

6.2 Who is Ineligible?

Guests, unassisted members, and live-in aides of the family are ineligible for VAWA protections that are available only to tenants and participants.

As a reasonable accommodation, a tenant/participant can request VAWA protections based on the grounds that the live-in aid is a victim of domestic violence, dating violence, sexual assault or stalking. In addition, other reasonable accommodations may be needed on a case-by-case basis.

In cases where a guest or unassisted member is a victim of domestic violence, dating violence, sexual assault or stalking, a tenant/participant cannot be evicted or have assistance terminated on the basis of the domestic violence, dating violence, sexual assault or stalking of the guest or unassisted member.

Unassisted members who are also on the lease may qualify by way of the lease for VAWA protections at 24 CFR 5.2005(c).

7. Determining Eligibility for VAWA Protections

7.1 Determining VAWA protections, including whether an adverse factor is a “Direct Result” of domestic violence, dating violence, sexual assault, or stalking

The VAWA Final Rule provides that an applicant for assistance or a tenant/participant receiving assistance under a covered housing provider may not be denied admission to, denied assistance under, terminated from participation in, or evicted 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. (See 24 CFR 5.2005(b)(1).)

In addition to prohibiting a denial, termination, or eviction based on the fact that the applicant or tenant/participant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, the VAWA Final Rule prohibits covered housing providers from denying assistance or admission, terminating participation in, or evicting 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.

For the programs covered by this Notice, an adverse factor refers to any factor that can be used as a basis for denying admission, terminating assistance, or evicting a tenant. However, if a denial or termination of assistance or eviction is required by a federal statute, based on a particular adverse factor, the PHA must comply with that statute, even if the adverse factor is a direct result of domestic violence, dating violence, sexual assault or stalking. For example, if the applicant is subject to a lifetime registration requirement under a State sex offender registration program, the PHA must comply with section 578 of the Quality Housing and Work Responsibility Act of 1998 and deny the applicant admission, even if the sex offense(s) were a direct result of the fact that the applicant was a victim of domestic violence, dating violence, sexual assault or stalking.

Section 7.2 provides examples to give PHAs and owners a sense of the various instances in which an adverse factor may be a direct result of domestic violence, dating violence, sexual assault, or stalking.

Section 7.3 provides a framework for determining whether an adverse factor is a direct result of the fact that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking.

Section 7.4 discusses the need for notifying an individual and other considerations when the PHA or owner determines the prohibition does not apply to the individual's denial, termination, or eviction.

7.2 Examples of When Adverse Factors Might Be Direct Results of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking

On the surface, adverse factors may appear unrelated to domestic violence, dating violence, sexual assault, or stalking and may present legitimate reasons for denial, termination, or eviction. However, the presence of an adverse factor may be due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking. An adverse factor may be present during much of an abusive relationship, or it may present itself only when a victim is attempting to leave, or has left, the abusive relationship. The following examples are provided to give PHAs and owners a sense of the many instances in which adverse factors might be the "direct result" of domestic violence, dating violence, sexual assault, or stalking. Please note that this list is neither exhaustive nor definitive.

Poor credit history. Depending on the circumstances, poor credit history may be a direct result of domestic violence, dating violence, sexual assault, or stalking when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Forcing a victim to obtain credit, including credit cards for the perpetrator's use.
- Using a victim's credit or debit card without permission, or forcing them to do so.
- Selling victims' personally identifying information to identity thieves.
- Running up debt on joint accounts.
- Obtaining loans/mortgages in a victim's name.
- Preventing a victim from obtaining and/or maintaining employment.
- Sabotaging work or employment opportunities by stalking or harassing a victim at the workplace, or causing a victim to lose their job by physically battering the victim prior to important meetings or interviews.
- Placing utilities or other bills in a victim's name and then refusing to pay.
- Forcing a victim to work without pay in a family business, or forcing them to turn their earnings over to the abuser.
- Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking.
- Job loss or lost wages due to missed work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime.
- Hospitalization and medical bills the victim cannot pay or cannot pay along with other bills.

