

## VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards

On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).<sup>1</sup> VAWA 2013 extends protections to victims on tribal land as well as LGBT and immigrant survivors of sexual assault and domestic violence. In addition, the law continues many of the housing protections that had been provided by the Violence Against Women Act of 2005 (VAWA 2005) and further expands these safeguards in several crucial ways. These changes include covering more federal housing programs; extending protections to survivors of sexual assault; allowing survivors who remain in the unit to establish eligibility or find new housing when a lease is bifurcated; providing survivors with emergency transfers; and notifying applicants and tenants of VAWA housing rights at three critical junctures. Another notable amendment concerns the mechanics of the revisions: VAWA 2013 makes the housing protections for all covered programs more consistent by repealing many of the prior provisions that had been replicated in several program statutes and consolidating them into a new section within the Violence Against Women Act.<sup>2</sup>

This article summarizes the major housing provisions of VAWA 2013 and highlights key differences between VAWA 2005 and VAWA 2013.

**Housing covered.** Previously, the housing protections of VAWA 2005 only applied to public housing, the Section 8 Housing Choice Voucher program, Section 8 project-based housing, Section 202 housing for the elderly and Section 811 housing for people with disabilities.<sup>3</sup> All of these programs are administered by HUD. VAWA 2013 expanded the list of housing to which VAWA applies by including additional HUD programs and specific affordable housing programs administered by the Department of Agriculture and the Department of Treasury. VAWA 2013 applies to the following types of housing (“covered housing programs”):

- Department of Housing and Urban Development (HUD)
  - Public housing;
  - Section 8 Housing Choice Voucher program;
  - Section 8 project-based housing;
  - Section 202 housing for the elderly;
  - Section 811 housing for people with disabilities;
  - Section 236 multifamily rental housing;
  - Section 221(d)(3) Below Market Interest Rate (BMIR) housing;
  - HOME;
  - Housing Opportunities for People with Aids (HOPWA);
  - McKinney-Vento Act programs.
- Department of Agriculture
  - Rural Development (RD) multifamily housing programs.
- Department of Treasury
  - Low-Income Housing Tax Credit (LIHTC)<sup>4</sup>

While these changes substantially extend VAWA’s coverage to include most affordable housing programs, they provide no protection to tenants in private market-rate housing.

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<sup>1</sup> 42 U.S.C.A. §§ 14043e-11, 1437d note (West 2014).

<sup>2</sup> See generally *id.*

<sup>3</sup> See HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66,246 (Oct. 27, 2010) (codified at 24 C.F.R. Parts 5, 91, 880, et al).

<sup>4</sup> 42 U.S.C.A. § 14043e-11(a)(3) (West 2014).

**Parties whom VAWA protects.** VAWA 2013 expands the housing protections to cover survivors of sexual assault.<sup>5</sup> As such, VAWA 2013 protects anyone who:

1. Is a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking, or an “affiliated individual” of the victim (spouse, parent, brother, sister, or child of that victim; or an individual to whom that victim stands in loco parentis; or an individual, tenant or lawful occupant living in the victim’s household) AND
2. Is living in, or seeking admission to, any of the covered housing programs.<sup>6</sup>

Notably, VAWA 2013 gets rid of the requirement under VAWA 2005 that the household member be related by blood or marriage to the victim.<sup>7</sup> Therefore, VAWA 2013 protects individuals who simply live in the victim’s household, regardless of whether they are related by marriage or blood to the victim.

**Definitions of “domestic violence,” “dating violence,” “sexual assault” and “stalking.”** The new law revised the definition of “domestic violence” to include crimes of violence committed by an intimate partner of the victim or by a person who has cohabitated with the victim as an intimate partner. VAWA 2013 further amended the definition of “stalking” by including a more general definition than had been provided by VAWA 2005.

VAWA 2013 defines the terms in the following manner:

- “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.<sup>8</sup>
- “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.<sup>9</sup>
- “Sexual assault” means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.<sup>10</sup>
- “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

<sup>5</sup> See generally 42 U.S.C.A. § 14043e-11 (West 2014).

<sup>6</sup> *Id.*

<sup>7</sup> 42 U.S.C.A. § 14043e-11(a)(1) (West 2014).

<sup>8</sup> 42 U.S.C.A. § 13925(a)(8) (West 2014).

<sup>9</sup> 42 U.S.C.A. § 13925(a)(10) (West 2014).

<sup>10</sup> 42 U.S.C.A. § 13925(a)(29) (West 2014).

