



## A Brief History of the Violence Against Women Act

*by Kerry Menchin, CONAM Management*

Domestic violence — or intimate partner violence, as it is also known — was once viewed as a family matter. Something private, something secret. As attention toward domestic violence increased, societal attitudes began to shift. What was once kept behind closed doors was thrust out into the open, and intimate partner violence was finally acknowledged as not only a crime, but a serious public health problem. Accordingly, in 1984, the landmark Family Violence Prevention and Services Act was created to assist states in preventing violence and to provide shelter for victims.

More than 10 years later, the Violent Crime Control and Law Enforcement Act of 1994 was signed into law. This legislation included the first iteration of the Violence Against Women Act (VAWA) as Title IV and added a great number of law enforcement programs as well as services to victims. Note: Though the act has the word “women” in its title, as women are statistically the principal victims of domestic violence, it was and continues to be applicable to all people.

VAWA was reauthorized many times since its origination. In 2013, housing rights for victims were added stating that, among other things, applicants may not be denied public housing assistance based on their status as victims of domestic violence, dating violence, sexual assault or stalking. In 2022, the act was updated to provide “that landlords, homeowners, tenants, residents, occupants, and guests of, and applicants for, housing shall not be penalized based on their requests for assistance or based on criminal activity of which they are a victim or otherwise not at fault under statutes, ordinances, regulations, or policies adopted or enforced by covered governmental entities.”

Although it was very clear that VAWA applied to all HUD-funded housing programs, it was unclear as to if it would apply to programs such as Low-Income Housing Tax Credit (LIHTC). In the 2013 reauthorization, LIHTC (among other programs) was officially added to the list of applicable funding programs and monitoring agencies added VAWA paperwork to the required tenant and applicant documents. This reauthorization also made VAWA violations equivalent to any fair housing violation with the same enforcement and penalties.

For which kinds of properties and/or funding programs does this apply? At this point, it could be all of them.



Notice FHEO-2023-01, “announces that, as VAWA 2022 requires, the Office of Fair Housing and Equal Opportunity (FHEO) will implement and enforce the housing provisions of VAWA consistent with, and in a manner that provides, the same rights and remedies as those provided for in the Fair Housing Act.”

## **Manager Role**

As a community manager, what does this mean for you?

HUD distributed the following forms:

1. Notice of Occupancy Rights under VAWA (Form HUD-5380)
2. Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking (Form HUD-5381)
3. Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking, and Alternate Documentation (Form HUD-5382)
4. Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking (Form HUD-5383)

The Notice of Occupancy Rights Under VAWA (Form HUD-5380) and the Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking, and Alternate Documentation (Form HUD-5382) should be provided to:

- Applicants along with their move-in paperwork
- Applicants denied for any reason
- Residents at every recertification
- Residents with lease violation notices
- Any resident or applicant upon request

These forms are required to be specific to your management company and/or property. Specifically, when it comes to the Emergency Transfer Plan, any procedures must be clearly stated for a resident or applicant requesting VAWA protection. It also must be clearly stated that emergency transfer requirements do not supersede any eligibility or occupancy requirements that may apply under any covered housing program such as LIHTC.

## **Things to Consider**

How much time does a resident have to request the emergency transfer?

- Victims requesting VAWA protection have 14 business days to provide documentation, but in the case of conflicting information, an extension of up to 30 calendar days can be given.



- In the case of a tenant who is a victim of sexual assault, either the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same unit or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer. Even so, if a victim of assault comes forward with a transfer request at any time, it must be considered, and they must be allowed to transfer, if eligible, to a unit which they deem “safe.”

Should residents who are victims looking for VAWA protection be put at the top of the waitlist, even above those requesting a reasonable accommodation transfer for a disability?

- This is an ownership/management decision. At CONAM, we have chosen to allow those requesting an emergency transfer under VAWA to be placed at the top of the waitlist.

Should external applicants be considered as priority on the waitlist?

- This is an ownership/management decision. At CONAM, we have chosen not to allow applicants requesting an emergency transfer under VAWA (from another property) to be placed at the top of the waitlist.

What does the 8609 line 8b have to do with this process?

- Answering “no” on line 8b of Form 8609 means that even though two buildings have the same LIHTC allocation, they are viewed by the IRS as being two separate developments.
  - A transfer in the same building is allowed.
  - “Transfers” between buildings is not allowed, and instead, a resident moving to another building would have to complete an initial or move-in file, sans the screening but including new lease documents.
- Answering “yes” on line 8b of Form 8609 means that buildings in a development that are identified as a group in the 8b statement (attached to the Form 8609 in the one-time IRS filing) should be treated as one, multiple building development for the purposes of LIHTC compliance.
  - A transfer in the same building is allowed.
  - Transfers between buildings are allowed if the buildings are in the same group.
  - But if the buildings are mixed or not 100% LIHTC, a resident moving to another building would have to complete an initial or move-in file, sans the screening but including new lease documents even though 8b is checked “yes.”



What documents need to be provided by the resident for an emergency transfer, if any?

Recommendations:

- To request an emergency transfer, the resident should notify the management office and submit a written request for a transfer to an available unit utilizing Emergency Transfer Request Form HUD-5383.
- If a resident submits a verbal request, staff can document the request and continue to work with the resident to obtain the information needed while waiting for the resident's written request.
- A resident's written request for an emergency transfer should include either:
  - A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under Estrella Del Mercado's program, or
  - A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

What is "conflicting evidence"?

- When two residents of a property or unit self-certify to be victims of the other when faced with eviction. In this case, more documentation would be needed, such as police reports or maybe letters from medical professionals.

What does a bifurcation of the lease mean?

- Housing providers may bifurcate a lease to remove, evict or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly related to a VAWA-covered crime against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim.
- When a lease is bifurcated under VAWA, the remaining members of the household may need to establish their continued eligibility for tenancy, depending on the housing program regulations.

How are things kept confidential?

- Any VAWA documentation must be kept in a separate and secure location, and not in the tenant file.
- Unless the resident gives written permission or disclosure of the information is required by law, the information cannot be released to anyone.



- As always, tenant confidentiality is extremely important. Just as one wouldn't bring up a person's disability as a topic of casual conversation in the office, those seeking VAWA protection deserve the same respect.

Create your procedures in tandem with your legal team and supervisors, follow the procedures, and if something falls outside of those procedures or is the least bit unclear, speak with your legal team and supervisors immediately; don't wait. Waiting could be dangerous for all parties.

Finally, also consider the importance of the work you are doing. It's good to remember that what you do, in part, is to provide a safe place for people to live their lives. It may sound simple to walk through the door, read a book at the kitchen table, watch TV on the couch or take a nap, and feel safe and at home. These are not things that everyone has, but you, in particular, give people the chance to enjoy them every day.

“No one should have to choose between maintaining housed and staying safe. The Violence Against Women Act makes clear that survivors of domestic violence, dating violence, sexual assault and stalking cannot be denied housing, and are eligible for an emergency transfer should the need arise. We are making these protections clear on HUD's website, so landlords are aware of our requirements and survivors know their rights.”

Marcia L. Fudge, Secretary of the U.S. Department of Housing and Urban Development

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