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June 1, 2015

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, D.C. 20410-0500
Via: www.regulations.gov

RE: The Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, Docket Number: FR-5720-P-02, RIN 2501-AD71

To Whom It May Concern:

The following comments are submitted on behalf of the National Affordable Housing Management Association (NAHMA). In addition to comments below, NAHMA and its industry partners have developed joint comments which reflect our concerns and provide additional recommendations for HUD's review. The joint comments are attached to this letter.

About NAHMA

NAHMA members manage and provide quality affordable housing to more than two million Americans with very low to moderate incomes. Presidents and executives of property management companies, owners of affordable rental housing, public agencies and national organizations involved in affordable housing, and providers of supplies and services to the affordable housing industry make up the membership of NAHMA. In addition, NAHMA serves as the national voice in Washington for 19 regional, state and local affordable housing management associations (AHMAs) nationwide.

Comments

1. Preamble

Pg. 17551 – "Affiliated Individual"

While VAWA protections apply only to lawful tenants, including authorized reported household members, the preamble appears to contradict this by asserting that an affiliated individual may receive indirect benefits when VAWA benefits are extended to a tenant (e.g., continuation of assistance). It is unclear if VAWA benefits would apply to unreported or unauthorized inhabitants of the tenant, and the final rule should clarify that they do not. (See similar comment re: 5.2003 "Affiliated Individual" definition below)

Pg. 17554 – Confidentiality re: Notice of Occupancy Rights under VAWA Certification

PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS

The prohibition against entering “any” information submitted by the tenant to the covered housing provider into a shared database raises practical operating concerns. While maintaining the confidentiality of the victim is extremely important, covered providers must be able to demonstrate compliance with occupancy requirements, including documenting requests for unit transfers, for example. Many providers make use of software programs to manage tenant information. Presumably a simple notation of “VAWA” entered into a database field to denote the reason for a unit transfer request would not violate the victim’s confidentiality, and such documentation should be re-considered by HUD.

Pg. 17556-57 – Emergency Transfer Plan

“Strict” confidentiality – while confidentiality regarding a VAWA victim’s circumstances is of the utmost importance, it is unclear why HUD is proposing to elevate confidentiality of VAWA information above that of EIV, which is arguably of equal importance. This is a potential minefield of liability for covered providers who may make an unintentional error.

Column three contains many unfounded assumptions about whether persons seeking emergency transfers have already been determined to be victims of domestic violence and thus qualify for such transfers.

Moving costs should also be considered to be permissible program expenses, and covered providers should not have to shoulder these costs.

Buried in the preamble (at pg. 17564) is a cursory discussion of the Impact on Small Entities, and a passing acknowledgement that small providers may be unable to carry out emergency transfer plans or bifurcation of leases. This concept should be highlighted in the preamble of the appropriate section and also covered in the regulations.

Pg. 17562 – Paperwork Reduction Act

HUD’s estimates of burden hours should take into account the impact on the housing providers who must take various steps following receipt of these forms.

Pg. 17564 – Impact on Small Entities

See comments above re: Emergency Transfer Plan. Furthermore, if HUD refuses to translate the required certification forms, the cost of providing translations would fall disproportionately on small entities, a potential violation of the Regulatory Flexibility Act.

2. Proposed Regulations

5.2001 Applicability

5.2001(b)(2) – while we appreciate HUD’s acknowledgement that the program-specific regulations take precedence in the event of a conflict, HUD should specify more clearly and specifically how covered housing providers are supposed to balance the interests of applicants (e.g., waitlist) and current tenants who may need the protections of VAWA.

5.2003 Definitions

“Affiliated Individual” (2) – the word “lawful” should be changed to an adverb and moved between the words “occupant” and “living” in order to clarify that only lawful individuals, tenants or occupants of the affected individual are considered to be affiliated individuals. The revised clause would read as follows: “(2) Any individual, tenant or occupant lawfully living in the household of that individual”.

“Covered housing provider” – should include a clarification that small providers may be exempt from certain requirements due to infeasibility, or at the very least acknowledge that there are limitations based on the size of the covered provider.

5.2005 VAWA Protections

5.2005(a) (3) – In order to ensure consistent translations and to minimize the financial burden on small providers, HUD should translate all VAWA required notices and certification forms into certain target languages. This would be consistent with HUD’s efforts to translate critical multifamily leasing documents for the benefit of the applicant and tenant populations. <http://www.hud.gov/offices/ftheo/lep.xml>

5.2005(e) (3) Emergency Transfer Plan – HUD should clarify how VAWA emergency transfer plans impact covered housing providers’ waiting lists.

