

HAWC VAWA Procedures

I. Definitions

- a. *Domestic Violence* - Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction
- b. *Spouse/Intimate Partner* - A person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in the relationship.
- c. *Dating Violence*
 - i. Violence committed by a person:
 1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 2. Where the existence of such a relationship shall be determined based on the following factors:
 - a. The length of the relationship
 - b. The type of relationship; and
 - c. The frequency of interaction between the persons involved in the relationship
- d. *Sexual Assault* – Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.
- e. *Stalking* – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - i. Fear for the person's individual safety or the safety of others; or
 - ii. Suffer substantial emotional duress
- f. *Affiliated Individual*
 - i. A spouse, parent, brother, sister, or child of that household, or a person to whom the individual stands in the place of a parent or guardian (ie foster parent)
 - ii. Any individual, tenant, or lawful occupant living in the household of that individual.
- g. *Adverse Factor* - 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. However, if a denial or termination of assistance is required by a federal statute, based on a particular adverse factor, the O/A must comply with the

statute even if the adverse factor is a direct result of domestic violence, dating violence, or sexual assault, or stalking.

h. *Actual and Imminent Threat* –

i. A physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual or imminent threat, the factors to be considered are:

1. The duration of the risk,
2. The nature and severity of the potential harm,
3. The likelihood that the potential harm will occur,
4. The length of time before the potential harm would occur.

II. VAWA Applicant/Tenant Protections

- a. An applicant cannot be denied admission/assistance upon an adverse factor if determined to be a direct result of the applicant's status as a victim.
- b. A tenant cannot be terminated from a housing program or evicted from a housing community based upon an adverse factor if determined to be a direct result of the tenant's status as a victim.
- c. Criminal activity directly related to domestic violence, dating violence, sexual assault or stalking engaged in by a member of the household or guest under control of the tenant cannot be used to terminate tenancy/assistance if the tenant or affiliated individual is a victim.
- d. Actual or threatened domestic violence, dating violence, sexual assault or stalking shall not be construed as a serious or repeated violation of the lease, or good cause to terminate assistance/tenancy or occupancy rights for the victim.

III. Housing Provider Protections

- a. When notified of a court order, the housing provider has the right to comply with the court order with respect to:
 - i. The right of access or control of property including civil protection orders
 - ii. The distribution or possession of property among members of the household
- b. A housing provider can evict or terminate assistance of a tenant for any violation of the lease not related to the tenant's status as a victim
 - i. Housing providers need to be sure they are not holding the victim to a higher standard than other tenants.
- c. If the housing provider can demonstrate actual or imminent threat to other tenants, employees, or service providers, the housing provider is allowed to terminate assistance/evict the tenant
 - i. Actual or imminent threats include words, gestures, actions, or other indicators if they meet the standard provided in the definition of "Imminent threat"

- ii. Eviction or termination of assistance should only be utilized when there is no other action that will reduce or eliminate the threat including, but not limited to:
 - 1. Transferring the victim to another unit;
 - 2. Barring the perpetrator from the property;
 - 3. Contacting law enforcement;
 - 4. Other legal remedies

IV. Required Notifications

- a. ***The Notification of Occupancy Rights Under the Violence Against Women Act*** (Form HUD -5380) AND ***Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation*** (Form HUD 5382) must be provided to:
 - i. Current Tenants
 - 1. With the next annual recertification/lease renewal, or by other means if there is no AT or Lease Renewal by 12/15/2017 **After 12/15/17 the forms are not required during annual recertification.*
 - 2. With any notice of termination of tenancy or assistance.
 - ii. Applicants
 - 1. At move in- or issuance of assistance
 - 2. At the time the applicant is denied assistance
- b. The applicant/tenant will sign a notification of receipt of the above forms.
- c. ***Lease Addendum*** (HUD Form 91067) must be provided
 - i. At the time a lease is issued or renewed
 - ii. It must be signed by both the tenant and the Landlord.

V. Documenting Victims Status

- 1. If a tenant or applicant chooses to identify him/herself as a victim of domestic violence etc., the housing provider may request in writing one of the following:
 - i. ***Completed Certification of Domestic Violence, Dating Violence, Dating Violence, Sexual Assault or Stalking and Alternate Documentation*** (HUD Form– 5382)
 - ii. Signed certification by victim service provider, attorney, medical or mental health professional from whom the victim has sought assistance:
 - 1. Must be signed by applicant or tenant
 - 2. Must contain a penalty statement
 - iii. Record of a law enforcement agency, court, or administrative agency
 - iv. A statement or other evidence provided by the applicant/tenant
- 2. All of the above must be included in the O/A's written policies and procedures.
- 3. NO-ONE shall have access to this information unless it is absolutely necessary.
- 4. Status cannot be in shared database unless it is:
 - i. Requested by the individual in a time-limited release
 - ii. Required for use in an eviction/termination of assistance proceeding, or

- iii. Otherwise required by law.
- 5. Communicating with Victim:
 - i. Take precautions to avoid inadvertent disclosure of confidential information
 - ii. Do NOT leave voicemail messages referring to VAWA or confidential information
 - iii. Do not send mail that references VAWA or confidential information.
 - iv. Request that the victim put in writing how he/she wants you to communicate information
 - v. Do not discuss confidential information in front of other employees or residents.

VI. Remedies Available to Victims

- a. Lease Bifurcation
 - i. Doesn't matter if the household member is a signatory on the lease
 - ii. Must be carried out in accordance with Federal, State, or local law
 - iii. Remaining members must be given 90 calendar days of the bifurcation to:
 - 1. Establish eligibility under the covered program
 - 2. Established eligibility under another covered program or
 - 3. Find alternative housing
 - iv. The tenant may be given up to an additional 60 days
 - v. HUD encourages housing providers to undertake all feasible actions to assist the family, including covering the costs of a transfer
- b. Emergency Transfer
 - i. HUD has provided a Model Emergency Transfer Plan (Form HUD 5381 - **Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**) and an Emergency Transfer Request (Form HUD 5383 – **Emergency Transfer Request for Domestic Violence, Dating Violence, Sexual Assault, or Stalking**)
 - ii. Two types of Emergency Transfers:
 - 1. Internal Emergency Transfer – Emergency location to another unit
 - 2. External Emergency Transfer – Emergency relocation to a new unit where the tenant is categorized as a new applicant and must undergo the application process.
 - iii. To Qualify for an Emergency Transfer the Tenant must:
 - 1. Expressly request the transfer
 - 2. Believe there is a threat of imminent harm
 - 3. The sexual assault occurred on the premises during the 90 calendar-day period preceding the date of the request for transfer