

**C I T Y O F A T L A N T A**

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To: All Federal Program Awardees (HOME, CDBG, NSP, ESG, Section 8 Moderate Rehabilitation and HOPWA Awardees

From: Lolita S. Collins Grants Services Manager-Policy, Administrative and Technical Services LSC

Date: July 1, 2020

SUBJECT: Policy Alert VAWA Reauthorization Act- Updated Provider Guidance

**Cc**: Jon Keen, Chief Operating Officer, Deputy/Interim Commissioner, DGCD

Monique Franklin, Director, Administrative and Technical Services

December Thompson, Grants Services Manager, Planning and Program Operations

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On June 29, 2020, the National Low- Income Housing Coalition announced in the Volume 25, Issue 26 that new guidance published for Housing Providers on protecting Survivors of Domestic and Sexual Domestic Violence during the COVID-19 pandemic. The information is attached as attachment A.

Below is the Q & A resource to use as a guide. Please add this Policy Alert to your Policy that was created based on the former Office of Housing and Community Development guidance (Policy Alert with the VAWA Policy is attached as attachment B)

Background Description

The Violence Against Women Act of 1994 (VAWA) is a United States federal law (Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act, H.R. 3355) signed as Pub.L. 103–322 by President Bill Clinton on September 13, 1994 (codified in part at 42 U.S.C. sections 13701 through 14040). VAWA was reauthorized in 2000, 2005 and 2013. According to HUD, VAWA 2013, among other things, “enhances judicial and law enforcement tools to combat violence against women; improves services for victims; enhances services, protection, and justice for young victims of violence; strengthens the health care system’s response to violence against women; and expands protections for Native American women and immigrants.” HUD’s final rule regarding the implementation of the housing protections authorized in the Violence Against Women Reauthorization Act of 2013 (VAWA) was published in the Federal Register on November 16, 2016. With the goal of providing protected housing for survivors of domestic and dating violence, as well as sexual assault and stalking, HUD requirements for landlords regarding the Violence Against Women’s Act went into effect in January of 2017. In addition, in April 219, HUD reinstated the guidance on this act. The requirement to comply with VAWA provisions as promulgated in 24 CFR part 5, subpart L.

Overview

Last May, 2019, the City of Atlanta, Office of Housing and Community Development adopted policies to include provisions for protection of victims of domestic violence, dating violence, sexual assault, sexual battery or stalking, regardless of sex, gender identity, gender expression or actual or perceived sexual orientation. These policies and procedures applied to all housing programs issued by the City of Atlanta as a HUD formula and other federal funding Participating Jurisdiction.

Resources

https://www.hud.gov/program\_offices/housing/mfh/violence\_against\_women\_act

**Attachment A: Housing Providers on protecting Survivors of Domestic and Sexual Domestic Violence during the COVID-19 pandemic.**

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| 1. I am a property manager. Recently, one of my maintenance workers said that she heard a lot of yelling, crying, and things breaking from one of our apartments. She thinks that it’s domestic violence. What should I do? |

Housing providers must be careful not to jeopardize the safety of tenants/program participants who are already experiencing violence at the hands of perpetrators who are living with them. We encourage housing providers to seek support and guidance by contacting their state, local, or territory [domestic violence](https://nnedv.org/content/state-u-s-territory-coalitions/) and [sexual violence](https://www.nsvrc.org/organizations?field_organizations_target_id=8&field_states_territories_target_id=All) coalitions or local domestic and sexual violence programs. Housing providers can work with survivor advocates at the coalitions and programs to determine safe approaches to help tenants/program participants.

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| 1. Can tenants/program participants be evicted or removed from their programs for domestic or sexual violence given the national eviction moratorium? |

It depends. Tenants/program participants who experience domestic or sexual violence cannot be evicted, be removed from a housing program, or have their rental assistance terminated because of the violence committed against them. This includes evictions, removals, or terminations due to property damage caused by the perpetrator. Tenants/program participants experiencing violence also cannot be evicted or removed from their programs for seeking help by calling 911 or emergency services. Further, housing providers cannot treat survivors more harshly than they treat other tenants/program participants. These protections for survivors apply independently of the current public health crisis.

