



RD AN No. **4814** (1944-N)
January 18, 2017

TO: State Directors
Rural Development

ATTN: Program Directors
Multi-Family Housing

FROM: Tony Hernandez
Administrator
Housing and Community Facilities Programs

SUBJECT: Implementation of 42 U.S.C. 14043e-11 of the Violence Against Women Reauthorization Act in Rural Development's Multi-Family Housing Programs

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to inform State Directors, Program Directors, Borrowers and Management Agents of the Agency's policies on the implementation and administration of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), enacted on March 7, 2013, under the 42 U.S.C. 14043e-11. VAWA 2013 provides legal rights and protections for applicants and tenants who are actual or threatened victims of domestic violence, dating violence, sexual assault, or stalking, as well as members of their household. These legal rights and protections include protection for victims from being denied admission to, denied assistance under, terminated from participation, or evicted from certain covered housing programs if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy. VAWA 2013 also requires that Borrowers provide for emergency transfers and lease bifurcations to further the protections from VAWA-related crimes. See 42 U.S.C. §14043e-11(b)(1).

The Rural Development (RD) Multi-Family Housing (MFH) programs affected by the VAWA 2013 are Section 515 Rural Rental Housing (RRH), Section 514/516 Farm Labor Housing (FLH), Section 538 Guaranteed Rural Rental Housing (GRRH), and Section 533 Housing Preservation Grant (HPG) programs (referred collectively as MFH Programs).

EXPIRATION DATE:
January 31, 2018

FILING INSTRUCTIONS:
Preceding RD Instruction 1944-N

USDA Rural Development

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RD's implementation and policies shall follow those outlined in this Notice, and in the U.S Department of Housing and Urban Development (HUD) Final Rule, dated November 16, 2016, (80724 FR Vol. 81, No. 221), at 24 CFR part 5, Subpart L – Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking (see 5.2001 - 5.2011). RD's definitions pertaining to the Violence Against Women Reauthorization Act of 2013 shall be as defined by HUD under 24 CFR part 5.2003.

COMPARISON WITH PREVIOUS AN: AN No. 4778 (1944-N)) was issued on this subject January 5, 2015, and has since expired. The reissued AN provides additional guidance and clarification on the Agency's full implementation of VAWA 2013.

HIGHLIGHTS OF VAWA 2013:

The law offers the following protections against eviction or denial of housing based on domestic violence, dating violence or stalking:

- An applicant's or program participant's status as a victim of domestic violence, dating violence or stalking is not a basis for denial of Rental Assistance (RA) or for denial of admission, if the applicant otherwise qualifies for assistance or admission.
- An incident or incidents of actual or threatened domestic violence, dating violence or stalking will not be construed as serious or repeated violations of the lease or other "good cause" for terminating the assistance, tenancy, or occupancy rights of a victim of abuse.
- Criminal activity directly related to domestic violence, dating violence or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of assistance, tenancy, or occupancy rights of the victim of the criminal acts.
- Assistance may be terminated or a lease "bifurcated" in order to remove an offending household member from the home. Whether or not the individual is a signatory to the lease and lawful tenant, if he/she engages in a criminal act of physical violence against family members or others, he/she stands to be evicted, removed, or have his/her occupancy rights terminated. This action is taken while allowing the victim, who is a tenant or a lawful occupant, to remain.
- The provisions protecting victims of domestic violence, dating violence or stalking engaged in by a member of the household, may not be construed to limit the Borrowers/ Management Agents, when notified, from honoring various court orders issued to either protect the victim or address the distribution of property in case a family breaks up.
- The authority to evict or terminate assistance is not limited with respect to a victim that commits unrelated criminal activity. Furthermore, if a Borrower/Management Agent can show an actual and imminent threat to other tenants or those employed at or providing service to the property if an unlawful tenant's residency is not terminated, then evicting a victim is an option, the VAWA 2013 notwithstanding. Ultimately, borrowers/ Management Agents may not subject victims to more demanding standards than other tenants.

- The VAWA 2013 protections shall not supersede any provision of any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence or stalking. The laws offering greater protection are applied in instances of domestic violence, dating violence, sexual assault, or stalking.

