

# HUD's Proposed Rule Implementing VAWA 2013

○

**KARLO NG & RENEE WILLIAMS**  
NATIONAL HOUSING LAW PROJECT

**KATE WALZ**  
SHRIVER CENTER ON POVERTY LAW

MAY 21, 2015

## HOUSING JUSTICE

National Housing Law Project

## GoToWebinar Interface

1. Viewer Window

2. Control Panel

The screenshot displays the GoToWebinar interface. On the left is the 'Viewer Window' titled 'Give Online Punch' by 'CB Presentations'. It includes contact information: Dial: (805) 879-4135, Access Code: 105-748-644, and Audio PIN: 74. A video thumbnail shows 'Corena Bahr, CEO and Founder, CB Presentations'. On the right is the 'Control Panel' with 'Audio Mode' set to 'Use Telephone'. It lists the same dial and access code, and highlights the 'Audio PIN: 74'. Below the audio settings is a 'Questions' section with a 'Questions Log' and an input field for questions. The Windows taskbar at the bottom shows the time as 4:11 PM.

## Housekeeping

3

- Materials were emailed to registrants and will be emailed again after the webinar, along with the evaluations.
- Materials and recording will be posted at <http://nhlp.org/OVWgrantees>.
- MCLE certificates will be emailed to California attorneys.

## Goals for Today

4

- Overview of key parts of HUD's proposed VAWA rule:
  - Covered housing programs and who VAWA protects
  - Who is the "covered housing provider"?
  - Basic anti-discrimination rights and limitations
  - Lease bifurcations
  - Emergency transfers
  - Documentation to claim VAWA housing protections
  - Confidentiality
  - Notice of VAWA rights and VAWA self-certification form
  - Issues specific to certain housing programs

## What We Are Not Covering

5

- **We will not cover**
  - Basics of VAWA 2013's housing protections
    - ✦ <http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated.pdf>
    - ✦ <http://nhlp.org/node/1484/>
  - VAWA implementation by other federal agencies
    - ✦ Stay tuned for upcoming webinar

## General vs. Program-Specific Regulations

6

- **The proposed rule significantly amends:**
  - general VAWA housing regulations that apply to all of the covered housing programs
  - specific regulations governing each of the covered housing programs
- **When there is a conflict between general and program-specific regulations, the program regulations govern.**
- **When multiple types of assistance are involved, the program regulations providing the most protections govern.**



## What HUD Programs are Covered?

7

Public Housing	Section 8 vouchers
Project-based Section 8	Section 811 Supportive Housing for People with Disabilities
Section 202 Supportive Housing for the Elderly  (Excludes Section 202 Direct Loan Projects without project-based Section 8 assistance)	§ 221d3 BMIR (Below Market Interest Rate)  (Excludes 221(d)(3) and (d)(5) BMIR projects refinancing under 223(a)(7) or 223(f) where interest rates not determined under 221(d)(5))
§ 236 Multifamily rental housing	HOME
HOPWA (Hous. Opp. for Pple w/AIDS)	Housing Trust Fund
McKinney-Vento (Homelessness Programs)  (Includes Emergency Solutions Grant; Continuum of Care (except safe havens); Rural Housing Stability Assistance program)	

## Who is Protected?

8

- Survivors of
  - **Domestic violence** – definition same as statute; includes definitions of “intimate partner” and “crimes of violence”
    - ✦ “Intimate partner”: adopts definition from 18 U.S.C. § 2266
      - Includes spouses, former spouses, someone with whom the person shares a child, someone with whom the person has lived as a spouse, someone with whom the person shares or has shared a romantic/intimate relationship, individuals who are treated like a spouse under state/tribal law
    - ✦ “Crimes of violence”: adopts definition from 18 U.S.C. § 16
      - Includes offenses involving use of or threats of physical force against another person or the property of another; felonies that include substantial risk of physical force against another person or the property of another

## Who is Protected? (cont'd)

9

- **Survivors of**
  - **Dating violence** – definition same as statute
  - **Sexual assault** – definition same as statute
  - **Stalking** – definition same as statute
- **VAWA applies to survivors “regardless of sex, gender identity, sexual orientation, disability, or age.”**