In many states, housing providers can remove a tenant/program participant from a unit (also known as a lease bifurcation) for committing violence against another tenant/program participant. This means that if a perpetrator is also a tenant/program participant, the perpetrator can be removed from the lease or program. This promotes the safety of the survivors as well as other tenants/program participants.

The [federal eviction moratorium](https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/) prohibits providers of federally subsidized housing from evicting tenants/program participants for nonpayment of rent, fees, or other charges. This moratorium does not prohibit evictions due to other lease violations. Therefore, tenants/program participants can be evicted or removed from their programs for perpetrating criminal acts against other tenants/program participants, such as domestic or sexual violence.

Housing providers must follow federal, state, and local laws when bifurcating leases.

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| 1. A tenant/program participant says that his ex-girlfriend threatens to kill him and has the key to his apartment. He wants to get his locks changed. Can we change locks during this crisis? |

Yes. [Many states and localities](https://www.nhlp.org/wp-content/uploads/2017-NHLP-DV-and-Hsing-State-Compendium-FINAL.pdf) have laws that permit tenants/program participants who have experienced domestic or sexual violence (and other forms of violence) to change their locks for safety reasons. These housing protections continue to be in effect. Therefore, housing providers must adhere to their obligations outlined in these laws. When changing locks, housing providers should take proper precautions following the Center for Disease Control (CDC) guidelines and the direction of their [local health department](https://www.naccho.org/membership/lhd-directory) officials.

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| 1. A tenant/program participant says that his roommate raped him. He wants to terminate his lease and move out of his unit for safety reasons. What do I do? |

For federally subsidized housing providers, housing protections under the [Violence Against Women Act](https://www.nhlp.org/wp-content/uploads/VAWA-Brochure.pdf) (VAWA) remain in effect. These providers must have an emergency transfer policy in place that is operable for tenants/program participants who need to move quickly for safety reasons. Tenants’/program participants’ requests for emergency moves and other safety measures under VAWA, such as lease bifurcations, must continue to be prioritized.

[Many states and localities](https://www.nhlp.org/wp-content/uploads/2017-NHLP-DV-and-Hsing-State-Compendium-FINAL.pdf) have laws that permit tenants/program participants who have experienced domestic or sexual violence (and other forms of violence) to end their leases early without penalties for safety reasons. These laws continue to be in effect. Therefore, housing providers must adhere to their obligations outlined in these laws.

Housing providers can facilitate emergency transfers by allowing survivors to bypass waiting lists through adopting admissions preferences for individuals who have experienced domestic or sexual violence and other forms of violence.

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| 1. How do I collect documentation from a tenant/program participant who says that they are or have experienced domestic or sexual violence? |

Housing providers are not required to request written proof from tenants/program participants who ask for specific safety measures because of violence committed against them. If a federally subsidized housing provider subject to VAWA does request written documentation, survivors must be able to provide a [self-certification](https://www.hud.gov/sites/documents/5382.docx) (Form HUD-5382 is available in [15 different languages](https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a#4)) to replace documents that cannot be obtained because of the crisis, such as police reports and restraining orders. Importantly, for safety reasons, housing providers must not demand that a survivor obtain a restraining order or file a police report against the perpetrator as a condition of remaining in their housing.

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| 1. Are there steps I should take to protect the confidentiality and privacy of tenants/program participants who have experienced domestic or sexual violence? |

Yes. Under the [Violence Against Women Act](https://www.nhlp.org/wp-content/uploads/VAWA-Brochure.pdf), federally subsidized housing providers must adhere to certain confidentiality requirements, such as not sharing the survivor’s information about the domestic or sexual violence with others and not placing the information in a shared database. In general, these are best practices that all housing providers should follow to ensure the safety of tenants/program participants. Housing providers should also work with advocates at their state, local, or territory [domestic violence](https://nnedv.org/content/state-u-s-territory-coalitions/) and [sexual violence](https://www.nsvrc.org/organizations?field_organizations_target_id=8&field_states_territories_target_id=All) coalitions to determine how best to protect the privacy of survivors.