IMPLEMENTATION RESPONSIBILITIES:

RD staff should become knowledgeable with the rights, responsibilities, and protections provided under VAWA 2013, and establish relationships with victim advocacy organizations, Owners/Management Agents of private markets and other non-RD subsidized housing providers in their jurisdiction to better be able to assist victims in emergency situations. MFH Borrowers and property managers are strongly encouraged to do the same and are expected to comply with all responsibilities under the statute. A collaborative network of support should be established, so that victims of VAWA-related crimes have increased access to needed assistance at the time of an emergency involving domestic violence, dating violence, sexual assault, or stalking. VAWA 2013 protections are available to all eligible individuals and households regardless of gender identity, race, color, national origin, sex, sexual orientation, familial status, disability, or age.

When there is conflict between the VAWA 2013 and RD program regulations, VAWA 2013 requirements shall govern. Additionally, where VAWA assistance is provided under more than one Federal housing program, MFH will not prevent tenants who are seeking the VAWA 2013 protections or remedies from choosing to use the protections or remedies under any or all of those programs, as long as the protections or remedies chosen are feasible and permissible under MFH's regulations and statutes.

HUD will be providing the following documents to be published under subsequent guidance, and may be used by RD's Borrowers and Management Agents:

- 1) Notice of Occupancy Rights;
- 2) Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation Form;
- 3) Model Emergency Transfer Plan;
- 4) Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking; and
- 5) VAWA Model Lease Addendum.

The HUD Model Lease Addendum, the Model Emergency Transfer Plan and the Emergency Transfer Request Form should be modified accordingly when used by RD's Borrowers.

Roles and Responsibilities of MFH Staff:

- MFH staff will provide general guidance to Borrowers and Management Agents regarding the implementation and monitor compliance with VAWA 2013.

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- MFH staff will strongly encourage Borrowers to update the Management Plan so that it contains a description of the Borrower's emergency transfer process, and how victims will be protected as a consequence of a VAWA-related crime, how victims will be assisted in finding alternative safe housing when requested, and reasonable strategies for maintaining confidentiality of VAWA-related information, as outlined in HB-2-3560, Chapter 3.3 B "General Requirements for Maintaining and Modifying a Management Plan."
- MFH staff will strongly encourage borrowers to update the Tenant Selection Policy and Occupancy Rules, if applicable, to incorporate the rights and protections afforded to applicants and tenants under VAWA 2013, as outlined in HB-2-3560, Chapter 6.16 "Agency Review and Monitoring of Occupancy Rules."
- MFH staff will monitor compliance by ensuring that the HUD Notice of Occupancy Rights and the HUD Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation Form are distributed to applicants and tenants in accordance with 42 U.S.C. 14043e-11(d)(2), and as outlined below.
- MFH staff will strongly encourage Borrowers to incorporate a Lease Addendum that includes the rights and protections afforded to victims under VAWA 2013 against termination of assistance or eviction.
- MFH staff will strongly encourage HPG grantees to amend the HPG Grant Agreement using as a model Exhibit B of subpart N of 7 C.F.R. part 1944, to state that the HPG grantee shall comply with VAWA 2013. Amendments will require RD's approval.

Roles and Responsibilities of Borrowers and Management Agents

- Borrower and grantee participants in Sections 514, 515, 516, 533, and 538 programs must abide by VAWA 2013 in that various certifications have been executed with regard to being in compliance with applicable law (e.g. 7 C.F.R. §3560.102(a), 7 C.F.R. §3560.352(c)(4), and 7 C.F.R. §3565.105(b)).
- Pursuant to VAWA 2013, an applicant for or tenant of housing assisted under the Sections 514, 515, 516, 533, and 538 housing programs may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.
- HPG Borrowers should include a clause in the Management Agreement that the owner agrees and certifies that the assistance is being made available subject to VAWA 2013.
- Borrowers should modify their Management Plan. Borrowers opting to modify their Management Plan should modify it within 6 months of this notice to include a VAWA Emergency Transfer Process, which shall be adopted upon Agency approval. The Emergency Transfer Process adopted and implemented by Borrowers must meet the following minimum criteria: 1) allow eligible tenants who reasonably believe that they are facing an imminent threat of domestic violence, dating violence, sexual assault, or

stalking to transfer to another available and safe dwelling unit; **or** allow the transfer of a tenant who is a victim of sexual assault which occurred on the premises during the 90-

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day period preceding the request for transfer; and 2) incorporates reasonable strategies for maintaining confidentiality, as described below. See HB-2-3560, Chapter 3.3 B 1 “General Requirements for Maintaining and Modifying a Management Plan.”

