October 7, 2013

Regulations Division
Office of General Counsel, Department
of Housing and Urban Development
451 7th Street SW., Room 10276
Washington, DC 20410–0500

Re: [Docket No. FR–5720–N–01] Violence Against Women Reauthorization Act of 2013:
Overview of Applicability to HUD Programs

The National Association of Housing and Redevelopment Officials (NAHRO) is pleased to have the opportunity to submit the following comments concerning the above referenced notice. Formed in 1933, with more than 22,400 agency and individual members, NAHRO is the nation’s oldest and largest national nonprofit organization representing local housing and redevelopment agencies and officials engaged in the production and operation of affordable housing.

General Comment

Unlike HUD’s Interim Rule regarding Violence Against Women Act Conforming Amendments on November 28, 2008 on October 27, 2010, HUD’s notice regarding “Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs” on August 6, 2013 did not include detailed information of how applicable sections and subsections within 24 CFR on “Subpart L - Protection for Victims of Domestic Violence in Public and Section 8 Housing” read if new regulatory provisions stemming from HUD’s implementation of Pub. L. 113–4 were adopted by HUD. This lack of information in HUD’s notice on August 6, 2013 [Docket No. FR–5720–N–01] makes it very difficult for all interested parties to cross-reference new provisions from P.L. 113-4 with Pub. L. 109–162 and Pub. L. 109–271 as amended, in order to make informed comments about what the new VAWA rule would look like if the provisions in the Department’s November 28, 2008 notice were adopted as written.
Clarification of terms (24 CFR 5.2005)

*Criminal activity directly related to domestic violence, dating violence stalking or sexual assault* – The fundamental protection afforded by VAWA reauthorization in 2013 is that this type of criminal activity may not be the basis of eviction or termination of assistance if the tenant or an “affiliated individual” is the victim. The statute and notice contain detailed definitions of the terms, “domestic violence,” “dating violence,” “stalking” and “sexual assault” and “affiliated individual.” However, no clarification is provided concerning the meaning of “directly related” as applied in this context. Presumably use of the word “directly” was intended by Congress to limit the reach of the provision so that peripheral activities, although arguably related in some remote way to domestic violence, dating violence, stalking, or sexual assault would not bring into play the statutory scheme. A clarification of the term “directly related” that takes into account this limiting Congressional intent would be helpful. In response to NAHRO’s comment regarding the Interim VAWA Rule (October 27, 2010), the Department wrote, “HUD finds that in this context, the meaning of ‘directly related’ is clear and does not require further elaboration.” Ambiguities in VAWA’s statutory terminology are likely to be the subject of litigation. Mitigating the incidence of litigation, which NAHRO suggests is in the interests of both tenants and PHAs/owners/management agents, not to mention useful in protecting the scarce resources available for the affordable housing programs, would be aided by regulatory clarification. To this end, we call upon the Department to clarify the term “directly related” that takes into account Congress’s intent to make such limitation.

Increased Confidentiality and Statement of Mental Health Professional

HUD’s notice refers to changes made by VAWA 2013 to the documentation and confidentiality requirements currently reflected at 24 CFR, part 5, subpart L as follows: “…[a]n acceptable form of documentation includes a document that is signed by the applicant or tenant and a mental health professional from whom the applicant or tenant has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of such actions, and states, under penalty of perjury, that the mental health professional believes that the domestic violence, dating violence, sexual assault, or stalking meets the requirements found in VAWA 2013;…” Consistent with other statutory aspects of the VAWA Reauthorization Act of 2013 and HUD’s regulatory notice for comment, NAHRO recommends HUD revise this paragraph by including “directly relating” to “…domestic violence, dating violence, sexual assault, or stalking, or the effects of such actions....” Once revised, the paragraph would read “…[a]n acceptable form of documentation includes a document that is signed by the applicant or tenant and a mental health professional from whom the applicant or tenant has sought assistance directly relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of such actions, and states, under penalty of perjury, that the mental health professional believes that the domestic violence, dating violence, sexual assault, or stalking meets the requirements found in VAWA 2013;…” (bold for emphasis).