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| 1. A tenant is having trouble paying rent because her partner, who controlled the family’s finances, has been removed from the unit because of domestic violence. Is there rental assistance that is available to her? |

Housing providers should remind federally subsidized tenants (whose subsidy levels are determined by the household’s income) that they can request an interim recertification if they have experienced a decrease in income during COVID-19, so that their rental assistance can be adjusted accordingly. HUD permits tenants to self-certify for recertifications or provide documentation for recertification by email or other electronic delivery. Federally subsidized housing providers should encourage tenants who have experienced income loss to recertify their income as soon as possible. Note that HUD has stated that the economic stimulus payments under the CARES Act and the temporary $600 federal enhancement to unemployment insurance are NOT considered part of a household’s income for federally subsidized tenants.

[Emergency Solutions Grant (ESG) funds](https://files.hudexchange.info/resources/documents/SNAPS-Shots-ESG-Rental-Assistance-and-Lease-Agreements.pdf), including ESG funds through the CARES Act to recipients and subrecipients, can also be used for [emergency rental assistance for survivors of domestic violence.](https://docs.google.com/document/d/14ZkgnRvsOoWoo5OM8RrlYlY3s6zukAOXeFI_G8q97Is/edit) ESG funds can also be used for rent arrears.

**Attachment B: December 11, 2019 Policy Alert: City of Atlanta, Office of Housing and Community Development VAWA Reauthorization Act Policy**



**C I T Y O F A T L A N T A**

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To: All Federal Program Awardees (HOME, CDBG, NSP, Section 8 Moderate Rehabilitation and HOPWA Awardees

From: Lolita S. Collins Assistant Director, OHCD

Date: December 11, 2019

SUBJECT: Policy Alert City of Atlanta, Office of Housing and Community Development VAWA Reauthorization Act Policy

Cc: Christina Cummings, Interim Director, OHCD

**Overview**

Under the HUD Final Rule Implementing VAWA Reauthorization Act of 2013, the City of Atlanta, Office of Housing and Community Development is adopting policies to include provisions for protection of victims of domestic violence, dating violence, sexual assault, sexual battery or stalking, regardless of sex, gender identity, gender expression or actual or perceived sexual

orientation. These policies and procedures apply to all housing programs issued by the City of Atlanta as a HUD formula and other federal funding Participating Jurisdiction.

**VAWA and Tenant Selection Plan Basics**

Housing Providers, Landlords/Property Owners and/or Property Managers MUST develop a public written tenant selection policy. It is not required that HUD approve this policy. The plan should be reviewed annually, and the plan should be available to the public. The required contents of this Tenant Selection Plan are but not limited to:

Project Eligibility Requirements

Project Specific Requirements (Example: Elderly or disabled designation)

2. Citizenship Requirements

3. SSN Requirements

Income Limits for Your Project

Waiting List/Admission Procedures / Opening /Closing Wait List

Taking Applications / Eligibility of students

Preferences That You Use

Screening Criteria (including Existing Tenant Search)

Rejecting Applicants

Occupancy Standards

Leasing/Unit Transfer Policies

Fair Housing Act & 504 Compliance

**Effective Date: June 1, 2019**

The COA is mandating all Housing Providers, Landlords/Property Owners and/or Property Managers to resume adhering to this act. This policy will remain in effect until a new policy mandate is issued.

**Background Description**

The Violence Against Women Act of 1994 (VAWA) is a United States federal law (Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act, H.R. 3355) signed as Pub.L. 103–322 by President Bill Clinton on September 13, 1994 (codified in part at 42 U.S.C. sections 13701 through 14040). VAWA was reauthorized in 2000, 2005 and 2013. The 2005 version first introduced provisions that applied to housing. Specifically affected were Section 8 programs and public housing. The 2013 reauthorization expanded the housing programs covered by the Act greatly.

