



## CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: December 22, 2017

TO: Property Owners and Management Agents of LIHTC Properties

FROM: Rose Guerrero, Compliance Section Chief

RE: Low Income Housing Tax Credit ("LIHTC") Violence Against Women Act ("VAWA") and Manager's Unit Guidance

This memorandum serves as guidance from the California Tax Credit Allocation Committee ("TCAC") to owners and property management agents of LIHTC properties in California on the following two topics:

1. The Manager's Unit
2. LIHTC VAWA

### **The Manager's Unit:**

Following recent discussions with the Internal Revenue Service ("IRS"), TCAC received clarification on the correct use of the manager's unit at LIHTC properties. Specifically, when the manager's unit is included in eligible basis, the IRS clarified the following:

- Per [IRS Revenue Ruling 92-61](#), Manager/Exempt units are considered facilities reasonably required for the operation of the residential rental housing. The unit is required to be occupied by the actual on-site resident manager and/or maintenance personnel of that LIHTC property in order for that unit to qualify as residential rental property for purposes of Section 42 of the Code.
- Employees occupying the manager's unit in one LIHTC property but working at a different LIHTC property is not a "qualified use of the manager unit." Such a unit is not considered a "manager unit" because the site personnel is/are not residing in the employee unit at the same LIHTC property they are employed at. To comply with federal regulations, an owner shall have the site personnel (on-site resident manager and/or maintenance personnel) reside in the same LIHTC property for which they are employed.

- TCAC staff are verifying the resident who occupies the on-site manager unit at all LIHTC properties to assure they are employed at that LIHTC property. Any violation of the correct use of the manager's unit will be reported to the IRS via Form 8823.

### **VAWA:**

VAWA protects victims of domestic violence, sexual assault, dating violence, and stalking ("VAWA Crimes") from discrimination in accessing and maintaining federally assisted housing because of the violence committed against them. In 2013, Congress expanded the VAWA's housing protections by including additional federal housing programs such as the LIHTC program.

While there has not been official guidance issued from the IRS to the state LIHTC allocating agencies regarding VAWA, TCAC will follow the provisions of the 2013 VAWA legislation in accordance with IRS regulations. Beginning **January 1, 2018**, TCAC will require all owners of LIHTC properties in California and their property management agents be in compliance with the VAWA LIHTC Information Checklist (see attached). Please note, this checklist is not all inclusive and owners along with their property management agents must be well familiar with all VAWA requirements.

Additionally, TCAC Monitoring staff will now be looking for compliance with the HUD VAWA Lease Rider ([HUD - 91067](#)). A HUD VAWA Lease Rider must be included in each LIHTC property tenant file. Failure to comply will result in a finding of noncompliance for each file where the HUD VAWA Lease Rider is missing.

If you have any questions on this memorandum, please contact Rose Guerrero, Compliance Section Chief at 916-654-6340.

# Violence Against Women Reauthorization Act of 2013

## LIHTC Information and Checklist

### Background

The Violence Against Women Act (“VAWA”) protects victims of domestic violence, sexual assault, dating violence, and stalking (“VAWA Crimes”) from discrimination in accessing and maintaining federally assisted housing because of the violence committed against them. In 2013, Congress expanded VAWA’s housing protections by covering additional federal housing programs, including the Low-Income Housing Tax Credit program (“LIHTC”).<sup>1</sup> This checklist outlines the obligations of LIHTC owners and their management agents under VAWA.

### Basic Obligations

The list below outlines the existing protections under the 2013 VAWA that are applicable to all low-income housing tax credit properties. It is **not** an exhaustive list of an owner or management agent’s responsibilities under VAWA. Additional obligations may apply to other programs such as the Section 8 Housing Choice Voucher Program and the HUD Multifamily rental programs<sup>2</sup> (collectively “VAWA-covered HUD programs”).<sup>3</sup>

### Tenant’s Status as a Victim of a VAWA Crime

- Owners and management agents may not deny admission or evict a tenant on the basis of, or as a direct result of, the fact that the tenant is or has been the victim or threatened victim of a VAWA Crime.

### Criminal Activity Related to VAWA Crimes

- Owners and management may not consider criminal activity directly relating to VAWA Crimes, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or an affiliated individual of the tenant is the victim or threatened victim of the violence.
- Owners and management agents may evict or terminate the assistance of a victim if they can demonstrate an actual and imminent threat to other tenants or employees at the property in the event that the tenant is not evicted or terminated from assistance.
- Owners and management agents cannot subject victims of VAWA Crimes to a more demanding standard than other tenants when determining whether to evict.

### Notification

- Owners and management agents are required to notify all tenants of their VAWA rights by providing each tenant a Notice of Occupancy Rights Form [HUD-5380](#) and VAWA Self-Certification Form [HUD-5382](#) when the tenant has been admitted to the property and with any notification of eviction or notification of termination of assistance. These forms are available in multiple languages on HUD’s website. Housing providers must customize Form HUD-5380 by providing information about the program and contact information.