- Management Plans that are updated for VAWA 2013 require the borrower to submit a new Management Certification, Attachment 3-B, to the Agency. See HB-2-3560, Chapter 3.4 “Management Certification.”
- Modification of the Management Plan for properties financed by Section 538 GRRHP funds will be done in accordance with Section 8.4 and Attachment 8-A of HB-1-3565.
- Borrowers should update their Tenant Selection Policy and Occupancy Rules, if applicable, to incorporate the rights and protections afforded to applicants and tenants under VAWA 2013, as outlined in HB-2-3560, Chapter 6.15 and Exhibit 6-4 “Required Items for Multi-Family Housing Occupancy Rules.” This will ensure uniformity in spreading awareness of VAWA 2013, and help to avoid improper evictions.
- Borrowers should update their tenant leases by providing a Lease Addendum containing the rights and protections afforded to victims under VAWA 2013. MFH will encourage Borrowers to provide these Lease Addendums to all existing tenants during the 12-month period following the effective date of the HUD Final Rule, during the annual recertification process. Or, if there will be no recertification or lease renewal for a tenant during the first year after HUD’s Final Rule takes effect, through other means.
- In accordance with 42 U.S.C. §14043e-11(d)(2), Borrowers must distribute the Notice of Occupancy Rights and the Certification of Domestic Violence and Alternate Documentation Form to all applicants and existing tenants upon each of the following 3 occasions: 1) when an individual is denied residency; 2) when an individual is assigned a RD unit; and 3) with any notification of eviction or termination of assistance. The Notice of Occupancy Rights and the Certification of Domestic Violence and Alternate Documentation Form should be posted in a place(s) where it can be visible to tenants and prospective tenants. These documents will be available from HUD in multiple languages.
- Borrowers should maintain and make available to tenants a list of other RD and non-RD housing providers in the local area who assist victims of VAWA-related crimes. Borrowers should also maintain a list of programs and phone numbers of advocacy organizations that assist victims of domestic violence, dating violence, sexual assault, and stalking on an emergency basis.
- Borrowers, whenever possible, must allow tenants who request and qualify for emergency transfers to transfer to an available unit that the victim feels is safe. The first option should be to facilitate the transfer to a unit that is under the Borrower’s control and is in an RD program; in which case the tenant would not have to make a new rental application. The second option should be to facilitate a transfer to a unit under a different RD Borrower’s control, then to a unit in a non-RD program, as long as the eligibility criteria for that program can be met by the victim.
- Borrowers choosing to utilize RD’s Emergency Transfer Plan should proceed as is indicated below, as set forth in Attachment A of this AN.

Emergency Transfers and Documentation Requirements

Eligibility and Limitations

- A tenant or household member on the lease who is a victim of domestic violence, dating violence, sexual assault, or stalking, or reasonably believes there is a threat of imminent harm from further violence if he or she remains in the dwelling unit, is eligible for and may request an emergency transfer under VAWA 2013. Borrowers may ask a victim who requests a transfer to submit a written request; however, the victim is not required, by statute, to submit a written request. See 42 U.S.C. 14043e-11(e) for the statutory requirements. To minimize the burden on the victim, HUD will create a Model Emergency Transfer Request Form under separate guidance to be available later this fiscal year, which a victim may use to request an emergency transfer and certify that they meet the eligibility requirements for an emergency transfer under VAWA 2013.
- Tenants who are victims and request an emergency transfer may receive a Letter of Priority Entitlement (LOPE), Handbook Letter 201, from the Agency, as RD considers this to be a situation beyond the tenant's control (7 CFR 3560.159(c)). Emergency transfers under this plan are subject to the availability of other safe RD MFH units, and should be carried out as outlined in HB-2-3560, Chapter 6.18 (C) and 6.22.
- Prior to an emergency transfer, the tenant must certify that they meet the requirements for a transfer. If a Borrower chooses to request documentation that the tenant is a victim of a VAWA-related crime, they must put the request in writing, and must accept any form of documentation the tenant or applicant chooses to provide, including self-certification, such as the HUD Certification of Domestic Violence and Alternate Documentation Form. The Borrower may require submission of documentation within 14 business days after the date that the individual received the request for documentation. However, the Borrower may extend this time period at his/her discretion. See 42 U.S.C. §14043e-11(c), and 24 CFR §5.2007(a).
- Cases involving conflicting certifications or which the occupant is the abuser require that third-party documentation be submitted to the Borrower. Examples of third-party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including e-mails, voicemails, text messages, and social media posts.
- In accordance with 42 U.S.C. §14043e-11(e)(1)(b)(ii), the tenant who is a victim of sexual assault occurring on the premises during the 90-calendar day period preceding the date of the request for transfer, or who reasonably believes that there is a threat of imminent harm from further violence if he or she remains in the dwelling unit is eligible for an emergency transfer. The 90-day timeframe for sexual assault is the minimum timeframe mandated by VAWA 2013, but RD urges allowing additional time for a sexual assault victim to request a transfer.

