



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 an Owner/Agent Perspective

July 26, 2017

Agenda

- Purpose & Background
- Applicability
- Protections & Eligibility
- Notification
- Documentation
- Lease Bifurcation
- Actual & Imminent Threat
- Emergency Transfer Plan
- HUD Enforcement

Summary of Changes

- Specifies “sexual assault” as a crime covered by VAWA in HUD-covered programs (24 CFR 5.2003)
- New requirements for Notice of Occupancy Rights Under the Violence Against Women Act, form HUD-5380. (24 CFR 5.2005(a))
- Applicants and tenants may not be denied assistance or have assistance terminated on the basis of or as a direct result of having been a victim of domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2005(b)(1))
- Establish requirements for creating an emergency transfer plan and for related record keeping and reporting (24 CFR 5.2005(e))

Summary of Changes

- Revise requirements for documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2007)
- Establish reasonable time periods for a tenant who is a VAWA victim to remain in the unit while establishing eligibility or seeking alternate housing after a lease bifurcation (24 CFR 5.2009(b))
- Clarifies that O/As may establish a preference for victims of dating violence, sexual assault, or stalking, in addition to domestic violence

Summary of Changes

- 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)

Purpose & Background

Purpose

- Provides guidance to owners and management agents (O/As) on implementing HUD's VAWA final rule
- Use Notice in conjunction with the final rule

Background

- Final rule implements 2013 VAWA reauthorization act
- Published on November 16, 2016
- Most provisions and requirements effective December 16, 2016
- Emergency Transfer Plan required by June 14, 2017

Applicability

- 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)

VAWA Protections

HUD housing programs may not deny or terminate applicant/tenant assistance or tenancy on the basis or as a direct result of the applicant or tenant currently or having 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.

Eligibility

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

Eligibility

Not Eligible for VAWA Protections

- Guests, unassisted household members, and live-in aides 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 household

Questions?

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

Notification

Notice of Occupancy Rights, form HUD-5380

- Use form without changes to core protections
- Provide the Notice of Occupancy Rights (form HUD-5380) and Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (form HUD-5382):
 - To applicants with denial of assistance
 - At move-in
 - With notice of eviction or termination of assistance
 - Through 12/15/2017 to each household during its annual recertification (AR)
 - If 2017 AR has passed, provide to household through other means by 12/15/2017

Notification

Notification with Eviction & Termination of Assistance Notices

- Send Notice and certification form only once for entire action
- Send with notice of eviction
 - Material noncompliance
 - Criminal activity
- Send with notice of termination of assistance
 - Failure to respond to recertification
 - Failure to move to different sized unit
 - Increase of income

Notification

VAWA Lease Addendum (form HUD-91067)

- Revising form HUD-91067 to include new provisions
- Applies to all MF housing programs
- Provide to current households at next AR
- Include with all new MIs

Documentation

Request for VAWA Protections

- O/As may accept a verbal request
- O/As may also require written certification or other documentation; O/A's request for written certification must be in the form of a written dated letter

Documentation

Certification form HUD-5382

- Form HUD-5382 replaces form HUD-91066
- Provided along with Notice of Occupancy of Rights Under the Violence Against Women Act (form HUD-5380)
- O/As must accept Certification form or other documentation to validate victim status

Documentation

Other Permissible Documentation

- Signed document from professional from whom victim sought assistance
- Record from governmental law enforcement or administrative agency or court
- At discretion of an O/A, another statement or form of evidence
- O/A cannot require more than one type of documentation, for example: form HUD-5382 must be accepted in lieu of other permissible documentation

Documentation

Response Time

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

Documentation

Victim Confidentiality

- All information and documentation maintained with strict confidentiality
- VAWA information not provided to employees or contractors unless required by law
- Not 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

Documentation

Victim Confidentiality (cont.)

- O/As document in tenant's file victim's preferred mode of communication
- Victim may designate an attorney, advocate, or other secure contact for communications
- Keep VAWA communication separate from tenant file
- See program notice for best practices

Documentation

Adverse Factors

- O/As may consider documentation of adverse factors resulting from being a victim that otherwise deems the individual ineligible
- 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 factor
- O/A may ask for clarification or additional information
- 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

Documentation

Case Study

Shawn applied for assistance at a project-based Section 8 property and was notified by the O/A that the application was denied due to poor rental history, as he was previously evicted two times. Shawn informed the O/A that the evictions stemmed from criminal activity engaged in by an abusive partner that is no longer a household member and provided documentation to support the claim. **How should the O/A proceed?**

Documentation

Case Study (cont.)

Shawn provided documentation supporting the claim that his poor rental history is a direct result of being a victim of domestic violence. The O/A must not deny admission based on an adverse factor if the adverse factor is a direct result of the fact that an applicant is/has been a victim of domestic violence, dating violence, sexual assault, or stalking.

Documentation

Conflicting Evidence

- More than one party may claim victim status
- Requested documentation may contradict initial information provided to the O/A
- O/A may request additional documentation [from both parties]; same documentation as discussed earlier
- May require 30-day response time

Documentation

Conflicting Evidence (cont.)

- O/A reviews all documentation submitted and makes decision regarding VAWA protections
- When evicting one household member, follow outstanding grievance procedures and family break-up policies

Questions?

