



## VAWA, COVID-19 and Beyond

*by Tari Bradley, Housing Compliance Trainer*

In less than the amount of time it will take you to read this article, someone will be a victim of domestic violence, dating violence, sexual assault or stalking.

Statistics show that an average of 24 people per minute are victims of rape, physical violence or stalking by an intimate partner in the United States, thereby impacting more than 12 million women and men over the course of a single year. These statistics emphasize and provide us with a snapshot of the importance and relevance of the Violence Against Women Act (VAWA) and the role it plays in providing protections to victims of covered crimes at our Low-Income Housing Tax Credit (LIHTC) communities.

Since the initial enactment of VAWA, which was signed into law in 1994, there have been three reauthorizations to the Act, with the most recent being the VAWA Reauthorization Act of 2013. The reauthorizations not only reauthorized funding for in-place programs and allowed for the funding of new programs under the Office of Violence Against Women (OVW), but also expanded coverage by providing housing protections for applicants and current tenants (2005 Reauthorization of the Violence Against Women Act). The VAWA Reauthorization Act of 2013 added more VAWA covered housing programs to enhance coverage and expand protections against VAWA covered crimes.

As the LIHTC program was deemed a recognized covered housing program with the VAWA Reauthorization Act of 2013, LIHTC owners and agents are required to adopt policies and procedures to provide housing protections to applicants and current tenants who are or have been a victim of a VAWA covered crime.

The implementation of VAWA 2013 as intended at our LIHTC communities can be, and is, challenging. This article is designed to review the relevance and requirements of VAWA 2013, the state housing finance agency's role, the impact of COVID-19, and 2021 preparedness. A focus

will be placed on compliance challenges that LIHTC communities must address when providing VAWA protections to current tenants and include the following:

- Introduction & Review of VAWA Requirements
- Bifurcate vs. Non-Compliance
- VAWA & COVID-19
- Preparing for 2021 – Policies & Procedures

## Introduction & Review of VAWA Requirements

The passing of VAWA 2013 did not amend the authorizing statutes for the covered housing programs; instead, VAWA 2013 requires that each “Appropriate Agency” that carries out the housing program to adopt policies and procedures in implementing VAWA protections. As a result, the appropriate agency needs to provide additional guidance and rules relating to program compliance. For the LIHTC program, that agency is the Department of Treasury. Currently, the IRS has not provided written guidance on what steps would be acceptable and not result in a non-compliant event.

The respective state Housing Finance Agency (HFA) is responsible for monitoring compliance at our LIHTC communities and have implemented written requirements deemed necessary to demonstrate compliance with VAWA 2013. The majority of state HFAs have included the provisions of VAWA 2013 within their LIHTC Compliance Manual, including the approval to use the following HUD-created forms to assist in the implementation of VAWA 2013 and VAWA Final Rule at our LIHTC communities:

- Appendix A/HUD Form 5380 – Notice of Occupancy Rights Under the Violence Against Women Act
- Appendix B/HUD Form 5381 – Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (MODEL ONLY – MUST BE MODIFIED BEFORE USE)
- Appendix C/HUD Form 5382 – Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation
- Appendix D/HUD Form 5383 – Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Within the VAWA 2013 itself, certain protections are afforded to applicants and current residents. Written policies and procedures are necessary to ensure that the act’s requirements are being followed and consistently applied, and that the VAWA protections are followed.

When creating VAWA policies and procedures at our LIHTC communities, one must consider the challenges that may arise in maintaining compliance with the regulations defined under IRC §42 and when applying the protections of VAWA 2013. In the following section, we will present a potential conflict that could result in a unit determined to be out of compliance.

## Bifurcate vs. Non-Compliance

Our policies and procedures should be designed to ensure that VAWA protections are provided in their entirety and to stipulate what events require a **current tenant** to receive the following documents:

1. “*Notice of Occupancy Rights Under the Violence Against Women Act*” (HUD Form 5380), and
2. “*Certification*” Form approved by Appropriate Agency

Note: Because the IRS has not provided an approved certification form, most state HFAs have approved HUD Form 5382 – “*Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation,*” which may be provided to the tenant to demonstrate compliance.

For example, one event that would require providing both of the above-mentioned notices to the current tenant/household is when steps are being taken that could result in the termination of tenancy. In the event that both the victim and the person committing the crime occupy the same unit, the policy should provide written guidance and stipulate the appropriate steps available to allow the victim to avoid having his or her lease terminated, thereby allowing for bifurcation of the lease.

