

NAHMAanalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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HUD Final Rule: The Violence Against Women Reauthorization Act of 2013 (VAWA)

Background

On March 7, 2013, President Obama signed The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) into law. On August 6, 2013, HUD published a Federal Register notice that listed the new HUD housing programs covered by VAWA 2013, provided the changes that VAWA 2013 made to existing VAWA protections, and identified key issues that HUD solicited public comments on. On April 1, 2015, HUD published its proposed VAWA rule that provided the changes to HUD's regulations to fully implement VAWA 2013. On November 16, 2016, HUD issued the [final VAWA Rule](#), providing the requirements of housing protections for VAWA victims. As stated in the final rule, "VAWA applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements."

Prior to VAWA 2013, only residents of public housing and Section 8 tenant-based and project-based programs were covered by VAWA, based on VAWA legislation passed in 2005. In addition to those programs, the final rule extends protections to the HOME Investment Partnerships Program, the National Housing Trust Fund, Section 202 Supportive Housing for the Elderly, Section 236 Rental Program, Section 811 Supportive Housing for People with Disabilities, Section 221(d)(3) Below Market Interest Rate Program, Housing Opportunities for Persons with AIDS, and McKinney-Vento homeless programs. The rule affects all owners/agents of properties under HUD's multifamily rental assistance programs and becomes effective on **December 16, 2016**. HUD has stated that emergency transfer provisions become effective on, **June 14, 2017**.

Notice of Occupancy Rights

In addition to this final rule, HUD published a notice titled the Notice of Occupancy Rights under the Violence Against Women Act (Notice of Occupancy Rights) that housing providers must give to tenants and applicants to ensure they know their rights under VAWA. HUD included the emergency transfer requirements. The Notice of Occupancy Rights and emergency transfer requirements can be found in the Appendix (A-D) of the final rule; including "a model emergency transfer plan that may be used by housing providers to develop their own emergency transfer plans, a model emergency transfer request form that housing providers could provide to tenants requesting an emergency transfer under these regulations, and a new certification form for documenting incidents of domestic violence, dating violence, sexual assault, and stalking that

must be used by housing providers.” The Notice of Occupancy Rights are critical documents for NAHMA members to review and incorporate in occupancy policies.

HUD Highlights Key Changes Made at the Final Rule Stage

After analyzing public comments on the proposed VAWA rule, HUD made key changes in this final rule. The following highlights are HUD’s substantive changes made to the final rule from the proposed rule that are relevant to NAHMA members. The final rule provides that:

- Existing tenants in HUD-covered programs must receive HUD’s Notice of Occupancy Rights and accompanying certification form no later than one year after this rule takes effect, during the annual recertification or lease renewal process, if applicable, or through other means if there will be no annual recertification or lease renewal process for a tenant.
- HUD-required lease, lease addendum, or tenancy addendum must include a description of the specific protections afforded to the victims of VAWA crimes.
- Applicants may not be denied assistance and tenants may not have assistance terminated under a covered housing program for factors resulting from the fact that the applicant or tenant is or has been a victim of a VAWA crime.
- Victims of sexual assault may qualify for an emergency transfer if they either reasonably believe there is a threat of imminent harm from further violence if they remain in their dwelling unit, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.
- Emergency transfer plans must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of individuals seeking transfers or placement on waiting lists.
- Emergency transfer plans must allow for a tenant to transfer to a new unit when a safe unit is immediately available and the tenant would not have to apply in order to occupy the new unit
- Emergency transfer plans must describe policies for assisting tenants to make emergency transfers when a safe unit is not immediately available, both for situations where a tenant would not have to apply in order to occupy the new unit, and where the tenant would have to apply in order to occupy the new unit.
- Emergency transfer plans must describe policies for assisting tenants who have tenant-based rental assistance to make emergency moves with that assistance.
- Emergency transfer plans may require documentation, as long as tenants can establish eligibility for an emergency transfer by submitting a written certification to their housing provider, and no other documentation is required for tenants who have established that they are victims of domestic violence, dating violence, sexual assault, or stalking to verify eligibility for a transfer.
- Housing providers must make emergency transfer plans available upon request, and make them publicly available whenever feasible.
- Housing providers have a six-month transition period to complete an emergency transfer plan and provide emergency transfers, when requested, under such plan.
- Tenants and applicants may choose which of the forms of documentation listed in the rule to give to housing providers to document the occurrence of a VAWA crime.
- In cases of conflicting evidence, tenants and applicants who may need to submit third-party documentation to document occurrence of a VAWA crime have 30 calendar days to submit the third-party documentation.
- If a covered housing provider bifurcates a lease under VAWA, any remaining tenants who had not already established eligibility for assistance must be given either the maximum time

permitted by statute, or, if there are no statutory prohibitions, at least 90 calendar days from the date of bifurcation of the lease or until expiration of the lease, depending on the covered housing program, to establish eligibility for a covered housing program, or find alternative housing.