According to HUD, VAWA 2013, among other things, “enhances judicial and law enforcement tools to combat violence against women; improves services for victims; enhances services, protection, and justice for young victims of violence; strengthens the health care system’s response to violence against women; and expands protections for Native American women and immigrants.” HUD’s final rule regarding the implementation of the housing protections authorized in the Violence Against Women Reauthorization Act of 2013 (VAWA) was published in the Federal Register on November 16, 2016. With the goal of providing protected housing for survivors of domestic and dating violence, as well as sexual assault and stalking, HUD requirements for landlords regarding the Violence Against Women’s Act went into effect in January of 2017. In addition, in April 219, HUD reinstated the guidance on this act. The requirement to comply with VAWA provisions as promulgated in 24 CFR part 5, subpart L.

**City of Atlanta, Office of Housing and Community Development**

**VAWA Reauthorization Act**

**Policy**

1. Under the Act, Housing Providers, Landlords/Property Owners and/or Property Managers must provide all applicants and existing tenants with a copy of the Notice of Occupancy Rights under the Violence Against Women Act. This notification must be in writing to applicants/ participants concerning the rights and obligations created under VAWA relating to confidentiality, denial of assistance and, termination of tenancy or assistance.
   1. If a tenant claims they are a victim of domestic violence, dating violence or stalking, the Housing Providers, Landlords/Property Owners and/or Property Managers may request that the tenant certify via a HUD approved certification form, that the individual is a victim of domestic violence, dating violence, or stalking. The certification must also state that the incident or incidents or bona fide incidents of such actual or threatened abuse, and meet the requirements set forth in the law. Attached is the COA form that is to be completed and maintained. Guidance should also be provided for the victim to provide this certification in writing, and that the victim must provide the information no less than 10 days after the date on which the owner/manager/landlord in writing requests the certification. If the victim does not want to complete a form, they may produce a Federal, State, tribal, territorial, or local police or court record to attach to the certification form.
2. Within thirty days of this Policy Alert, each Entity must adopt and implement an Emergency Transfer Plan that details both what a resident must do to request either an internal or external transfer due to their status as a victim of domestic violence, dating violence, sexual assault or stalking and what the Entity will do to relocate the victim family. HUD has produced a model plan that can be used as a template, but it is important to note that this model plan is not comprehensive and is only meant as a starting point in this process. Please use the attached HUD form 5381 as your template.
3. Add a lease addendum to the lease. This form must reflect the following
   1. purpose of the addendum- that the addendum is being executed to add the provisions of the Violence against Women and Justice Department Reauthorization Act.
   2. Conflicts with other provisions of the lease- it should read- in case of any conflicts between the provisions of this addendum and other sections of the lease, the provisions of this addendum shall prevail.
   3. Terms of the lease should remain the same (1 year). It should read- the effective date of this addendum is \_\_\_\_\_\_\_\_\_\_\_\_\_\_. This lease addendum shall continue to be effect until the lease is terminated.
   4. Include the protections

This law affects the selection of residents, the lease provisions that deal with termination of the lease and eviction, and the termination of assistance or eviction provisions in the lease or HAP contract and the relationship with the resident. A brief explanation of each of these three areas follows.

1. Selection of tenants and/or program participants: The law prohibits landlords/owners/managers from refusing to lease to persons who are, or have been, victims of domestic violence, dating violence, or stalking, when the applicant is otherwise a qualified applicant.
2. Lease Terms Regarding Termination: If a tenant is the victim of an incident or incidents of actual or threatened domestic violence, dating violence, or stalking, those incidents may not be construed as a serious or repeated violation of the lease by the victim or the threatened victim of the violence, and are not good cause for terminating the tenancy or occupancy rights of the victim of such violence or threatened violence.
3. Termination of Assistance/Eviction: Criminal activity directly relating to domestic violence, dating violence, or stalking engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control shall not be cause for termination of the tenancy rights if the tenant or an immediate member of the tenant’s family is the victim or threatened victim of that domestic violence, dating violence, or stalking.

