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


To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I am pleased to offer the following comments in response to the proposed rule (FR-5720P02) entitled “Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs,” published in the Federal Register on January 16, 2015. Formed in 1933, NAHRO represents over 20,000 individual and agency members. Collectively, our membership manages over 970,000 public housing units, or approximately 83 percent of the entire public housing inventory, as well as 1.7 million vouchers. A good portion of our members are also involved in the administration of federal funding through Community Planning and Development programs. Undoubtedly, NAHRO members are deeply vested in any regulations governing local housing and community development agency planning operations.

Distribution of Notice of Occupancy Rights and Certification Form (Solicitation #3)

In the proposed rule, HUD requests specific comment on a less burdensome way to reach out to all existing tenants in the newly-covered programs about their rights under VAWA. In general, NAHRO agrees it is necessary to distribute the Notice of Occupancy Rights (Appendix A) and certification form (Appendix C) to both new and existing covered housing program tenants. Proper knowledge of VAWA rights is necessary for the health and safety of program applicants and tenants. However, NAHRO believes HUD should refrain from imposing additional financial obligations on HUD-covered programs beyond what is stipulated in VAWA statute, particularly at a time when many programs are experiencing historically low funding. NAHRO recommends that the distribution of the Notice of Occupancy Rights and the certification form to all existing tenants should occur in conjunction with each covered housing provider’s annual income recertification, over a period of no more than one year following an enactment date that is determined by HUD.
Certification Form (Solicitation #8 and #9)

HUD requests comment from housing providers, victims, survivors, and their advocates, who have had experience with forms HUD-50066 and HUD-91066, about whether these forms are useful and whether any changes are needed for the proposed certification form (Appendix C). In the proposed certification form, applicants and tenants are permitted to self-certify their incidence of domestic violence, dating violence, sexual assault, or stalking. Additionally, the victim is permitted to provide “alternate documentation” instead of (or in addition to) the proposed certification form. The VAWA responsible entity has the discretion to request “alternate documentation” from the victim if the responsible entity deems it necessary. According to the certification form: “Alternate Documentation” may include:

1. 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;
2. A document signed by the applicant or tenant who states under penalty of perjury that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under VAWA;
3. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
4. At the discretion of the responsible entity, a statement or other evidence provided by the applicant or tenant.

NAHRO members include covered housing providers for the homeless with responsible entities that utilize self-certification forms similar to the certification form proposed in Appendix C. These housing providers often find themselves in a situation where the responsible entity begins to rely too heavily on self-certification to qualify applicants. This situation leaves the housing provider vulnerable to penalties that stem from HUD program audits, causing disruptions and delays in the program and adversely affecting the program’s ability to provide services to those that need them. NAHRO recommends that the certification form be redrafted so that the responsible entity may first request the items under “alternate documentation” to fulfill §5.2007. However, the ability to obtain a third-party verification for victim status may be difficult in certain situations and certain places, such as in rural areas. NAHRO recommends the certification form and the requirements outlined in §5.2007 should direct responsible entities to accept self-certification as a last resort.

The proposed certification form and the regulations found under §5.2007(b)(ii) both authorize the following ‘professional’ documentation as permissible when documenting the occurrence of domestic violence, dating violence, sexual assault or stalking: “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.” 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 abuse.” Once revised, the paragraph would read: “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 directly relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse” (bold for emphasis).

HUD solicits comment on whether the 14-business-day time period for submitting documentation requested by the covered housing provider under §5.2007(a)(2)(ii) should apply to a third-party document request under §5.2007(b)(2). In general, NAHRO does not believe the 14-business-day time period is an unreasonable request of the victim or covered housing provider. NAHRO acknowledges that in certain cases, the victim’s ability to obtain and submit third-party documents may sometimes be delayed due to involuntary and unforeseen circumstances. NAHRO suggests HUD include regulatory language that offers covered housing providers the discretion to extend the time period for submitting third-party documentation beyond the 14-business-day time period, in such cases.

**Bifurcation: Reasonable Time Period to Establish Eligibility (Solicitation #12)**

If a covered housing provider opts to bifurcate a lease on grounds of VAWA protections, §5.2009(b) of the proposed rule establishes a 90-day “reasonable time period” in which a tenant (in situations where the tenant is not the perpetrator) may establish eligibility to remain in the current unit or find alternative housing. The rule specifies that “the covered housing provider shall provide to any remaining tenant or tenants a period of 60 calendar days from the date of bifurcation of the lease to: (A) Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease; or (B) Establish eligibility under another covered housing program.” If eligibility is not established by the tenant, the covered housing provider must provide tenants with an additional 30 calendar days to find alternative housing, commencing the 61st day after the date of the bifurcation of lease.