- Borrowers are strongly encouraged to process emergency transfer requests as quickly as possible to protect the health and safety of tenants, as well as give frequent status updates to tenants, while exercising extreme caution to maintain confidentiality, if the emergency transfer cannot be made immediately.

Lease Bifurcation and Termination of Tenancy

- Under VAWA 2013, lease bifurcation can be initiated by the Borrower or Management Agent, or at a victim's request to remove an abuser from a unit without evicting, removing, terminating assistance to, or otherwise penalizing a victim who seeks to remain in a unit. Lease bifurcation in order to evict or remove the abusing tenant shall be done under the authority of 7 CFR 3560.159(d) Criminal Activity. A victim must be a tenant or household member on the lease to request a bifurcation of the lease. Bifurcation is not the appropriate remedy to remove a person living in the unit who is not on the lease and who is not a lawful tenant.
- VAWA 2013 does not limit the authority to terminate assistance to or evict a tenant if the owner or manager of the housing can demonstrate that an actual and imminent threat to other tenants or individuals employed at or providing service to the property would be present if the assistance is not terminated or the tenant is not evicted. Eviction or termination of a victim's assistance under the actual and imminent threat provision should occur only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the abuser from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the abuser from acting on a threat.
- In the event that one household member is removed from the unit because of engaging in acts of domestic violence, dating violence, sexual assault, or stalking against another household member, an interim recertification should be processed reflecting the change in household income and tenant composition, as outlined in HB-2-3560, Chapter 6.28 B "Interim Recertification Process."
- When terminating assistance or bifurcating a lease, Borrowers should follow the procedures outlined in HB-2-3560, Chapter 6.32 "Termination of Occupancy."
- The reasonable time period, as mandated by VAWA 2013, for remaining tenants to establish eligibility, apply under a different covered program or find new housing is 90-calendar days, beginning on the date of bifurcation of the lease, and not at the start of the lease bifurcation process. Borrowers are encouraged to allow an additional 60-day extension.
- When the remaining household members are unable to establish eligibility, such as when the removal of the abuser leaves the family with no member who can qualify, a qualified adult may be added to the household to serve as the head of household using procedures outlined in HB-2-3560, Chapter 6.30 D "Remaining Household Members."

- In accordance with VAWA 2013, eviction or termination of assistance may be initiated against remaining tenants who are unable to establish eligibility or find new housing at the expiration of the lease, unless a reasonable time period beyond expiration of the lease
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is granted by the Borrower and approved by the Agency, as outlined in HB-2-3560, Chapter 6.30 “Ineligible Tenants.”

- Termination of occupancy rights, evictions, removals, and termination of assistance must be carried out in accordance with the Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, and stalking.

Cost of Emergency Transfers

- Cost to Tenants - Tenants will be responsible for bearing the cost of an emergency transfer. The U.S. Department of Justice (DOJ) administers programs through the States, who then provide funding for victims of crimes covered by VAWA 2013. The DOJ Office of Justice Programs’ Victims Crime Fund may be used to pay for relocation expenses of the victims, or to provide other sources of support, which could free up funding to pay for moving costs. See the section below on Additional Resources for VAWA-related crimes.
- Cost to Borrowers - Borrowers are encouraged to bear a part or all of the cost of transfers, but are not required to. Borrowers are also encouraged to work with victims to identify sources of possible funding for emergency transfers. Costs to Borrowers will mainly be due to unit turnover with possibly some administrative costs.