## Who is Protected? (cont'd)

10

- **“Affiliated individual” of the survivor**
  - Replaces VAWA 2005’s “immediate family member”
  - Includes immediate family or household member
  - HUD’s definition similar to statute (defines “loco parentis”)
  - HUD’s comments
    - ✦ VAWA only covers tenants or individuals on the lease; affiliated individuals not on lease are not covered
      - E.g. VAWA does not apply to guests, caretakers, live-in aides, and unreported members of the household
    - ✦ Affiliated individual is protected as applicant and cannot be denied admission or assistance because of violence/abuse
    - ✦ Tenant cannot be evicted or denied assistance for violence/abuse committed against affiliated individual

## Who/What is the “Covered Housing Provider”?

11

- Individuals or entities responsible for administering or overseeing VAWA protections
  - Includes housing authorities, state/local governments, owners, managers, sponsors, mortgagors, and nonprofit or for-profit organizations or entities
- Depending on the VAWA obligation, there can be different covered housing providers responsible

## What Does the “Covered Housing Provider” Do?

12

- The “covered housing provider” **must**:
  - Not discriminate against survivors and affiliated individuals
  - Provide VAWA rights notice and self-certification form
  - Adopt an emergency transfer plan
  - Keep survivor’s information confidential
  - Comply with court orders re: property rights
- The “covered housing provider” **can**:
  - Authorize a lease bifurcation
  - Determine whether to evict/terminate assistance based on non-VAWA violation or “actual and imminent” threat
  - Request documentation re: violence or abuse



## Examples of “Covered Housing Provider”

13

**Public Housing** – public housing authority (PHA)

**Section 8 vouchers** – PHA or owner

**HOME** – Participating jurisdiction/designee, owner, entity administering tenant-based assistance

## Admissions and Evictions

14

- Housing provider cannot deny an applicant housing/assistance or evict/terminate assistance for a tenant on the basis that s/he is or has been a survivor.
- Crimes against a survivor directly relating to the violence/abuse are not grounds for evicting the survivor or terminating his/her rental subsidy.
- An incident of actual or threatened violence/abuse does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating his/her rental subsidy.

## Limitations

15

### Housing provider

- must comply with court orders re: property rights
- can evict or terminate assistance for violation **not premised on violence/abuse** (i.e. subject to VAWA).
  - Must subject survivor to the same standard as other tenants (i.e., cannot impose more demanding standard on survivor)
- can evict if the housing provider can demonstrate “actual and imminent threat” to other tenants or employees at the property if survivor is not evicted.
  - Retains definition of “actual and imminent threat” from 2005 VAWA regulations and emphasis that exception should be used as last resort

## Lease Bifurcation

16

### Generally

- A housing provider can “bifurcate” a lease or evict an abuser while allowing the survivor and other remaining tenants to stay subject to program requirements and state/local law.
- Remaining tenants can continue to reside under existing lease requirements or lease may be revised depending on eligibility for continued occupancy.
- After lease bifurcation, if abuser was only tenant on housing assistance, housing provider must give remaining tenant(s) “reasonable time” of **60 calendar days** to establish eligibility for same program or other covered program and **another 30 calendar days** to find other housing.



## Lease Bifurcation – Special Rules

17

- **HOPWA**
  - General reasonable time provision **does not apply**. Provide remaining tenants reasonable grace period of at least 90 days and at most a year. Must notify participants of period and may assist them with information on other available housing programs and moving expenses.
- **CoC**
  - General reasonable time provision **does not apply**. For permanent supportive housing, if qualifying member evicted due to lease bifurcation, remaining household have right to rental assistance until lease expires.

## Lease Bifurcation – Special Rules (cont'd)

18

- **HOME**
  - General reasonable time provision does not apply.
  - Participating jurisdiction/designee decides what is a “reasonable opportunity” for remaining tenant to establish eligibility for project- and tenant-based assistance.
  - For project-based and tenant-based assistance, if tenant cannot establish eligibility within time frame, owner must give tenant at least 60 days to find other housing
  - For tenant-based assistance, participating jurisdiction/designee decides what VAWA protections apply to remaining tenants if qualifying tenant is removed
  - For tenant-based assistance, if family separates because of bifurcation and both families eligible, participating jurisdiction/designee decides which family keeps assistance and if other family gets new assistance.

