

July 13, 2020

Submitted via e-mail

Secretary Sonny Perdue
U.S. Department of Agriculture
1400 Independence St. SW
Washington, D.C. 20250

Re: Ensuring Safe Access to Housing for Domestic and Sexual Violence Survivors
During and After the COVID-19 Pandemic

Dear Secretary Perdue:

The undersigned organizations write to urge the USDA Rural Housing Service (RHS) to issue guidance to owners of Section 515, 514/516 and 538 rental housing outlining ways to protect survivors of domestic violence, dating violence, sexual assault, and stalking during and after the COVID-19 crisis. Our organizations advocate for the ability of survivors to access safe, decent, and affordable housing.

We make this request for three reasons: First, as you know, the current pandemic has created far-reaching social and economic disruption across the United States. For domestic violence survivors, the pandemic has led to more frequent, severe, and dangerous threats to their safety, with communities across the country seeing increased incidents of domestic violence during stay-at-home orders.¹ Housing providers can play a critical role in helping tenants experiencing domestic and sexual violence access safe housing and supportive services. Therefore, we encourage housing providers to seek support and guidance by contacting their state or local domestic and sexual violence coalitions² or local domestic and sexual violence programs. Housing providers can work with coalitions to determine safe approaches to help applicants and tenants.

Second, Congress' failure to reauthorize various VAWA program funding provisions has caused significant confusion about the force and effect of VAWA as it was enacted in 2013. It is therefore extremely important that RD advise borrowers and residents that basic VAWA housing protections remain in effect and must be followed.³

¹ See e.g., Tyler Kingkade, NBC News, Police see rise in domestic violence calls amid coronavirus lockdown (Apr. 5, 2020), <https://www.nbcnews.com/news/us-news/police-see-rise-domestic-violence-calls-amid-coronavirus-lockdown-n1176151>.

² <https://nnedv.org/content/state-u-s-territory-coalitions/>;
https://www.nsvrc.org/organizations?field_organizations_target_id=8&field_states_territories_target_id=All

³ Laura L. Rogers, Acting Director, U.S. Department of Justice Office on Violence Against Women, "The Violence Against Women Act – An Ongoing Fixture In the Nation's Response to Domestic Violence, Dating Violence, Sexual Assault, And Stalking" (Feb. 19, 2020), <https://www.justice.gov/ovw/blog/violence-against-women-act-ongoing-fixture-nation-s-response-domestic-violence-dating>.

Third, RD has only published two now-expired Administrative Notices regarding the applicability of the Violence Against Women Act (VAWA), with the most recent notice being published in December 2017.⁴ The 2017 notice, which did not adequately cover owners' obligations and survivors' rights under VAWA,⁵ expired in December 2018. We are concerned that owners of RHS housing are not following the Act's mandate in protecting survivors, particularly at this time when the incidence of domestic violence is so prevalent. While we understand that RHS is planning to publish regulations that will implement VAWA, we are concerned that the rights and protections of survivors of domestic and sexual violence will go unserved during the lengthy regulatory process. The publication of an updated and revised Administrative Notice in the interim is therefore critical.

We urge RHS to issue new VAWA guidance for the agency's housing programs detailing how owners/managers can continue to serve the needs of survivors as well as comply with VAWA obligations. Housing providers need current information about how to best serve survivors given limited staffing levels and capacity, as well as information or resources (*e.g.*, a Q&A) to improve survivor outcomes.⁶ In this letter, we outline concerns and recommendations regarding the housing needs of survivors both during and after the current pandemic.

Ensuring Safe, Decent, and Affordable Housing Access for Survivors During and After the Pandemic

Nondiscrimination protections - While the CARES Act (Pub. L. 116-136) suspends evictions in VAWA-covered housing programs for 120 days, the moratorium only covers evictions associated with nonpayment of rent, or other fees or charges.⁷ Unfortunately, a survivor could still wrongfully receive an eviction or termination notice for other lease violations that are related to the violence committed against them, such as criminal activity and property damage. As you know, evicting survivors because of the violence committed against them violates core VAWA protections. Therefore, especially during this time of increased incidents of domestic violence, it is critical for RHS to reiterate that VAWA housing protections still apply, including the prohibition against evictions or subsidy terminations for reasons related to the fact that a tenant or family member has been a victim of domestic violence, dating violence, sexual assault, or stalking.⁸

Furthermore, RHS should remind owners that evictions and terminations of assistance against survivors due to the presence of an "actual and imminent threat" caused by a perpetrator should be utilized only when there are no other actions that could be taken to reduce or eliminate the

⁴ RD AN No. 4814 (1944-N) (Jan. 18, 2017); *see also* RD AN No. 4778 (1944-N) (Jan. 5, 2015).

⁵ We are enclosing a copy of the National Housing Law Project letter to RHS pointing out shortcomings in the 2017 Administrative Notice.

