

Violence Against Women Act - Final Rule

Q&A's with Multifamily Staff – Part I

The following is a summary of questions/scenarios presented to the HUD Multifamily Office of Asset Management and Portfolio Oversight regarding the Violence Against Women Act (VAWA) Final Rule and Notice H 2017-05.

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Applicability

1. **Question:** Previously, the VAWA 2013 Final Rule was only applicable to Section 8 as noted in the HUD Occupancy Handbook 4350.3. Does the reauthorization act now include 202/811 projects with a Project Rental Assistance Contract (PRAC) or other housing programs for seniors or people with disabilities as part of the covered groups?

Answer: Yes; VAWA 2013 applies to privately-owned HUD assisted properties under several types of contracts. In addition to PRAC projects, VAWA 2013 now also applies to 811 Project Rental Assistance (PRA), 202 Senior Preservation Rental Assistance Contract (SPRAC), and 202 Project Assistance contract (PAC) projects. Other covered housing includes Section 236, 221(d)(3) and 221(d)(5) properties financed with a below-market or subsidized interest rate loan. If a property does not receive HUD rental subsidy or doesn't have a subsidized loan, then that property is exempt.

2. **Question:** Do all properties with HUD-insured loans have to meet requirements of the updated implementation of VAWA?

Answer: No, unless the property operates with some type of HUD rental or interest rate subsidy program.

3. **Question:** We have a current ineligible applicant (non-citizen) who believes she may now qualify for Section 8 assistance based on being a victim of domestic violence. Does the VAWA Final Rule affect applicant/tenant eligible status for project-based Section 8?

Answer: No. The VAWA Final Rule does not supersede or change any applicant/tenant eligibility or occupancy requirements that may apply under a covered housing program.

4. **Question:** Is a Section 8 resident who signs the VAWA Lease Addendum (form HUD-91067) but goes to market rate at a later date, still covered under the VAWA Final Rule?

Answer: Any resident who is eligible at move-in may continue to receive VAWA protections as long as they reside at the property, regardless of income increases at a later date.

Notice of Occupancy Rights and Certification Form

5. **Question:** What is the status of form HUD-91066 “Certification of Domestic Violence, Dating Violence, or Stalking”?

Answer: Form HUD-91066 is now obsolete and replaced with the certification form titled, “Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation” (form HUD-5382) for all multifamily housing programs.

6. **Question:** Are O/As responsible for providing translated documents?

Answer: All VAWA forms have been translated into Armenian, Cambodian, Creole, Japanese, Korean, Lao, Mandarin, Russian, Spanish, Thai, and Vietnamese and can be downloaded from [Hudclips](#).

7. **Question:** O/As are typically not permitted to change OMB approved forms without HUD approval. Is it acceptable to change the Notice of Occupancy Rights (form HUD-5380) and Model Emergency Transfer Plan (form HUD-5381)?

Answer: O/As may customize the Notice of Occupancy Rights (form HUD-5380) to reflect the type of assistance provided under the specific housing program and specify the program operations that may pertain to or affect VAWA. However, O/As must not change the form’s core protections and confidentiality provisions. The Model Emergency Transfer Plan (form HUD-5381) is a model form and provides guidance for completing a comprehensive plan. Using the model as is will not satisfy VAWA’s Emergency Transfer Plan requirement. The O/A must add to the model form and customize it to meet the VAWA emergency transfer requirements. See Emergency Transfer Q&As for additional detail.

8. **Question:** Can an O/A give the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) to all residents at once or at times other than during the Annual Recertification and have them sign an acknowledgment? That would be easier than providing both forms to each household at Annual Recertification.

Answer: The VAWA Final Rule specifies that the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) must be given at each household's Annual Recertification during the first year the VAWA Final Rule is in effect. O/As are encouraged to provide the forms to tenants earlier if possible and at any additional times determined to be helpful in informing tenants of their VAWA rights. HUD also encourages O/As to post the Notice of Occupancy Rights on their websites and in public areas, such as waiting rooms, community bulletin boards, and lobbies where all tenants may view them.

9. **Question:** What does an O/A do if some households have already had their Annual Recertification for 2017 and they didn't get the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382)?

