

# HOUSING JUSTICE

National Housing Law Project

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## RD Issues Notice on VAWA Implementation

On February 10, 2014, Rural Housing Service Administrator Tony Hernandez issued a notice (Notice) to state directors of Rural Development (RD) and program directors of RD Multifamily Housing Programs concerning the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). VAWA 2013's housing protections for survivors of domestic violence, sexual assault, dating violence, and stalking apply to RD multifamily housing programs, specifically Section 515 Rural Rental Housing; Section 514/516 Farm Labor Housing; Section 533 Housing Preservation Grant programs; and Section 538 Guaranteed Rural Rental Housing. The purpose of the Notice is to inform state directors, program directors, owners, and managers of VAWA's safeguards for survivors accessing and maintaining RD multifamily housing, as well as to provide RD's model emergency transfer plan. This article summarizes the Notice and flags important issues for advocates.

**Implementation Responsibilities.** The Notice does not require directors, owners, or managers to take any affirmative steps towards implementing VAWA 2013. Instead, it recommends that multifamily housing staff read and understand VAWA 2013's housing provisions, which are attached to the Notice, and that staff be prepared to implement the accompanying model emergency transfer plan. The Notice further indicates that at this time, no changes need to be made to leases, occupancy rules, or the management plan. Importantly, it is unclear how information about VAWA 2013's housing protections will reach applicants and tenants of RD multifamily programs. While RD regulations require landlords to post the occupancy rules for residents, there is no requirement to amend these rules until RD publishes further notices.

**Highlights of VAWA.** The Notice lists some of VAWA 2013's housing safeguards, including prohibiting owners and managers from evicting or denying housing to survivors for incidents of domestic violence, dating violence, sexual assault, or stalking; prohibiting criminal activity evictions directly related to such violence; providing lease bifurcation to remove the abuser from the lease while allowing the survivor to remain in the unit; requiring confidentiality of information pertaining to the violence; allowing self-certification for survivors; and permitting emergency transfers.

**HUD Notice.** Under VAWA 2013, the U.S. Department of Housing and Urban Development (HUD) must develop a VAWA housing rights notice (HUD Notice) that housing providers must give to applicants and tenants along with the agency-approved self-certification form when: (1) an applicant is denied residency; (2) an individual is admitted; and (3) a tenant is notified of an eviction or termination of assistance. HUD has yet to develop the HUD Notice. RD has indicated that USDA will amend this RD Notice once the HUD Notice is created.

**RD VAWA Certification Form.** VAWA 2013 requires the federal agencies responsible for administering the housing programs covered by the statute to approve a self-certification form that survivors can use to verify their status as victims of domestic violence, sexual assault, dating violence, or stalking. USDA/RD has yet to approve such a form. The Notice will be amended when USDA/RD has approved this form.

**Certification of Legal Compliance Includes Compliance with VAWA.** The Notice states that participants of the RD multifamily housing programs must certify compliance with applicable laws, including VAWA 2013. These certifications are agreements between RD and the owners. Generally, there is no third-party

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enforceability by tenants. RD can enforce this agreement, but it is unlikely that the agency will do so.

Recommendations to Owners and Managers. The Notice recommends that owners and managers update their tenancy selection policy and occupancy rules by incorporating VAWA protections. However, this recommendation conflicts with the Notice's earlier statement that occupancy rules need not be amended at this time. Since the Notice does not require owners and managers to do anything affirmatively, it is unlikely that they will. In addition, the Notice indicates that HUD requirements govern RD multifamily housing receiving Section 8 assistance. Therefore, HUD's regulations implementing VAWA would also apply to these units. There are approximately 28,000 RD multifamily units nationwide that receive project-based Section 8 assistance. An additional 20,000 units are assisted by HUD's Section 8 voucher program, which is also subject to VAWA. Finally, this section states that for the Section 533 program, the agreement between the Housing Preservation Grant grantee and the owner can be amended to include a clause in which the owner certifies that the housing assistance is subject to VAWA 2013's requirements.