⁶ For example, the National Alliance for Safe Housing and the National Housing Law Project have created a Q&A for housing providers regarding the housing rights of survivors during COVID-19: <https://docs.google.com/document/d/18PHFQvzEqTkz8yBgZwHAepDKofYu0mdpNN6fEWHL3cQ/edit#heading=h.gjdgxs>. HUD's PIH Office has issued general Q&As for PHAs and an eviction prevention toolkit (which references VAWA protections in the tenant brochure of the toolkit), available here: https://www.hud.gov/program_offices/public_indian_housing/covid_19_resources.

⁷ § 4024(b).

⁸ 34 U.S.C. § 12491(b).

threat.⁹ We strongly believe that owners and survivors would benefit from a current, detailed resource outlining how VAWA protections apply, and how to better serve survivors.

Additionally, we have heard from survivor advocates that some federal assisted housing owners (that are also covered by VAWA) are not accommodating survivors who do not feel safe attending hearings where their perpetrators would be present. During this time when technology is increasingly being used to create remote options for everyone, RHS should encourage owners/managers to use technology so that survivors have safe options to testify at hearings where their housing subsidy is at stake. This is a practice that can be utilized both during and after the pandemic. Please see below for our recommendations for housing providers.

Waiting lists - As survivors continue to struggle to find safe, affordable, and permanent housing, it becomes vital that they can continue to apply for subsidized housing. RHS should encourage owners to accept admission applications from survivors at any time, notwithstanding the fact that a waiting list may be closed. Moreover, owners should open waiting lists as soon as practicable to allow survivors currently residing in congregate living situations to move into permanent housing more quickly, which, in turn, will allow survivors to more successfully comply with social distancing measures. Furthermore, to the extent that any owners/managers have closed their physical offices, they should be required to inform the community of how they will offer services during the COVID-19 pandemic.

Extended absence from unit - Due to the pandemic, families are having to adjust to a new normal, which may include leaving their units to care for ill loved ones, or hospitalization or quarantine due to exposure to the virus. We, therefore, believe that RHS should require that all owners refrain from terminating a household subsidy due to an extended absence from the unit during the emergency. While this benefits a wide range of households, it would also benefit survivors of domestic violence, dating violence, sexual assault, and stalking who need to flee their homes immediately for safety without first notifying the owner.

Emergency transfers, lease bifurcations, and family break-ups - RHS must ensure that owners/managers consider and grant requests for VAWA remedies, such as emergency transfers and lease bifurcations. Owners and managers also need reminding that they have an obligation to provide VAWA notices to all residents who are facing evictions.¹⁰ Similarly, RD staff must also be reminded that they can facilitate transfers to other RD developments by issuing Letters of Priority Entitlement (LOPES).

Our organizations have heard increasing reports from survivor advocates across the country that VAWA emergency transfers and lease bifurcations requested by survivors in federally subsidized and assisted housing programs are not advancing during the epidemic. Many owners/managers are not responding to these requests and they are not providing status updates concerning the requests. Instead, survivor advocates have reported that some housing providers continue to engage in problematic practices that jeopardize the safety of survivors. For example, one owner, after a survivor requested a lease bifurcation in a HUD-covered program, sent written

⁹ RD had language to this effect in its now-expired RD AN No. 4814 (1944-N), page 7; *see also* HUD regulations at 24 C.F.R. § 5.2005(d)(3), (4).

¹⁰ 34 U.S.C. § 12491(d)(2).

requests for VAWA documentation to the address of the home that the survivor shared with the abuser. We are very concerned that similar issues are occurring in RD developments in the absence of rulemaking or recent guidance documents from RHS.

A survivor's safety hinges on whether they can move with their housing assistance or if an abuser is removed from the unit. Therefore, it is vital for owners/managers to prioritize survivors' requests to access and maintain safe housing so that survivors and their families can avoid homelessness. Given that RHS has not published any VAWA guidance since 2017, RHS should clarify and provide guidance to owners/managers about effectuating emergency transfers and lease bifurcations as soon as possible. This includes ensuring that survivors do not lose their assistance when there are family break-ups and working closely with survivors who must move quickly for safety reasons.

Documentation – RHS should remind owners/managers that VAWA does not require that they ask survivors seeking protections for written proof regarding the violence.¹¹ Housing providers are permitted to accept survivors' verbal accounts of the need for VAWA protections. For housing providers that are nevertheless requiring this documentation, RHS must stress to these providers that other forms of documentation, such as protective orders, will be difficult, if not impossible, to acquire during the COVID-19 crisis. Therefore, providers must encourage and accept survivors' use of the VAWA self-certification form or sworn statements, instead of other types of documentation.