Answer: Provide these households with the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) as quickly as possible.

10. **Question:** Do O/As have to give the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) to each household or to each member of a household?

Answer: Only one set of forms - Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) - must be given to each household.

11. **Question:** Are resident and applicant files required to include evidence that Management issued the Notice of Occupancy Rights? If so, is it acceptable if O/As have in the resident/applicant files an acknowledgement form demonstrating that the notice was received by each household?

Answer: Although the VAWA Final Rule does not require applicants/tenants to sign acknowledgement of receipt of the forms, it is strongly recommended that O/As maintain a note or other documentation in each tenant file that indicates each applicant/tenant was provided the Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382) at each of the following times:

- Household annual recertification between December 16, 2016 and December 15, 2017;
- At the time an applicant is denied assistance or admission;
- At the time the household is provided assistance or admission (i.e. at move-in), and
- With any notification of eviction or termination of assistance. Note that O/As do not need to provide the forms with subsequent notices sent for the same infraction.

12. **Question:** It is unclear how often the Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382) must be given relative to evictions and termination of assistance. Is an O/A required to give both forms with all noncompliance notices for Annual Recertifications?

Answer: The Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) must be provided to the household with the first notice of termination of assistance or eviction. It is not necessary to resend these forms with subsequent notices for the same termination or eviction action.

13. **Question:** Are we required to send everyone on the waitlist the Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382)? Or, can we include the forms in our Applicant Packet?

Answer: The VAWA Final Rule states that the Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382) must be provided to applicants “at the time the applicant is denied assistance or admission [and] at the time the individual is provided assistance or admission”. Sending the forms to your entire waiting list and including the forms in your applicant packets is not necessary.

14. **Question:** Must an O/A provide the Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382) when a resident's rental assistance is terminated due to increased income? What happens at a later point if that resident becomes eligible for rental assistance again, because his/her income decreases?

Answer: Yes, O/As must provide the Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382) with any type of termination of assistance notice. Assistance (if available) may be reinstated if the household becomes eligible for assistance at a later date.

15. **Question:** In instances where a property has both project-based Section 8 and LIHTC units, are O/As required to distribute the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) to the LIHTC units?

Answer: The VAWA Final Rule only applies to applicants and tenants of HUD covered housing programs. Properties funded with LIHTCs should seek guidance from the Department of Treasury or the appropriate HFA for guidance on implementing VAWA protections in those units. Note: O/As may choose to offer VAWA protections and remedies to all tenants and applicants, where applicable.

Emergency Transfers

16. **Question:** It does not appear that the Model Emergency Transfer Plan (form HUD-5381) contains all the required elements of the VAWA Final Rule. Will the property be in compliance if this Model Emergency Transfer Plan is utilized?

Answer: The model form contains only general provisions of an Emergency Transfer Plan that apply across HUD programs. Adoption of this model plan without further information will not be sufficient to meet a O/A's responsibility to adopt an emergency transfer plan. O/As must consult applicable regulations and program-specific HUD guidance when developing their own emergency transfer plans, to ensure their plans contain all required elements.

17. **Question:** Is there a sample acknowledgment form for the residents to sign stating that they have received a copy of the property's Emergency Transfer Plan?

Answer: No. O/As are not required to individually distribute the Emergency Transfer Plan to tenants. However, O/As must make their Emergency Transfer Plans available upon request and, when feasible, make copies readily available to the public.

18. **Question:** Can O/As utilize the Model Emergency Transfer Plan (form-HUD 5381) to help them create an Emergency Transfer Plan for units that are funded by Low-Income Housing Tax Credits (LIHTC)?

Answer: To the extent that the LIHTC units have a HUD assistance attached to them, then the O/A must follow the VAWA requirements per the VAWA Final Rule, including the development of an Emergency Transfer Plan. In such instances, the O/A can use the HUD Model Emergency Transfer Plan (form HUD-5381) as a model to develop their own Emergency Transfer plan. If, on the other hand, the LIHTC units do not have a covered HUD assistance attached to them, then for those units, O/As should seek guidance from the Department of Treasury in developing an Emergency Transfer Plan for LIHTC purposes.

19. **Question:** Are applicants eligible for an emergency transfer?