Bifurcation of Leases

HUD’s summary explanation in the subsection titled, “Bifurcation of lease and opportunity to establish eligibility for remaining tenants” (Page 47720) states, “VAWA 2013 continues to allow for lease bifurcation, but changes the language regarding the violent acts (“'criminal acts
of physical violence against family members or others” becomes “criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual”), and mandates that if such bifurcation occurs, and the removed tenant or lawful occupant was the sole tenant eligible to receive assistance under a covered housing program, the PHA, owner, or manager shall provide any remaining tenant the opportunity to establish eligibility for the covered housing program. If the remaining tenant cannot establish eligibility, the PHA, owner, or manager is required to provide the tenant a reasonable time to find new housing or to establish eligibility under another covered housing program.” (bold for emphasis) For reasons described below, we view the statutory context of SEC. 41411(3)(B)(i) and SEC. 41411(3)(B)(ii) regarding bifurcation of lease and opportunity to establish eligibility for remaining tenants under the VAWA Reauthorization Act of 2013 which reference “any remaining tenant” is only meant to be someone who meets the legal definition of “tenant,” who is a “lawful occupant of the housing,” and/or who is an “affiliated individual.”

SEC. 41411(3)(B)(i) regarding bifurcation, VAWA 2013 states, “IN GENERAL.—Notwithstanding subparagraph (A), a public housing agency or owner or manager of housing assisted under a covered housing program may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.”

The context in which the term referenced under SEC. 41411(3)(B)(ii) in the VAWA Reauthorization Act of 2013 - “…an individual under clause (i), and the individual is the sole tenant eligible to receive assistance under a covered housing program,…” – is when a PHA or owner/management agent being allowed to bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing. “…” (bold for emphasis). The reference in SEC. 41411(3)(B)(i) to “…any individual who is a tenant or lawful occupant of the housing” as a perpetrator(s), pertains only to legally authorized household members, consistent with VAWA 2013 definition of “affiliated individual,” who were properly reported and added to an assisted dwelling lease with a PHA or owner/management agent under covered housing programs. In its VAWA 2013 notice, HUD defines an “affiliated individual,” with respect to an individual, as a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis, or any individual, tenant, or lawful occupant living in the household of that individual.” The language in the next portion of the provision in SEC. 41411(3)(B)(i) states, “…against an affiliated individual or other individual” refers to “other individual” who is a victim but who is not a legal tenant, or lawful occupant of the housing or an “affiliated individual.” The last remaining portion of SEC. 41411(3)(B)(i) which states, “…without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful
occupant of the housing. …” refers to legal tenants or occupants of the housing. (bold for emphasis).

SEC. 41411(3)(B)(ii) in the VAWA Reauthorization Act of 2013, regarding “EFFECT OF EVICTION ON OTHER TENANTS,” states, “[i]f public housing agency or owner or manager of housing assisted under a covered housing program evicts, removes, or terminates assistance to an individual under clause (i), and the individual is the sole tenant eligible to receive assistance under a covered housing program, the public housing agency or owner or manager of housing assisted under the covered housing program shall provide any remaining tenant an opportunity to establish eligibility for the covered housing program. If a tenant described in the preceding sentence cannot establish eligibility, the public housing agency or owner or manager of the housing shall provide the tenant a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program.” (bold for emphasis) As described in the paragraph above, outside of the legal definition of “tenant,” “lawful occupant of the housing,” and/or “affiliated individual” there are no other individuals who meet the legal definition of “tenant” or “lawful occupant of housing,” or “affiliated individual.” Therefore, NAHRO believes that the statutory context and use of the term “any remaining tenant” in SEC. 41411(3)(B)(ii) in the VAWA Reauthorization Act of 2013 as well as HUD’s VAWA 2013 notice, must meet the legal definition of “tenant,” “lawful occupant of the housing,” and/or “affiliated individual.” By extension, the statutory context of the VAWA Reauthorization Act of 2013 would preclude “any remaining tenant” outside of the three types of defined individuals - the legal definition of “tenant,” “lawful occupant of the housing,” and/or “affiliated individual” - with an opportunity to establish eligibility for the covered housing program.

