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**Office of AIDS
Housing Opportunities for Persons With AIDS Program**

**Management Memorandum
Letter Number: 18-01**

January 5, 2018

TO: Housing Opportunities for Persons With AIDS (HOPWA) CONTRACTORS

SUBJECT: Compliance with the 2013 Violence Against Women Act (VAWA)

I. Purpose

The purpose of this Management Memo is to provide guidance to HOPWA contractors on compliance with VAWA.

II. Background

On March 2, 2013, VAWA was signed into law and expanded housing protections for victims of domestic violence, dating violence, sexual assault, and stalking to include HOPWA programs. On November 16, 2016, the U.S. Department of Housing and Urban Development (HUD) published the VAWA final rule through HUD regulations (81 Code of Federal Regulations [CFR] 80724).

III. Policy

VAWA provisions afford protections to all HOPWA-assisted tenants or HOPWA housing assistance applicants that are victims of domestic violence, dating violence, sexual assault, or stalking regardless of sex, gender identity, sexual orientation, race, color, national origin, religion, familial status, disability, or age. VAWA requirements in 24 CFR part 5, subpart L state that no individual may be denied assistance, have their assistance terminated, or be removed on the basis or as a direct result of the fact that the individual is or has been a victim of one of the aforementioned crimes.

VAWA requirements in CFR 24, part 5, subpart L apply to the following housing services: project-based and tenant-based rental assistance, community residences, operating costs, new construction, and the acquisition, rehabilitation, conversion, lease, and repair of facilities.



Notice of Occupancy Rights

The Notice of Occupancy Rights Under VAWA (HUD–5380) form is used to ensure that individuals are aware of their rights under VAWA and its implementing regulations.

HOPWA contractors must distribute this form at the following times:

- When an applicant or tenant is denied rental assistance or admission to a HOPWA-assisted unit;
- When a person is admitted to a HOPWA-assisted unit or is provided rental assistance; and
- With notification of eviction from the HOPWA-assisted unit or notification of termination of rental assistance.

Certification and Documentation

HOPWA contractors must distribute the Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (HUD–5382) form to tenants and applicants with form HUD-5380 at the required times listed above.

- An individual may then optionally submit the form, certifying that they are a victim of the aforementioned crimes and that the incident in question is bona fide.
- The certification form serves as one tool for documenting the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

Any of the following may be submitted in order to satisfy a request for documentation:

- Form HUD-5382; or
- A document:
 - Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;
 - Signed by the applicant or tenant; and
 - That specifies, under penalty of perjury, that the professional believes the occurrence of the incident occurred, and that is the ground for protection and remedies under the VAWA Final Rule, and that the incident meets the applicable definitions of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or
- A record of a Federal, State, tribal, territorial, or local law enforcement agency (may include a police report), court, or administrative agency; or
- At the discretion of the HOPWA contractor, a statement or other evidence provided by the applicant or tenant.

Emergency Transfer Plan

Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (HUD-5381) form:

- HOPWA contractors are responsible for developing and implementing an emergency transfer plan for carrying out HOPWA housing activities (excluding Short Term Rent, Mortgage, and Utilities [STRMU] and emergency/short-term facilities).
- The plan shall be based on HUD’s model emergency transfer plan (Form HUD-5381), and must be consistent with 24 CFR 5.2005(e).

Each HOPWA contractor’s Emergency Transfer Plan must:

- Define tenants eligible for an emergency transfer;
- List documentation needed to request an emergency transfer;
- Detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA;
- Incorporate strict confidentiality measures; and
- Describe how an emergency transfer may occur.

Emergency Transfer Request

Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (HUD–5383) form:

- Serves as a model for use by HOPWA contractors to accept requests for emergency transfers under its required VAWA 2013 Emergency Transfer Plan.
- Allows an individual to submit and certify that they are a victim of one of the four crimes and that the incident in question is bona fide for purposes of being eligible for an emergency transfer.

Verbal self-certification is sufficient, or HOPWA contractors may require a written request for an emergency transfer. The verbal self-certification, if permitted, or the written request, must include a statement that the tenant requests an emergency transfer because the tenant:

- Reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same unit; or
- Was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the tenant’s request for an emergency transfer.

Contractors are required to keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a minimum period of three years. Requests and outcomes of such requests must also be reported to the California Department of Public Health, Office of AIDS annually on their year-end HOPWA Progress Report (HPR).

