

Colette Pollard
Reports Management Officer, REE,
Department of Housing and Urban Development
451 7th Street SW, Room 4176,
Washington, DC 20410-5000
Colette.Pollard@hud.gov.
Docket No. FR-7061-N-18

Dear Ms. Pollard:

Please accept these comments in response to HUD's Information Collection Notice issued on Nov. 4, 2022, regarding HUD's implementation of the Violence Against Women Act ("VAWA") and HUD Forms 5380, 5381, 5382, and 5383, emergency transfer reporting and data collection by covered housing providers, model emergency transfer policies, family break-up, lease bifurcation, and lease addendums.

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility

We appreciate HUD's concern regarding whether the gathering of information regarding emergency transfers is necessary to facilitate the effective implementation of programmatic obligations. We believe it is. We also believe that if done correctly, it is an important tool to inform owners, agents, program offices, and HUD on both the effectiveness of their existing emergency transfer plans and the barriers to providing survivors of VAWA violence emergency transfers. Such data will be extremely informative and useful if it is used to then make changes. Data used to inform management of policies and procedures, as well as a potential focal point for HUD offices to address emergency transfer access issues, is very helpful.

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information

It is difficult to assess the accuracy of the agency's estimate of the administrative burden of the proposed collection of information. The time this task will take will depend on a number of factors including, but not limited to, the following:

The internal structure of the Owner/Agent/Program. For example, is there a point person coordinating VAWA implementation, specifically the implementation of the applicable VAWA Emergency Transfer Plan ("ETP") and coordinating data collection? This position is analogous to a 504 Coordinator, but for VAWA.

An operable and streamlined VAWA Emergency Transfer Plan (“ETP”). For example, if a survivor reaches out to the Covered Housing Provider (“CHP”) for an emergency transfer, the CHP has a detailed internal process for ensuring the emergency transfer is a real possibility. This entails an ETP that clearly outlines the role and responsibilities of the CHP from the start point (when a survivor makes the request) to the endpoint (when a survivor moves to a safe unit). In addition to an operable and streamlined ETP, the tenants and applicants are informed of their VAWA protections, including the ETP, so they are actually aware of their right to request an emergency transfer.

Electronic tracking sheet. Whether an electronic tracking sheet (with program-specific drop downs for ease and accuracy) will be developed by HUD and made available to CHPs. If a standardized tracking sheet is developed, will the data be easily transferred to the reporting mechanism HUD creates?

The failure to develop standardized tools for CHPs to use to facilitate the process will result in the process being more cumbersome than necessary.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected

Data collection is critical to quality information. We recommend HUD establish a standardized data collection form. To improve back-end data analysis of the information, we recommend close-ended questions (i.e., standardized answer options that can be selected on the form or from a drop-down menu) for key outcomes of interest. This will allow for the ability to look at numeric indicators and quantitatively evaluate the information provided more rapidly. These close-ended responses would benefit from being followed by open-ended response fields to allow for an explanation of additional key considerations. This mix of quantitative and qualitative information will allow for a more robust assessment of the state of the field (closed) and how or why it may look that way (open-ended).

To ensure reliable information is being collected, HUD will need to make sure there is consistency among responses within a given report and allow for flexibility depending on the CHP (i.e., is it a Continuum of Care, Public Housing Authority, etc.). For example, the number of internal transfers cannot exceed the number of total transfers, or else data entry cannot proceed. Priority items could be considered to be repeated at the beginning and end of the data collection instrument or validated through the use of more than one indicator. For example, reporting of the total number of days and a range of dates. These checks can ensure the accuracy and clarity of information.

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses

Electronic and standardized submissions can benefit end users. The same instrument should be available electronically and on paper, in the user's preferred language, for those who do not have access to the electronic form. Should an entity utilize a paper form, the hard copy can be mailed or scanned, and data transferred to the electronic reporting system by a third party? The data that is shared must be in the aggregate and compliant with VAWA confidentiality protections.

(5) HUD solicits comment on the implementation of the requirement that covered housing providers must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and that such data must be reported to HUD annually. Specifically, is HUD's list of potential outcomes adequate, or are there outcomes that should be added or modified?

HUD has created a great list of outcomes, to begin with. We have additional recommendations to add. Outcomes can include both process outcomes and outputs of those processes. We suggest that HUD needs to be interested in both how things happened (process) and what happened (outputs).

