

Notice of Occupancy Rights Under the Violence Against Women Act (VAWA)

Policy (Approved by the HOME Advisory Group on 08/07/2018; Updated and Approved by HOME Advisory Group 09/01/2020; Updated and Approved by HOME Advisory Group xx/xx/2023)

1. Overview:

First introduced in 1994 and subsequently reauthorized four times, the Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.

2. Authority – 24 CFR Part 5 – Subpart L:

This subpart addresses the regulation for protections for victims of domestic violence, dating violence, sexual assault, or stalking who are applying for, or are the beneficiaries of, assistance under a Department of Housing and Urban Development (HUD) program covered by the Violence Against Women Act (VAWA), as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e *et seq.*) (“covered housing program,” as defined in § 5.2003). Notwithstanding the title of the statute, protections are not limited to women but cover victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation. Consistent with the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a), victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD’s VAWA requirements must be applied in a manner consistent with the definitions found at 34 U.S.C. 122291(a)(12) (Domestic Violence), 34 U.S.C. 122291(a)(13) (Economic Abuse) and 34 U.S.C. 122291(a)(40) (Technological Abuse).

3. Rights, and Responsibility for the Community Development Commission, Subrecipients, Landlords, and Tenants:

- a. **Tenant Protections, Rights, and Responsibilities.** Prospective tenants cannot be denied admission or denied assistance because they have been a victim of domestic violence, dating violence, sexual assault, or stalking. A tenant can be evicted for repeated lease violations that are not related to domestic violence, dating violence, sexual assault, and stalking. Landlords, homeowners, tenants, residents, occupants, and guests of, and applicants for, housing shall have the right to seek law enforcement or emergency assistance on their own behalf or on behalf of another person in need of assistance. The tenant, to the greatest extent feasible, will have the right to work with the landlord, subrecipients, and the Community Development Commission (CDC) to work on a solution on a case-by-case basis while remaining confidential and in the best interest of the tenant.
- b. **Landlord Protections, Rights, and Responsibilities.** The landlord has the ability to adjust the lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking (refer to

section 5). A landlord cannot deny a prospective tenant admission or denied assistance because they have been a victim of domestic violence, dating violence, sexual assault, or stalking. The landlord, to the greatest extent feasible, will have the right to work with the tenant, subrecipients, and the Community Development Commission to work on a solution on a case-by-case basis while remaining confidential and in the best interest of the tenant.

- c. **Subrecipient Protections, Rights, and Responsibilities.** The subrecipient has the responsibility to report any instances where a landlord has denied a prospective tenant admission or denied assistance because they have been a victim of domestic violence, dating violence, sexual assault, or stalking. They also have the responsibility to assist landlords in adjusting the lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking (refer to section 5). The subrecipient, to the greatest extent feasible, will have the right to work with the tenant, landlords, and the Community Development Commission to work on a solution on a case-by-case basis while remaining confidential and in the best interest of the tenant.
- d. **Community Development Commission Protections, Rights, and Responsibilities.** Upon a tenant request, the CDC, to the greatest extent feasible, will work with affiliate agencies providing affordable housing to permit a tenant to move to another unit due to an incidence of domestic violence, dating violence, sexual assault, or stalking, and threats, pending availability of comparable units and need. All requests will remain confidential to the greatest extent feasible.

The CDC, to the greatest extent feasible, will have the responsibility to work with the tenant, landlords, and if needed, victim service providers, legal service providers, or nonprofit agencies to provide services to work on a solution on a case-by-case basis while remaining confidential and in the best interest of the tenant.

Upon guidance issued by HUD, the CDC on behalf of the County will report on its laws or policies, and/or their Subrecipient's laws or policies, that penalize protected persons based on requests for law enforcement or emergency assistance or based on criminal activity that occurred at a property. Certification of compliance with protections or an explanation of how compliance will be met by the County and/or its Subrecipients will be provided as required by HUD in accordance with reporting requirements.

