

NAIHC - 2017 LEGAL SYMPOSIUM

Violence Against Women Act “VAWA”: What you need to know

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Last*

VAWA: History

- The Violence Against Women Act was first passed by Congress in 1994. The original VAWA of 1994 (Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355) provided funding towards the investigation and prosecution of violent crimes against women, imposed automatic and mandatory restitution on those convicted, and allowed civil redress in cases prosecutors chose to leave unprosecuted.
- The Act also established the Office on Violence Against Women (OVW) within the Department of Justice (DOJ).



VAWA: History

- VAWA includes automatic expiration dates, for which Congress must reauthorize the Act.
- VAWA was reauthorized in 2000, 2005, and 2013.
- In 2000, Congress granted tribal courts full civil jurisdiction to enforce all protection orders, regardless of what jurisdiction issued the original order. (Victims of Trafficking and Violence Protection Act of 2000, AWA 2000, H.R. 3244, Division B, 106th Congress, 1999-2000).



VAWA: History

The 2005 reauthorization (VAWA 2005 Reauthorization Act, H.R. 3171, 109th Congress, 2005-2006) contained, for the first time, a specific Tribal Title (Title IX), which sought to improve the safety and justice for Native American and Alaska Native women.

Title IX of 2005 included provisions for:

- authorization for Indian law enforcement agencies to access national criminal information databases;
- expansion of the Firearms Possession Prohibition to include tribal law convictions;
- increased punishment through federal prosecutions for repeat domestic violence offenders who have at least two tribal convictions.
- the creation of a national tribal sex offender registry and a national registry containing protection orders issued by Indian tribes;



VAWA: History

Title IX of 2005 also included provisions for:

- authorization for Bureau of Indian Affairs (BIA) officers to arrest, without a warrant, persons reasonably believed to have committed certain domestic violence offenses;
- annual consultation sessions between the U.S. Department of Justice (DOJ) and tribal governments regarding distribution of tribal funds;
- national studies to examine violence against Native American and Alaska Native women, evaluate the effectiveness of tribal, federal, state and local responses, and examine the cost of providing related health services; and
- a mandate that 10% of funds allocated by the STOP (Services, Training, Officers and Prosecutors) grant program be set aside for tribal programs. An additional 10% of funding for direct services for victims of sexual violence was set aside for state, territorial and tribal coalitions.



VAWA: History

VAWA 2013 - The Violence Against Women Act (VAWA) was reauthorized in 2013 - 2013 - Violence Against Women Reauthorization Act of 2013, S. 47, 113th Congress, 2013-2015, including for the second time, an expanding Title IX, Safety for Indian Women - Title IX: Safety for Indian Women, of VAWA 2013.

Among its provisions, Title IX of VAWA of 2013 authorized “special domestic violence criminal jurisdiction.” This jurisdiction authorizes tribes to criminally prosecute non-Indians for the crimes of domestic violence, dating violence, and the violation of protection orders. However, in order for tribes to utilize this criminal jurisdiction, tribes must provide certain enumerated due process protections, including most of the protections required in the Tribal Law and Order Act.



VAWA: Housing

VAWA 2013 requires that Tenant Selection Plans and Housing Policy and Procedures must include policies to support or assist victims of domestic violence, dating violence or stalking, and protect victims and their families from being denied housing or from losing housing as a consequence of domestic violence, dating violence or stalking.

However, in accordance with VAWA 2013, owners may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in the VAWA 2013.



VAWA: Housing

Although owners of HOME and LIHTC projects must now comply with VAWA 2013, the Internal Revenue Service (IRS) has indicated that violations falling under VAWA 2013 are not currently reportable events in themselves on IRS Form 8823, unless it is determined that a violation is also a violation of a resident's rights under Fair Housing law. The incident could trigger a loss or recapture of LIHTC.

Owner/agent should include a copy of HUD form 91066 or its successor form with each tenancy termination or eviction notice to allow an individual to certify that he or she is a victim of domestic violence, dating violence or stalking. The form is to be completed and submitted to owner/agent within 14 business days or an agreed-upon extension date, in order for the individual to receive protection under the VAWA.”



VAWA: Housing

Some additional notes regarding VAWA:

- Technically, VAWA only applies to HUD programs (this includes NAHASDA)
- LIHTC only projects are not required to give notices or have an emergency transfer plan
- May be wise to have a plan anyway, because Violence is not restricted to only HUD projects
- Denying an applicant based on their victim status may end up as a discrimination issue
- These issues usually end up at the HUD Office of Fair Housing and Equal Opportunity
- Rural Development is expected to issue guidance soon



VAWA: Housing

One of the requirements of the HUD Final Rule on the Violence Against Women Act (VAWA) is that a copy of the Notice of Occupancy Rights, form HUD-5380, must be provided to applicants and residents. This form, along with the certification form HUD-5382 must be provided to existing households, applicants, and new move-ins/initial certifications no later than each of the following times:

- For applicants –
 - At the time the household is provided assistance or admission (i.e., move-in [MI] or initial certification [IC]); and
 - At the time the applicant is denied assistance or admission.

For existing households –

- Through December 15, 2017, at each household's annual recertification [AR]; and
- With any notification of eviction or termination of assistance (but not with subsequent eviction or termination notices sent for the same infraction).



VAWA: Housing

Emergency Transfer Plan:

- Allows survivors to transfer to another safe and available unit if they fear for their life and safety
- They can self-certify that this is considered an emergency
- Allows the survivor to decide what is a safe unit
- Requires landlords to allow survivors to move immediately
- Requires landlords to describe the efforts they will make if another safe unit is not immediately attainable; (i.e. partner with victim's services, have agreements in place with other housing providers)
- Requires landlords to document and annually report requests for transfers and the outcome of the requests
- Must be implemented by June 14, 2017



VAWA: Housing

To access the HUD provided forms:

- Google: “HUD form #####”
- Notice of Occupancy Rights under VAWA: form HUD-5380
- Emergency Transfer Plan: form HUD-5381
- Certification of Victim Status: form HUD-5382
- Emergency Transfer Request: form HUD-5383

These are fillable forms that you can enter your project information on and customize to your project as long as you retain HUD’s wording.



VAWA: Housing

Victims cannot be denied based on the “effects” of an incidence of violence, assault or stalking, for example

- Bad credit
- Damaged property
- Arrests

These may be issues that arise when you are qualifying an applicant and should be reviewed on a case-by-case basis

VAWA provides that if a covered housing provider bifurcates a lease under VAWA, any remaining tenants who had not already established eligibility for assistance must be given either the maximum time permitted by statute, or, if there are no statutory prohibitions, at least 90 calendar days from the date of bifurcation of the lease or until expiration of the lease, depending on the covered housing program, to establish eligibility for a covered housing program, or find alternative housing (See § 5.2009(b)(2).)



QUESTIONS?



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