We suggest adding process outcomes by program. It is important to capture the steps or processes used by CHPs to obtain the related outcome. For example, does the CHP have a VAWA coordinator? Does the VAWA coordinator follow a systematic step-by-step process when conducting both internal/external transfers? Is the CHP's software set up in a manner whereby a VAWA coordinator can conduct an internal search across a site and portfolio? Can the VAWA coordinator place an alert in the software system to alert them if an appropriate unit becomes vacant? What, if any, relationships, or partnerships exist with other housing providers? What about advocacy agencies? The purpose of this is to ascertain if there are patterns in procedures used by CHPs that yield the best results. The goal of doing this is to develop best business practices.

We recommend breaking down further specific data fields that are recommended by HUD:

- The number of requests for internal transfers: Of these requests, the number that resulted in internal transfers. In addition, did any internal transfer for the same size/type unit take precedence over the VAWA emergency transfer, and if yes, why?
- The number of requests for external transfers: Of these requests, the number that resulted in external transfers. Of these, whether these external transfers to the CHP's portfolio, or to one not in their portfolio. Also, whether the location of the external transfer had a VAWA preference.

We also recommend adding additional data fields:

- While an emergency transfer was pending, what, if any, safety measures were requested by the applicant/tenant? Of those requested, what measures did the covered housing provider provide?

- The geographic location of both the site where a request is made to transfer from and the parameters of the requested geographic area.
- Whether the applicant/tenant was working with a domestic violence (“DV”)/sexual assault (“SA”) advocate who was assisting them with the housing search (Note: we recognize a housing provider may not be aware of this. A no-knowledge checkbox could be provided).
- Whether the CHP had a working relationship with a DV/SA service provider who assisted in the process, including safety planning.
- Whether the CHP had a VAWA coordinator facilitating the emergency transfer within the CHP, and if not, who facilitated the transfer. For example, at a multifamily site, was the transfer facilitated by the manager, assistant manager, or resident service coordinator (“RSC”).
- Whether the applicant/tenant had limited English proficiency and/or a disability and needed free language assistance and/or an auxiliary aid or service to effectively participate in the emergency transfer request process.
- The languages requested by applicants/tenants who have limited English proficiency to identify community trends.
- Whether the tenant needed a specific type of unit (mobility accessible/vision or hearing, first floor, elevator building or other accessibility needs) as a result of a disability.
- Whether the applicant/tenant vacated their unit before the completion of an emergency transfer, and if yes, whether the person went and why. In other words, was there a temporary move pending a permanent move? Did the person vacate the premises and go to a shelter due to safety concerns?
- Whether the tenant denied the emergency transfer unit and the reason why the unit was denied.
- If a denial of a unit occurred, did the CHP move forward with identifying another unit that the applicant/tenant determined was a safe option?

(6) Further, HUD proposes to collect data on the “length of time” for emergency transfers to be implemented. What is an appropriate measure for “length of time” for emergency transfers? Should a covered housing provider only measure from when the emergency transfer was requested to approval/denial, and/or should it be measured to the move-in date? If a victim is issued a Housing Choice Voucher (HCV) due to their emergency transfer request, should the length of time be measured from request to voucher issuance and/or lease-up date? Should covered housing providers be able to explain the circumstances that affected the length of time for emergency transfers (e.g., the victim turned down offered units due to safety concerns)?

We appreciate HUD recognizing the importance of collecting data on how long it takes a CHP to make an emergency transfer, and how best to measure the time it took. Regardless of what measures are used, the important point is that emergency transfers need to occur as expeditiously as possible. It is crucial that CHPs make reasonable efforts to facilitate an emergency transfer and be able to document the ongoing efforts made and if they were unable

to do so, why. A central focus for HUD needs to be the systems that need to be in place to enable a prompt, effective response.

HUD asked a number of questions within this question, and we will answer them accordingly.

What is an appropriate measure for “length of time” for emergency transfers?

It is unclear what HUD means by this. If HUD is asking us to identify a reasonable timeframe within which an emergency transfer should occur, we believe this depends on a number of factors including, but not limited to:

- The type of CHP- Continuums of Care (“CoCs”), for example, may be able to utilize interim housing or hotels for short-term placement for a survivor, while waiting for a transfer. They might be able to move survivors from Permanent Supportive Housing (“PSH”) to Rapid Re-Housing (“RRH”) (and vice versa - as appropriate and if it works for the survivor/household). RRH allows for much more flexibility to ensure emergency transfers can happen in an expedited fashion, because they are mobile, following the tenant. In addition, a designated CoC liaison or matcher for emergency transfers can expedite the process quickly. This flexibility isn’t afforded to HUD Multifamily housing providers due to program rules.
- The CHP’s housing portfolio-for example, in the case of Multifamily Housing Providers, there is a great divergence on how many units an Owner has, whether the Owner’s portfolio is self-managed or third-party managed, and if more than one management company manages for an Owner, how sites are financed and with what programs they are layered with, each site’s project eligibility criteria (not only program eligibility criteria), the internal waiting list of each site, whether the CHP has adopted a VAWA preference for all their sites. Likewise, many third-party management companies may not be easily able to facilitate an external transfer because not all of the owners for who they manage are willing to adopt a VAWA preference or will only adopt a VAWA preference for sites they own, rather than for all sites under the management company’s administrative control.
- The housing stock available for the unit size and type in the geographic area where a survivor wishes to move, the turnover rate at the sites in the geographic area, the internal and external waiting list at those sites, and if any of the sites have adopted a VAWA preference or were financed by a state agency which requires a VAWA preference.

We suggest providing program-specific best business practices, a CHP may adopt to facilitate an effective emergency transfer plan.

Should a covered housing provider only measure from when the emergency transfer was requested to approval/denial, and/or should it be measured to the move-in date?

We believe it is imperative that a CHP measure **both** from when the request for an emergency transfer was made orally and/or in writing (and to identify how it was made), to the approval date **and** when the family moved to a safe unit. This is important information for any CHP who is interested in ascertaining the effectiveness of their ETP and making any necessary changes to comply with both the legal obligations contained in VAWA as well as the spirit of the law. It will not be effective to only measure to the date of approval. Doing this suggests that a CHP's obligation ends there. To only measure from when the request was made to the move-in date doesn't facilitate the prompt processing of a request for an emergency transfer or encourage the use of a date the CHP will use to trigger their procedures. Measuring both timeframes will enable a CHP to evaluate its policies and practices to determine if they effectively satisfy VAWA's Emergency Transfer provision and to take corrective steps to modify any policies and practices that don't. Gathering this data nationwide will also enable HUD to identify best practices.

If a victim is issued a Housing Choice Voucher (HCV) as a result of their emergency transfer request, should the length of time be measured from request to voucher issuance and/or lease-up date?

If a survivor is issued a Housing Choice Voucher (HCV) as a result of their emergency transfer request, the length of time should be measured from both the transfer request to voucher issuance **and** lease-up date. Doing both will help facilitate a better understanding of the barriers survivors experience in both obtaining a voucher due to the process (including language access, the need for auxiliary aids and services, as well as plain language materials to participate in the process) and/or adverse factors that are the direct result of domestic violence, dating violence, sexual assault, or stalking. In addition, measuring the length of time to the lease-up date will assist all parties in identifying barriers that exist for survivors in utilizing mobile vouchers in specific geographic areas, and what policies/procedures a PHA may be able to adopt to remove those barriers. It will also help identify whether a pattern of discrimination exists in relation to providers not wanting to rent to survivors, and/or if there is discrimination against voucher holders, as found in various studies that have been conducted, or a combination thereof.

Should covered housing providers be able to explain the circumstances that affected the length of time for emergency transfers (e.g., the victim turned down offered units due to safety concerns)?

We believe that CHPs should be required to explain the circumstances that affected the length of time for emergency transfers (e.g., the survivor turned down offered units due to safety concerns). CHPs documenting their efforts to comply with legal requirements is standard operating procedure. From a business standpoint, it holds the CHP accountable for taking required actions and complying with their obligations. It is also a method of protecting staff and preventing liability. A similar process is standardly used when tracking reasonable accommodation requests and implementation and providing documentation of any determination that a requested accommodation poses an undue financial and administrative

burden. In addition, tracking the “why” is key for a CHP to evaluate its policies and practices to determine if they effectively satisfy VAWA’s Emergency Transfer provision, and to take corrective steps to modify any policies and practices that don’t. Gathering this data nationwide will also enable HUD to identify best practices.