Answer: No. Applicants are not eligible for emergency transfers. However, O/As may adopt an admission preference for applicants who are victims of domestic violence, dating violence, sexual assault, or stalking. Without that preference, the applicant will be placed at the end of the admission waiting list.

20. **Question:** Does an internal VAWA emergency transfer request supersede other internal transfers, e.g., 504 request or a transfer due to being under/over housed? Would all transfer requests for VAWA be considered emergency?

Answer: The VAWA Final Rule does not define transfer priorities. The O/A has discretion to set priorities for transfers. Each property's Emergency Transfer Plan must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of tenants seeking transfers and individuals seeking placement on waiting lists. Priorities for the internal transfer waiting list and applicant preferences for the external waiting list must be identified in the property's Tenant Selection Plan.

The VAWA Final Rule does not define the term emergency, therefore, all VAWA transfer requests should be considered emergencies.

21. **Question:** When a resident fear for his/her life, switching units within a property (internal transfer) might not be sufficient to ensure his/her safety. Can a resident be moved to another property as an emergency transfer?

Answer: Yes. If a unit within the current property (internal transfer at Property A) is not deemed to be a safe unit, the resident may request help in moving to another property (external transfer at Property B). However, if Property B has not adopted a preference for victims of domestic violence, dating violence, sexual assault, or stalking, then the tenant that was at Property A will become an applicant at Property B, and will be placed at the end of Property B's waiting list.

To accept an external transfer, Property B must follow established screening guidelines to ensure the new applicant meets eligibility criteria. Qualifying for an emergency transfer does not guarantee continued assistance under the program or an external transfer to another covered housing program. The emergency transfer requirements do not supersede any eligibility or occupancy requirements that apply under a covered housing program.

22. **Question:** If an O/A owns or manages multiple properties, are O/As required to make emergency transfers to other properties within their portfolio?

Answer: No, if the properties are separate projects, then the transferring resident would have to reapply at each of the properties. A management agent (with consent from owners) may implement a VAWA preference at all of their properties to give priority to residents of the agent's other managed properties. However, this is at the discretion of the O/A; it is not required by the VAWA Final Rule. The Rule require that in facilitating an external transfer (moving from Property A to Property B), O/As must make reasonable efforts to help tenants who request an external emergency transfer (in accordance with the property's Emergency Transfer Plan), when a safe unit at the current property is not immediately available.

23. **Question:** Are there additional requirements the Emergency Transfer Plan must address such as a transfer request to a property that is fully occupied?

Answer: The VAWA Final Rule does not specifically address a transfer request to a property that is fully occupied. The Eemergency Transfer Plan must, however, describe reasonable efforts the O/A will make to help residents who request an external emergency transfer. O/As may

include a procedure to help residents in cases where other possible properties are completely occupied.

24. **Question:** O/As are obligated to assist VAWA victims in moving to a “safe unit”. If an O/A helps a victim move to another property, but the abuser finds them, is the O/A subject to liability?

Answer: Questions regarding the O/A’s liability should be directed to the O/A’s legal counsel. However, HUD does not require or expect the O/A to determine whether a unit is safe from an abuser or ensure the victim moves to a unit that is safe from the abuser. For purposes of emergency transfers under VAWA, a “safe unit” refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe.

25. **Question:** In facilitating an emergency transfer, is the O/A responsible for the victim’s moving costs?

Answer: The VAWA Final Rule does not require O/As to pay moving costs that households generally pay, (including application fees and deposits in addition to physically moving belongings). However, for HUD programs that have existing guidance related to paying costs of unit transfers, O/As should continue to follow those unit transfer policies.

Lease Addendum

26. **Question:** Is each adult household member required to sign a separate VAWA Lease Addendum (form HUD-91067) or can management add additional signature lines so all adult household members can sign just one form?

Answer: Each adult household member must sign the VAWA Lease Addendum form. HUD will add additional signature lines in the updated VAWA Lease Addendum (form HUD-91067).

27. **Question:** Does the VAWA Lease Addendum (form HUD-91067) apply to 202 PRAC and 811 PRAC properties?

