

VAWA FINAL RULE DEFINITIONS, PROTECTIONS, DOCUMENTATION AND VICTIM REMEDIES

Definitions:

Actual and imminent threat refers to 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.

Affiliated individual, with respect to an individual, means:

- a. A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual);
or
- b. Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Covered housing provider refers to the individual or entity under a covered housing program, and as defined by each program in its regulations, that has responsibility of the administration and/or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities.

Dating violence means violence committed by a person:

- a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. Where the existence of such a relationship shall be determined based on a consideration of the following factors: length of the relationship, the type of relationship; and the frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by:

- a. a current or former spouse or intimate partner of the victim,
- b. by a person with whom the victim shares a child in common,
- c. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- d. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving the grant monies, or

- e. by any other person by an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

The term "spouse or intimate partner of the victim" includes 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 the relationship, and the frequency of interaction between the persons involved in the relationship.

Sexual assault means any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks the capacity to consent.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

Protections:

- 1. KHA cannot deny admission to, deny assistance under, or terminate a participant from participation in, or evict from housing on the basis or as a direct result of the fact that the applicant or tenant/participant 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. KHA cannot deny assistance or admission, terminate participation in, or evict a tenant based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking. Adverse factors can include: poor credit history, poor rental history, criminal record, or failure to pay rent.

Documentation Requirements:

KHA accepts a signed Self-Certification (HUD-5382) as a means of documenting an incident or incidents of domestic violence, dating violence, sexual assault or stalking.

KHA, on a case-by-case basis, may also provide VAWA protections based on the individual's verbal statement or other corroborating evidence. This statement will be documented in a confidential manner.

KHA may also accept a signed Certification by an employee, agent, or volunteer of a victim service provider, an attorney, or medical or mental health professional from whom the victim has sought assistance relating to the incident.

KHA may also utilize a Federal, State, tribal, territorial or local law enforcement agency, court or administrative agency's record of the incident. KHA can accept a police report.

Victim Remedies:

1. Tenants who are victims of domestic violence may request KHA to bifurcate the lease and continue to house the victim in cases where the victim and the perpetrator are members of the same household.
2. KHA will honor all court orders addressing rights of access to or control of the property, including civil protection orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and to address the distribution of property among household members in a case where a family breaks up.