## Emergency Transfers

19

- VAWA 2013 mandates each federal agency to adopt a model emergency transfer plan to be used by housing providers.
- Transfer plan must allow survivor tenants to transfer to another available and safe unit assisted under covered housing program if
  - (1) tenant expressly requests the transfer and
  - (2) either tenant reasonably believes that s/he is threatened with imminent harm from further violence if s/he remains or tenant is a victim of sexual assault that occurred on premises within 90 days before request
- Transfer plan must ensure “strict” confidentiality so that housing provider does not disclose location of new unit to abuser

## Emergency Transfers (cont'd)

20

### HUD Proposed Rule 2013:

- Basic model plan proposed;
- Existing proof requirement may not apply;
- Existing policies governing transfers should determine associated housing transfer costs, including providers covering these costs;
- Focus on “available & safe” unit – with consideration for availability, eligibility, waiting lists, tenant preferences, unit restrictions, and safety;
- Covered housing program at a minimum must try to secure a transfer to a unit within the provider’s control;
- HUD may issue a model transfer request form.



## HUD Seeks Model Plan Examples

21

- Chicago – Project-based Section 8 transfers
- HUD Regional Multifamily Office: survivors and their advocates can seek a VAWA transfer facilitated by the HUD regional office, who identifies vacancies and offers those housing choices to the survivor;
- Transfer unit available between 48 hours and two weeks, depending on survivor needs and availability of safe units.

## Specific Programs and Emergency Transfers

22

- **Emergency Solutions Grant Program**
  - Plans developed by recipient or for recipient to require subrecipients to develop plan; recipient must specify what jurisdiction the plan covers; each recipient and subrecipient must adopt the plan.
  - Participants with short or medium-term rental assistance qualify for VAWA transfer;
  - ESG funds can be used for damages caused by the early lease termination. Costs not subject to 24-month limit on rental assistance.



## Specific Programs and Transfers (cont'd)

23

- **Continuum of Care Program**
  - COC must develop the emergency transfer plan to coordinate emergency transfers within geographic area;
  - Plan must require all recipients and subrecipients in the geographic area to use the plan;
  - Plan must allow recipients/subrecipients of tenant-based assistance grants to use grant funds to pay for damages related to early lease termination.
  - If lease bifurcation due to VAWA results in the eviction of the qualifying member, remaining household members have a right to continued assistance until lease in effect at time of eviction expires.
  - Except for tenant based rental assistance, recipient/subrecipient must require lease/occupancy agreement to allow tenant to terminate lease without penalty if recipient/subrecipient determines emergency transfer requirements met.

## Specific Programs and Transfers (cont'd)

24

- **HOME**
  - VAWA lease term/addendum must allow tenant to terminate lease without penalty if participating jurisdiction/designee determines tenant qualifies for emergency transfer.
- **HOPWA**
  - Tenant-based assistance – Project sponsor determines case-by-case whether to provide tenant-based assistance to remaining tenant if emergency transfer leads to household division
  - VAWA lease term/addendum must allow tenant to terminate lease without penalty if determination made tenant has met emergency transfer conditions.

## Proving Abuse

25

- Covered housing provider is free to take tenant at his/her word, or can ask tenant to prove violence/abuse.
- Any request by covered housing provider for proof must be in writing.
- Tenant has 14 business days from covered housing provider's request to provide proof.
- Covered housing provider is free to grant extension.
- HUD considering whether to require documentation for emergency transfers.

## Proving Abuse – Options for Documentation

26

### 1. Self-Certification Form

- Certification via form *approved* by appropriate federal agency.
- This form must (1) state that the applicant or tenant is victim; (2) state that the incident is ground for protection meeting requirements under VAWA and (3) include perpetrator's name, *if known and safe to provide*.

### 2. Police, Court or Administrative Record

- Record can be from a federal, state, tribal, territorial, or local entity or administrative record.

### 3. Statement from Third Party

- Can be from a victim service provider, medical professional, mental health professional or attorney.
- Must be signed by both the third party and the survivor under penalty of perjury.

