

# 24 CFR § 5.2005 - VAWA protections.

- [CFR](#)
- 

[prev](#) | [next](#)

## § 5.2005 VAWA protections.

### **(a) Notification of occupancy rights under VAWA, and certification form.**

**(1)** A [covered housing provider](#) must provide to each of its [applicants](#) and to each of its [tenants](#) the notice of occupancy rights and the certification form as described in this section:

**(i)** A "Notice of Occupancy Rights under the Violence Against Women Act," as prescribed and in accordance with directions provided by [HUD](#), that explains the [VAWA](#) protections under this subpart, including the right to confidentiality, and any limitations on those protections; and

**(ii)** A certification form, in a form approved by [HUD](#), to be completed by the victim to document an incident of [domestic violence](#), [dating violence](#), [sexual assault](#) or [stalking](#), and that:

**(A)** States that the [applicant](#) or [tenant](#) is a victim of [domestic violence](#), [dating violence](#), [sexual assault](#), or [stalking](#);

**(B)** States that the incident of [domestic violence](#), [dating violence](#), [sexual assault](#), or [stalking](#) that is the ground for protection under this subpart meets the applicable definition for such incident under [§ 5.2003](#); and

**(C)** Includes the name of the individual who committed the [domestic violence](#), [dating violence](#), [sexual assault](#), or [stalking](#), if the name is known and safe to provide.

**(2)** The notice required by [paragraph \(a\)\(1\)\(i\)](#) of this section and certification form required by [paragraph \(a\)\(1\)\(ii\)](#) of this section must be provided to an [applicant](#) or [tenant](#) no later than at each of the following times:

**(i)** At the time the [applicant](#) is denied assistance or admission under a [covered housing program](#);

(ii) At the time the individual is provided assistance or admission under the covered housing program;

(iii) With any notification of eviction or notification of termination of assistance; and

(iv) During the 12-month period following **December 16, 2016**, either during the annual recertification or lease renewal process, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.

(3) The notice required by paragraph (a)(1)(i) of this section and the certification form required by paragraph (a)(1)(ii) of this section must be made available in multiple languages, consistent with guidance issued by HUD in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency, signed August 11, 2000, and published in the FEDERAL REGISTER on August 16, 2000 (at 65 FR 50121).

(4) For the Housing Choice Voucher program under 24 CFR part 982, the project-based voucher program under 24 CFR part 983, the public housing admission and occupancy requirements under 24 CFR part 960, and renewed funding or leases of the Section 8 project-based program under 24 CFR parts 880, 882, 883, 884, 886, as well as project-based section 8 provided in connection with housing under part 891, the HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, sexual assault, or stalking, as provided in this subpart.

**(b) Prohibited basis for denial or termination of assistance or eviction**—(1) *General*. An applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

**(2) Termination on the basis of criminal activity**. A tenant in a covered housing program may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if:

(i) The criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and

(ii) The tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking.

**(c) Construction of lease terms and terms of assistance.** An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

(1) A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or

(2) Good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of the victim or threatened victim of such incident.

**(d) Limitations of VAWA protections.**

(1) Nothing in this section limits the authority of a covered housing provider, when notified of a court order, to comply with a court order with respect to:

(i) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

(ii) The distribution or possession of property among members of a household.

(2) Nothing in this section limits any available authority of a covered housing provider to evict or terminate assistance to a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. However, the covered housing provider must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.

(3) Nothing in this section limits the authority of a covered housing provider to terminate assistance to or evict a tenant under a covered housing program if the covered housing provider can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to property of the covered housing provider would be present if that tenant or lawful occupant is not evicted or terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an "actual and imminent threat" if they meet the standards provided in the definition of "actual and imminent threat" in § 5.2003.

(4) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section should be utilized by a covered housing provider only when there are no

other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

**(e) Emergency transfer plan.** Each covered housing provider, as identified in the program-specific regulations for the covered housing program, shall adopt an emergency transfer plan, no later than June 14, 2017 based on HUD's model emergency transfer plan, in accordance with the following:

**(1)** For purposes of this section, the following definitions apply:

**(i) Internal emergency transfer** refers to an emergency relocation of a tenant to another unit where the tenant would not be categorized as a new applicant; that is, the tenant may reside in the new unit without having to undergo an application process.

