

The Violence Against Women Reauthorization Act of 2013: Q&A for Advocates May 2014



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 survivors 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 survivors. Key changes include covering more federal housing programs; covering survivors of sexual assault and LGBT survivors; providing emergency transfer policies; providing survivors 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. *See generally* 42 U.S.C.A. § 14043e-11.

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/her status as a survivor. 42 U.S.C.A. § 14043e-11(b)(1).

In addition, HUD has indicated that the agency's regulations implementing VAWA 2005 continue to be in effect until further notice. *See generally* 78 Fed. Reg. 47,717 (Aug. 6, 2013); 75 Fed. Reg. 66,246 (Oct. 27, 2010).

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

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

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. 42 U.S.C.A. § 13925(a)(8).
- “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
 - 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. 42 U.S.C.A. § 13925(a)(10).
- “Sexual assault” means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent. 42 U.S.C.A. § 13925(a)(29).
- “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. 42 U.S.C.A. § 13925(a)(30).

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

An “affiliated individual” can be: a survivor’s spouse, parent, sibling, or child; an individual to whom that survivor “stands in loco parentis”; or an “individual, tenant, or lawful occupant” living in the survivor’s household. 42 U.S.C.A. § 14043e-11(a)(1)(A)-(B). Under VAWA 2013, “affiliated individuals” do not necessarily have to be related to the survivor 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. 42 U.S.C.A. § 14043e-11(a)(3) (listing covered housing programs). 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
 - 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
- U.S. Department of Agriculture
 - Rural Development (RD) multifamily housing programs
- U.S. Department of the Treasury
 - Low-Income Housing Tax Credit program (LIHTC)

Admissions and Evictions/Terminations

How does VAWA affect admissions and terminations?

An individual's status as a survivor of domestic violence, dating violence, sexual assault, or stalking is not an appropriate basis for denial of admission/assistance, eviction, or termination of housing assistance. 42 U.S.C.A. § 14043e-11(b)(1).

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 survivor or an affiliated individual of the survivor. 42 U.S.C.A. § 14043e-11(b)(3)(A). In addition, 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 survivor or an affiliated individual. 42 U.S.C.A. § 14043e-11(b)(2)(A)-(B).

What if a housing provider says that the abuser is a threat to staff or other residents?

Despite VAWA's protections, a housing provider may still be able to evict the survivor if the housing provider can demonstrate an "actual and imminent threat" to other tenants or employees of the property if the survivor is not evicted or assistance is not terminated. 42 U.S.C.A. § 14043e-11(b)(3)(C)(iii).

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." 24 C.F.R. § 5.2005(e). The regulation notes that "words, gestures, actions, or other indicators" constitute such a threat *if they also meet this definition*. 24 C.F.R. § 5.2005(d)(2). 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. 24 C.F.R. § 5.2005(e).

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. 24 C.F.R. § 5.2005(d)(3). Other actions may include providing the survivor with a transfer, banning the abuser from the property, increasing police presence on the property, or pursuing legal remedies to stop the abuser from acting on threats.

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 survivor to a higher standard than other tenants. 42 U.S.C.A. § 14043e-11(b)(3)(C)(ii).

Can a housing provider evict the abuser while allowing the survivor 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. 42 U.S.C.A § 14043e-11(b)(3)(B)(i). This action may be taken without evicting or terminating assistance to the survivor 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.

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 C.F.R. § 982.315(a)(2).

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

If the abuser was the only household member receiving housing assistance, VAWA 2013 states that the survivor must be afforded the opportunity to demonstrate eligibility for the housing program. 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii). If the survivor cannot establish eligibility for that program, then the housing provider must allow the survivor reasonable time to show that he/she qualifies for another covered housing program, or to relocate to other housing. 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii). The agency administering the housing program at issue (HUD, USDA, or Treasury) will determine what constitutes a reasonable amount of time.

What if the survivor needs to leave a unit for his or her own safety?