Answer: HUD is in the process of updating the VAWA Lease Addendum (form HUD-91067) to include 202/811 PRAC properties. Therefore, 202/811 PRAC properties should wait to implement the VAWA Lease Addendum until the form is updated and issued by HUD. Similarly, projects funded with 811 Project Rental Assistance (PRA), 202 Senior Preservation Rental Assistance Contract (SPRAC), and 202 Project Assistance contract (PAC) funds should also wait and use the updated Lease Addendum once it is available.

28. **Question:** Will HUD be revising the VAWA Lease Addendum (form HUD-91067) to include a bifurcation clause?

Answer: Yes. The VAWA Lease Addendum (form HUD-91067) will be modified to include a bifurcation clause.

Lease Bifurcation

29. **Question:** In cases where the accused perpetrator is the only qualifying member and moves out of the unit, does the remaining household continue to pay the current tenant rent or is an Interim Recertification (IR) performed based on the income/deductions for the remaining members?

Answer: When the perpetrator moves out, an IR is performed using the remaining member(s) income/deductions to determine rent. The VAWA Final Rule and Notice H 2017-05 establish a reasonable time for remaining family member(s) to demonstrate eligibility for housing assistance or find alternative housing following lease bifurcation. If the remaining family member(s) will not be able to establish eligibility in the established timeframe for their program type, the household is not eligible to receive subsidy. In this case, the remaining family member must then pay contract/operating rent for the duration of the established time or move-out.

30. **Question:** When a household's assistance is recalculated, is the O/A required to terminate assistance in cases where termination is called for (e.g., when income increases to the point where the Housing Assistance Payment (HAP) is zero)?

Answer: Yes. As a reminder, pursuant to the VAWA Final Rule, the O/A must also provide the tenant with the Notice of Occupancy Rights (form HUD-5380) and the Certification Form (form HUD-5382) with the termination notice.

31. **Question:** Are O/As subject to losing tax credits for the time non-qualified household members are allowed to establish eligibility to remain in a unit?

Answer: O/As with LIHTC units should seek guidance from the Department of Treasury or the appropriate Housing Finance Agency (HFA).

32. **Scenario:** Jerry who is 64 years old and Sarah who is 58 years old are a household and live in a Section 202 elderly property. Jerry, who is the Head of Household (HOH) and program qualifying household member, receives zero income and an elderly deduction. After an altercation, Sarah claims VAWA protections. On August 15, 2017, Jerry moves out of the unit and leaves Sarah as the sole household member. The management agent intends to bifurcate the lease, as long as Sarah can establish eligibility. Sarah's rent increases because the household no longer receives the elderly deduction. The O/A performs an Interim Recertification (IR), effective October 1, 2017, allowing time to provide Sarah with a notice of increased rent.

A. **Question:** Does Jerry have to sign anything?

Answer: HUD guidelines do not require Jerry to sign anything.

B. **Question:** Does Jerry remain on the household's 50059 and remain active in TRACS and EIV until the effective date of October 1, 2017?

Answer: Yes, there is no way to remove Jerry from TRACS/EIV any sooner.

C. **Question:** Can Sarah remain in the unit and become the HOH? How will her tenant payment be determined?

Answer:

- For Section 202s with project-based Section 8 – Sarah must meet program eligibility requirements within 90-calendar days or when the lease expires (whichever comes first). If eligibility cannot be established, the individual may remain in the unit but must pay the contract rent. If eligibility is established, the tenant payment will be based on the remaining family members' incomes.
- For Section 202 PRACs - Since Sarah is 58, she does not meet the program eligibility requirements. Therefore, she must vacate the unit within 90-calendar days or when the lease expires (whichever comes first). Sarah is not eligible to receive subsidy and must pay market rate for the duration of tenancy.

33. **Question:** How long does the lease bifurcation process take?

Answer: The length of the bifurcation process will depend on several factors, including the willingness and readiness of the parties to amend the lease and the applicable requirements and procedures under Federal, state and local law. A lease bifurcation under the VAWA Final Rule must be carried out in accordance with any requirements or procedures prescribed by federal, state, or local law for termination of assistance or leases and in accordance with any requirements under the relevant covered housing program. For example, some jurisdictions may prohibit partial or single tenant evictions.

