

Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

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HUD Issues Additional VAWA Guidance for Multifamily Owners and Management Agents

Background

On June 30, HUD issued Notice H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents. This notice provides guidance to owners and management agents (O/As) of HUD multifamily assisted housing on the requirements from the VAWA Final Rule, issued in November 2016. The notice is applicable to Project-based Section 8 programs, Section 202/162 Project Assistance Contract (PAC), Section 202 Project Rental Assistance Contract (PRAC), Section 202 Senior Preservation Rental Assistance Contracts (SPRAC), Section 811 PRAC, Section 811 Project Rental Assistance (PRA), Section 236 (including RAP), and Section 221(d)(3)/(d)(5) Below Market Interest Rate (BMIR). This NAHMA Analysis highlights some key requirements of the notice; however, members are strongly encouraged to review the entire notice.

Certification and Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Over eight pages in this section, HUD outlines the VAWA certification process, required documentation, and denial process. Members should be well aware of the VAWA certification form. The notice states that [form HUD-5382](#), “Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation,” supersedes the Multifamily Housing VAWA certification form, HUD- 91066. HUD directs O/As to attach form HUD-5382 to the VAWA “Notice of Occupancy Rights,” [form HUD-5380](#). HUD states “O/As may accept this form and must make it publicly available and provide it upon request.” The form must be consistent with HUD’s Limited English Proficiency (LEP) Guidance, as well as consistent with other fair housing laws, civil rights laws, and requirements for reasonable accommodations for individuals with disabilities.

VAWA Lease Addendum

HUD is still finalizing the VAWA Lease Addendum, form HUD-91067. HUD states the “Office of Multifamily Housing will soon issue an updated form HUD-91067, “VAWA Lease Addendum,” which will include the additional provisions required in the final rule. All O/As must use this updated form when providing or modifying a lease. Once available, O/As will be required to provide the new VAWA Lease addendum to all current households, either at the next annual

recertification or at another opportunity. All new move-ins must receive the lease addendum. HUD also encourages O/As to include additional VAWA protections in their house rules. In lieu of the VAWA Lease Addendum, HUD refers O/As to “24 CFR Part 5, subpart L, and the applicable program regulations for required elements of the lease addendum. The updated lease provisions in HUD-91067 will include updates regarding: Definitions (24 CFR 5.2003); VAWA protections (24 CFR 5.2005); Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2007); and Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking as applicable to the multifamily housing program, including emergency transfers (24 CFR 5.2009).”

Notice of Occupancy Rights

Form HUD-5380, Notice of Occupancy Rights, is currently available. The VAWA Notice of Occupancy Rights must be made available in multiple languages, consistent with HUD’s LEP guidance. O/As must be aware of the deadlines for providing HUD-5380, as stated on pg. 20-22 of the notice. HUD states, “The VAWA Notice of Occupancy Rights, along with the attached certification form HUD-5382, must be provided to existing households, applicants, and new move-ins/initial certifications no later than each of the following times:

1. For applicants –
 - a. At the time the household is provided assistance or admission (i.e., at move-in (MI) or initial certification (IC)), and
 - b. At the time the applicant is denied assistance or admission.
2. For existing households –
 - a. Through December 15, 2017, at each household’s annual recertification (AR), and
 - b. With any notification of eviction or termination of assistance, (but not with subsequent eviction or termination notices sent for the same infraction).

If households have already had their AR for 2017 and they were not provided with the forms, the O/A must provide the forms to those households through other means by 12/15/2017. A note or documentation must be made in those tenant files indicating when the forms were provided to the household.

The VAWA Final Rule does not require an applicant/household to sign acknowledgement of receipt of the Notice of Occupancy Rights and certification form. Nonetheless, it is strongly recommended that O/As maintain a note or other documentation in each tenant’s file that indicates when each applicant or household was provided the forms at each of the times listed in 1a, 1b, 2a, and 2b above.