- Suffer substantial emotional distress.<sup>11</sup>

**Parties who must comply with VAWA.** Public housing authorities, owners and managers participating in the covered housing programs must comply with VAWA 2013.<sup>12</sup>

**Denials of admissions, termination of tenancy or assistance.** VAWA 2013 continues VAWA 2005's protections that prohibit an applicant or tenant from being denied admission to, denied assistance under, terminated from participation in, or evicted from housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. Like VAWA 2005, the new law indicates that an incident of actual or threatened domestic violence, dating violence, sexual assault or stalking will not be construed as a serious or repeated violation of the lease by the victim and will not be good cause for terminating the assistance or tenancy of the victim.<sup>13</sup>

**Criminal activity directly related to the abuse.** VAWA 2013 prohibits any person from being denied assistance, tenancy or occupancy rights to housing solely on the basis of criminal activity, if that activity is directly related to domestic violence, dating violence, sexual assault or stalking engaged in by a household member, guest or any person under the tenant's control, if the tenant or affiliated individual of the tenant is the victim.<sup>14</sup>

**“Actual and imminent threat” provision.** As previously authorized by VAWA 2005, a PHA, owner or manager may evict or terminate assistance to a victim if the PHA, owner or manager can demonstrate an actual and imminent threat to other tenants or employees at the property in the event that the tenant is not evicted or terminated from assistance.<sup>15</sup>

Like VAWA 2005, VAWA 2013 does not define “actual and imminent threat.” Therefore, it will be critical for advocates to work with the federal agencies responsible for administering the covered housing programs, especially USDA's Rural Development or the Treasury's IRS, to include in their implementing regulations a clear definition of this crucial term as well as guidance. For example, current HUD regulations implementing VAWA 2005 define the term as a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.<sup>16</sup> Furthermore, the regulations provide that certain factors be considered in determining the existence of an “actual or imminent threat,” including the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.<sup>17</sup> In addition, HUD indicated that eviction or termination of a victim's assistance under this provision should occur “only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator

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<sup>11</sup> 42 U.S.C.A. § 13925(a)(30) (West 2014).

<sup>12</sup> See generally 42 U.S.C.A. § 14043e-11 (West 2014).

<sup>13</sup> See 42 U.S.C.A. § 14043e-11(b)(1), (b)(2) (West 2014). Note that VAWA 2013 did not strike VAWA 2005's protections concerning admissions in the Section 8 Voucher statute, 42 U.S.C.A. § 1437f(o)(6)(B) (West 2014). This is likely an oversight. Advocates should use the housing provisions of VAWA 2013 for these safeguards as applied to the Voucher program because they also cover sexual assault victims.

<sup>14</sup> 42 U.S.C.A. § 14043e-11(b)(3)(A) (West 2014).

<sup>15</sup> 42 U.S.C.A. § 14043e-11(b)(3)(C)(iii) (West 2014).

<sup>16</sup> 24 C.F.R. § 5.2005(e) (2014).

<sup>17</sup> *Id.*

from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat.”<sup>18</sup>

**Victims must be held to the same standard as other tenants.** As under VAWA 2005, for lease violations unrelated to the abuse, a PHA, owner or manager cannot subject an individual who is a victim of domestic violence, dating violence, sexual assault or stalking to a more demanding standard than other tenants in determining whether to evict or terminate assistance.<sup>19</sup>

**Bifurcation.** Like VAWA 2005, VAWA 2013 allows PHAs, owners and managers of the covered housing programs to bifurcate a lease to evict or terminate assistance to any tenant or lawful occupant who engages in criminal acts of violence against an affiliated individual or others. This action may be taken without penalizing the survivor who is also a tenant or lawful occupant.<sup>20</sup>

Importantly, VAWA 2013 adds a new protection for tenants who remain in the housing as a result of the lease bifurcation. Specifically, if a PHA, owner or manager evicts, removes or terminates assistance to an individual because of criminal acts of violence against family members or others, and that individual is the only tenant eligible to receive the housing assistance, then any remaining tenant will have the opportunity to establish eligibility for the assistance. If no tenant can establish such eligibility, then the PHA, owner or manager must provide the tenant reasonable time (as determined by the respective federal agency) to find new housing or to establish eligibility under another covered housing program.<sup>21</sup>

**Portability.** VAWA 2013 makes no change to victims’ protections concerning portability of Section 8 vouchers, as provided by VAWA 2005. Therefore, a PHA may still permit a family with a Section 8 voucher to move to another jurisdiction if the family has complied with all other obligations of the program and is moving to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence or stalking. The PHA may permit the family to move even if the family’s lease term has not yet expired.<sup>22</sup>

Because it left the portability provision untouched, VAWA 2013 failed to extend its coverage to victims of sexual assault. However, because this oversight clearly violates an important purpose of VAWA 2013’s housing provisions – to provide protections to sexual assault victims, advocates should ensure that this protection is clarified and included in the implementing regulations.