Section 41411(3)(B)(ii) under the VAWA Reauthorization Act of 2013, stipulates that “the public housing agency or owner or manager of housing assisted under the covered housing program shall provide “any remaining tenant” with an opportunity to establish eligibility for the covered housing program. NAHRO believes that so long as “any remaining tenant” is someone who meets the legal definition of “tenant,” who is a “lawful occupant of the housing,” and/or who is an “affiliated individual,” PHAs or owner/management agents are required under the statute to provide them with an opportunity to establish eligibility for the covered housing program. Similarly, NAHRO believes that “any remaining tenant” who meets the legal definition of “tenant,” who is a “lawful occupant of the housing,” and/or who is an “affiliated individual” who cannot establish eligibility, that under the VAWA 2013 statute a public housing agency or owner or manager of the housing is required to provide the tenant a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program. However, along with HUD’s final revision of the VAWA 2013 notice, it imperative HUD provide PHAs or owners / management agents additional financial resources commensurate with the reasonable period the Department determines for the aforementioned tenant to find new housing or to establish eligibility for housing under another covered housing program. PHAs or owners or management/agents should not be indirectly forced to forgo applicable tenant rent shares, Housing Assistance Payments, Operating Funds, etc. that they would otherwise charge and receive during the same period of time HUD determines through proper rulemaking as reasonable for them to give to someone to find new housing or to establish eligibility for housing under another covered housing program.
NAHRO believes that the statutory context for VAWA 2013 alone, warrants HUD implementing the treatment described in the above paragraph in its revised notice. Beyond the statutory context of VAWA 2013 that warrants the treatment we define and recommend, regardless of whether “any remaining tenant” was otherwise eligible for the covered housing program, it would be unfair for other unassisted waiting list households, if “any remaining tenant” who did not meet any of the three legal definitions above to for all intents and purposes, transfer the housing assistance to “any remaining tenant” instead. Similarly, NAHRO believes that under the VAWA 2013 statute, if “any remaining tenant” who does not meet the legal definition of “tenant,” who is not a “lawful occupant of the housing,” and/or who is not an “affiliated individual,” that a PHA or owner/management agent is not required to provide the tenant a reasonable time to find new housing or to establish eligibility for housing under another covered housing program. Even in an era of greatly diminished financial resources to administer existing covered housing programs, a PHA or owner/management agent may choose at its discretion, to provide the tenant a reasonable time to find new housing or to establish eligibility for housing under another covered housing program, but it is not required to do so.

**Reasonable Period of Time to Determine Eligibility For The Covered Housing Program**

VAWA 2013 provides that the appropriate agency, in this case HUD, with respect to HUD covered programs, is to determine what constitutes a reasonable time. NAHRO recommends HUD provide through rulemaking rather than guidance, what constitutes a reasonable time for remaining legal tenants to have their eligibility for the covered housing program determined by the PHA or owner/management agent, or “any remaining tenant” who does not meet one of the three legal definitions of tenant to find new housing or establish eligibility under another HUD covered housing program.

The factors governing a determination of the period that would be reasonable to establish eligibility under the covered housing program involves a wide range of actual and possible scenarios stemming from “domestic violence” (including all of the types enumerated under VAWA 2013). As such it would be very difficult to establish a reasonable, fair and specified time frame for this purpose nationwide. Instead, NAHRO recommends HUD develop through rulemaking, a set of reasonable and applicable factors for PHAs or owners/management agents in order for them to establish reasonable and applicable criteria for purposes of developing a workable policy in their respective administrative plans that takes into consideration a wide range of possible scenarios when there is a remaining tenant who is someone that meets the three legal tenant definitions (described above). In addition to a wide range of actual and possible scenarios of remaining legal household member(s), there are also related issues if the remaining legal household member(s) who are eligible for housing assistance under the covered housing program, have greater, lesser or equal income, deductions, etc. as it relates to when a PHA or owner/management agent should make any applicable changes in the household’s share of rent retroactive, with a thirty day’s advanced written notice, or to take effect at their next annual lease anniversary.
**Reasonable Period of Time to Find New Housing & Establishing Eligibility Under Another Covered Housing Program**

VAWA 2013 provides that the appropriate agency, in this case HUD, with respect to HUD covered programs, is to determine what constitutes a reasonable time. To reiterate, NAHRO recommends HUD to provide through rulemaking rather than guidance, regarding what constitutes a reasonable time for remaining tenants to find new housing or establish eligibility under another HUD covered housing program.

Regarding the period that would be reasonable to find new housing for an existing voucher-assisted household under an assisted dwelling lease and Housing Assistance Payment (HAP) contract for example, we believe that it would be reasonable to amend the section for victims covered under the VAWA Reauthorization Act of 2013” for an initial term of at least 90 calendar days, rather than the existing 60-day period [24 CFR § 982.303(s)]. Given that every housing market is different around the country including varying degrees of affordability, availability, handicap accessibility, vacancy rates by bedroom size of dwelling units, it makes sense for PHAs to include policies in their administrative plans with a set of reasonable applicable parameters to help define under varying scenarios, including but not limited to victims covered under the VAWA Reauthorization Act of 2013, under which extensions of time on a voucher holder’s voucher to search and secure a dwelling unit that passes Housing Quality Standards at a reasonable rent, etc. are warranted. Please note that in making this recommendation that [24 CFR § 982.303(s)(c) regarding “Suspension of term” and CFR § 982.303(s)(d) regarding “Progress report by family to the PHA” would also remain in place.