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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

- Eviction, removal, or termination must be effected in accordance with applicable laws for your area
- HUD recommends court-ordered evictions or reaching agreement on the mutual termination of the lease
- Change in family composition may require move to another unit of appropriate size

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
 - 90-calendar days or when lease expires (whichever is first) for 202/811 PRAC & SPRAC where household member does not meet age/disability criteria
 - 30-calendar days to establish immigrations status for Section 8, 202/8, and 236
 - Period will not apply beyond the expiration of a lease, unless permitted by program regulations

Lease Bifurcation

Statutory limitations that may prevent remaining tenant from establishing eligibility

Program	Possible Eligibility Limitations	Regulatory Provision	Reasonable Time Period to Remain in Unit
Section 202/811 PRAC and SPRAC	Age (for Section 202) and disability (for Section 811)	24 CFR 5.2009	90-calendar days or when the lease expires, whichever is first
Section 202/8	Age or disability; Immigration Status	24 CFR 5.2009	90-calendar days or when the lease expires, whichever is first; 30-calendar days if immigration status is an eligibility limitation
Section 221(d)(3)/(d)(5)		24 CFR 5.2009	All residents already meet eligibility
Section 236 (including RAP)	Immigration Status	24 CFR 5.2009	30-calendar days to meet eligibility
Section 8 PBRA and Mod Rehab/SRO	Immigration Status	24 CFR 5.2009	30-calendar days to meet eligibility

Lease Bifurcation

Case Study

Susan who is 64 years old and Jason who is 58 years old are a household and live in a Section 202 elderly property. Susan, who is the HOH and program qualifying household member, has no income and receives an elderly deduction. After an altercation, Jason claims VAWA protections. On 9/15/2017, Susan moves out of the unit and leaves Jason as the sole household member. Jason's rent increases because the household no longer receives the elderly deduction. **Can Jason remain in the unit and become the HOH?**

Lease Bifurcation

Case Study (cont.)-Reference: HUD Handbook 4350.3, Paragraph 3-16

- For Section 202s with project-based Section 8 - Jason must meet program eligibility requirements within 90 days or when the lease expires (whichever comes first). If eligibility cannot be established, the individual **may remain in the unit but must pay the contract rent.**
- For Section 202 PRACs - Since Jason is 58, he does not meet the program eligibility requirements. He must **vacate the unit** within 90 days or when the lease expires (whichever comes first). **Operating rent must be paid during the 90 day period.**

Actual and Imminent Threat

Defined

- “Actual and imminent threat” - a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm
- O/A must have objective evidence of words, gestures, actions, or other indicators of such threat

Actual and Imminent Threat

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.

Actual and Imminent Threat

Case Study

In response to a lease infraction for repeated disturbances, Samantha, a resident of ABC Apartments, informed the property's Manager that she was a victim of domestic abuse. As a result, the Manager barred the abuser from the property and offered Samantha an internal transfer. Although she claimed VAWA protections, Samantha refuses to follow through with other resources included in the property's Emergency Transfer Plan and maintains a relationship with the abuser. The couple's repeated altercations disrupt other tenants and causes them to fear for their safety. **How should the Manager proceed?**

Actual and Imminent Threat

Case Study (cont.)

- O/As must enforce the lease to ensure the peaceful enjoyment of the premises by other residents
- The O/A should determine if an actual and imminent threat to other tenants or those employed at or providing services to the property

Questions?

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Carissa.I.Janis@hud.gov

Emergency Transfer Plan

Internal and External Transfers

- *Internal 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 plan completion - June 14, 2017

Emergency Transfer Plan

Plan Contents

- Define eligibility for emergency transfers
- Describe measure of any preference or priority given to tenants/applicants who qualify for internal and external transfers (preferences or priority must be included in TSP)
- Statement that preferences (if any) don't supersede usual eligibility criteria
- Incorporate strict confidentiality measures

Emergency Transfer Plan

Plan Contents (cont.)

- Policy for making internal transfer when safe unit immediately available
- Policy for internal transfer when safe unit not immediately available
- Reasonable efforts O/A will take to facilitate external transfer; may include:
 - Arrangements with other HUD housing providers and
 - Outreach activities to community service providers

Emergency Transfer Plan

Plan Contents (cont.)

- Outreach activities to community service providers
- Policy for requesting internal and external transfer at same time
- Whether O/A will accept/require verbal or written transfer request and certification of victim status
- Specify required documentation, (if any)

Emergency Transfer Plan

Other Plan Requirements

- O/A must make the Plan available upon request and, when feasible, publicly available
- O/As keep retain record of all emergency transfers requested and their outcomes for three years or for a period of time as specified in their program's regulations
- Define “immediately available”, e.g. “vacant unit, ready for move-in within reasonable period of time”
- Review internal and external transfer waiting list policies in the TSP to determine if changes needed

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

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

Priority

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

Questions?

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HUD Enforcement

- VAWA claims, policies and transfer plan reviewed as part of MOR
- Reviewer will identify areas of noncompliance
 - TSP
 - Wait Lists (internal and external)
 - Preference and priority
 - Confidentiality
 - Record keeping

HUD Enforcement

Record Keeping and Reporting

- Keep records by project and project fiscal year
- Number of transfer requests and outcomes of each
- Retain records for three years or as specified in program regulations

HUD Enforcement

Fair Housing and Nondiscrimination

- Comply with all applicable fair housing and civil rights laws in implementing VAWA requirements
- Provide reasonable accommodations for people with disabilities to VAWA policies and procedures
- Ensure access to and accessible versions of VAWA documents to LEP individuals and people with disabilities

Questions?

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