5.2007 Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking

5.2007(a)(1) – Requests for emergency transfer should require some sort of documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking to prevent persons from possibly gaming the system to obtain a benefit they would otherwise not be entitled too. At a minimum, such documentation should be submitted as soon as possible after the emergency transfer request is made.

5.2007(c)(2) – The prohibition of entering confidential information into any shared database of the housing provider does not take into account the practical needs of operating such housing. At a minimum, covered providers should at least be able to enter a notation into a shared database that a transfer request was necessitated by VAWA.

5.2009 Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking

5.2009(c) The costs of unit transfer should be an acceptable covered program expense and should not have to be borne by the covered housing provider

3. Appendices

Appendix A – Notice of Housing Rights under the VAWA

Removing the Abuser from the Household

The second sentence makes reference to an unspecified “period of time” during which the other household members may remain in the unit and establish eligibility. This should be revised to match the regulations.

Confidentiality

The prohibition against entering information into any shared database does not take into consideration the practical implications of operating the property. At a minimum, covered providers should be permitted to include a notation in such a database if the reason for a transfer request is based on VAWA.

Appendix B – Model Emergency Transfer Plan for Victims of Domestic Violence

The third sentence should clarify that the size of the housing provider may affect the ability of the housing provider to execute emergency transfer requests. Additionally, requests for emergency transfers should include documentation of the incident triggering the request within a reasonable time after the request is submitted to the housing provider.

Appendix C – Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternative Documentation

The signature block should also include the warning that the signatory is making such statements under penalty of perjury.

Thank you for the opportunity to comment. Please contact Larry Keys at lkeys@nahma.org or Scott McMillen at scott.mcmillen@nahma.org with any questions.

Sincerely,

A handwritten signature in black ink that reads "Kris Cook". The signature is written in a cursive, flowing style.

Kris Cook, CAE
Executive Director

June 1, 2015

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**RE: The Violence Against Women Reauthorization Act of 2013: Implementation in HUD
Housing Programs, Docket Number: FR-5720-P-02, RIN 2501-AD71**

To Whom It May Concern:

The undersigned organizations represent a diverse group of housing providers, including private property owners and managers and public housing authorities (PHAs), who are directly affected by the implementation of the Violence Against Women Reauthorization Act of 2013. Our industry is committed to providing high quality, affordable and safe homes. We believe that preserving housing for victims of domestic violence, dating violence, sexual assault and stalking (“domestic violence”) is critically important. Therefore, we strongly support the goals of the Violence Against Women Act (VAWA or “the Act”) and appreciate the opportunity to comment on HUD’s prospective guidance and regulations.

Our organizations actively participated in the legislative development of VAWA, the regulatory implementation of the 2005 Act and the reauthorization in 2013. Throughout the process we have worked to ensure that the Act provided important protections for victims of domestic violence, while balancing the needs of victims, their communities and housing providers alike. As such, we have several recommendations to aide in HUD’s implementation efforts moving forward.

Notice of Occupancy Rights (Section 5.2005)

There was significant discussion concerning the notice requirements during the legislative process. We agree that Congress did not require HUD to provide a “model” notice, but it clearly says that HUD should “develop a notice of the rights of individuals under this section, including the right to confidentiality and the limits thereof.” However, the specific times that such notice should be provided are outlined in the statute: (A) “at the time the applicant is denied residency in a dwelling unit assisted under the covered housing program; (B) at the time the individual is admitted to a dwelling unit assisted under the covered housing program; (C) with any notification of eviction or notification of termination of assistance; and (D) in multiple languages consistent with guidance issued by the Secretary of Housing and Urban Development in accordance with Executive Order 13166 (42 U.S.C.2000(d)-1note; relating to access to services for persons with limited English proficiency).”