PHAs may permit Section 8 voucher holders to move to another jurisdiction, even during a lease term, to protect the health and safety of someone who has been a survivor of domestic violence, dating violence, or stalking. *See* 42 U.S.C.A. § 1437f(r)(5). Preserving portability for survivors was part of VAWA 2005, and was unchanged by VAWA 2013; thus, sexual assault survivors are not explicitly included in this pre-VAWA 2013 protection. However, this should be viewed as an oversight, and advocates should work to ensure that this oversight is addressed in any subsequent implementing

regulations or documents.

VAWA 2013 requires federal agencies administering programs covered by the statute to adopt model emergency transfer policies. 42 U.S.C.A. § 14043e-11(e). Once adopted, these policies are to be used by housing providers to allow survivors 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 survivor 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) is victim of sexual assault on the property up to 90 days before the request. 42 U.S.C.A. § 14043e-11(e)(1)(A)-(B). Under VAWA 2013, HUD must establish policies and procedures enabling survivors who request an emergency transfer to receive a tenant protection voucher. However, the law is not clear if the survivor would be entitled to a tenant protection voucher if no transfer options were available. *See* 42 U.S.C.A. § 14043e-11(f). Additionally, note that USDA Rural Development has circulated a preliminary model emergency transfer plan in a February 2014 administrative notice. *See* RD AN No. 4747 (1944-N), Attachment B.

Proof of Abuse

Can a housing provider 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 survivor if the individual seeks to assert VAWA's protections. 42 U.S.C.A. § 14043e-11(c)(5). At their discretion, housing providers may apply VAWA to an individual based solely on the individual's statement. 42 U.S.C.A. § 14043e-11(c)(3)(D). However, if the housing provider would like documentation, this request must be made in writing. 42 U.S.C.A. § 14043e-11(c)(1). The individual has fourteen business days to respond. 42 U.S.C.A. § 14043e-11(c)(2)(A). 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. 42 U.S.C.A. § 14043e-11(c)(2)(B).

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

If a housing provider requests documentation, the survivor 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; note that the abuse cited is covered by the statute; and state the name of the abuser, if the name is known and safe to provide (Form HUD-50066 or Form HUD-91066 are the certification forms developed by HUD under VAWA 2005);

- documentation signed by the survivor 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 survivor 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.

See 42 U.S.C.A. § 14043e-11(c)(3). While a provider must accept any of these forms of certification, if there are conflicting certifications (*e.g.*, two people claim to be the victim while accusing the other person of being the perpetrator), the housing provider can require the survivor to provide third-party documentation. 42 U.S.C.A. § 14043e-11(c)(7).

What steps must housing providers take to protect the survivor's privacy?

Any information provided regarding an individual's status as a survivor must be kept confidential. Housing providers may not enter the information into any shared database or provide it to any related entity or person. 42 U.S.C.A. § 14043e-11(c)(4). The only exceptions are: (1) the survivor 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. 42 U.S.C.A. § 14043e-11(c)(4)(A)-(C). HUD regulations implementing VAWA 2005 restrict access to survivor information to authorized employees who need such information to perform job duties. 24 C.F.R. § 5.2007(b)(4)(ii).

Housing Provider Obligations

Do housing providers have to notify applicants and tenants of their VAWA rights?

VAWA 2013 requires HUD to develop a written notice of an applicant or tenant's rights under the statute. 42 U.S.C.A. § 14043e-11(d)(1). 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. 42 U.S.C.A. § 14043e-11(d)(2)(A)-(C). The notice must be accompanied by the federal agency-approved certification form, and must be available in non-English languages for persons with limited English proficiency. 42 U.S.C.A. § 14043e-11(d)(2)(D). 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 assisted 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. 24 C.F.R. § 5.2005(a)(1)-(3).

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.
- USDA, RD AN No. 4747 (1944-N) (Feb. 10, 2014): Rural Development Administrative Notice (AN) addressed to RD multifamily housing program directors concerning implementation of VAWA 2013; includes a model emergency transfer plan, available at: <http://www.rurdev.usda.gov/SupportDocuments/an4747.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>

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%202013%20Bulletin%20Article%20\(Jan%202014\).pdf](http://nhlp.org/files/VAWA%202013%20Bulletin%20Article%20(Jan%202014).pdf)
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