Construction and Addendum of Lease Terms

HOPWA contractors are responsible for ensuring that the housing or facility owner or manager, as applicable, adds a VAWA lease term/addendum to the leases for all HOPWA-assisted units, and is aware of the option to bifurcate a lease to evict, remove, terminate occupancy rights, or terminate assistance to a household member for engaging in criminal activity directly relating to one of the four crimes.

The VAWA lease term/addendum must:

- Provide that the tenant may terminate the lease without penalty if the tenant has met the conditions for an emergency transfer;
- Incorporate the applicable requirements at 24 CFR Part 5, Subpart L, including:
 - Definitions (24 CFR 5.2003);
 - Prohibited basis for denial or termination of assistance or eviction (24 CFR 5.2005(b));
 - Construction of lease terms and terms of assistance (24 CFR 5.2005(c));
 - Limitations of VAWA protections (24 CFR 5.2005(d)); and
 - Confidentiality requirements (24 CFR 5.2007(c)).
- If an applicant for HOPWA assistance or HOPWA-assisted tenant seeks VAWA protections, the individual must submit the request through the HOPWA contractor to facilitate protections on their behalf.
- HOPWA contractors are not required to ask for documentation when an individual requests VAWA protections; protections may be provided based solely on an individual's verbal statement or other corroborating evidence. If the HOPWA contractor chooses to request an applicant or tenant to document their claim of domestic violence, dating violence, sexual assault, or stalking, the HOPWA contractor must make the request in writing.
- If a written request for documentation is made, HOPWA contractors may require that the documentation be submitted within fourteen business days after the date the individual received the request.

An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

- A serious or repeated violation of a lease; or
- Good cause for terminating assistance, tenancy, or occupancy rights of the victim or threatened victim of such incident.

Lease Bifurcation Option

The lease bifurcation option is designed to minimize the loss of housing to individual(s) covered under VAWA.

- When the option is exercised to bifurcate a lease to evict, remove, terminate occupancy rights, or terminate assistance to a HOPWA-eligible household member, the remaining persons residing in the unit must be provided a reasonable grace period to establish eligibility to continue receiving HOPWA assistance or find alternative housing.
- The HOPWA contractor is responsible for setting the reasonable grace period and notifying the remaining members of its duration, which shall be no less than 90 calendar days, and no more than one year, from the date of the bifurcation of the lease.
- Housing assistance and supportive services continue to be provided to the remaining members during the grace period.

Confidentiality

Any information submitted to a HOPWA contractor, or housing owner or manager, including the fact that an individual is a victim of one of the four crimes, must be maintained in confidence:

- Employees of the HOPWA contractor, or housing owner or manager must not have access to the information unless authorized for reasons that specifically call for these individuals to have access to such information under applicable Federal, State, or local law; and
- The HOPWA contractor, or housing owner or manager must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:
 - Requested or consented to in writing by the individual (victim) in a time-limited release;
 - Required for use in an eviction proceeding or hearing regarding termination of assistance; or
 - Otherwise required by applicable law.

IV. Action Required

Contractors must be in compliance with these requirements within 30 days of this Management Memorandum. Contractors must forward this information to any subcontractors that own or operate housing facilities funded under the HOPWA Facility-Based Housing Operating Cost category.

If you have any questions regarding this management memorandum, please contact Jessica Heskin, at jessica.heskin@cdph.ca.gov or (916) 449-5958.

Thank you for your assistance.

Sincerely,



Jessica Heskin, MA, MPH, Chief
Care Housing Unit
Office of AIDS

U.S. Department of Housing and Urban Development (HUD) [Final Rule for VAWA 2013](https://www.hudexchange.info/resource/4718/federal-register-noticeproposed-rule-violence-against-women-act-2013-vawa-2013/):
<https://www.hudexchange.info/resource/4718/federal-register-noticeproposed-rule-violence-against-women-act-2013-vawa-2013/>

Attachments –

- Notice of Occupancy Rights under VAWA ([HUD-5380](http://www.hud.gov/sites/documents/5380.docx)) Form
<http://www.hud.gov/sites/documents/5380.docx>
- Model Emergency Transfer Plan ([HUD-5381](http://www.hud.gov/sites/documents/5381.docx)) Form
<http://www.hud.gov/sites/documents/5381.docx>
- Certification and Alternative Documentation ([HUD-5382](http://www.hud.gov/sites/documents/5382.docx)) Form
<http://www.hud.gov/sites/documents/5382.docx>
- Emergency Transfer Request ([HUD-5383](http://www.hud.gov/sites/documents/5383.docx)) Form
<http://www.hud.gov/sites/documents/5383.docx>

cc: Kaye Pulupa, Care Housing Unit
Abigail West, Care Housing Unit