

**COMPLIANCE WITH VIOLENCE AGAINST WOMEN ACT (VAWA)  
REQUIREMENTS**

**PRIMARY ISSUES**

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## Important Points Relating to Domestic Violence

1. ***Abusers aren't just big guys wearing "wife beaters:"*** People want to think of all perpetrators as "monsters." This is not the case – many seem to be like everyone else. This is one of the reasons victims often stay in the relationship – they are hoping that the perpetrator will change.
2. ***Abuse is not just physical:*** Domestic abuse can be physical, sexual, emotional, economic, and psychological. For many victims, the most damaging abuse is psychological and social.
3. ***Abusive behavior often does not start right away:*** It can occur years into a relationship. It often begins with behavior that is easy to dismiss – name-calling and intense jealousy are examples. It then escalates to controlling behavior, such as controlling who a person sees, forbidding a woman from using birth control or threatening to harm people a person loves, such as parents or children.
4. ***Abuse isn't constant:*** There can be long periods where there is no abuse. In many cases, after physical violence there is a "honeymoon phase" in which the perpetrator acts remorseful.
5. ***Leaving is difficult:*** Fear of greater violence or retaliation, financial restrictions, or fear of losing children are all reasons why a person may stay with an abuser.

### Determining Eligibility for VAWA Protections

The first step in determining whether an individual is subject to VAWA protections is to determine whether an adverse factor is a “Direct Result” of domestic violence, dating violence, sexual assault, or stalking.

The law prohibits owners from denying admission to, denying assistance under, terminating participation in, or evicting a tenant based on an adverse factor, if the adverse factor is determined to be the direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

- An adverse factor refers to any factor that can be used as a basis for denying admission or assistance, terminating assistance or participation in a program, or evicting a tenant.
- If a denial or termination is required by a federal statute, based on a particular adverse factor, the owner must comply with that statute, even if the adverse factor is a direct result of domestic violence, dating violence, sexual assault, or stalking.
  - For example, if an applicant is subject to a lifetime registration requirement under a State sex offender registration program, the owner must deny the applicant admission, even if the sex offense(s) was (or were) a direct result of the fact that the applicant was a victim of domestic violence, dating violence, sexual assault, or stalking.

### Examples of When Adverse Factors Might Be a Direct Result of Domestic violence, Dating violence, Sexual assault, or Stalking:

>The presence of an adverse factor may be due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking. An adverse factor may be present during much of an abusive relationship, or it may be present itself only when a victim is attempting to leave, or has left, the abusive relationship. The following list of examples is neither exhaustive nor definitive:

- Poor credit history, such as
  - Forcing a victim to obtain credit, including credit cards for the perpetrator’s use;
  - Using a victim’s credit or debit card without permission;
  - Selling victim’s personally identifiable information to identity thieves;
  - Running up debt on joint accounts;
  - Obtaining loans/mortgages in a victim’s name;
  - Preventing a victim from obtaining and/or maintaining employment;
  - Sabotaging work or employment opportunities, or causing a victim to lose his or her job by physically battering the victim prior to important meetings or interviews;
  - Placing utilities or other bills in a victim’s name and then refusing to pay;
  - Forcing a victim to work without pay in a family business, or forcing him or her to turn the earnings over to the abuser;

- Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking;
- Job loss or lost wages due to missed work to attend court hearings, or seek counseling or medical care; and
- Hospitalization or medical bills the victim cannot pay or cannot pay along with other bills.
- Poor rental history – for example:
  - Property damage;
  - Noise complaints;
  - Harassment;
  - Trespassing;
  - Threats;
  - Criminal activity;
  - Missed or late utility payments;
  - Missed or late rental payments;
  - Writing bad checks to the landlord; and
  - Early lease termination and/or short lease terms.
- Criminal Record – for example:
  - Forcing a victim to write bad checks;
  - Property damage;
  - Theft;
  - Disorderly conduct;
  - Threats;
  - Trespassing;
  - Noise complaints;
  - Family disturbance trouble;
  - 911 abuse;
  - Public drunkenness;
  - Drug activity;
  - Crimes related to sex work;
  - Failure to protect a child from a batterer’s violence;
  - Crimes committed by a victim to defend him or herself or in defense of another person; and
  - Human trafficking.
- Failure to pay rent – for example:
  - The victim’s injury or temporary incapacitation;
  - The arrest of the only wage earning member of the household;
  - Preventing the victim from obtaining and/or maintaining employment;
  - Preventing a victim from obtaining and/or maintaining employment;
  - Sabotaging work or employment opportunities, or causing a victim to lose his or her job by physically battering the victim prior to important meetings or interviews; and
  - Placing utilities or other bills in the victim’s name and then refusing to pay.

It is the owner/management's responsibility to determine when adverse factors are a direct result of domestic violence, dating violence, sexual assault, or stalking. However, it is the responsibility of the applicant or tenant to trigger the direct result analysis. In order to do this, the applicant/tenant must:

1. Inform the owner that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking; and
2. Provide enough information for the owner to make a determination that the adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking.

Once adequate information is received from the applicant/tenant, the owner should consider the individual's statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking.

If further information is necessary for this determination, the owner may request additional supporting documentation. However, any request for documentation must:

1. Be in accordance with the owners' policies or practices;
2. Not require evidence of domestic violence, dating violence, sexual assault, or stalking other than as specified in the law (*see the next section titled Certification and Documentation of Domestic Violence, Dating Violence, Sexual Assault, and Stalking*); and
3. Not violate the VAWA Final Rule's confidentiality requirements.

