



Oregon

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Housing and Community Services

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TO: Owners and Management Agents

FROM: Jennifer Marchand, Lead Compliance Officer and LIHTC Technical Advisor

**SUBJECT: HUD's Violence Against Women Act (VAWA)
Required for All Tax Credit and HUD Funded Communities**

Effective 1/3/15, all owner/managers of housing programs funded under HUD and/or the Tax Credit program must implement a policy to address the protections under the Violence Against Women Act (VAWA).

Since 2005 the Violence Against Women Act (VAWA) has provided protections to families applying for and receiving rental assistance payments under the Project Based Section 8 program. VAWA protects victims of domestic violence, dating violence, sexual assault, or stalking, as well as affiliated individual(s), generally, from being denied housing assistance or being evicted as a result of an incident of domestic violence, dating violence, sexual assault, or stalking that is reported and confirmed.

2013 VAWA POLICY CHANGE, (Federal Register Vol. 78, No. 151, August 6, 2013)

On March 7, 2013, President Obama signed the Violence Against Women Act Reauthorization, which expands the housing protections to include the following programs:

1. HOME Investment Partnerships program (HOME)
2. Low-Income Housing Tax Credit properties (LIHTC)
3. USDA Rural Housing properties
4. Section 236 Supportive Housing (Elderly)
5. 811 Supportive Housing for persons with disabilities
6. Section 221(d)(3) Below Market Interest Rate Program (BMIR)
7. HOPWA housing program
8. HUD McKinney-Vento homeless programs

The VAWA 2013 reauthorization enhances judicial and law enforcement tools to combat violence against women, improves services for victims, and strengthens the health care system's response to violence against women. It should be noted that the protections for VAWA-covered violence include sexual assault, women, men, and people in same-sex relationships.



PROTECTIONS FOR TENANTS

Tenants cannot be denied tenancy based upon a previous incident of violence. Victims have a right to privacy. All information provided by the tenant must be kept confidential. Incidents of threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a “serious or repeated lease violation” by the victim, or “good cause” to terminate the tenancy rights of the victim. The tenant can also request a transfer if they believe that they are threatened with imminent harm from further violence if they remain in the same unit.

If a household member engages in a criminal act(s) of violence against another household member, VAWA allows for lease bifurcation. This means that the owner/manager may evict or remove the person responsible for the violent act(s) without evicting or removing the victim(s) from the lease agreement.

If the victim participates in a housing program and cannot establish eligibility for the housing program, the owner/manager must give a reasonable amount of time for the victim to find new housing or establish eligibility under another covered housing program.

PROTECTIONS FOR THE OWNER/MANAGER

The VAWA protections are not meant to limit the owner/manager from honoring court orders issued to either protect the victim or address the distribution of property in case a household breaks up. Nor, do the protections limit the owner/manager from terminating the victim’s lease for lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking. If the owner/manager can show that the victim’s presence poses an actual and imminent threat to other tenants or employees, the owner/manager may choose to end the lease term. The owner/manager must show reasonable actions to reduce or eliminate the threat prior to seeking eviction.

Tenants who are victims of domestic violence, dating violence, sexual assault, and/or stalking must contact their owner/manager as soon as possible to report any issue(s). The owner/manager may request that the tenant provide documentation of the abuse. Failure to report and document an occurrence of domestic violence, dating violence, sexual assault, or stalking within the required (14-days) or agreed upon deadline can be considered a lease violation if the tenant was properly notified of the VAWA protections.

VAWA IMPLEMENTATION AT THE SITE

Properties that have already implemented a VAWA policy and documentation or the VAWA Certification form to address the VAWA protections can make a copy of the completed documents and file them with the Tax Credit paperwork for file compliance purposes. The documentation must meet the 2013 requirements for all programs.

VAWA LEASE ADDENDUM - The owner/manager must implement a VAWA lease addendum for all current and new tenants. Although HUD provides a VAWA lease addendum (HUD Form 91067), this is not a mandatory form. The owner/manager can incorporate the VAWA protections in the current lease and forms, or create a lease addendum with the required language.

VAWA Lease Document Requirements

1. VAWA Protections (Required Language)

- a. VAWA confidentiality required language must notify the resident that their statement(s) will be retained in confidence and will not be entered into a shared database, or provided to another entity without prior written consent or if required by law. All documentation must also be kept in a secure location separate from the tenant files.

