



Office of Multifamily Housing

Notice: H 2017-05

Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents

VAWA Final Rule from HUD/PBCA Perspective

August 1, 2017

Agenda

- Overview
- Notice of Occupancy of Rights Under the Violence Against Women Act (form HUD-5380) and Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (form HUD-5382)
- VAWA Lease Addendum HUD-91067
- Documentation of Occurrences
- Lease Bifurcation
- Emergency Transfer Plan
- Confidentiality and Record Keeping
- Management Review for Multifamily Housing Projects (form HUD-9834)

Overview

- Provides guidance to owners and management agents (O/As) on implementing HUD's VAWA final rule
- Use Notice in conjunction with the final rule
- Summary of major changes can be reviewed in Section IV of the Notice H 2017-05
- Definition of key terms included in the VAWA final rule

Overview

- New/updated forms:
 - Notice of Occupancy of Rights Under the Violence Against Women Act (form HUD-5380)
 - Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence Sexual Assault, or Stalking (form HUD-5381)
 - Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (form HUD-5382)
 - Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (form HUD-5383)
 - Forthcoming: Updated VAWA Lease Addendum (form HUD-91067)

Overview

VAWA final rule applicable to:

- Apply to all assisted multifamily housing programs
- Apply to family, elderly, and disabled projects
- Includes:
 - Project-based Section 8
 - 202/162 PAC
 - 202/811 PRAC
 - 202 SPRAC
 - 236 (including RAP)
 - 811 PRA
 - 221(d)(3) and (d)(5)

Overview

Eligible for VAWA Protections

- Applicants and tenants of HUD housing programs who are victims of domestic violence , dating violence, sexual assault, or stalking
- Not limited to women and available to all, without regard to sex, gender identity, or sexual orientation

Overview

Not Eligible for VAWA Protections

- Guests, unassisted household members, and live-in aides are not eligible for protections limited to tenants

Note: As a reasonable accommodation, a tenant can request VAWA protections if a live-in aid is a victim and may request an emergency transfer for the household

Overview

Timetable

- All requirements now in effect
- Most provisions and requirements effective 12/16/2016
- Emergency Transfer Plan required by 6/14/2017

Notice of Occupancy of Rights Under the Violence Against Women Act (form HUD-5380)

- Core protections and confidentiality rights should not be changed
- The Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382) must be provided:
 - To rejected applicants
 - At move-in
 - With notice of eviction or termination of assistance
 - To each household during its annual recertification (AR) by 12/15/2017

Certification Form (form HUD-5382)

Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (form HUD-5382)

- Form HUD-5382 replaces form HUD-91066
- Provided with Notice of Occupancy Rights (form HUD-5380)

form HUD-5380 and form HUD-5382

Notification with Eviction & Termination of Assistance Notices

- Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382) required **once** for **each** action
- Required with notice of eviction
 - Material noncompliance
 - Criminal activity
- Required with notice of termination of assistance
 - Failure to respond to recertification
 - Failure to move to different sized unit
 - Increase of income

form HUD-5380 and form HUD-5382

Things To Look For

- Changes/exclusion to core protections and confidentiality rights on the Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382)
- Acknowledgment of receipt of form HUD-5380 and form HUD-5382 at 2017 AR not required but strongly encouraged by HUD
- If no acknowledgment of receipt is present, discuss with O/A

form HUD-5380 and form HUD-5382

Management and Occupancy Reviews (MOR)

Suggested Corrective Actions

- Finding for noncompliant content of Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382)
- Observation for not providing form HUD-5380 and form HUD-5382 to current residents during its AR by 12/15/17
- Finding for not providing form HUD-5380 and form HUD-5382 at other required events (e.g., eviction, termination of assistance, rejected applicant, MI)

VAWA Lease Addendum HUD-91067

- HUD will soon issue an updated form HUD-91067 to include new provisions
- Applies to all MF housing programs
 - Section 8 continue using current form HUD-91067. Provide revised form to current households at next AR and to new MI.
 - All other programs should not use current form HUD-91067 – wait until updated form HUD-91067 is issued

VAWA Lease Addendum HUD-91067

Management and Occupancy Reviews (MOR)

Suggested Corrective Actions

- Section 8 program - issue a Finding if an O/A is not using the updated form. Until the updated form is issued, make sure O/As have not amended the VAWA lease addendum on their own
- All other programs, not required to provide form HUD-91067 until updated version is released
- Once form HUD-91067 is updated, all covered housing projects must use updated version

Questions?

