NAHMAnalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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Reauthorization and Implementation of the Violence Against Women Act

Background

The Violence Against Women Act (VAWA) is a federal law designed to strengthen and improve existing programs that assist victims of domestic violence, dating violence, sexual assault, and stalking. The Act was originally passed in 1994 as a section of the Violent Crime Control and Law Enforcement Act. This 1994 version of VAWA was passed with bipartisan support and was reauthorized in 2000 and again in 2005. The reauthorization in 2005 was substantial. It provided more robust housing protections and officially made it unlawful to deny an individual Section 8 housing assistance because she is a victim of domestic/dating violence.

VAWA expired in September of 2011 and was set to be reauthorized again in early 2012. Attempts to reauthorize VAWA were stalled in 2012, but in the beginning of 2013, Senate Majority Leader Patrick Leahy (D-VT) introduced S.47, the Violence Against Women Reauthorization Act of 2013. Opposition was raised against S.47 by conservatives in both the House of Representatives and the Senate because they felt, among other reasons, that changes in the bill exceeded the fundamental mission of the law and raised serious policy questions with immigration and tribal law. These concerns attracted media attention and criticism.

Pressure from the public and the media swayed opinions and S. 47 passed the Senate with a recorded vote of 78 to 22 in February, 2013. The Senate bill was then brought to the floor of the House where it passed with a recorded vote of 286 to 138. On March 7, 2013, President Obama signed S.47 into law. VAWA's reauthorization provides $650 million to states over five years to go support transitional housing, legal assistance, and other services for victims of domestic violence.

Coupled with the new protections for previously underserved populations, the 2013 reauthorization expands VAWA's applicability to additional affordable housing programs. Under the 2005 reauthorization, VAWA was applicable to only project-based and tenant-based Section 8 rental assistance properties (and to public housing). VAWA 2013 expanded the list to which assistance applies, including to USDA's Rural Development multifamily housing programs and properties that use the Low-Income Housing Tax Credit (LIHTC). Below is a list of all housing programs that are now subject to the protections under VAWA:

- Section 202, Supportive Housing for the Elderly
- Section 811, Supportive Housing for Persons With Disabilities

- Project-Based Section 8
- Tenant-Based Section 8 (Housing Choice Vouchers)
- Housing Opportunities for Persons With AIDS (HOPWA)
- Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act
- HOME Investment Partnerships
- Section 221(d) of the National Housing Act
- Federal Housing Administration (FHA) Mortgage Insurance (Including Section 236)
- Low-Income Housing Tax Credit (LIHTC)
- Rural Housing Programs, including sections 514, 515, 516, 533, and 538
- Public Housing

Because programs under Section 8 already have VAWA regulations in place, HUD believes that compliance with the VAWA 2013 requirements will be easier for public housing authorities (PHAs) and owners and agencies (O/As) participating in these programs. However, the 2013 reauthorization does contain new notification and emergency transfer requirements for PHAs and O/As. While NAHMA agrees that tenants should have easy access to information on their rights under VAWA, we are concerned that the increased notification requirements under the 2013 reauthorization are too burdensome.

Also, several of these new stipulations were not fully defined and industry concerns were not adequately addressed in initial *Federal Register* notices made by HUD. For example, O/As are concerned about the feasibility of the emergency transfer plans required under the law. In August, the Department made a request for comments on these law revisions. On October 7, 2013, NAHMA and its industry partners submitted comments that asked for further guidance and clarification on several provisions of the law. These comments are cited in this analysis of VAWA 2013.

General VAWA Housing Protections and Rules

Title VI of the Violence Against Women Act (Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking) contains the specific housing measures that are provided under the law. PHAs, owners, and managers participating in the federal programs covered by VAWA must comply with the 2013 reauthorization. The key provisions under Title IV include:

- It is unlawful for an O/A to deny or terminate housing assistance to a tenant in federally subsidized housing based solely on the individual being a victim of domestic violence, dating violence, sexual assault, or stalking.
- It is unlawful to deny assistance, tenancy, or occupancy in assisted housing based solely on certain criminal activity directly related to domestic violence engaged in by a member of the individual's household or by any guest or other person under the individual's control, if the tenant or an affiliated individual is the victim or threatened victim.
- PHAs are responsible for developing model emergency transfer plans for O/As to use; HUD is responsible for developing policies for victims who are eligible for tenant protection vouchers.