- b. The Landlord may not consider incidents of domestic violence, dating violence, sexual assault, or stalking as serious or repeated violations of the lease or other “good cause” for termination of assistance, tenancy or occupancy rights of the victim of abuse.
- c. The Landlord may not consider criminal activity directly relating to abuse, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or affiliated individual(s) of the tenant’s family is the victim or threatened victim of that abuse.
- d. The Landlord may request in writing that the victim, or a family member, or affiliated individual, on the victim’s behalf, certify that the individual is a victim of abuse and that the Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-91066, or other documentation as noted on the certification form, be completed and submitted within 14 business days, or an agreed upon extension date, to receive protection under the VAWA. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction.

2. The lease addendum must be signed by all tenants required to sign the lease agreement according to your management policy.

3. The lease addendum must also be signed with the same frequency as your other lease addendums. It is a good practice to review this policy with your Tenants annually during the lease renewal process.

4. Each site must provide the VAWA notice of rights to tenants at the time a person applies for housing, when a person is denied residency, when a person is admitted as a tenant of a housing unit, and when a tenant is threatened with eviction or termination.

VAWA CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING – The VAWA Certification form (HUD Form 91066) may be used to document occurrences of violence at the site and certify that the individual/tenant is a victim of domestic violence. This form is not mandatory. However, if the owner/manager chooses to create their own form, the form must notify the tenant who has experienced the violent occurrence of the VAWA confidentiality requirements. The form must also include the date, time, and location of the incident, as well as a description of the incident that must be signed under penalty of perjury.

TENANT SELECTION POLICY – Having a tenant selection policy is a good practice for all communities. The tenant selection policy should describe the marketing and outreach activities, waiting list management, and tenant selection during the application period for your community. Under VAWA, potential tenants cannot be denied tenancy based upon a previous incident(s) of violence. The VAWA language must be included in your tenant selection policy with details on how the owner/manager will process applications with documented occurrence(s) of domestic violence, dating violence, sexual assault, or stalking. The owner/manager must adopt a policy to address requests for emergency unit transfers as a result of a documented occurrence of domestic violence, dating violence, sexual assault, or stalking.

VAWA NOTIFICATION

When notifying tenants of the VAWA protections, the required language must be used and a process must be created for collecting supporting documentation if a tenant experiences a violent occurrence.

RESOURCES FOR TENANTS & LANDLORDS

The owner/manager should reaffirm with their tenants at move-in and recertification, the importance of calling 911 if they feel that they are in immediate danger. Victims of domestic violence, dating violence, sexual assault, or stalking can get help by calling the National Domestic Violence Hotline at 1-800-799-SAFE (7233). There is also a state-by-state list of local resources at <http://www.thehotline.org/>

Federal Register VAWA Notice <http://www.gpo.gov/fdsys/pkg/FR-2013-08-06/pdf/2013-18920.pdf>

One CPD <https://www.onecpd.info/news/reauthorization-of-the-violence-against-women-act-vawa/>

National Housing Law Project Comments on VAWA (Example Notice to Tenants included)

<http://povertylaw.org/sites/default/files/files/housing-justice/13-10-7-NHLP-Shriver-HUD-VAWA-comments.pdf>

National Housing Law Project compendium of State and local laws that affect domestic violence

<http://nhlp.org/files/Domestic%20violence%20housing%20compendium%20FINAL7.pdf>

FAILURE TO IMPLEMENT THE VAWA POLICY

At this time OHCS will not file form 8823 with the IRS for failure to implement the VAWA policy with required lease language; however a finding of general non-compliance may be noted for the property. This may change when more guidance is communicated from HUD or the IRS regarding non-compliance with VAWA policies.

If a housing provider refuses to rent, evicts, or otherwise treats someone differently because of that person's status as a victim of domestic violence, HUD or the courts may find a violation under the Fair Housing Act due to direct discrimination, unequal treatment, or disparate impact.

As of the date of this memo, HUD and the IRS are developing regulations to codify the VAWA protections and provide additional guidance on the statutory provisions of "reasonable time" in the case of bifurcation and the remaining household member no longer qualifies, and "notice of rights", which is required at application, move-in and when there is an occurrence of violence reported by your tenant.

If you have any questions regarding this memo, please feel free to send them to

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