



Oregon

Governor Kate Brown

Housing and Community Services

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TO: OHCS Owners and Management Agents

FROM: Jennifer Marchand, Multifamily Program Compliance Technical Advisor

SUBJECT: HUD's Violence Against Women Act (VAWA) Final Rule published with new requirements effective immediately

On 11/16/2016 HUD published the VAWA Final Rule in the Federal Register. The rule can be found at the following link: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf> As stated in the regulation, certain requirements in the rule became effective the following month on December 16, 2016. However compliance with the rule with respect to completing an emergency transfer plan and providing emergency transfers, as well as associated recordkeeping and reporting requirements, is required no later than June 14, 2017. The final rule codifies VAWA core protections across covered HUD programs to ensure individuals are not denied assistance, evicted, or have their assistance terminated because of their status as victims of domestic violence, dating violence, sexual assault and stalking, or for being affiliated with a victim.

The 2013 VAWA legislation and resulting final rule in 2016 expanded the number of HUD programs subject to VAWA protections. Previously, only residents of public housing and Section 8 tenant-based and project-based programs were covered by VAWA legislation as passed by Congress in 2005. The final rule extends VAWA 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 211(d)(3) Below Market Interest Rate Program, Housing Opportunities for Persons with AIDS, and McKinney-Vento homeless programs. The Low Income Housing Tax Credit and USDA Rural Housing properties are also subject to VAWA requirements per the 2013 reauthorization.

HUD's rule includes:

- Continuation of the core protections – The rule codifies the core protection across HUD's covered programs ensuring survivors are not denied assistance as an applicant, or evicted or have assistance terminated due to having been a victim of domestic violence, dating violence, sexual assault, and stalking, or for being affiliated with a victim.
- Emergency transfers – One of the key elements of VAWA's housing protections are emergency transfers which allows for survivors to move to another safe and available unit if they fear for their life and safety. VAWA required HUD to adopt a model emergency transfer plan for



housing providers and to explain how housing providers must address their tenants' requests for emergency transfers. HUD's model emergency transfer plan

- allows a survivor to self-certify their need for an emergency transfer, ensuring documentation is not a barrier to protecting their immediate safety;
- allows the survivor to determine what is a safe unit for purposes of the transfer, ensuring that the survivor has control over their own safety planning;
- requires housing providers to allow for a resident to move immediately if there is another safe and available unit that does not require the survivor to undergo an application process as a new tenant, ensuring quicker access to safe housing;
- requires housing providers to explain the efforts they will take when there is not a safe and available unit available for an emergency transfer and encourages housing providers to partner with victim services and advocates and other housing providers to assist a survivor; and,
- requires housing providers to document requests for emergency transfers, including the outcome of the request

•Protections against the adverse effects of abuse – Domestic violence can often have negative economic and criminal consequences on a survivor. The perpetrator may take out credit cards in a survivor's name, ruining their credit history, or causing damage to survivor's property causing eviction and poor rental history. The perpetrator may force a survivor to participate in criminal activity or a survivor may be arrested as part of policies that require arresting of both parties in a domestic disturbance. The final rule ensures that covered housing providers do not deny tenancy or occupancy rights based solely on these adverse factors that are a direct result of being a survivor.

•Low-barrier certification process – The final rule makes it clear that under most circumstances, a survivor need only to self-certify in order to exercise their rights under VAWA, ensuring third party documentation does not cause a barrier in a survivor expressing their rights and receiving the protections needed to keep themselves safe.

Important Notice of Immediate Requirement for Implementation:

On 12/15/16 HUD published VAWA model forms that all Owners/Agents subject to VAWA can use. The HUD forms are model forms and owners/agents can customize them for their company and properties, as long as they contain the same information and language.

During the 12-month period following the effective date of the VAWA regulation, owners/agents **must give each in-place household the notice of occupancy rights and the certification form** either during the annual recertification or lease renewal process, or, if there will be no recertification or lease renewal for a household during the first year after the rule takes effect, through other means. The 12-month period began December 16, 2016 and runs through December 15, 2017. Although HUD has not issued a requirement to have residents sign an acknowledgement of receipt of Appendix A and Appendix C, OHCS strongly encourages the use

of an acknowledgement of receipt which is signed and dated by each household and retained in the file in order to show compliance with the HUD requirement of giving the notice to all in place households and households as they move in. The Owner or Agent can create their own form or use the HUD form VAWA Appendix A. If an Owner or Agent creates their own form, the information given to the tenant must be the same as indicated in the HUD form. OHCS highly recommends that Owners use the HUD form or have an Attorney review self-created forms.

Please note that the HUD form has areas that must be completed by the Owner or Agent. For example, the notice uses HP for housing provider but the housing provider should insert its name where HP is used. The Notice also has the following "[insert name of program or rental assistance]" throughout. VAWA protections apply to all of the programs mentioned at the beginning of this notice as required in the rule. For example, if the funding at the specific property is Section 8 based, please insert "the Section 8 Assistance Program". If the assistance is HOME, insert "the HOME Investment Partnerships Program". If the property was funded by LIHTC insert "Section 42 Low Income Housing Tax Credit Program".

In addition to in place tenants, beginning immediately, owners/agents must provide the Notification of Occupancy Rights and Certification forms to applicants when assistance is being terminated, the tenant is being evicted, an application is being denied, or at the time the new household moves into the property. However, it is important to note that the forms do not have to be provided to every applicant on a property's waiting list.

Forms to assist you with VAWA are available on the Office of Multifamily Housing's web page at: https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh

The forms are as follows:

- VAWA Appendix A: Notice of Occupancy Rights Under the Violence Against Women Act, form HUD-5380
- VAWA Appendix B: Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, form HUD-5381
- VAWA Appendix C: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation, form HUD-5382and
- VAWA Appendix D: Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, form HUD-5383

At this time HUD has not completed the updating of forms 91067 or 91068. **In order for an Owner/Agent to be in compliance with the VAWA Final Rule they must implement VAWA Appendix A (HUD-5380) and C (HUD 5382) or self-created forms using exact information immediately.**

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.

Questions regarding this notice can be sent to Jennifer.C.Marchand@oregon.gov