The factors governing a determination of the period that would be reasonable to establish eligibility under another covered housing program for remaining legal tenant(s) involves a wide range of actual and possible scenarios stemming from “domestic violence” (including all of the types enumerated under VAWA 2013). As such it would be very difficult to establish a reasonable, fair and specified time frame for this purpose nationwide. Instead, NAHRO recommends HUD develop through rulemaking, a set of reasonable and applicable factors for PHAs or owners/management agents in order for them to establish reasonable and applicable criteria for purposes of developing a workable policy in their respective administrative plans that takes into consideration a wide range of possible scenarios when there is a remaining tenant who is someone that meets the three legal tenant definitions (described above). Such factors which vary greatly from locality to locality could include but not be limited to: a reasonable time for the victim to apply for other covered housing programs, and contingent up the previous factor a reasonable time for the victim to have an eligibility determination performed by PHAs or owner/management agent under applicable covered program rules.

Along with HUD’s final revision of the VAWA 2013 notice, NAHRO believes that it is imperative HUD provide PHAs or owners / management agents additional financial resources commensurate with the reasonable period the Department determines for the aforementioned tenant to find new housing or to establish eligibility for housing under another covered housing program. PHAs or owners or management/agents should not be indirectly forced to forgo applicable tenant rent shares, Housing Assistance Payments, Operating Funds, etc. that they would otherwise charge and receive during the same period of time HUD determines through proper rulemaking as reasonable for them to give to someone to find new housing or to
establish eligibility for housing under another covered housing program. To reiterate, NAHRO believes that under the VAWA 2013 statute, if “any remaining tenant” who does not meet the legal definition of “tenant,” who is not a “lawful occupant of the housing,” and/or who is not an “affiliated individual,” that a PHA or owner/management agent is not required to provide the tenant a reasonable time to find new housing or to establish eligibility for housing under another covered housing program. Even in an era of greatly diminished financial resources to administer existing covered housing programs, a PHA or owner/management agent may choose at its discretion, to provide the tenant a reasonable time to find new housing or to establish eligibility for housing under another covered housing program, but it should not be required.

Enhanced Notification of VAWA Protections

In summarizing Pre-VAWA 2013, HUD’s notice correctly states, “[d]ocumentation requirements. Pre-VAWA 2013 requirements allowed a PHA, owner, or manager of assisted housing to request documentation that an applicant or tenant is a victim of domestic violence, dating violence, or stalking if the applicant or tenant seeks and requests the protections of VAWA previously discussed in this notice (addressed in 24 CFR 5.2007(a)). However, VAWA did not require a PHA, owner, or manager of assisted housing to request this information (addressed in 24 CFR 5.2007(d)). If a tenant or applicant does not provide this documentation after it is requested by the PHA, owner, or manager, then the PHA, owner, or manager may evict or terminate assistance of the tenant or a family member, for violations of the lease or family obligations that otherwise would constitute good cause to evict or grounds for termination (addressed in 24 CFR 5.2007(c)).”

VAWA 2013 extends the requirements addressed at 24 CFR 5.2005(a)(1) and 5.2005(a)(3) to all covered HUD programs, but requires that HUD, as opposed to the individual housing provider, develop the notice outlining the applicant or tenant’s rights. Additionally, VAWA 2013 requires that the notice be provided together with the certification form discussed in section D of this notice. VAWA 2013 also requires notice to be provided at the time the applicant is denied residency in a dwelling unit, at the time the individual is admitted to a dwelling unit, with any notification of eviction or notification of termination of assistance, and in multiple languages, consistent with guidance issued by the Secretary of Housing and Urban Development.

In terms of the frequency of PHAs providing notification to applicants and participants of their rights and obligations along with the certification form (addressed in 24 CFR 5.2007(b)(1) and the HUD-approved forms are HUD–50066 and HUD–91066 or an alternative form of certification/documentation as amended by VAWA 2013, the Department should obviously implement the law as specifically stipulated in statute. Beyond the specific stipulations of PHAs or owners/management agents in statute under VAWA 2013, we ask the Department to consider not imposing additional financial obligations on PHAs or owners/management agents beyond what is stipulated in statute, as a result of a prolonged period of underfunding and historically low funding to administer their programs.