**Court orders.** Like VAWA 2005, VAWA 2013 requires that PHAs, owners and managers honor court orders addressing rights of access to or control of property, including civil protection orders issued to protect the victim, as well as orders addressing the distribution or possession of property among household members in a case.<sup>23</sup>

#### **Certification.**

- **Discretion of PHAs and owners.** Like VAWA 2005, VAWA 2013 allows, but does not require, PHAs, owners and managers to make a written request to an individual for certification that he or

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<sup>18</sup> 24 C.F.R. § 5.2005(d)(3) (2014).

<sup>19</sup> 42 U.S.C.A. § 14043e-11(b)(3)(C)(ii) (West 2014).

<sup>20</sup> 42 U.S.C.A. § 14043e-11(b)(3)(B)(i) (West 2014).

<sup>21</sup> 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii) (West 2014).

<sup>22</sup> 42 U.S.C.A. § 1437f(r)(5) (West 2014).

<sup>23</sup> 42 U.S.C.A. § 14043e-11(b)(3)(C)(i) (West 2014).

she is a victim of domestic violence, dating violence, sexual assault or stalking when seeking VAWA's protections. At their discretion, PHAs, owners or managers may apply VAWA to an individual based solely on the individual's statement or other evidence.<sup>24</sup> Any requests for certification must be in writing.

- Agency-approved form. VAWA 2013 revised the certification process outlined under VAWA 2005 and implemented through forms HUD-50066 or HUD-91066. The new law permits PHAs, owners and managers to request that an individual certify via a form approved by the appropriate federal agency. This form must: (1) state that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault or stalking; (2) state that the incident that is the ground for protection meets the requirements under the statute; and (3) include the name of perpetrator, if the name is known and safe to provide.<sup>25</sup>
- Other permissible documents. VAWA 2013 expanded the forms of documentation to include one signed by a victim and a mental health professional in which the professional attests under penalty of perjury. In addition, a victim may now provide an administrative record to document the abuse. Under the new law, instead of the certification form, the applicant or tenant may provide:
  - Documentation signed by the victim and a victim service provider, an attorney, a medical professional, or a mental health professional in which the professional attests under penalty of perjury to his or her belief that the victim has experienced an incident of domestic violence, dating violence, sexual assault or stalking that meets the grounds for protection under the statute; or
  - A federal, state, tribal, territorial, or local law enforcement, court or administrative record.<sup>26</sup>
- Timeline. After a PHA, owner or manager has requested certification in writing, an applicant or tenant has 14 business days to respond to the request. If an individual does not provide the documentation within the 14 days, a PHA, owner or manager may deny admission or assistance, terminate the assistance or bring eviction proceedings for good cause. However, a PHA, owner or manager may extend this timeframe.<sup>27</sup>

**Conflicting certification.** In situations where the PHA, owner or manager receives documentation with conflicting information, VAWA 2013 provides that the PHA, owner or manager may require an applicant or tenant to submit any of the above-mentioned third-party documentation.<sup>28</sup> While VAWA 2005 did not cover this issue, the HUD regulations implementing VAWA 2005 did address the matter by similarly allowing third-party documentation in instances where two or more household members claimed to be the victim and named the other person as the perpetrator.<sup>29</sup>

**Emergency transfers.** VAWA 2013 includes a new provision mandating that each federal agency adopt a model emergency transfer plan to be used by PHAs and owners or managers of housing assisted under the covered housing programs. This transfer plan must allow survivor tenants to transfer to another available and safe dwelling unit assisted under a covered housing program if: (1) the tenant expressly requests the transfer and (2) either the tenant reasonably believes that the tenant is threatened with

<sup>24</sup> 42 U.S.C.A. § 14043e-11(c)(3)(D), (c)(5) (West 2014).

<sup>25</sup> 42 U.S.C.A. § 14043e-11(c)(3)(A) (West 2014).

<sup>26</sup> 42 U.S.C.A. § 14043e-11(c)(3)(B), (C) (West 2014).

<sup>27</sup> 42 U.S.C.A. § 14043e-11(c)(2) (West 2014).

<sup>28</sup> 42 U.S.C.A. § 14043e-11(c)(7) (West 2014).