- If a family in a HOME-assisted rental unit separates, the remaining tenant(s) will retain the unit.
- If a family receiving HOME tenant-based rental assistance separates, the tenant(s) who are not removed will retain the HOME tenant-based rental assistance, and the participating jurisdiction must determine whether a tenant who was removed from the unit will receive HOME tenant-based rental assistance.
- VAWA protections apply to eviction actions for tenants in housing under a HUD-covered housing program.
- VAWA protections and requirements apply to mixed finance developments.
- In the Section 8 Housing Choice Voucher and Project-Based Voucher programs, the PHA is the housing provider responsible for complying with VAWA emergency transfer provisions.

HUD Responses to NAHMA Member Concerns

In response to the proposed rule, NAHMA members raised concerns on requirements of the emergency transfer implementation, confidential information of victims, and the definition of safe unit. NAHMA also joined with industry colleagues around shared [concerns](#) with the proposed VAWA rule. HUD offered responses to our comments as outlined below:

1. How are covered housing providers supposed to balance the interests of applicants (e.g., waitlist) and current tenants who may need the protections of VAWA? HUD should clarify how VAWA emergency transfer plans impact covered housing providers' waiting lists.

HUD Response (complete response can be found on 80749-80751): HUD acknowledges the difficulty of achieving the right balance. HUD noted that this is the reason that VAWA 2013 requires an emergency transfer plan so that covered housing providers may plan in advance, what actions to take.... the goal is for the plan to facilitate an emergency transfer under VAWA as expeditiously as possible....Consistent with program requirements and allowances, housing providers in covered programs are allowed to establish preferences for victims of domestic violence, dating violence, sexual assault, and stalking. Emergency transfer obligations under VAWA do not supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

2. "Covered housing provider" should include a clarification that small providers may be exempt from certain requirements due to infeasibility, or at the very least acknowledge that there are limitations based on the size of the covered provider.

HUD Response: As HUD noted in the proposed rule, VAWA 2013 does not allow for covered housing providers who could be considered to be small entities to provide fewer protections than covered entities that are larger....As small entities are not statutorily exempt from any VAWA protections, HUD declines to define them for purposes of this rule.

3. In order to ensure consistent translations and to minimize the financial burden on small providers, HUD should translate all VAWA required notices and certification forms into certain target languages. This would be consistent with HUD's efforts to translate critical multifamily leasing documents for the benefit of the applicant and tenant populations.

HUD Response: With respect to the issue of translation of documents, as noted earlier in this preamble, HUD has stated that it will provide versions of the certification form and notice of housing rights in different languages.

4. Requests for emergency transfer should require some sort of documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking to prevent persons from possibly gaming the system to obtain a benefit they would otherwise not be entitled too. At a minimum, such documentation should be submitted as soon as possible after the emergency transfer request is made.

HUD Response: The final rule allows housing providers, at their discretion, to require that tenants requesting transfers submit a written request before a transfer occurs certifying that they meet the criteria for an emergency transfer under this rule. To minimize burden, HUD has created a model emergency transfer request. Housing providers may accept third-party documentation if that documentation is offered by tenants, but housing providers will not be allowed to require any third-party documentation in order to determine whether a tenant seeking an emergency transfer is eligible for an emergency transfer.

5. 5.2007(c)(2) – The prohibition of entering confidential information into any shared database of the housing provider does not take into account the practical needs of operating such housing. At a minimum, covered providers should at least be able to enter a notation into a shared database that a transfer request was necessitated by VAWA.

HUD Response: The final rule maintains the provisions in the proposed rule that emergency transfer plans must incorporate strict confidentiality measures, and HUD's model emergency plan contains a section on confidentiality that specifies that the housing provider will keep confidential any information that the victim submits about an emergency transfer unless the victim gives the housing provider written permission to release the information or disclosure is required by law.

6. The costs of unit transfer should be an acceptable covered program expense and should not have to be borne by the covered housing provider.

HUD Response: For HUD programs that have existing guidance related to paying costs of transfers, housing providers should follow that guidance and may follow any existing transfer policies and procedures they have, including those for repayment plans. Under this final rule, housing providers will not be required to bear moving costs that tenants and their household members generally pay, including application fees and deposits, in addition to costs to physically move households and their belongings.

Conclusion

After much anticipation, HUD's VAWA requirements set standards for the affordable housing industry. The Low Income Housing Tax Credit and USDA Rural Housing properties are also subject to VAWA requirements, as stated in the VAWA 2013 reauthorization. Treasury and USDA have not yet issued regulations to implement VAWA protections under those programs; however USDA has indicated that they will likely follow HUD's lead and adopt similar requirements by the end of the year.