**(ii) External emergency transfer** refers to an emergency relocation of a tenant to another unit where the tenant would be categorized as a new applicant; that is the tenant must undergo an application process in order to reside in the new unit.

**(iii) Safe unit** refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe.

**(2)** The emergency transfer plan must provide that a tenant receiving rental assistance through, or residing in a unit subsidized under, a covered housing program who is a victim of domestic violence, dating violence, sexual assault, or stalking qualifies for an emergency transfer if:

**(i)** The tenant expressly requests the transfer; and

**(ii)**

**(A)** The tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying; or

**(B)** 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 dwelling unit that the tenant is

currently occupying, or the [sexual assault](#) occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.

**(3)** The emergency transfer plan must detail the measure of any priority given to [tenants](#) who qualify for an emergency transfer under [VAWA](#) in relation to other categories of [tenants](#) seeking transfers and individuals seeking placement on waiting lists.

**(4)** The emergency transfer plan must incorporate strict confidentiality measures to ensure that the [covered housing provider](#) does not disclose the location of the dwelling unit of the [tenant](#) to a person who committed or threatened to commit an act of [domestic violence](#), [dating violence](#), [sexual assault](#), or [stalking](#) against the [tenant](#).

**(5)** The emergency transfer plan must allow a [tenant](#) to make an internal emergency transfer under [VAWA](#) when a safe unit is immediately available.

**(6)** The emergency transfer plan must describe policies for assisting a [tenant](#) in making an internal emergency transfer under [VAWA](#) when a safe unit is not immediately available, and these policies must ensure that requests for internal emergency transfers under [VAWA](#) receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.

**(7)** The emergency transfer plan must describe reasonable efforts the [covered housing provider](#) will take to assist a [tenant](#) who wishes to make an external emergency transfer when a safe unit is not immediately available. The plan must include policies for assisting a [tenant](#) who is seeking an external emergency transfer under [VAWA](#) out of the [covered housing provider's](#) program or project, and a [tenant](#) who is seeking an external emergency transfer under [VAWA](#) into the [covered housing provider's](#) program or project. These policies may include:

**(i)** Arrangements, including memoranda of understanding, with other [covered housing providers](#) to facilitate moves; and

**(ii)** Outreach activities to organizations that assist or provide resources to victims of [domestic violence](#), [dating violence](#), [sexual assault](#), or [stalking](#).

**(8)** Nothing may preclude a [tenant](#) from seeking an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available.

**(9)** Where applicable, the emergency transfer plan must describe policies for a [tenant](#) who has [tenant-based rental assistance](#) and who meets the requirements of [paragraph \(e\)\(2\)](#) of this section to move quickly with that assistance.

**(10)** The emergency transfer plan may require documentation from a [tenant](#) seeking an emergency transfer, provided that:

**(i)** The [tenant](#)'s submission of a written request to the [covered housing provider](#), where the [tenant](#) certifies that they meet the criteria in [paragraph \(e\)\(2\)\(ii\)](#) of this section, shall be sufficient documentation of the requirements in [paragraph \(e\)\(2\)](#) of this section;

**(ii)** The [covered housing provider](#) may, at its discretion, ask an individual seeking an emergency transfer to document the occurrence of [domestic violence, dating violence, sexual assault, or stalking](#), in accordance with [§ 5.2007](#), for which the individual is seeking the emergency transfer, if the individual has not already provided documentation of that occurrence; and

**(iii)** No other documentation is required to qualify the [tenant](#) for an emergency transfer.

**(11)** The [covered housing provider](#) must make its emergency transfer plan available upon request and, when feasible, must make its plan publicly available.

**(12)** The [covered housing provider](#) must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. Requests and outcomes of such requests must be reported to [HUD](#) annually.

**(13)** Nothing in this paragraph (e) may be construed to supersede any eligibility or other occupancy requirements that may apply under a [covered housing program](#).