Interest Rate (BMIR) housing
 - HOME
 - Housing Opportunities for Persons with AIDS (HOPWA)
 - McKinney-Vento Act programs for the homeless
- Under U.S. Department of Agriculture (USDA)*
 - Rural Development (RD) Multifamily Housing Programs
 - Section 515 Rental Housing
 - Section 514 and 516 Farm Labor Housing
 - Section 533 Housing Preservation Grant Program
 - Section 8 Multifamily Rental Housing

**For USDA RD programs, housing providers should refer to USDA Administrative Notice RD AN No. 4814, dated January 18, 2017, for guidance on VAWA implementation on USDA covered programs. This notice is available at www.rd.usda.gov.*

- Under Department of the Treasury*
 - Low Income Housing Tax Credit (LIHTC) program

**Treasury has not yet promulgated rules regarding VAWA although VAWA protection DOES extend here. The Department of Treasury should be contacted for guidance in administering VAWA at properties under these programs.²*

Part 3: Programs Not Covered by VAWA

- RD Voucher Program
- Indian programs
- State housing programs having no connection to any program otherwise covered by VAWA. Caution should be exercised though to ensure there is NO overlap with a covered program via Section 8, receipt of HUD HOME funding, etc. that could trigger VAWA coverage.
- **BUT...**
 - HUD encourages VAWA's core protections be extended to ALL tenants and applicants, even those not specifically covered.

Part 4: VAWA Protection

Who can receive VAWA protection?

- Any tenant in a VAWA covered program
 - A tenant is an assisted family and any member of the household listed on the lease.³ It also protects:
 - Any "affiliated individual" – "with respect to an individual, means: (A) 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 (B) any individual, tenant, or lawful occupant living in the household of that individual."⁴
 - Generally, VAWA does NOT otherwise cover guests, unauthorized residents, or care providers.
- How does a qualified person request protection?
 - By "self-certifying" that they are a victim of domestic violence, dating violence, stalking, or sexual assault.
 - The self-certifying component carries a low threshold.
 - A verbal assertion of victim status under VAWA may be acceptable to the housing provider
 - **BUT...**
 - The housing provider may request, **IN WRITING**, written certification of victim status.

² Department of Housing and Urban Development; Violence Against Women Reauthorization Act of 2013; Implementation in HUD Housing Programs, 81 Federal Register 221, (16 November 2016), p. 80731

³ 81 Federal Register 221, (16 November 2016), p. 80731

⁴ 81 Federal Register 221, (16 November 2016), p. 80735

- The victim must be given **NO LESS THAN 14** days to provide the requested certification. Extensions up to thirty days, or more, may be granted by the PHA/owner/manager.
 - Should the victim applicant fail to respond to the request for written documentation, the housing provider may evict provided cause for same exists and applicable laws and regulations are followed. Again, every reasonable effort should be made to offer assistance.
- What constitutes acceptable written certification as a victim?
 - HUD Form 5382, *Certification as a Victim*; or,
 - A document signed by a qualified professional and the victim attesting to the victim having requested assistance relating to domestic or dating violence, stalking, or sexual assault and that specifies, under penalty of perjury that said professional believes the conduct to have occurred; or,
 - A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency; or,
 - Any documentation the housing provider deems sufficient.
 - Can a housing provider request additional documentation?
 - Yes, but **ONLY** to clarify conflicting information.
 - e.g., two residents of the same unit both claiming to be a victim and identifying the other as the perpetrator.
 - In this instance, the housing provider may request, **IN WRITING**, that the parties provide third party documentation within 30 days.
 - Once an applicant is deemed a victim for purposes of VAWA they may request:
 - Discretionary accommodation – these can include reconsideration of lease violations, modification of lease term, etc.
 - A bifurcation of the lease allowing the victim to maintain residence independent of a perpetrator who may be listed as the lawful leaseholder.
 - Any termination of lease rights or eviction of the perpetrator must conform to applicable law or regulations.
 - Under these circumstances the victim must be able to demonstrate, within 90 calendar days, eligibility for the same covered program as the perpetrator/lease holder at the time of bifurcation; or,
 - Establish eligibility under a different covered program; or,
 - Find alternative housing.
 - The 90 day period shall not apply if the program requirements prohibit it – in other words VAWA, in this instance, does not supersede program eligibility. It shall also not extend beyond the scheduled expiration of a lease, either term or month-to-month.
 - The housing provider may extend this 90 day period for an additional 60 days.
 - An emergency transfer, either verbally or in writing.
 - Housing providers *may* ask that the request be in writing. Housing providers should move in an expeditious manner within the context that an “emergency” implies.
 - HUD provides an Emergency Transfer Request form, HUD Form 5383.
 - A certified victim may qualify for an emergency transfer if:
 - The victim requests it.
 - The victim believes they are in imminent danger if they remain in the unit.
 - The person was a victim of a sexual assault *on the premises* within the 90 days preceding the request.