<sup>29</sup> See 24 C.F.R. § 5.2007(e) (2014).

imminent harm from further violence if the tenant remains within the same assisted dwelling unit, or where the tenant is a victim of sexual assault and the sexual assault occurred on the premises within 90 days before the transfer request. In addition, the transfer plan must incorporate reasonable confidentiality measures to ensure that the PHA, owner or manager does not disclose the location of the new unit to the abuser. Because the new statute fails to explicitly require PHAs and owners to adopt the model plan, regulatory clarifications concerning this duty appear necessary. VAWA 2013 further mandates that HUD establish policies and procedures under which a victim requesting an emergency transfer may receive a tenant protection voucher,<sup>30</sup> although the statute is unclear about whether a victim is entitled to receive a transfer voucher where other transfer options are infeasible.

**Confidentiality.** In addition to the confidentiality mandate under the new emergency transfer provision, VAWA 2013 further requires that a PHA, owner or manager keep confidential the information an individual provides to certify victim status, including the individual's status as a victim. Furthermore, this information cannot be entered into a shared database or disclosed to another entity or individual, unless the disclosure is: requested or consented to by the individual in writing; required for use in an eviction proceeding to determine whether the incident qualifies as a serious or repeated violation of the lease, good cause to terminate assistance or tenancy, or criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking; or otherwise required by law.<sup>31</sup>

The HUD regulations implementing VAWA 2005 also prohibit employees of a PHA, owner or management agent from accessing the information regarding domestic violence unless they are specifically and explicitly authorized to access this information because it is necessary for their work.<sup>32</sup> Presumably, this access limitation will remain effective under VAWA 2013, and, hopefully, will be expanded to the other newly covered housing programs.

**Notification and language access.** VAWA 2013 significantly revised the notification requirements for PHAs and owners or managers of the covered housing programs. The new law requires HUD to develop a notice of VAWA housing rights ("HUD notice"), which includes the right of confidentiality, for applicants and tenants. Specifically, PHAs, owners and managers must provide the HUD notice accompanied by the agency-approved, self-certification form to applicants and tenants: (1) at the time an applicant is denied residency; (2) at the time the individual is admitted; and (3) with any notification of eviction or termination of assistance.<sup>33</sup> In addition, the HUD notice must be available in multiple languages and be consistent with HUD guidance concerning language access for individuals with limited-English proficiency.<sup>34</sup>

**PHA plans.** VAWA 2013 did not amend VAWA 2005's provisions concerning the PHA planning process. Therefore, a PHA must still include in its annual plan a description of any activities, services, or programs being undertaken to assist victims of domestic violence, dating violence, sexual assault or stalking.<sup>35</sup> In addition, a PHA must include in its five-year plan a description of any goals, objectives, policies, or programs it uses to serve victims' housing needs.<sup>36</sup> Furthermore, any local community that

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<sup>30</sup> 42 U.S.C.A. § 14043e-11(e), (f) (West 2014).

<sup>31</sup> 42 U.S.C.A. § 14043e-11(c)(4) (West 2014).

<sup>32</sup> See 24 C.F.R. § 5.2007(b)(4) (2014).

<sup>33</sup> 42 U.S.C.A. § 14043e-11(d) (West 2014).

<sup>34</sup> 42 U.S.C.A. § 14043e-11(d)(2)(D) (West 2014).

<sup>35</sup> 42 U.S.C.A. § 1437c-1(d)(13) (West 2014).

<sup>36</sup> 42 U.S.C.A. § 1437c-1(a)(2) (West 2014).



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receives HUD assistance must include in its consolidated planning process a description of the housing needs of victims of domestic violence, dating violence, sexual assault and stalking.<sup>37</sup>

**Preemption and impact on existing protections.** VAWA 2013 does not preempt any Federal, State or local law that provides greater protections for victims of domestic violence, dating violence, sexual assault or stalking.<sup>38</sup> Further, the new law does not limit any rights or remedies available under Section 6 or 8 of the United States Housing Act of 1937 and the implementing regulations of VAWA 2005's housing provisions.<sup>39</sup> Accordingly, the implementing regulations for VAWA 2013 can only augment the existing regulatory protections.

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<sup>37</sup> 42 U.S.C.A. § 12705(b)(1) (West 2014).

<sup>38</sup> 42 U.S.C.A. § 14043e-11(b)(3)(C)(iv), (c)(8) (West 2014).

<sup>39</sup> 42 U.S.C.A. § 1437d note (West 2014).