Firstly, we believe the intent of the law is for HUD to develop such notice and not to delegate the responsibility to housing providers. However, the form of the notice is not prescribed. During the debate on S. 1925, the reauthorization of VAWA in the Senate Judiciary Committee in 2012, the report for S. 1925 (112th Congress, 2d Session, Calendar No. 312, Report 112-153, page 13) says that, "It is the Committee's intent that to the extent practicable, notification be incorporated into existing standard notification documents that are provided to tenants, such as the Tenants' Rights and Responsibilities brochure." Not only do we support this concept, but we also believe that HUD should prioritize the translation of these notice materials to satisfy limited English proficiency requirements. For example, the Tenants' Rights and Responsibility brochure, which is provided to applicants in the project based Section 8 program, could be modified to include rights under VAWA, translated as is done currently by HUD, and disseminated by housing owner/agents to new residents. HUD could similarly adapt notification language for the voucher program in existing documents to avoid undue administrative burdens or, as appropriate, amend the voucher tenancy addendum. Again, we do not believe the statute envisioned the customization of the notice by individual providers, but we suggest that HUD develop such notices in as plain of language as practicable.

As mentioned above, the timing of access to such notice is included in the statute. In the proposed rule, HUD reports that it is considering requiring the notifications to be provided to all residents. If Congress intended for housing providers to immediately disseminate such a notice to all existing residents, the statute would require such action. It does not. As a result, it is important that HUD recognize the administrative burdens imposed by such an expanded requirement. The owner/agent or PHA should be initially required to provide the notice only at the times prescribed in the statute. Existing tenants would be informed of such rights at time of recertification. Further, HUD could post rights under VAWA on its website for current residents or other interested parties to access at any time during their tenancies. We urge HUD to consider permitting the dissemination of such materials via electronic media.

Eviction and Termination

Finally, the notice also reviews eviction and termination procedures. The language states that "Although not required by VAWA, HUD retains paragraph (d) (3) of existing section 5.2005 (Section 5.2005 (d) (4) in the proposed rule) that encourages a covered housing provider to evict or terminate assistance as provided in Section 5.2005 (d) only when there are no other actions that could be taken to reduce or eliminate the threat of domestic violence." This paragraph provides that any eviction or termination of assistance, as provided in the regulations, should be utilized by a covered housing provider only when there are no other actions that could be taken to reduce or eliminate the threat. That includes, but is not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence, developing other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. In the preamble, HUD uses the word "encourage" with regard to this provision. Clearly understanding the ability of housing providers to avoid eviction or termination will vary widely dependent upon factors that are generally out of the control of the provider. HUD inserted this

language during a prior rulemaking, it is subjective, it is not in the statute, and therefore it should be stricken.

Request for Emergency Transfer (Section 5.2005(e))

We support the ability for victims living in federally subsidized housing to request transfer to units for their protection when the victim believes there is a threat of imminent harm. Unfortunately, the reality is that subsidized housing is scarce and the need is tremendous. Most subsidized properties have few vacancies and the housing voucher programs have long waiting lists. There will be situations where, despite the victim's request for an emergency transfer, there will be no safe or available subsidized unit to move them to. We strongly urge HUD to encourage the appropriators to increase funding for tenant protection vouchers for this purpose and/or to encourage a separate set-aside of vouchers for victims of domestic violence.

The law requires that "each appropriate agency shall adopt a model emergency transfer plan for use by public housing agencies and owners and managers of housing assisted under covered housing programs." As previously mentioned, during the debate on S. 1925, the reauthorization of VAWA in the Senate Judiciary Committee in 2012, the report for S. 1925 (112th Congress, 2d Session, Calendar No. 312, Report 112-153, page 14) expresses concerns regarding emergency transfers by saying, "It is the Committee's intent that these policies should be tailored to the various types of housing programs covered by the bill, recognizing that housing agencies, owners and managers have varying abilities to transfer occupants based on the volume and availability of dwelling units under their control or management. The emergency transfer plans should provide guidance for use in situations where it is not feasible for an individual public housing agency, owner or manager to effectuate a transfer." We believe that HUD should provide separate model emergency plans for public housing, the voucher program, project-based rental assistance, etc., in recognition of the various laws and regulations applicable to different housing programs. The model plans can be incorporated into the operating documents of the relevant housing providers. However, the law does not require housing providers to adopt the agencies' plans, as a result, it may be that the provider will write (or will have written) their own plans to accomplish the victim protections outlined in the statute.

We believe HUD model plans should include the required criteria for requesting an emergency transfer to an "available and safe unit." We support that the term "available and safe unit" as it reflects the limits of the housing provider's responsibility and ability to transfer a victim of domestic violence. The word "available" refers to a subsidized unit under the same program and under the control of the provider. The victim will need to make the determination if the unit is "safe" considering the proximity to the perpetrator or other factors known to the victim. Of course, any unit receiving subsidy is subject to HUD's prevailing physical inspection standards.