VAWA notice – RHS must remind owners/managers that they must distribute the Notice of VAWA Rights and VAWA Self-Certification form as required by statute, including upon notification of eviction or subsidy termination.¹² HUD has published these forms (HUD Forms 5380 and 5382) in multiple languages and made them available online, and owners should distribute these forms.¹³ The availability of the VAWA Self-Certification form is particularly crucial as obtaining a police report or other forms of documentation will be difficult during the pandemic. In issuing such a reminder, RHS should advise owners that VAWA requires these forms be made available to persons with limited English proficiency.¹⁴ To ensure that survivors are aware of their VAWA housing rights, this notice and self-certification form must be provided to every adult member of assisted households, not just the head of household, who is generally not the survivor.

Confidentiality - RHS should ensure that strict confidentiality requirements regarding information provided by survivors are upheld while staff are working both within as well as

¹¹ 34 U.S.C. § 12491(c)(1) (“If an applicant for, or tenant of, housing assisted under a covered housing program represents to a public housing agency or owner or manager of the housing that the individual is entitled to protection under subsection (b), the public housing agency or owner or manager **may request**, in writing, that the applicant or tenant submit to the public housing agency or owner or manager a form of documentation described in paragraph (3).”) (emphasis added); *see also* HUD Notice PIH 2017-08, at 11 (“The VAWA Final Rule clarifies that PHAs and owners are not required to ask for documentation when an individual presents a claim for VAWA protections; the PHA or owner *may instead choose to provide benefits to an individual based solely on the individual’s verbal statement or other corroborating evidence.*”) (emphasis added); HUD Notice H 2017-05, at 13.

¹² 34 U.S.C. § 12491(c).

¹³ https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a.

¹⁴ 34 U.S.C. § 12491(c).

outside of their usual office environments due to social distancing measures. This includes creating circumstances where housing providers can communicate verbally and in writing with survivors living with their perpetrators without jeopardizing their safety. We encourage RHS to issue guidance that reminds covered housing providers of their confidentiality obligations under VAWA, such as ensuring that information about a tenant's domestic violence, dating violence, sexual assault, or stalking is not included in a shared database. RHS should further encourage housing providers to be flexible, and to make sure that proper privacy and confidentiality measures are in place.

Recommendations

We urge RHS to ensure that the aforementioned VAWA protections are implemented by owners/managers. RHS should encourage owners/managers to exercise flexibility and creativity when working with survivors.

During this pandemic, we strongly urge RHS to issue a notice or guidance that outlines the following action steps for owners/managers:

- Allow survivors to apply for housing notwithstanding the fact that a waiting list is closed. Generally, housing providers should re-open waiting lists so that survivors, who would otherwise face homelessness, can apply for housing assistance during this critical time and move out of congregate living situations such as shelters, which, in turn, will allow survivors to better engage in social distancing.
- Consider adopting an admissions preference on individual property waiting lists for survivors of domestic violence, dating violence, sexual assault, and stalking, so that survivors who are seeking new admissions or emergency transfers can be prioritized on a development's waiting list. This will also allow survivors to move out of congregate living situations.
- Allow more time for survivors to demonstrate eligibility for the existing housing program or another subsidized housing program, where a perpetrator, who was head of household, has been removed because of violence (i.e. lease bifurcation).
- Accept survivors' verbal statements regarding the violence or, if written documentation is requested, accept VAWA self-certification or other sworn statement.
- Establish safe mechanisms to communicate with survivors who are living with their perpetrators, such as setting up a separate mailbox that only a survivor can access to receive communications from the housing provider.
- Provide safe, remote options for survivors to participate in critical meetings with housing providers.
- Send vital documents, such as termination notices and notices of rights, to each adult member of the household, not just the head of household.

Suspend Non-Emergency Rulemaking

RHS is considering rulemaking changes that, in our view, would lead to increased homelessness and housing insecurity. For example, we are concerned about a proposal that would prohibit mixed-status families from living together in RHS-assisted housing.

While we oppose the adoption of this rule more broadly, we also believe that moving forward with a proposal during the COVID-19 crisis would not allow robust and representative engagement of housing advocates who are currently directing their resources to immediate COVID-19 response. We, therefore, urge RHS to refrain from all non-emergency rulemaking during this crisis.

* * *

We strongly recommend that RHS provide practical guidance to owners on how they best can serve the needs of survivors during this unprecedented and uncertain time.

We appreciate your attention to these recommendations and would be interested in speaking to RHS staff regarding the important work of ensuring safe, decent, and affordable housing for families impacted by domestic violence, dating violence, sexual assault, or stalking. If you have questions, please contact Karlo Ng (kng@nashsta.org), Renee Williams (rwilliams@nhlp.org), and Gideon Anders (ganders@nhlp.org).

Sincerely,

Enterprise Community Partners

Housing Assistance Council

National Alliance for Safe Housing

National Housing Law Project

National Low Income Housing Coalition

National Network to End Domestic Violence

National Resource Center on Domestic Violence

National Rural Housing Coalition

Rural Local Initiatives Support Corporation

Attachment (1)