NAHRO believes that providing only 30 days to find alternative housing is an extremely difficult task to ask of tenants, 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. NAHRO acknowledges that the proposed rule does allow tenants to pursue both efforts to establish eligibility or find alternative housing during either reasonable time period. However, the reality for many covered housing providers is that if tenants are provided with the proposed regulatory language that segments 60-calendar days for establishing eligibility and 30-calender days to find alternative housing, it is very unlikely their tenants will even begin searching for alternative housing until after their ineligibility for housing under the current covered housing program or another covered housing program is confirmed. HUD should refrain from marking a specific 60-day period to establish eligibility and marking a specific 30-day period for finding alternate housing. NAHRO recommends the language under §5.2009(b) be redrafted so it requires covered housing providers to provide a total of 90 calendar days to tenant or tenants, following the date of the bifurcation of lease, for establishing eligibility and finding alternative housing.
Lease Requirements for TBRA in Homelessness Prevention (Solicitation #11)

HUD requests comment on what lease requirements should apply when tenant-based rental assistance (TBRA) is used for homelessness prevention under the Emergency Solutions Grants and CoC programs, in instances where the family wishes to stay in their existing housing. In instances of domestic abuse and violence, perpetrators will often return to the victim’s home with consent from the victim. NAHRO recommends that the TBRA lease specify as a lease requirement that the perpetrator cannot be listed on the new lease. If there is a restraining order placed on the perpetrator by the victim, the victim should be required to honor that restraining order by not allowing the perpetrator on the property. Additionally, the lease should require that the unit must not be substandard housing. Substandard housing should be determined by the physical assessment criteria used within each specific covered housing program.

Emergency Transfer Plan: Clarification of Term (Solicitation #5)

Under HUD’s preamble for the subsection titled, “VAWA Protections – Revised to Include New Protections,” the text on Page 17557 references the “available and safe unit” that a tenant may transfer into under an emergency transfer plan. The preamble offers an example of “safe” where “an unoccupied unit immediately next door to the unit in which the victim is residing would, on its face, be safer than the unit in which the victim is currently residing, but the degree and extent of safety may be questionable if the perpetrator remains in the unit in which the victim was residing.” However, the proposed regulatory language found in §5.2003 and §5.2005(e) does not provide a clear explanation of what constitutes a “safe unit.” NAHRO is concerned that the open-ended nature of what constitutes a “safe unit” may leave covered housing providers vulnerable to litigation. NAHRO requests from HUD specific regulatory language that offers a criteria that a covered housing provider may follow to classify a unit as “safe.” Additionally, in situations where a tenant is transferred into a different unit under a different covered housing provider, NAHRO requests further clarification on which covered housing provider will be expected to fulfill the VAWA responsibility of determining a unit as “safe.”

Documentation of Emergency Transfers (Solicitation #4 and #7)

HUD requests feedback on documentation requirements in the situation in which a tenant who is a victim requesting an emergency transfer from the tenant’s existing unit to another safe and available unit. For homelessness assistance programs, such as the Continuum of Care (CoC), the documentation of homelessness is vital when transferring a tenant into a unit operated by another program. For example, if a homeless shelter transfers a tenant from an emergency housing program into a transitional housing program, and the recipient experiences another instance of domestic violence, that perpetrator now knows where the victim lives. The victim must be relocated to another safe place. The new unit may be a site-based program only and will require documentation for when this person first became homeless in order to qualify. In instances of transfers, the lack of documentation is much more risky to the tenant and covered housing provider compared to the requirement of documentation before and/or after the emergency transfer. Additionally, it is common for victims to go back to their abuser. Third-party documentation can advise covered housing providers with the victim’s history and habits
(e.g., police reports, restraining orders, medical information) prior to the emergency transfer. There may also be instances in which a tenant will falsify an emergency transfer in order to break their current lease or jump into another preferred housing program. Third-party documentation is essential for preventing tenants from taking advantage of VAWA protections that do not apply to them.

In consideration of the scenarios described in the above paragraph, NAHRO believes third-party documentation prior to an emergency transfer is necessary. The exception to this is when the situation of violence is observable by a responsible entity. NAHRO recommends the specific type of third-party documentation that is required during an emergency transfer should be established through local and regional policy. Communities and localities often have varying degrees of participation across organizations (e.g., victims’ advocacy group, law enforcement, domestic shelter) that address victims covered under VAWA. Many covered housing providers already document victim situations. Third-party documentation prior to an emergency transfer will not increase cost or risk covered housing providers. NAHRO recommends that HUD emphasize the need for clear communication between covered housing providers on the types of documentation that will be provided and/or required for a successful emergency transfer.

Model Emergency Transfer Plan (Solicitation #6)

HUD requests feedback on whether the model emergency transfer plan found in Appendix B should include a criteria for tenants requesting an emergency transfer (e.g., reasonable belief that the tenant is being threatened). For the sake of clarity and efficiency, NAHRO believes HUD should provide reasonable criteria in their model emergency transfer plan that allows covered housing providers to reference during the process of approving an emergency transfer for a tenant. NAHRO recommends the criteria to include reasonable and applicable factors that take into consideration a wide range of possible scenarios and that can be uniformly standardized for each specific covered housing provider. A standardized criteria will help covered housing programs demonstrate their reasonable attempt to qualify a tenant for an emergency transfer, affording covered housing providers and responsible entities safe harbor from litigation.

NAHRO thanks the Department for the opportunity to submit comments. As always, we remain committed to ensuring the success of federal housing and community development programs in partnership with the Department and our membership.

Sincerely,

Jenny Hsu
Policy Analyst