### 4. Other Documentation



## Self-Certification Form

27

- HUD proposes a new self-certification form for all HUD programs – Appendix C
- Terminology change to reflect VAWA 2013
- Shortened space to describe the violence/abuse so as not to signal detailed description is needed

## Conflicting Certification

28

- In cases where the housing provider receives conflicting certification, the housing provider can require third-party documentation.
- HUD is considering whether to have 14-business-day timeframe for third-party documentation when there is conflicting certification. HUD recognizes more time may be needed.



## Confidentiality

29

- HUD changed VAWA provision to make clear that information submitted to housing provider re: individual's status as survivor shall not be entered into shared database or disclosed to others
- Adds exception to confidentiality - disclosure for use in a hearing re: assistance termination from covered program

## Notification and Self-Certification Form

30

- HUD developed a customizable notice of VAWA housing rights (HUD notice) for applicants and tenants – Appendix A
- Covered housing provider must provide HUD notice along with self-certification form to applicants and tenants
  - (1) at the time an applicant is denied admission or assistance;
  - (2) at the time individual is admitted or given assistance; and
  - (3) with any notification of eviction or assistance termination.
- HUD proposes to distribute notice and form to all tenants.

## Notice and Form: Language Access

31

- HUD proposed rule confirms that HUD guidance prohibiting discrimination against LEP persons is applicable, including specifically for the HUD notice and self certification form.
- No mention in proposed rule re: who is responsible for translating notice and form.

## Other General Requirements

32

- No preemption for laws that provide greater protections for survivors



## Issues Specific to Certain Programs

33

- **Section 8 voucher**
  - Voucher portability
    - VAWA exception to general prohibitions against
      - Moving during first year of lease or moving more than once during a one-year period.
      - (homeownership) Moving with assistance to new unit if family member owns title or interest in prior home
    - Policies do not apply when move is needed to protect health and safety or family member was sexual assault victim on premises within 90 days before request to move
  - Preserving voucher for survivor
    - If a family breakup results from violence/abuse, “the PHA must ensure that the victim retains assistance.” (emphasis added)

## Issues Specific to Certain Programs (cont'd)

34

- **Effective date**
  - HOME - VAWA does not apply to HOME housing if funded before [effective date of final rule].
  - HOPWA
    - ✘ For formula grants, VAWA compliance not required for project with funding earlier than [effective date of final rule].
    - ✘ For competitive grants, VAWA requirements apply to grant or renewal agreements executed for first full fiscal year starting on [effective date of final rule].
  - ESG - VAWA applies to eligibility and termination decisions made for rental assistance on or after [effective date of final rule].
  - CoC – VAWA applies to grants awarded under NOFAs published on or after [effective date of final rule]. Compliance encouraged for grants awarded under NOFAs published earlier than [effective date of final rule].



## Issues Specific to Certain Programs (cont'd)

35

- **VAWA protections in written documents and applicable period**
  - ESG – Rental assistance agreements and leases
  - CoC – Contracts and leases with owner/landlord
  - HOPWA – VAWA lease term/addendum
  - HOME – VAWA lease term/addendum; written agreements for HOME funds between participating jurisdiction and owner/sponsor/developer; tenant selection policies/criteria must comply
- **“Optional policy”**
  - ESG and CoC – Establish written policy allowing or requiring tenants to seek recipient/subrecipient’s assistance in preventing owner/landlord from violating VAWA

## What is Not Addressed?

36

- **HUD’s proposed rule does not address:**
  - Policy for VAWA tenant protection vouchers
    - ✦ HUD Secretary must establish policies and procedures under which a survivor requesting an emergency transfer can receive a tenant protection voucher. 42 U.S.C. 14043e-11(f)
  - Enforcement of VAWA housing provisions

## Public Comments to HUD

37

- Proposed rule available at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-01/pdf/2015-06781.pdf>
- Public comments due on June 1, 2015
- <http://www.regulations.gov/#!documentDetail;D=HUD-2015-0028-0001>

## Thank You!

38

Karlo Ng, [kng@nhlp.org](mailto:kng@nhlp.org)  
Renee Williams, [rwilliams@nhlp.org](mailto:rwilliams@nhlp.org)  
Kate Walz, [katewalz@povertylaw.org](mailto:katewalz@povertylaw.org)

[www.nhlp.org/OVWgrantees](http://www.nhlp.org/OVWgrantees)

*This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*