The act of bifurcating a lease will result in the removal or eviction of any individual who is a tenant or lawful occupant, and who engages in criminal activity related directly to a VAWA 2013 covered crime.

Simply put, the victim is allowed to remain as a tenant, and the perpetrator has to go, either voluntarily or through an eviction process with the court.

It’s important to note that lease bifurcation can also cause a unit to be out of compliance with the regulation, as described in IRC §42.

When a lease is bifurcated under VAWA 2013, the remaining members of the household may need to re-establish their continued eligibility for tenancy. Consider that a household cannot re-establish their eligibility. In that case, the current tenant shall be provided with a reasonable time frame, as determined by the appropriate agency, to find new housing or establish eligibility. As previously noted, the Department of Treasury is the appropriate agency, and has not stipulated or defined a reasonable time frame.

If we adhere to HUD's guidelines, HUD defines a reasonable period of time to re-establish eligibility as 90 calendar days.

One example that illustrates this challenge is a full-time student status eligible household, determined eligible by meeting one of the five exceptions. The qualifying household member is removed from the unit by bifurcation of the lease. The remaining member will need to re-establish eligibility or find new housing within 90 calendar days.

Now, ask yourself this question. What appropriate steps need to be included in your policies and procedures if the lease bifurcation process is near the end of the calendar year, and the current resident is allowed 90 calendar days to vacate, which could place the unit out of compliance as of the last day of the owner's tax year?

## **VAWA & COVID-19**

This last year has presented a new set of challenges with the appearance of COVID-19, a pandemic that has impacted all facets of how we provide affordable housing and stay in program compliance at our LIHTC communities. To minimize risk and exposure, owners and agents were forced to make adjustments in how interaction with residents and applicants was conducted. During this time, the Coronavirus Aid, Relief, and Economic Security (CARES) Act provided the following:

- Temporary protection to residents from eviction and late fees being assessed through July 24, 2020
- Additional funding under the Family Violence Prevention and Services Act (FVPSA), including a VAWA-related provision

The Office of Multifamily Stakeholders, on Oct. 14, 2020, provided updated guidance addressing COVID-19 concerns.

The following VAWA-related concern was included in this update:

**Q20:** Can an owner or agent still evict a perpetrator of domestic violence or criminal activity, or for other lease violations?

**A:** Yes, the eviction moratorium found in Section 4024(b) of the CARES Act only applies to evictions related to non-payment of rent or other charges. The moratorium also prohibits the charging of other fees, penalties, or other charges due to the non-payment of rent. Protections under the Violence Against Women Act of 2013 (VAWA) remain in effect, and owners/agents should consult Notice H17-05 for more information about the housing rights of victims of domestic violence, dating violence, sexual assault, and stalking under VAWA.

Note: Seek legal counsel and refer to all state and local landlord-tenant laws before initiating eviction proceedings.

As we near the end of 2020, it is noteworthy that the effects of COVID-19 continue to be present in our LIHTC communities. Statistics indicate that an increase in VAWA-protected crimes may result from economic uncertainties, stay-at-home orders that create feelings of being isolated, and additional challenges on successfully finding ways to stay connected or ask for help.

## Preparing for 2021 – Policies & Procedures

*“Get good, get committed and get it going....”* – Farshad Asl

It is said that a look-back can help create a roadmap for the future as we prepare for 2021. In preparation to update policies and procedures, entities (e.g., state HFAs, owners, and agents) should anticipate that similar challenges relating to COVID-19 will be present in 2021 at LIHTC communities and complete a review of current VAWA policies and procedures to determine what changes and updates, if any, will need to be addressed.

A useful reference is HUD Notice 2017-05, published by HUD on June 30, 2017, that provides additional guidance and clarification to HUD’s VAWA Final Rule. Even though this notice is

applicable to HUD programs, it can serve as a framework to ensure the mission of VAWA is achieved.

Before putting “pen to paper,” a review of the following items can be beneficial in preparing for 2021. The following items are just a few areas to consider.

- HUD Notice 2017-05, Appendix 1, Items to Consider When Developing VAWA Policies
  - A good outline of recommended topics to include
- HUD Notice 5380, Notice of Occupancy Rights Under the Violence Against Women Act
  - A review to assist in updating details on resources and contacts to organizations that help or provide resources to victims
- Provide all notices in appropriate languages, which are available on HUD.gov / HUD Forms

As with any working document, conduct a thorough review of all regulations that govern all covered programs and the property before creating and implementing policies.

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