What the Housing Providers, Landlords/Property Owners and/or Property Managers can do:

1. Bifurcate the lease to terminate evict a leaseholder who engages in criminal acts of violence as described above to family members or others without evicting the victimized lawful occupants.
2. Honor court orders regarding rights of access or control of the property.
3. May evict tenants for other good cause unrelated to the incident or incidents of domestic violence, provided that the victim is not subject to a “more demanding standard” than non-victims.
4. May evict if it can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant is not evicted.

Documentation must be maintained in confidence and may not be entered into any shared database or disclosed to any other entity. Exceptions are applicable if 1) the victim requests or consents to disclosure 2) the documentation is required in the bifurcation eviction proceedings or 3) otherwise required by applicable law.

**Protections Provided Under the VAWA**

VAWA provides specific protections for victims of domestic violence, dating violence, sexual assault or stalking as follows:

1. Housing Providers, Landlords/Property Owners and/or Property Managers may not deny admission or assistance to an applicant on the basis or as a direct result of the fact that the person has been a victim of domestic violence, dating violence, sexual assault or stalking if the applicant otherwise qualifies for admission or assistance.
2. If the program receives adverse information about an applicant/household member and is aware that domestic violence might be involved, the program shall determine whether there is a substantial connection between the adverse information and the fact that the applicant/household member is a victim of domestic violence. If the program determines that there is such a connection, then the program will disregard the adverse information.
3. A substantial connection includes, but is not limited to, where a victim loses financial support (e.g. victim’s job or perpetrator’s wages) due to domestic violence and is evicted (or receives a negative landlord reference) for late or nonpayment of rent; where a victim is evicted or receives a negative landlord reference due to property damage and/or noise or other interference with neighbors caused by the perpetrator; and where a victim receives a negative landlord reference for breaking a lease prior to its expiration due to domestic violence.
4. Housing Providers, Landlords/Property Owners and/or Property Managers may not terminate the lease or program assistance of a family that moves out of the dwelling unit in violation of the lease, with or without prior notification to the program, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believed they were imminently threatened by harm from further violence if they remained in the unit. An “imminent threat” is 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 and imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.
5. An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed as either a serious or repeated lease or program violation by the victim or as good cause to terminate the lease or assistance of the victim.
6. Criminal activity directly related to domestic violence, dating violence, sexual assault or stalking may not be construed as cause for terminating assistance of the lease of a resident if a member of the resident’s household, a guest, or another person under the resident’s control is the one engaging in the criminal activity, and the resident or affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, sexual assault, or stalking.
7. Housing Providers, Landlords/Property Owners and/or Property Managers have the authority to terminate the lease to any resident or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of the violence.
8. Common Application of Protections Afforded:
9. Where a perpetrator causes property damage, program assistance may not be terminated nor shall a sponsor-based program evict the victim of domestic violence, dating violence, sexual assault or stalking because of such property damage.
10. Where nonpayment of rent or other charges due a sponsor-based program is caused by the perpetrator, and where the victim of domestic violence, dating violence, sexual assault or stalking removes said perpetrator from the lease, the program shall offer the remaining household members a reasonable repayment plan (without charging late fees but may recover costs) and shall not evict the remaining members for such nonpayment so long as they substantially comply with said plan.

**Resources**

**https://www.hud.gov/program\_offices/housing/mfh/violence\_against\_women\_act**

To make compliance easier, all VAWA-related forms have been made available for download at HUD Clips. These include:

•VAWA Appendix A: Notice of Occupancy Rights Under the Violence Against Women Act, form HUD-5380

•VAWA Appendix B: Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, form HUD-5381

•VAWA Appendix C: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation, form HUD-5382

•VAWA Appendix D: Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, form HUD-5383