34. **Question:** If a lease is bifurcated and the victim obtains a restraining order, is management responsible for keeping the abuser away from the household?

Answer: The VAWA Final Rule does not hold O/As responsible for knowing the whereabouts of the abuser. However, pursuant to the VAWA regulation, the O/A must comply with a court order with respect to the rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking. HUD encourages O/As to employ actions that may reduce additional threats, such as barring the abuser from the property (where applicable) and working with police or victim service providers to develop a safety plan for the property and a plan of action for the tenant. In addition, owners and

managers should consult their legal counsel regarding the owner's or manager's duties and obligations under state and local law.

35. **Question:** If during the bifurcation process, the remaining tenant asks management to change the unit's locks so the abuser will not have access to the unit, can the O/A be held liable by the abuser for preventing access to the unit prior to completing the eviction process?

Answer: Owners and managers should consult their legal counsel regarding the owner's or manager's duties and obligations under state and local law.

Other Questions

36. **Question:** When a resident requests VAWA protections, can an O/A require the applicant or tenant to obtain a restraining order as documentation of the victim's status?

Answer: No, the O/A cannot require the tenant to obtain a restraining order as a way to document victim status. While the VAWA Final Rule allows O/As to require tenants to submit documentation showing the applicant or resident is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, The VAWA Final Rule prohibits an O/A from requiring the victim to provide third-party documentation of victim status, except in the case of conflicting information. When requesting documentation of victim status or an incident of domestic violence, dating violence, sexual assault, or stalking, the O/A must accept any of the types of documentation listed in the VAWA Certification form, HUD-5282.

37. **Question:** The head of household (HOH) is a victim of domestic violence, but continues to let the abuser, who is not a member of the household, in the unit. The couple's repeated altercations disrupt other tenants. The HOH has claimed VAWA protections, but has refused to move forward with any charges and maintains a relationship with the abuser. Does the HOH still have the same rights under VAWA?

Answer: Yes. O/As cannot penalize a VAWA victim based on the fact that the victim still has a relationship with the abuser. However, VAWA doesn't limit the authority of an O/A to evict a tenant if the O/A can demonstrate that an actual and imminent threat to other tenants or those employed at or providing services at the property would be present if the tenant or lawful occupant is not evicted or terminated from assistance.

38. **Question:** A resident of a Section 202 property obtained a restraining order against a relative who is not a household member. The relative continues to steal from the resident and bring unwanted guests into the resident's unit. The resident is hesitant to pursue further charges and has not requested VAWA protections. How should the O/A address the resident's circumstances?

Answer: Whenever an O/A is notified of a court order, the O/A has authority to comply with such order to protect a victim of domestic violence, dating violence, sexual assault, or stalking. In this case, the O/A can refuse access to the property. The O/A can also remind the resident of available VAWA protections and resources, such as an emergency transfer to a safe unit.

39. **Question:** Are O/As required to maintain documentation of VAWA claims in a file separate from tenant leasing folders?

Answer: Yes. The VAWA Final Rule does not require VAWA documentation to be maintained in a specific location. However, HUD's VAWA regulation restricts disclosure of VAWA information to individuals other than the victim unless specific conditions are met. O/As must not enter confidential information into any shared database. Because domestic violence often occurs within the household, and the members of the household can review the tenant file, the regulation calls for confidential record keeping in a location other than the tenant file. This requirement is also stated in HUD's Occupancy Handbook 4350.3. The Handbook requires O/As to retain all documentation relating to an individual's experience with domestic violence, dating violence, sexual assault, or stalking in a separate file that is kept in a separate secure location from other tenant files.

40. **Question:** We are concerned that some of the requirements included in the VAWA Final Rule may not fall within some staff's scope of expertise. How should O/As address this concern?

Answer: The VAWA Final Rule requires that O/As make reasonable efforts to assist victims in seeking a safe unit (as determined by the tenant). Where specific expertise is needed, staff should refer tenants or applicants to community resources available to victims of domestic violence, dating violence, sexual assault, or stalking. O/As may also consider getting training, where available, from a trained third-party (such as an expert victim service provider), to assist staff in reviewing VAWA documentation and responding to other areas of need.