Note: Even if the VAWA Notice of Occupancy Rights (form HUD-5380) and certification form (form HUD-5382) are provided in other ways, O/As still must provide the VAWA Notice of Occupancy Rights and certification form at each household’s AR through December 15, 2017. After that date, HUD assumes all current households will have received the forms and the VAWA rule does not require O/As to provide the notice and certification form at future ARs.”

Emergency Transfers

After a section on victim confidentiality, HUD provides an eight-page section on requirements and process for emergency transfer plans. HUD’s model Emergency Transfer Plan, [form HUD-5381](#), and a model Emergency Transfer Request, [form HUD-5383](#), are available. In regards to

Management and Occupancy Reviews (MORs), HUD states, “O/As must adopt an Emergency Transfer Plan no later than June 14, 2017 (although this notice was not issued until June 30, 2017). For MORs conducted after the publication of this Notice through December 13, 2017, PBCA reviewers should issue a Recommendation, rather than a Finding, for non-compliance relating to the Emergency Transfer Plan. For MORs conducted after December 14, 2017, a Finding should be issued for noncompliance relating to the Emergency Transfer Plan.”

Record Keeping and Reporting Requirements

In this section, HUD states that O/As must “keep confidential records of all emergency transfers requested under its Emergency Transfer Plan and the outcomes of such requests, and to retain these records for a period of three years, or for a period as specified in program regulations.” The requests and outcomes of such requests must be reported to HUD annually. In a future release of the Tenant Rental Assistance Certification System (TRACS), HUD plans to add data elements for the number of emergency transfer requests received; number of requests resolved; number still pending; and outcomes of requests. However, until TRACS is updated, the requirement to report this information to HUD is not in effect and HUD will communicate additional details about the reporting requirement at a later date. HUD states, “it would be beneficial for O/As to maintain this information to facilitate future reporting.”

Establishing Waiting List Preferences

O/As can establish a VAWA admission preference. HUD states “O/As do not need HUD approval to adopt a VAWA preference – this is an acceptable owner-adopted preference. O/As must modify their Tenant Selection Plan to include the owner-adopted preference. The Tenant Selection Plan will be reviewed during the property’s MOR. HUD does note that owners must receive HUD approval to adopt an admissions preference not specified under the requirements for owner-adopted preferences.

For reference on establishing owner-adopted preferences, HUD refers to: “24 CFR 5.655, HUD Handbook 4350.3, REV-1, Chapter 4-6, or Housing Notice 2013-21 *Implementation and approval of owner-adopted admission preferences for individuals or families experiencing homelessness.*”

HUD Enforcement of VAWA Final Rule

HUD plans to enforce VAWA requirements “during an on-site MOR or as part of an off-site desk review. HUD, the property’s Performance Based Contract Administrator (PBCA), or the property’s Traditional Contract Administrator (TCA) staff will review the O/As compliance with VAWA Final Rule. HUD/PBCA/TCS will identify areas of noncompliance in the form HUD-9834. Under the current version of the form, questions 14, 16, 21, 22, and 25 each contain subsections under which VAWA compliance may be assessed and reported.” In addition to these requirements, O/As must comply with all applicable fair housing and civil rights laws and requirements in the implementation of VAWA requirements. O/As must also take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals.

Conclusion

In conclusion, HUD’s VAWA requirements are long overdue. Members have long requesting this guidance. In addition to guidance provided to O/As, HUD has also provided VAWA implementation guidance to Public Housing Authorities (PHAs) for the Housing Choice program

and Public Housing programs. VAWA guidance for PHAs can be found [here](#). NAHMA will continue to keep members updated on additional forms and TRACs releases.

VAWA Documents

- [HUD-5380](#), Notice of Occupancy Rights
- [HUD-5381](#), Model Emergency Transfer Plan
- [HUD-5382](#), Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (replaces form HUD-91066)
- [HUD-5383](#), Emergency Transfer Request
- [HUD-91067](#), Lease Addendum - Violence Against Women and Justice Department Reauthorization Act of 2005

Despite their expiration, HUD has recommended O/As use all forms until new forms are published. Members can also find links to all of the documents and available translations on [HUDCLIPS](#).