- PHAs and O/As may request documentation from an individual seeking VAWA protections to certify that he or she is a victim of domestic violence, dating violence, sexual assault or stalking.

Some versions of these items were included in previous reauthorizations of the law, while the emergency transfer plan language is new.

Documentation

Like the 2005 reauthorization, VAWA 2013 allows PHAs or O/As to request that a tenant seeking protection under that law provide documents that certify his or her claim of abuse. All certifications must be in writing and can be requested solely on the individual's statement or other evidence. The 2013 reauthorization permits PHAs or O/As to seek the certification through a form that is approved by the appropriate federal agency. This form must include:

- That an applicant is a victim of domestic/dating violence, sexual assault, or stalking;
- That the incident documented for protection meets the requirements under the statute; and
- The name of the perpetrator (if the name is known and safe to provide)

A victim may also provide a document signed under penalty of perjury by the alleged victim and a mental health professional, social worker, victim service provider, attorney, or medial expert in which the expert attests his or her belief that the victim has experienced an incident which meets the grounds for protection. A federal, state, tribal, local law enforcement or court administrative record may also be used.

In a situation where the PHA or O/A receives documentation with conflicting information, VAWA 2013 allows that PHA or O/A to require an applicant to submit one of the previously mentioned third-party documents. After a request for documentation has been made, an applicant or tenant has 14 business days to respond. An O/A or PHA may deny assistance if the documentation is not provided in this time; the timeframe may also be extended at the O/A's discretion.

In industry comments submitted to HUD, we suggested that HUD's implementing guidance and forms should reflect the ability for housing providers to require third-party certification when there is not clear evidence that domestic violence occurred, or if there is a question about who is a victim and who is the perpetrator of domestic violence.

Emergency Transfer Plans

A new provision of the 2013 reauthorization of the Violence Against Women Act requires that the appropriate agencies develop a model emergency transfer plan for PHAs and O/As to use for the covered housing programs. This plan must allow victims of abuse to transfer tenancy to another safe unit assisted under a VAWA covered housing program. Reasonable confidentiality measures are required as well.

The tenant can be granted a transfer only if the tenant requests a transfer, and either the tenant reasonably believes he or she is threatened with imminent harm from further violence if he or she remains in the unit or if the tenant is a sexual assault victim, and the sexual assault occurred on the property premises during the 90- day period preceding the transfer request. Furthermore, VAWA 2013 requires HUD to establish policies and procedures under which

victims of abuse requesting an emergency transfer may receive (subject to the availability of tenant protection vouchers) assistance through the tenant-based section 8 program.

In industry comments to HUD, NAHMA joined other housing organizations in urging the Department to recognize the differing characteristics, roles and capabilities of various housing providers and property types. Our big concern is that O/As cannot "transfer" a resident to another multifamily project. For example, while a PHA may have the ability to relocate residents upon request, private property owners and managers generally are not in a position to transfer residents to another property or assist individuals in making alternative housing choices. If there are no available units in the project, there is nowhere to relocate the family or individual. Therefore, any emergency transfer provision should acknowledge the limitations of transfer policies and reflect the practical realities of the rental housing sector. Because the requirement is statutory, the industry's best chance to mitigate this policy is through the rule making process. HUD should consider the volume and availability of dwelling units under the control of various program participants while creating this rule.

The comments also suggested that the emergency transfer plan should provide guidance for situations where it is not feasible for an individual PHA or O/A to effectuate a transfer. For example, HUD should consider providing a HUD resource person in each HUB or program center that an owner or manager can direct a tenant to for alternate housing options. This resource person would be able to provide tenants with:

- Information on assisted housing properties with local preferences for victims of domestic violence
- A referral to the local PHA for admission to public housing or the voucher program
- Access to and use of Tenant Protection Vouchers

The comments suggested that HUD should also address the implementation of emergency transfers as they relate to other competing tenant selection or relocation preferences such as disability and homelessness. Until HUD develops the model Emergency Transfer Plan, PHAs and O/As may continue to implement any transfer plan at that property/program as described in an agency's admissions and occupancy plan or administrative plan.

