

Kimball, Tirey & St. John LLP

Legal Alert

HUD Final Rule: VAWA Implementation in HUD Housing Programs Effect on Subsidized Tenancies and Termination Notices

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Published on November 16, 2016, and effective as of December 16, 2016, HUD's Final Rule, 5720-F-03, updates the Code of Federal Regulations in order to implement the requirements of the Federal Violence Against Women Act (VAWA) as reauthorized in 2013. This new rule creates several specific notification and documentation requirements which will impact the management policies and procedures of covered housing providers. HUD's final rule is applicable not only to many subsidized housing providers, but also to otherwise unsubsidized housing providers that accept Section 8 vouchers. On January 18, 2017, the United States Department of Agriculture released Administrative Notice RD AN No. 4814 (1944-N) to provide direction to Rural Development (RD) Multi-Family Housing (MFH) programs affected by VAWA.

On June 30, 2017, HUD released Notice H 2017-05, providing additional guidance to owners and management agents with regard to the implementation of VAWA and HUD's Final Rule. "Covered housing providers" include Section 8 project based and tenant based programs, as well as Section 202, Section 811, HOPWA, HOME, Homeless Programs, Section 221, Section 236, and the Housing Trust Fund.

On December 22, 2017, the California Tax Credit Allocation Committee (CTCAC) also issued guidance regarding Low Income Housing Tax Credit ("LIHTC") properties and their obligations to comply with Violence Against Women Act ("VAWA") Reauthorization Act of 2013.

Under HUD's Final Rule, covered housing providers are required to provide applicants and tenants with both HUD Form 5380, "Notice of Occupancy Rights under the Violence Against Women Act" and HUD Form 5382, the Self Certification form (hereinafter "VAWA documents") during each of the following times: (1) upon denial of assistance or admission to the housing program; (2) upon admission to the housing program; (3) with any notification of eviction or termination of assistance; and (4) once during the 12-month period immediately following December 16, 2016.

Ambiguity remains as to what exactly constitutes a "notification of eviction" under HUD's Final Rule. However, it is highly recommended that VAWA documents be included with *every* Notice that could result in a termination of tenancy, including but not limited to, all Notices to Pay Rent or Quit. Since the publication of HUD's Final Rule 5720-F-03, some judges have found in favor of Defendants in unlawful detainer proceedings when the VAWA documents were not attached to the Pay or Quit Notice (or other notices) which resulted in an eviction being filed. KTS can assist with both the preparation and the service of the required VAWA documents.

For tenants living at a property pursuant to a Section-8 voucher, the Housing Authority (HA) is responsible for providing VAWA documents in accordance with the above. To reduce the potential risks that may be associated with noncompliance, owners of properties with Section-8 voucher tenancies should contact the local Housing Authority and requesting copies of these documents so that the landlord can serve them at the same time as any Notice which the Landlord is serving

upon the Resident rather than relying on the Housing Authority to do so. If the Housing Authority serves a resident with a notice to terminate assistance, the Housing Authority must serve the VAWA documents along with that notice.

In addition to the requirements above, HUD's Final Rule also requires covered housing providers to develop and adopt an emergency transfer plan. The emergency transfer plan must outline a procedure which allows for the transfer of a victim of domestic violence, dating violence, sexual assault, or stalking, upon request, to another unit at the property or to another property. HUD's Final Rule requires that housing providers adopt this emergency transfer plan no later than June 14, 2017. HUD will begin issuing a finding for noncompliance relating to the Emergency Transfer Plan for MORs conducted after December 14, 2017.

Housing providers affected by this Rule should also consider reviewing and revising their internal policies and procedures to ensure compliance with this new Rule.

A copy of HUD's Final Rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>.

For further assistance with interpretation of HUD's Final Rule, or VAWA compliance with any other affordable housing program, please contact KTS's Affordable Housing Practice Group at AffordableHousing@KTS-law.com.

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