Poor rental history. Depending on the circumstances, poor rental history may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Property damage;
- Noise complaints;
- Harassment;
- Trespassing;
- Threats;
- Criminal activity;

- Missed or late utility payments(s);
- Missed or late rental payment(s);
- Writing bad checks to the landlord; or
- Early lease termination and/or short lease terms.

Criminal record. Depending on the circumstances, a criminal record may be a direct result of domestic violence, dating violence, sexual assault, or stalking when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Forcing a victim to write bad checks, misuse credit, or file fraudulent tax returns;
- Property damage;
- Theft;
- Disorderly conduct;
- Threats;
- Trespassing;
- Noise complaints;
- Family disturbance/trouble;
- 911 abuse;
- Public drunkenness;
- Drug activity (drug use and the selling of drugs);
- Crimes related to sex work;
- “Failure to protect” a child from a batterer’s violence and/or abuse;
- Crimes committed by a victim to defend themselves or in defense of third parties from domestic violence, dating violence, sexual assault, or stalking; or
- Human trafficking.

Failure to pay rent. Depending on the circumstances, temporary failure to pay rent may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when domestic violence, dating violence, sexual assault, or stalking results in, for example:

- The victim’s injury or temporary incapacitation;
- The arrest of the only wage-earning member of the household;
- Preventing the victim from obtaining and/or maintaining employment;
- Sabotaging work or employment opportunities by stalking or harassing the victim at the workplace;
- Causing the victim to lose the victim’s job by physically battering prior to important meetings or interviews;
- Placing utilities or other bills in the victim’s name and then refusing to pay;
- Forcing the victim to turn their earnings over to the abuser;
- Forcing the victim to work without pay in a family business;
- Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking;
- Losing wages or a job due to missing work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime can result in loss wages and unemployment; or
- Inability to pay bills after significant medical expenses resulting from the victim’s hospitalization.

7.3 How to Determine if an Adverse Factor is a Direct Result of Domestic Violence, Dating Violence, Sexual Assault or Stalking

To trigger the direct result analysis, it is the responsibility of the applicant or tenant to:

1. Inform the PHA or owner that they are a victim of domestic violence, dating violence, sexual assault, or stalking; and
2. Provide enough information for the PHA or owner to make a determination regarding the adverse factor they are claiming was a direct result of domestic violence, dating violence, sexual assault, or stalking.

After the PHA or owner receives this information, the PHA or owner should consider the individual's statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking. If further information is necessary for this determination, the PHA or owner may request additional supporting documentation from the applicant or tenant. However, any request for additional documentation must:

- a. Be in accordance with the PHA or owners' policies or practices,
- b. Not require evidence of the domestic violence, dating violence, sexual assault, or stalking other than as specified in 24 CFR 5.2007 (see Section 8 of this Notice), and
- c. Not violate the VAWA Final Rule's confidentiality requirements or any other laws.

Note: Where an applicant, tenant or participant fails to request VAWA protections, the PHA or owner is not independently required to identify whether adverse factors are the direct result of domestic violence, dating violence, sexual assault, or stalking. PHAs and owners may seek training, where available, from a trained third-party (such as an expert victim service provider) on reviewing VAWA documentation. Any communications with a third party must be done consistent with the VAWA rule's confidentiality requirements.

If the PHA or owner believes any information is not clear, it should speak to the victim and try to clarify the information. After the PHA or owner has received the information from the tenant or applicant, and if necessary, clarified this information with the tenant or applicant, the PHA or owner must make an objectively reasonable determination, based on all the circumstances, whether the adverse factor is a direct result of the fact that the applicant or tenant/participant is a victim of domestic violence, dating violence, sexual assault, or stalking.

7.4 Notification and Other Considerations

PHAs and owners must notify the applicant or tenant if the PHA or owner finds that the denial, termination, or eviction is not on the basis or as a "direct result" of being a victim of domestic violence, dating violence, sexual assault, or stalking, and the applicant or tenant is thus denied admission to, denied assistance under, terminate from participation in, or evicted from the housing. (See 24 CFR 5.2005(b)(1).) An applicant or tenant that disagrees with the finding should use the program's appeal procedures (if applicable).

In the case of a termination or eviction, PHAs and owners must comply with the prohibition in 5.2005(d)(2), which provides:

[T]he 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.