Model Emergency Transfer Plan. The Notice presents RD's model transfer plan that

- Allows survivors to break their lease and transfer to another RD multifamily housing unit when a transfer is requested by the tenant and (1) the tenant reasonably believes that s/he is threatened with imminent harm from further violence if s/he remains within the same dwelling; and (2) the tenant is a victim of sexual assault and the assault occurred on the premises during the 90-day period preceding the transfer request. This language must be amended to clarify that, under VAWA 2013, a tenant can request this transfer EITHER because s/he believes that there is threat of imminent harm OR the tenant has been a victim of sexual assault. In addition, the language must be changed to cover victims of sexual assault, dating violence, and stalking. Furthermore, under VAWA 2013, a survivor should

be able to transfer to a unit in any other program covered by VAWA, not just RD multifamily units. Importantly, "imminent harm" in this context is not defined in the Notice.

- Permits survivors to request an emergency transfer under the Uniform Relocation Assistance and Real Property Acquisition Act (Relocation Act) by requesting a Letter of Priority Entitlement (LOPE) from RD. A LOPE is an RD letter that gives the letter holder top priority for admission to other RD developments. The holder gets placed at the top of the waiting list of another development. However, this priority does not preclude a landlord from denying the applicant admission for other reasons. Ideally, the admissions policy for all RD developments would include VAWA protections so that landlords would know that they cannot deny admission to an applicant because of acts of domestic violence, sexual assault, dating violence, or stalking committed against the applicant. However, this Notice does not currently require that any changes be made to the admissions policy or occupancy rules.

LOPEs have typically been used in situations involving mortgage prepayment by owners, natural disasters, and foreclosure. Therefore, they are used when a large number of tenants are at risk of or have already lost their housing. In these scenarios, RD issues notices to the residents that notify them of their right to request a LOPE from the agency. As such, RD is usually on notice that a number of requests for LOPEs may be submitted to the agency. In a situation involving VAWA protections, it is unclear what the process will be if survivors can individually request a LOPE for purposes of emergency transfer. There are no regulations that govern how an individual gets a LOPE or even who to apply to when seeking a LOPE. Important questions that need to be answered include: How will residents be notified of their ability to request a LOPE because of domestic violence, sexual assault, dating violence, and stalking? How can a survivor submit a request? What happens

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when there is a conflict between the landlord's decision on the transfer and RD's decision to issue a LOPE?

An applicant with a LOPE who receives an RD rental assistance subsidy, which is comparable to the HUD project-based Section 8 subsidy, can transfer that assistance to the new unit if the new unit will not provide the same deep subsidy. However, if this subsidy is transferred, then the owner of the former unit also loses the rental assistance. This creates a major disincentive for the owner to let the survivor-tenant transfer to an RD unit that is owned by someone else.

The paragraphs concerning the Relocation Act are confusing as they insinuate that survivors may be entitled to receive benefits under the Act by requesting a LOPE. For example, individuals who qualify for these benefits are entitled to moving costs. However, this may not be true in a VAWA situation since eligibility for the benefit requires government action, and here there would be no government action in a move that is intended to serve the needs of a survivor.

- Provides that reasonable confidentiality measures be incorporated by owners and managers so that the location of the new dwelling is not disclosed to the perpetrator. The confidentiality requirement should be more expansive. Owners and managers should not disclose the location of the survivor's new dwelling to anyone – not just the perpetrator – unless required to do so by law or court order.

In conclusion, the Notice is a first step in the right direction. However, RD notices are not consistently forwarded to landlords and there is little chance that residents will find out about this Notice. RD regulations require landlords to post occupancy rules. However, the Notice does not require occupancy rules to be changed, and it also does not require landlords to take affirmative steps. Therefore, the extent to which the Notice has legal teeth, if any, remains unclear. However, RD's model transfer plan provides some hope concerning the ability of survi-

### Resource

Implementation of 42 U.S.C. 14043e-11 of the Violence Against Women Reauthorization Act in Rural Development's Multi-Family Housing Programs, RD AN No. 4747 (1944-N) (Feb. 10, 2014), available at <http://www.rurdev.usda.gov/SupportDocuments/an4747.pdf>

vors to request a transfer from RD. It will be critical for RD to establish procedures detailing how a survivor can break his/her lease with the landlord and request a transfer from RD. Advocates should make sure that their state RD directors are aware of the Notice, and should encourage them to work with landlords to implement VAWA 2013.

NHLP will continue to provide updates on federal implementation of VAWA's housing provisions via this newsletter as information becomes available.

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