Notification Rights for Tenants and Applicants

The 2005 reauthorization of VAWA included provisions that required specific notification requirements for O/As participating in the covered housing programs to provide to tenants. The 2013 reauthorization significantly revised these notification requirements, and it directed O/As to inform tenants of their rights more frequently. It also requires that HUD, as opposed to the individual housing provider, develop the notice outlining the applicant or tenant's rights. The tenant or applicant must be informed of their rights:

- At the time that an applicant is denied residency;
- With the certification form distributed to applicants;
- At the time when the applicant is admitted to tenancy at the property; and
- With any notification of eviction or termination of assistance

The HUD notice on tenant rights must be available in multiple languages and be consistent with limited-English proficiency policies. Also, O/As must provide the certification form with the notice of the tenant's rights.

Industry comments sent to HUD suggested that the Department update this language in its own standard information documents that are given to tenants and applicants of affordable housing. Examples include the Tenants' Rights and Responsibilities brochure and the Section 8 Tenancy Addendum (HUD 52641-A), which already includes a notification of rights under the 2005 reauthorization. It was requested that HUD should also prioritize the translation of these notification materials to satisfy Limited English Proficiency requirements.

Lease Bifurcation

A key aspect of the 2005 reauthorization allowed PHAs and O/As to "bifurcate" a lease, meaning they could evict or end assistance to any lawful occupant who engaged in criminal acts of physical violence, without evicting or ending the assistance of others in the household. So in a situation where domestic abuse occurred in a housing unit when the perpetrator is the lease holder of the unit, an O/A is permitted to remove or terminate assistance to the perpetrator while maintaining housing or assistance for the victim.

Under the 2013 reauthorization of VAWA, housing providers must provide the remaining tenant (i.e. the victim) with the opportunity to establish eligibility under their current housing program or allow time for him or her to find new housing, which may fall under an alternate program. In comments submitted to HUD, NAHMA and its industry partners stated, "A 60 to 90-day time period provides a 'reasonable' amount of time for tenants to establish program eligibility or find new housing under VAWA." Currently, there is no statutorily required timeframe for the tenant's "opportunity" to establish eligibility under their current housing program. In the submitted comments, we suggested that HUD should avoid any interpretation that would result in an unreasonably long period of time to meet the opportunity requirements.

Overall, the comments requested more guidance for the lease bifurcation provision in VAWA. The responsibility and penalties for establishing tenant eligibility to remain in their unit should not fall solely on O/As. Housing providers should not be penalized where a local housing agency fails to act on the remaining tenant's application for program eligibility during the specified time period. It is also important to recognize that the housing programs covered under VAWA have different waiting lists and tenant selection requirements. Guidance is necessary to clarify whether VAWA's bifurcation and tenant eligibility provisions impact existing wait list and admission criteria.

Furthermore, HUD guidance must also address the payment of rent during this eligibility time period. The comments suggested that such guidance should require that remaining tenants are responsible for rent payment and meeting other lease obligations, or HUD should commit to continuing assistance to the housing provider for the duration of the time period.

Conclusion

NAHMA firmly supports the mission of the Violence Against Women Act. We are more than willing to continue collaboration with federal agencies to improve housing protections for victims of domestic violence while also ensuring that the practical concerns of housing providers are addressed. In order to improve these services, NAHMA believes that HUD should provide additional guidance where necessary so that O/As can be most effective in protecting tenants. At this time, NAHMA has not received any proposals for implementing VAWA policies at properties assisted through Rural Development (RD) programs or LIHTC properties

(IRS/Treasury). We will continue to follow the implementation of this law and will inform members as soon as information for RD or LIHTC properties is available.