Once all necessary information is received, the owner must make an objectively reasonable determination based on all the circumstances, whether the adverse factor is a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

## Certification & Documentation Requirements

### Notifications –

- Notice of Occupancy Rights, form HUD-5380
  - Use form without changes to core protections.
  - Provide the Notice of Occupancy Rights (form HUD-5380) and Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (form HUD-5382);
    - To applicants with denial of assistance
    - At move-in
  - With notice of eviction or termination of assistance
    - Send notice and certification form only once for entire action;
    - Send with Notice of Eviction
      - Material noncompliance; or
      - Criminal activity.
    - Send with Notice of Termination of Assistance
      - Failure to respond to recertification
      - Failure to move to different sized unit
      - Increase of income
  - All existing households were required to have been provided the documents prior to 12/15/17.
- VAWA Lease Addendum (form HUD-91067)
  - This form is being revised to include new provisions.
  - Applies to all MF housing programs.
  - Provide to current households at next AR.
  - Include with all new move-ins.
- Request for VAWA Protections
  - O/As may accept a verbal request.
  - O/As may also require a written certification or other documentation; O/As request for written certification must be in the form of a written dated letter.
- Certification form HUD-5382
  - Replaces form HUD-91066
  - Must be provided along with Notice of Occupancy Rights Under the Violence Against Women Act (form HUD-5380).
  - O/As must accept Certification form or other documentation to validate victim status.

- Other Permissible Documentation
  - Signed document from professional from whom victim sought assistance.
  - Record from governmental law enforcement or administrative agency or court.
  - At discretion of an O/A, another statement or form of evidence.
  - O/A cannot require more than one type of documentation, for example:
    - Form HUD-5382 must be accepted in lieu of other permissible documentation.
- Response Time
  - O/A may require response within 14 business days.
  - May extend time period.
  - May deny VAWA protections if not submitted on time.
- Victim Confidentiality
  - All information & documentation must be maintained with strict confidentiality.
  - Unless required by law, no VAWA information should be provided to employees or contractors.
  - VAWA information should not be entered into a database or provided to others, without consent from the victim or unless required for an eviction action or by law.
  - O/As must secure all correspondence and personal interaction with victims to maintain confidentiality.
  - The tenant file must contain documentation the victim's preferred method of communication.
  - The victim may designate an attorney, advocate, or other secure contact for communications.
  - Keep VAWA communications separate from tenant file.
  - Examples of Confidentiality best practices:
    - Use private room for intake;
    - Let victim know who they should communicate with;
    - Train staff on confidentiality policies; and
    - Serve victims offsite if needed.
- Adverse Factors
  - O/As may consider documentation of adverse factors resulting from being a victim that otherwise deems the individual ineligible.
  - The applicant or tenant must inform the O/A that he/she is a victim and provide enough information for the O/A to make a determination regarding the adverse factor.
  - The O/A may ask for clarification or additional information.
  - The O/A must make an objectively reasonable determination of whether the adverse factor is a direct result of the applicant or tenant being or having been a victim.

- Case Study
  - Shawn applied for assistance at a Project-Based Section 8 property and was notified by the O/A that the application was denied due to poor rental history, as he was previously evicted twice. Shawn informed the O/A that the evictions stemmed from criminal activity engaged in by an abusive partner that is no longer a household member and provided documentation to support the claim. *How should the O/A proceed?*
  - If it is determined that the adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking, the O/A should not deny admission.
- Conflicting Evidence
  - More than one party may claim victim status.
  - Requested documentation may contradict initial information provided to the O/A.
  - The O/A may request additional documentation (from both parties); it may be the same documentation as discussed earlier.
  - The O/A may require a 30-day response time.
  - The O/A must review all submitted documentation and make a decision regarding VAWA protections.

When evicting one household member, the O/A must follow grievance procedures and family break-up policies.

## Emergency Transfers

1. The Model Emergency Transfer Plan (form HUD-5381) contains only general provisions of the comprehensive plan that O/As are required to prepare and implement. Adoption of the model plan without further information will not be sufficient to meet HUD requirements relative to the contents of an Emergency Transfer Plan. O/As must review the complete VAWA regulation and program specific HUD guidance when developing a specific plan.
2. O/As are not required to provide copies of an Emergency Transfer Plan to each household. However, O/As must make the Plan available upon request and, when feasible, make copies readily available to the public.
3. Since applicants are not residents, they are not eligible for emergency transfers. However, O/As may adopt an admission preference for applicants who are victims of domestic violence, dating violence, sexual assault, or stalking. If no such preference is adopted, applicants who are victims of domestic violence, dating violence, sexual assault, or stalking will be placed at the end of the admission waiting list. *For this reason, I strongly recommend that such a preference be adopted.*
4. With regard to internal and external transfers, The VAWA Final Rule does not define transfer priorities. The O/A has discretion to set priorities for transfers, and any such priority must be outlined in the project's Emergency Transfer Plan. Any priorities must also be identified in the Tenant Selection Plan. However, all VAWA transfer requests should be considered emergencies, and should generally be given priority over any non-emergency transfer request.
5. O/As that own or manage multiple properties are not required to make emergency transfers between properties in their portfolio. The transferring resident must reapply at each project. However, a management agent (with consent from owners) may implement a VAWA preference at all of their properties to give priority to residents of the agent's other managed properties, but are not required to do so.
6. While issues relating to O/A liability should be addressed with the O/As legal counsel, HUD does not require or expect the O/A to determine whether a unit is safe from an abuser or ensure that a victim moves to a unit that is safe from an abuser. For purposes of emergency transfers under VAWA, a "safe unit" refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe. *This assumes that VAWA confidentiality requirements are met.*

With regard to the moving costs of victims when transferring from one unit to another under the VAWA Emergency Transfer Plan, there is no HUD requirement that an O/A pay moving costs for the households. O/As should continue to follow the existing policies relative to transfer costs for affected projects.