Retention and Confidentiality of VAWA Information

- Borrowers, management companies, employees of management companies, and RD staff shall not disclose information pertaining to any VAWA-related incident to any other entity or individual, except to the extent that the disclosure is: 1) consented to in writing by the victim(s) in a time-limited release; 2) required for use in an eviction proceeding or hearing regarding termination of assistance; or 3) otherwise required by applicable law. In addition, reasonable confidentiality measures must be incorporated so that the location of the new dwelling unit is not disclosed to the person that commits an actual or imminent act of violence. See 42 U.S.C. §14043e-11(c)(4).
- Borrowers should keep a record of all emergency transfers requested, and the outcome of such requests. These records should be retained in a secure location for a period of 3 years, and must be kept confidential indefinitely or until destroyed. Borrowers should report all emergency transfer and lease bifurcation activities and outcomes to RD staff when requested for Agency reporting purposes. Borrowers are required to ensure that details of VAWA incidents are not entered into any shared database.

Additional Resources for Victims of VAWA-Related crimes:

Owners, Management Agents, applicants, and tenants who are actual or threatened victims of domestic violence, dating violence, sexual assault, or stalking may contact the following organizations for assistance:

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- The National Domestic Violence Hotline, 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) for immediate assistance.
- Rape, Abuse & Incest National Network's National Sexual Assault Hotline, 1-800-656-HOPE (4673) or <https://ohl.rainn.org/online>.
- National Center for Victims of Crime's Stalking Resource Center, 855-4-VICTIM (855-484-2846), or <http://victimsofcrime.org/our-programs/stalking-resource-center/help-for-victims>.
- The Office for Victims of Crime (OVC), part of the Department of Justice (DOJ), administers the Crime Victims Fund, which provides direct reimbursement to crime victims for financial losses from crimes including medical costs, mental health counseling, and lost wages or loss of support. This provides reimbursement for victims during a time when they may be facing financial constraints. The Crime Victims Fund may also be used to fund transitional housing and shelter for victims of domestic violence, dating violence, sexual assault, or stalking who need the transitional housing or shelter because they were a victim of one of these crimes, and to fund relocation expenses for those who need to move because they were a victims of domestic violence, dating violence, sexual assault, or stalking.
- OVC – U.S. Resource Map of Crime Victim Services and Information: <http://www.ovc.gov/map.html> and Help for Crime Victims Helplines: <http://www.ovc.gov/help/tollfree.html>.

If you have any questions, you should contact Barbara Chism, Multi-Family Housing Portfolio Management Division, at (202) 690-1436.

Attachment

RD AN No. 4814 (1944-N)

The Violence Against Women Reauthorization Act of 2013
Rural Development Emergency Transfer Plan
[DRAFT]

Rural Development (RD) tenants who are actual or imminent victims of domestic violence, dating violence, sexual assault, or stalking, in accordance with The Violence Against Women Reauthorization Act of 2013 (VAWA Act of 2013), shall be permitted by the owner or manager to request a transfer to another safe dwelling unit in another RD Multi-Family Housing (MFH) property, if (1) the tenant reasonably believes that he or she is threatened with imminent harm from further violence if he or she remains within the same dwelling; or (2) in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90-day period preceding the request for transfer. Transfers under this plan are subject to the availability of other RD MFH units.

Tenants who are actual or imminent victims of domestic violence, dating violence, sexual assault, or stalking and are requesting an emergency transfer under the Rural Development Emergency Transfer Plan may receive benefits by the use of a Letter of Priority Entitlement (LOPE) from the Agency, as RD considers this to be a situation beyond the tenant's control under 7 CFR 3560.159(c).

A LOPE entitles victims to receive priority for available housing at any Section 515 Rural Rental Housing or Section 514 Farm Labor Housing property, anywhere in the United States, if the victim otherwise meets the normal RD program eligibility criteria. This letter may also help the victim get preference in a non-RD financed apartment if permitted by the occupancy policy of the non-RD financed program.

Tenants who receive a LOPE and are beneficiaries of Rental Assistance (RA) may not transfer the RA to another RD property. The RA will remain with the original RD property.

Tenants should contact the property manager to request an emergency transfer. The property manager may request written certification and offer the tenant a HUD Certification of Domestic Violence Form, though this is not required when requesting an emergency transfer. The property manager shall immediately contact their MFH RD servicing office, who shall provide the LOPE along with a letter to the tenant indicating at a minimum, that the tenant may receive priority placement in an available RD unit and the given timeframes.

Reasonable confidentiality measures must be incorporated by owners and managers so that the location of the new dwelling is not disclosed to the person that commits an actual or imminent act of violence.