The plan could include a checklist for the required documentation the victim must provide to support the need for such transfer. As part of the emergency transfer request, we believe the housing providers should have the ability to request police reports, or other third party

documentation (victim service provider, attorney or other professionals assisting the victim), as permitted under Section 5.2007. We do not believe that the provision of documentation after the emergency transfer occurs is necessary.

In the proposed rule, HUD recognizes the differing characteristics, roles and capabilities of various housing providers and property types. Private property owners and managers (like those participating in the project-based rental assistance programs and the voucher programs) are not in a position to transfer residents to another property owned by a different ownership entity or assist individuals in making alternative housing choices under other subsidy programs.

The emergency transfer plans should provide guidance for use in situations where it is not feasible for an individual PHA, owner or manager to effectuate a transfer. For example, HUD should consider providing a HUD resource person in each HUB or program center that an owner or manager can direct a tenant to for alternate housing options. HUD personnel is in the best position to discuss housing solutions including: 1) assisted housing properties with local preferences for victims of domestic violence; 2) referral to the local PHA for application to public housing or the voucher program; and 3) access to and use of Tenant Protection Vouchers under Section 8(o) of the United States Housing Act of 1937. Similarly, HUD should address the implementation of emergency transfers as they relate to other competing tenant selection/relocation preferences such as disability, homelessness, etc.

Cost of Transfers

HUD requested comment on the costs of transferring residents. The costs associated with an emergency transfer would include those of a typical turnover of any unit in an apartment community. They can vary depending upon the condition of the unit, tenure of the resident and other factors. These activities are conducted at every turn of an apartment home, are part of the cost of doing business, and are traditionally incurred by the owner.

An additional cost incurred at turnover is repairing any damage to the unit. These expenses also vary widely and are typically deducted from the resident's security deposit. Our position is that this would not change in the case of an emergency transfer and that the resident should remain responsible for unpaid rent or any damage to the unit from which they are leaving.

Typically, when a lease is broken there are financial penalties imposed on the departing resident. The exact amount of those penalties will vary depending upon the rent for the unit, preferences of individual owners, and state or local laws. In the case of an emergency transfer, these penalties could be waived by the owner based upon a confirmed instance of domestic violence, stalking or sexual assault.

Request for Documentation (Section 5.2007)

VAWA 2005 established a certification process designed to provide housing providers with third-party verification of incidents of domestic violence to ensure that only bona fide victims of domestic violence receive benefits under the Act. However, when HUD implemented this provision, they interpreted the language to permit self-certifications, but allowed housing providers to request additional information to document the claim of domestic violence in some cases. VAWA 2013 specifically allows housing providers to require third-party certification where there is conflicting information about an incident of domestic violence. We expect HUD's implementing guidance and forms to reflect the ability for housing providers to require third-party certification when there is not clear evidence that domestic violence occurred, or if there is a question about who is a victim and who the perpetrator is. Appendix C allows victims to self-certify, which was not the original intent of the law. We request that HUD revisit this issue.

Timeframe for Submitting Documentation (Section 5.2007(a)(2)(ii) and (b)(2))

The industry is supportive of the criteria outlined in this section regarding the 14-business-day time period for submitting documentation requested by the covered housing provider. If more time is requested by the victim to obtain third party documentation, such extensions should be at the discretion of the housing provider.

Remedies Available to Victims (Section 5.2009)

In a situation where the lease is bifurcated, there is a possibility that lawful occupants of the unit may need to establish eligibility for the program. We believe that 60-90 days is a reasonable timeframe, but suggest that determining eligibility should take less than 30 days and the remaining timeframe could be utilized for the remaining residents to locate other housing should they be deemed ineligible for subsidies.

HUD should be clear that remaining tenants are responsible for rent payments and meeting other lease obligations during this period, or HUD should commit to continuing assistance to the unit for the duration of the time period when permitted under program rules.

Thank you for the opportunity to comment. Please contact Denise B. Muha at the National Leased Housing Association at dmuha@hudnlha.com, or Paula Cino at the National Multifamily Housing Council at pcino@nmhc.org, with any questions.

Sincerely,

Council for Affordable and Rural Housing
Institute of Real Estate Management
LeadingAge
National Affordable Housing Management Association
National Apartment Association
National Association of Housing Cooperatives
National Association of Home Builders

National Leased Housing Association
National Multifamily Housing Council