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<sup>1</sup> 34 U.S.C. § 12491.

<sup>2</sup> The HUD Multifamily programs that are covered by VAWA are Section 8 project-based housing; Section 202 housing for the elderly; Section 811 housing for people with disabilities; Section 236 multifamily rental housing; and Section 221(d)(3) Below Market Interest Rate (BMIR) housing.

<sup>3</sup> In November 2016, HUD promulgated the agency’s [Final Rule](#) implementing VAWA 2013 in the VAWA-covered housing programs. HUD’s Office of Public and Indian Housing and Office of Housing have further issued extensive notices for housing providers implementing VAWA 2013 – [Notice PIH-2017-08 \(HA\)](#) and [H 2017-05](#).

- **NOTE:** Owners and management agents participating in VAWA-covered HUD Programs are required to distribute these forms to existing tenants by **December 16, 2017**.<sup>4</sup>

### Documentation

- Owners and management agents may request, in writing, that the tenant seeking VAWA protections certify that the individual is a victim of a VAWA Crime. To receive protections under VAWA, the tenant has the choice to submit either a VAWA Self-Certification Form [HUD-5382](#), or other documentation as noted on the certification form, completed and submitted within 14 business days, or an agreed upon extension date. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction or admission denial.
- If the Owner or management agent receives conflicting certifications, they can require an applicant or tenant to submit third-party documentation permitted under VAWA.

### Confidentiality

- Owner and management agents are required to keep strictly confidential all information submitted by the tenant related to their VAWA request or protected status, including the fact that an individual is a victim of a VAWA Crime. They may not enter any of this confidential information into any shared database or disclose this information to any other entity or individual, except to the extent that the disclosure is: requested or consented to by the individual seeking VAWA protections in writing, required for use in an eviction proceeding, otherwise required by applicable law, or for compliance with the Section 42 Tax Credit Program.

### Court Orders

- Owners and management agents must honor all court orders addressing rights of access or control of property, including protective orders issued to victims, and any orders addressing the distribution or possession of property.

### Remedies for VAWA Victims

- Owner and management agents have an obligation to qualified tenants and their affiliated individuals who are victims of VAWA crimes to assist them with an emergency transfer in accordance with a documented emergency transfer plan. This may include the option of lease bifurcation or other discretionary procedures such as a transfer to another unit. More information on these remedies can be found in the Notice of Occupancy Rights Form [HUD-5380](#).
  - **NOTE:** Owner and management agents participating in VAWA-covered HUD Programs must have developed VAWA emergency transfer plans consistent with HUD regulations by **June 14, 2017**.

### IRS Section 42 LIHTC and CTCAC Guidance

The CA Tax Credit Allocation Committee (CTCAC) will follow the provisions of the 2013 VAWA regulation in accordance with IRS guidance. CTCAC will allow the use of the HUD VAWA Lease Rider [HUD-91067](#), which outlines the provision of the VAWA regulation, to be used at **all** tax credit properties, including those that do not have other HUD Multifamily funding.

Transfers related to VAWA regulation remedies must continue to follow the existing transfer protocols in place. Projects that are **not** designated as a multi-building project (noted as a “No” Election on Line 8b on the IRS 8609 Form), may be subject to a loss of credits if a non-qualifying household is transferred into a unit in a different building. Projects that are not 100% tax credit and have market/conventional units as well as tax credit units,

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<sup>4</sup> 24 C.F.R. § 5.2005(a)(2)(iv) (“During the 12-month period following **December 16, 2016**, either during the annual recertification or lease renewal process, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.”).

must continue to follow the 140% Next Available Unit Rule in addition to the protocol for transferring in a multi-building project.

**Failure to Meet Obligations**

Under the Memorandum of Understanding between the IRS, HUD, and the Dept of Justice, and in a cooperative effort to promote enhanced compliance with the Fair Housing Act for the benefit of residents of LIHTC properties, key points of the MOU include coordinated procedures for notifying the State Agencies and IRS of charges, lawsuits, or other actions under the Fair Housing Act involving a LIHTC property<sup>5</sup>. If a “probable cause” discrimination charge or other violation of either VAWA or the Fair Housing Act is determined by HUD, DOJ, the Dept of Fair Employment and Housing, or any other substantially equivalent fair housing state or local agency, CTCAC will file Form 8823 to the IRS as a result of this MOU.

Failure to follow the IRS Section 42 transfer protocols may result in the filing of Form 8823 to the IRS.

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<sup>5</sup> Per the IRS Guide for Completing Form 8823 Chapter 13 Category 11h Project not Available to the General Public (Notifications of Fair Housing Act Administrative and Legal Actions)