Email questions to
Carissa.I.Janis@hud.gov

Documentation of Occurrences

Certification of Victim Status

- O/As may accept a verbal request/certification
- O/A may require written request/certification or other form of documentation
- O/A must make request for written request/certification in writing in the form of a dated letter
- O/A cannot require more than one type of documentation

Documentation of Occurrences

An applicant or tenant may satisfy O/A's request by providing any one of the following:

- Certification Form (form HUD-5382); or
- A document
 - Signed by the professional from whom the victim sought assistance related to a VAWA crime:
 - Signed by the tenant; and
 - That specifies under penalty of perjury that the professional believes the occurrence of the incident of a VAWA crime is the ground for protection and remedies under the VAWA Final Rule; or
- Record from governmental law enforcement or administrative agency or court; or
- At discretion of an O/A, another statement or form of evidence

Documentation of Occurrences

- O/As encouraged to develop written policies as to whether verbal or written request will be required
- Applicant or tenant must inform O/A that he/she is a victim and provide enough information for the O/A to make determination regarding adverse factors
- O/As may consider documentation of adverse factors resulting from a tenant /applicant being a victim that otherwise deems the individual ineligible
- O/A must make an objectively reasonable determination of whether the adverse factor is a direct result of the applicant or tenant being or having been a victim
- O/A may ask for clarification or additional information

Documentation of Occurrences

Response Time

- O/A may require response within 14 business days
- O/A may extend time period
- VAWA protections may be denied if not submitted on time

Documentation of Occurrences

Conflicting Claim/Evidence

- More than one party may claim victim status or initial documentation given to O/A may contain contradictory information already available to the O/A
- O/A may request additional documentation from both parties
- May require 30-day response time

Documentation of Occurrences

Things To Look For in VAWA File

- Written policy aligns with current practices
- If O/A require written request/certification, the dated letter that was provided to tenant/applicant
- VAWA file should contain documentation of requests and O/A response, additional documentation received, and final determination
- Documentation demonstrating requests, victim status, occurrence of adverse factors, and O/A's final determination

Documentation of Occurrences

Things To Look For in VAWA File

- For conflicting claims/evidence, documentation should show how issue was resolved
- Documentation that applicant/tenant claim is not or is not valid and initial action was appropriate
- If O/A initial determination was appealed, VAWA file shows compliance with grievance procedures
- Timeframe of O/A's response; should be reasonable period of time

Documentation of Occurrences

Management & Occupancy Reviews (MOR)

- Enquire about the number of tenant/applicants requesting VAWA protections
- Request to view applicant rejected files and tenant files requesting VAWA protections

Suggested Corrective Actions

- Reviewer should issue Finding if required documentation as stated in TSP or written policies (e.g., House Rules) is not present
- Reviewer should use discretion when issuing Findings for O/A compliance with content and placement of written policy (e.g, TSP, House Rules)

Questions?

Email questions to Carissa.I.Janis@hud.gov

Lease Bifurcation

- Remove a household member or lawful occupant from a lease to evict, terminate occupancy rights, or terminate assistance
- If individual engages in criminal activity related to domestic violence, dating violence, sexual assault, or stalking
- Perpetrator is taken off lease and new lease executed with victim or other eligible household member
- Does not apply to guests, unreported household members, or anyone who is not a tenant

Lease Bifurcation

Reasonable Time Period to Establish Eligibility

- Remaining family member has to meet statutory requirements for housing assistance; e.g. immigration, age, disability status
- Time period from the date of lease bifurcation to establish eligibility or move out
 - For 202/811 PRAC, 90-calendar days or when lease expires (whichever is first) when household member does not meet age/disability criteria
 - Section 8, 202/8, and 236, 30-calendar days to establish immigrations status
 - Period will not apply beyond the expiration of a lease, unless permitted by program regulations

Lease Bifurcation

Termination of Victim Due to “Actual and Imminent Threat”

O/As may evict a victim or terminate assistance if they can demonstrate that an actual and imminent threat to other tenants or those employed at or providing services to the property would be present if that tenant or lawful occupant is not evicted.

Lease Bifurcation

Actual and Imminent Threat

O/As must consider the following:

- Duration of the risk
- Nature and severity of potential harm
- Likelihood that the potential harm will occur
- Length of time before the potential harm would occur

Lease Bifurcation

Things To Look For in Family Break-up

- Perpetrator was provided adequate notification and action within given timeframe
- Time period from the date of lease bifurcation to establish eligibility or move out
- Period to establish eligibility or find alternate housing does not extend beyond the expiration of a lease
- Documentation that remaining family member met statutory requirements for housing assistance; e.g. Immigration, age, disability status

Lease Bifurcation

Things To Look For in Family Break-up

- Eviction, removal, or termination was performed in accordance with applicable laws
- Compliance with HUD and O/A grievance procedures
- Proper notification provided for change in rent
- Remaining members are in appropriate sized unit – if not are they on unit transfer waiting list
- Documentation of evaluation and outcome in cases of actual and imminent threat

Lease Bifurcation

Management & Occupancy Reviews (MOR)

Suggested Corrective Actions

- Issue Finding(s) for infractions regarding establishing eligibility and performing timely move-outs/interim recertification
- Issue Finding(s) for infractions regarding performing eviction e.g., proper notice, following applicable laws
- Reviewer should use discretion in issuing corrective actions for documentation of O/A evaluation of cases of actual and imminent threat

Questions?

