

HOUSING JUSTICE

National Housing Law Project

Newsletter April-May 2013

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"). 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. Like VAWA 2005, VAWA 2013 prohibits public housing authorities ("PHAs") and owners and managers of public housing, the Section 8 Housing Choice Voucher program and Section 8 Project-based housing from denying a survivor admission to, assistance for, or evicting them from the housing because the applicant or tenant is a victim of domestic violence, dating violence, or stalking. In addition, incidents of abuse can neither be construed as a serious or repeated lease violation nor considered good cause for terminating the assistance or tenancy.

Survivors also cannot be denied or evicted from the housing on the basis of criminal activity related to the abuse committed against them or a household member. However, 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. Additionally, VAWA 2013 continues safeguards for survivors concerning lease bifurca-

tion, portability of Section 8 voucher assistance and confidentiality. The new law also does not amend PHAs' obligations to undertake programs to assist survivors and, in their five-year plans, to set out goals and policies used to serve survivors' housing needs.

The following highlights key differences between VAWA 2005 and VAWA 2013.

Housing covered. Previously, VAWA 2005 only applied to public housing, the Section 8 Housing Choice Voucher program and Section 8 Project-based housing. HUD regulations implementing VAWA 2005 also covered Section 202 housing for the elderly and Section 811 housing for people with disabilities. 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 certain housing 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);

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- HOME;
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- McKinney-Vento Act programs.

Department of Agriculture

- Rural Development (RD) multifamily housing programs.

Department of Treasury

- Low-Income Housing Tax Credit (LIHTC)

Parties whom VAWA protects. VAWA 2013 expands the housing protections to cover survivors of sexual assault. 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.

Notably, VAWA 2013 gets rid of the requirement under VAWA 2005 that the household member be related by blood or marriage to the victim. 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. In addition, the 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.

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

For More Information

Violence Against Women Reauthorization Act of 2013, <http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf>

who is also a tenant or lawful occupant. 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 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.

Certification.

- Discretion of PHAs and owners. Like VAWA 2005, VAWA 2013 allows, but does not require, PHAs, owners and managers to ask in writing an individual for certification that he or she is a victim of domestic violence, dating violence, sexual assault or stalking if the individual seeks 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.
- 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, which is the ground for protection, meets the requirements under the

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statute; and (3) include the name of perpetrator, if the name is known and safe to provide.

- **Other permissible documents.** VAWA 2013 expanded the type of third-party documentation to add one signed by a victim and a mental health professional. Also, a victim may now provide an administrative record to document the abuse.
- **Timeline.** Both VAWA 2005 and 2013 provide that 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.

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. 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.

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 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 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. VAWA 2013 further mandates that HUD establish policies and procedures under which a victim requesting an emergency transfer can receive a tenant protection voucher.

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 rights for victims (“HUD notice”), which includes the right of confidentiality. 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. 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. ■

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HUD Issues Disparate Impact Rule

On February 15, 2013, the U.S. Department of Housing and Urban Development (HUD) issued its regulation concerning the disparate impact theory under the federal Fair Housing Act (FHA).

“Disparate impact” is a legal theory under the FHA that allows plaintiffs to challenge actions, policies and practices in the housing context that disproportionately discriminate against certain protected populations (such as racial minorities, women, and individuals with disabilities). Plaintiffs can use this theory even when the disputed policies do not explicitly discriminate against these protected groups. In a disparate impact analysis, the focus is not on whether a defendant intentionally discriminated against a member of a protected group; instead, the emphasis is on the discriminatory effects of the defendant’s policy on that member.

Why is disparate impact significant for survivors of domestic violence?

Domestic violence disproportionately impacts women, particularly women of color. In a memo issued in 2011, HUD cited statistics estimating that 85 percent of individuals subjected to domestic violence were women. Additionally, the HUD memo noted that as of 2009, women were five times more likely than men to experience domestic violence. Furthermore, the memo stated that African-American, Native American, and immigrant women suffered domestic violence at disproportionately high rates. While domestic violence survivors are not explicitly protected under the FHA, any rules or policies that adversely affect domestic violence survivors could, in turn, have a disparate impact on women and racial/ethnic minorities—who are protected by the FHA. Therefore, policies negatively affecting domestic violence survivors could give rise to a potential FHA disparate impact claim on the basis of sex, race, or national origin.

For More Information

HUD, “Implementation of the Fair Housing Act’s Discriminatory Effects Standard; Final Rule,” 78 Fed. Reg. 11460 (Feb. 15, 2013), <http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>

HUD Office of Fair Housing and Equal Opportunity, “Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)” (Feb. 9, 2011). [Read memo.](#)

What does HUD’s new disparate impact rule say?

The HUD disparate impact rule largely mirrors the analysis that federal courts have applied in fair housing cases. According to the new rule, first, the plaintiff has the burden to prove that the defendant’s action, policy or practice had a discriminatory effect. A practice has a discriminatory effect when “it actually or predictably” has a disparate impact on members of protected groups. If the claimant cannot meet this burden, then the defendant prevails. However, assuming that the plaintiff is able to establish a discriminatory effect, the burden shifts to the defendant to provide proof of a legally sufficient justification for the disputed policy or practice. In order for the defendant to assert a legally sufficient justification, he or she must show that the policy or practice is “necessary to achieve one or more substantial, legitimate, nondiscriminatory interests” of the defendant. The defendant must offer evidence, not merely speculation, to assert such a justification. If the defendant cannot meet this burden, then the plaintiff wins. However, if the defendant can show a legally sufficient justification, then the plaintiff can still prevail by proving that the defendant could achieve the same legitimate, nondiscriminatory ends with a less discriminatory alternative. ■