- Once the request for an emergency transfer is made:
 - The housing provider should meet with the victim to discuss whether the request will be granted and to discuss available options.
 - ❖ Keep in mind the goal is to provide reasonable assistance!
 - ❖ A person requesting an emergency transfer is *not* guaranteed a transfer, but all reasonable accommodations should be considered.
 - An emergency transfer can be “internal” or “external.”
 - Internal transfers involve relocation to another unit where the victim would not be considered a new resident subject to an application process.
 - Provided the specific assistance program allows it, the policy **MUST** allow for an immediate internal transfer if the housing provider has a safe unit immediately available.
 - The victim defines what a “safe” unit is.
 - The policy must ensure what the housing provider can do to prioritize an internal transfer if a safe unit is not immediately available. This could include modifying existing tenant selection plans.
 - External transfers involve relocation to a unit where the victim would be considered a new resident subject to an application process. This may involve a transfer to a different housing provider.
 - The policy should describe the reasonable efforts a housing provider will take to assist with an external transfer.
 - A person may request both an internal and external transfer simultaneously if a safe unit is not immediately available.
- There may be circumstances that allow for the eviction of the involved persons.
 - Eviction is inconsistent with the purpose of VAWA and should be avoided if possible.
 - The housing provider cannot evict a protected person for activity tied directly to VAWA protected incidents. e.g., repeated lease violations owing to disturbances created by the resident victim being assaulted by the perpetrator.
 - Eviction may be an option if the housing provider would normally have the right to do so independent of any VAWA protection.
 - It is important that the housing provider not apply different standards to similarly situated tenants.
 - Eviction is also allowed if the housing provider can articulate that an actual imminent threat exists to other residents, property employees, or service providers if that resident or affiliated person is allowed to remain.

Part 5: Record Retention and Reporting

- HUD confidentiality, records retention, and reporting requirements
 - Housing providers must maintain VAWA related records separately from other tenant files.
 - Under no circumstances should the perpetrator be advised of the victim’s new location.
 - VAWA related information should **NOT** be entered into any shared database or otherwise released unless:
 - The victim provides a time limited written release.
 - The information is required in a termination of assistance or eviction proceeding.
 - Applicable law requires the release.
 - Housing providers are required to retain records of emergency transfer requests and the outcomes of those requests for 3 years.
 - HUD requires an annual report on these requests.

Part 6: Conclusion

Covered housing providers need to ensure careful compliance with all aspects of VAWA, including required notifications. CHFA WILL INSPECT FOR COMPLIANCE DURING THE COURSE OF SITE VISITS. Much of this information can be obtained through HUD and the following HUD forms, previously discussed:

- HUD Form 5380, *Notification of Occupancy Rights**
- HUD Form 5381, *Model Emergency Transfer Plan**
- HUD Form 5382, *Certification as a Victim**
- HUD Form 5383, *Emergency Transfer Request Form**

* All HUD forms are available at www.hud.gov

APPENDIX A – Definitions

These definitions were obtained from 42 U.S.C. § 13925. CHFA provides these definitions as a general reference tool only. CHFA assumes no responsibility or liability related to the application of these definitions or any changes to the definitions. Users are cautioned to seek qualified assistance in specifically applying or interpreting these definitions or requirements of VAWA to their own circumstances.

“Domestic Violence”- The term ‘domestic violence’ includes 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.”

“Dating Violence”- The term ‘dating violence’ means violence committed by a person-

- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) 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.
 - (iii) The frequency of interaction between the persons involved in the relationship.

“Sexual Assault”- The term ‘sexual assault’ means any non-consensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.”

“Stalking”- The term ‘stalking’ means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress.”