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Emergency Transfer Plan

Internal and External Transfers

- *Internal emergency transfer* - relocation of a tenant to another unit at same property where the tenant may move in without completing application process
- *External emergency transfer* - relocation of a tenant to another unit and meet eligibility requirements for the other property where the tenant must complete an application process at a different property

Emergency Transfer Plan

- VAWA 2013 requires O/As to assist victims in making internal and/or external unit transfers when possible
- Transfer to a safe unit; tenant determines what is safe
- O/As must create and implement an Emergency Transfer Plan, based on HUD's model, form HUD-5381
- Deadline for Emergency Transfer Plan completion - June 14, 2017
- Refer to Section XII of Notice H 2017-05 for Emergency Transfer Plan contents

Emergency Transfer Plan

Eligibility for Transfers

- Tenant expressly requests transfer and believes there is a threat of imminent harm if remaining in same unit
- In the case of sexual assault, either tenant believes there is a threat of imminent harm or the sexual assault occurred on the premises during the 90 days preceding the transfer request
- Request does not guarantee continued assistance or an external transfer to other HUD housing
- Tenant must meet outstanding eligibility or occupancy requirements

Emergency Transfer Plan

Preferences for applicants

- For external transfers
- O/As may establish a preference for VAWA victims
- Amend TSP for VAWA preference (does not need HUD approval)

Priority for tenants

- For internal transfers
- Amend TSP for priorities of the internal transfer waiting list

Emergency Transfer Plan

Things To Look For

- Emergency Transfer Plan compliant with the VAWA Final Rule and HUD Notice H 2017-05 requirements
- O/A actions consistency with adopted Emergency Transfer Plan
- Updated Tenant Selection Plan reflect VAWA preferences/priorities (if any)
- Documentation that adopted preference/priority was applied to both internal and external emergency transfers in accordance with the TSP
- Some house rules may discuss transfers and VAWA protections. If this is the case, make sure that house rules are updated accordingly.

Emergency Transfer Plan

Management & Occupancy Review (MOR)

Suggested Corrective Actions

- Finding if no Emergency Transfer Plan for MORs conducted after 12/14/2017
- Reviewer use discretion in issuing corrective actions regarding compliance with the contents of the Emergency Transfer Plan
- Reviewer use discretion in issuing corrective actions regarding applicability of O/A adopted Emergency Transfer Plan
- Finding regarding application of adopted preference/priority to internal and external emergency transfers

Questions?

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Confidentiality & Record Keeping

Confidentiality

- All information and documentation maintained with strict confidentiality
- VAWA information should not be provided to employees or contractors unless required by law
- Should not be entered into a database or provided to others, without consent from victim or unless required for an eviction action or by law
- O/As secure all correspondence and personal interaction with victim to maintain confidentiality

Confidentiality & Record Keeping

Confidentiality (cont.)

- O/As document victim's preferred mode of communication
- Victim may designate an attorney, advocate, or other secure contact for communications
- VAWA communication must be maintained separate from tenant file
- See Section XI of Housing Notice 2017-05 for best practices

Confidentiality & Record Keeping

Things To Look For

- Confirm who has access to documentation of VAWA claims
- How and where VAWA correspondence is maintained
- Documentation of victim's preferred mode of communication

Confidentiality & Record Keeping

Record Keeping & Reporting

- Maintain records of transfer requests and outcomes at each property
- Number of VAWA claims and transfer requests and outcomes of each
- Keep records by project
- Retain records for three years or as specified in program regulations
- More information about reporting will be forthcoming

Confidentiality & Record Keeping

Things To Look

- Number of VAWA claims and transfer requests for past year
- Time period records of VAWA claims are maintained

Confidentiality & Record Keeping

Management & Occupancy Review (MOR)

Suggested Corrective Actions

- Reviewer use discretion in issuing corrective actions regarding possible breaches of confidentiality
- Reviewer use discretion in issuing corrective actions regarding record keeping and reporting requirements

Management Review for Multifamily Housing Projects (form HUD-9834)

- Only Section E.21.b specific to victims of domestic violence, dating violence, or stalking (Note: sexual assault not listed but must be included in reviews)
- Suggested corrective action/comment placements
 - Section E.14: Tenant Selection Plan and waiting lists infractions
 - Section E.16: Termination of tenancy and assistance
 - Section E.21: Confidentiality
 - Section E.22: Sampled file infractions
 - Section F.23: Grievance procedures
 - Section F.24: VAWA outreach/partnership and other accolades
 - Section G.25: Implementation of VAWA Final Rule and HUD Notice: H 2017-05 requirements

Questions?

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