Going forward and after all possible administrative and legal processes have been exhausted by de-identified applicants and participants covered under applicable privacy and confidentiality rights and protections, NAHRO may survey our members regarding the frequency with which
applicants or participants who would otherwise be legitimately and legally denied housing assistance or have their housing assistance terminated for other reasons outside of being victims under the VAWA Reauthorization Act of 2013 and its attendant protections, to determine whether or not this requirement led to an appreciable increase in applicant and/or participant claims of being a victim under VAWA (within previous and currently covered programs) that are ultimately not substantiated under the law and HUD’s VAWA 2013 notice. Obviously, carefully and credibly designed surveys of our members would be needed, consistent with all applicable laws and implementing guidance. If our survey is adequately designed and shows an appreciable increase in applicant and/or participant claims of being a victim under VAWA (within previous and currently covered programs) that are ultimately not substantiated under the law and HUD’s VAWA 2013 notice, it may be an indication of applicants and/or participants who claimed being victims under VAWA 2013, in order to possibly gain eligibility or avoid termination of housing assistance, or to otherwise extend the period by which termination of their housing assistance or their application for housing assistance was considered.

In terms of the Limited English Proficiency (LEP) elements HUD’s VAWA 2013 notice and under both President Obama’s Executive Order 13166 and related HUD notices subsequently issued about this Executive Order, both written and verbal translations are non-binding on PHAs or owners / management agents.

NAHRO has long-standing policy positions that all HUD documents should be translated by the Department, and HUD should set up and staff a toll-free hotline for all verbal translations. Over the years, NAHRO has supported efforts led by the National Affordable Housing Managers Association, National Multi-Housing Assistance Council / National Apartment Association, National Leased Housing Association and the National Association of Realtors, to authorize and fund such Limited English Proficiency (LEP) activities. In the FY 2012 “minibus” appropriations measure (H.R. 2112) Congress included $300,000 for the creation and promotion of translated materials and other programs that support the assistance of persons with limited English proficiency (LEP) in utilizing the services provided by HUD. The funding previously provided for this activity supports both the translation and dissemination of documents. The Senate Appropriations Committee urged the Department to move expeditiously to meet the intent of these funds. In addition, HUD is directed in the Committee's report to provide information on its work on this program in its 2013 budget justification, including plans and costs of: translating and updating documents, conducting outreach and disseminating vital documents, and operating an interpretation hotline.

**Modification to Existing Forms**

The notice states, “HUD will modify its existing forms, HUD–50066 and HUD–91066, to ensure that the forms reflect an obligation on the part of the victim to provide the name of the perpetrator only if it is safe to provide and if it is known to the victim. HUD will also modify its existing forms to reflect the additional acceptable forms of documentation that the victim may submit; for example, a document signed by the tenant, or a mental health professional or an administrative agency record. In addition, HUD will modify its forms to cover victims of sexual assault.
Unfortunately, HUD’s notice does not provide a sufficient level of detail regarding HUD’s pending modification to its existing forms, HUD–50066 and HUD–91066, for existing covered programs to reflect the additional acceptable forms of documentation that the victim may submit. As a result, it is difficult to comment on the content of any changes to these existing forms and/or additional acceptable forms of documentation without first having an opportunity to review the contents of HUD’s revised forms and additional acceptable forms of documentation. Therefore, NAHRO respectfully requests the Department to provide an opportunity for interested parties to comment within a reasonable time frame from when this information is published in the Federal Register and subject to comment.

Notice of Rights

HUD is developing the notice of rights, which will be issued first for comment under the Paperwork Reduction Act. HUD specifically solicits comment, in advance of issuance of a notice for comment under the Paperwork Reduction Act, on the content of the notice of tenant’s rights. NAHRO looks forward to reviewing and possibly commenting on this topic, once HUD has published this information. In the meantime, it is worth noting that applicants and participants’ rights under the VAWA Reauthorization 2013 are prescribed in statute. If HUD rather than each PHA is going to outline victims’ rights and obligations it makes sense to do so as long as a victim’s rights are constituted under the VAWA Reauthorization Act of 2013 and other applicable law.

Sincerely,

Jonathan Zimmerman
Senior Policy Advisor