4. **Prohibition on Retaliation:**

Retaliation is prohibited in covered housing. It is illegal for Public Housing Agency (PHA), owner, or manager of covered housing to discriminate against any person because that person has opposed any act or practice made unlawful by VAWA's housing provisions, or because that person testified, assisted, or participated in any real matter.

It is also illegal for Public Housing Agency (PHA), owner, or manager of covered housing to coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises, assists, or encourages a person to exercise any rights or protections under VAWA's housing provisions.

5. Lease Bifurcation:

- a. The housing owner may bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual:
 - i. Without regard to whether the household member is a signatory to the lease; and
 - ii. Without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.
- b. If a household occupying a HOME-assisted rental unit separates due to domestic violence, dating violence, sexual assault, or stalking, the remaining tenant(s) may remain in the HOME-assisted unit.
- c. If a household receiving HOME tenant-based rental assistance separates due to domestic violence, dating violence, sexual assault, or stalking, the remaining tenant(s) will retain the HOME tenant-based rental assistance.
- d. A lease bifurcation shall be carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law for termination of assistance or leases and in accordance with any requirements under the relevant covered housing program.

6. Right to Report Crime and Emergencies:

- a. Landlords, homeowners, tenants, residents, occupants, and guests of, and applicants for, housing shall have the right to seek law enforcement or emergency assistance on their own behalf or on behalf of another person in need of assistance. Penalizing or threatening to penalize persons because they request assistance or report criminal activity of which they are a victim or otherwise not at fault under the laws or policies adopted or enforced by covered governmental entities (any municipal, county, or State government that receives funding under section 106 of the Housing and Community Development Act of 1974) is prohibited.
- b. Covered governmental entities are required to report on their laws or policies or their subgrantees' law or policies, that penalize protected persons based on request for law enforcement or emergency assistance or based on criminal activity that occurred at a property. These entities must also certify compliance with these protections or explain how they will come into compliance or ensure compliance among subgrantees within

180 days of submitting the report to HUD. Implementation regulations or guidance will be issued by HUD regarding the timing and process of the reporting.

7. Confidentiality:

Subrecipients, and landlords receiving Federal funds through the Community Development Commission must keep confidential any information related to tenant rights under VAWA. The CDC must not allow any individual administering assistance or other services on behalf of the CDC to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law. The CDC, subrecipients, and landlords receiving Federal funds, however, may disclose information provided if:

- Written permission is received from the tenant to release the information on a time limited basis
- Information is needed in an eviction or termination proceeding, such as to evict an abuser or perpetrator or terminate the abuser or perpetrator from the CDC assisted unit
- A law requires the release of the information

VAWA does not limit the duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

8. Other Laws and Non-Compliance:

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. Tenants may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws. All complaints or violations should be submitted to the HUD Chicago Regional Office either by phone at (312) 353-5680 or by mail:

Ralph Metcalfe Federal Building
77 West Jackson Boulevard
Chicago, Illinois 60604

Complaints may also be filed with HUD's Office of Fair Housing and Equal Opportunity (FHEO) electronically at <https://www.hud.gov/fairhousing/fileacomplaint%20>.

9. Appeals:

Appeals of a Federal regulation or requirement cannot be granted by the Commission as the Commission only has the ability to grant appeals based on County policies. However, should a landlord and/or tenant not reach a satisfactory outcome compliant with VAWA, tenant/landlord disputes would be referred to the appropriate local legal resource.

10. Attachments:

The following forms have been developed by HUD and may be provided to tenants by covered housing providers administering one or more covered housing programs. These forms may be updated by HUD from time to time, and the most recent versions must be utilized by housing providers.

- a. Form HUD-5380, Notice of Occupancy Rights under VAWA
- b. Form HUD-5381, Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking
- c. Form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking, and Alternate Documentation
- d. Form HUD-5383, Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

If a covered housing provider wishes to develop and utilize forms outside of those developed by HUD, each form must meet the requirements under VAWA.