In addition to addressing the foregoing, we offer the following general comments, suggestions, and form-specific comments. We will begin with our general comments:

I. Language Access

We assume that HUD intends to translate the VAWA forms into multiple languages, as it has historically done. Currently, the notices are in 14 languages. Presumably, HUD will continue this practice. As HUD is aware, this is necessary for many survivors to obtain access to their rights under VAWA. In addition to continuing this practice, we have a few suggestions to facilitate language access for survivors:

- Move the language regarding free language assistance (and reasonable accommodation) contained in **Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking** further up, right after what is VAWA, or right before it.
- The language could also be simplified/shortened and placed in **BOLD** to draw attention. Even with HUD providing this document in multiple languages, the question arises of how to get it to applicants/tenants in multiple languages. For CHPs who have created a Language Access Plan (“LAP”), and follow it, we are hopeful that the form is being provided in both English and the person’s requested language (assuming it is one of the 14 translated or if not, provided language assistance in accordance with the CHP’s LAP.
- An additional action HUD could take is to create a cover document that contains simple language in the 14 languages (as well as English) which states something like: “This is an important document for applicants/tenants regarding their rights under the Violence Against Women’s Act. This notice is available in multiple languages (list the languages) at _____. If you need free language assistance, please contact the covered housing provider. “Note that a space could be left blank for the CHP to fill in the contact information. You could also utilize the HUD suggested language “please contact [INSERT COVERED HOUSING PROVIDER (HP) CONTACT INFORMATION] or go to [INSERT WEBSITE, IF APPLICABLE]. The important point is that providing someone a document in English which says they are entitled to free language assistance if their primary or sole language is not English does not suffice.

II. Plain Language, General Terminology, and Accuracy of Information Provided

It is a difficult task at best to take legal requirements and put them into plain language. We appreciate HUD's efforts to do so. In HUD's quest to do so, we found some of the components of the forms confusing as written, and not very helpful to a person who is trying to understand what VAWA is, their rights, and a CHPs obligation.

For example, the document titled **Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking** begins by asking, "**What is the Violence Against Women Act (VAWA)?**" However, the information that follows does not answer the question. It does not explain that VAWA is a federal law, called a statute, that gives survivors of domestic violence, dating violence, sexual assault, and stalking specific rights in housing.

HUD then provides the reader with a definition of VAWA violence, that includes terms that are not defined within the document. We assume this was done to keep the form short and simple. Although this is important, it cannot be at the expense of helping survivors understand if they are protected. Survivors may not even be familiar with the terms; but still experience the violence or trauma that provides them with VAWA protections. One option is to have the definitions as an appendix, rather than in the document itself. If this document will always be provided with *Form HUD-5382: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation*, it could cross reference the definitions in the self-certification form. It is burdensome and confusing to survivors to cross-reference any document or location, such as HUD's regulations, a notice, or a website. In addition, using plain language and examples of the different types of violence and trauma can help survivors recognize that the protections may apply to them.

We also make the following recommendations:

- HUD should review all of the forms to make sure someone who knows nothing about VAWA can understand what housing protections and rights VAWA accords survivors, and that it also be reviewed for accessibility purposes as well.
- The information provided should be broken into simpler sentences or addressed in a chart format for ease of reference. For example, in Form 5380, in the response to "How can I remove an abuser from my household?" The information in the brackets is extremely difficult to read and comprehend. A chart addressing the answer by the specific program would be extremely beneficial.
- The forms need to be reviewed to make sure consistent language is used. For example, the forms will need to be edited to make sure that "VAWA violence/abuse" or "violence/abuse" is used and not just "abuse." Likewise, consistency also needs to apply to the use of perpetrator and abuser.

- The forms need to recognize that program terminology applies and incorporates terms accordingly and when applicable. Specifically, some programs do not refer to tenants or family members, but rather program participants or residents. Likewise, the terms internal and external transfers do not apply to all housing programs. A chart illustrating program-specific terminology would be helpful.

In addition, HUD has not addressed some terminology in the forms. For example, clarity is needed for tenant versus household member. For example, a live-in aide is a household member for the purpose of Multifamily Housing rules, but they are not tenants. What about family members who do not sign a lease, such as minors? Consistency throughout the documents is crucial.

- Any time the Occupancy Rights Form is referenced, the Form number and actual title need to be included.
- The forms need to be reviewed to make sure the information contained in them cannot be interpreted in a manner that is incorrect either due to language or grammatical errors, and/or that the Form is not providing inaccurate information.

- For example, Form 5380 provides the following:

An emergency transfer cannot be guaranteed, but you can request an emergency transfer when: (1) you (or a member of your household) are a victim of VAWA violence/abuse; (2) you specifically request the emergency transfer, and either (3)(A) you reasonably believe you (or a member of your household) will soon face more violence if you stay in your housing; or (B) you (or a member of your household) are a victim of sexual assault that occurred on the premises and you request an emergency transfer within 90 days (including holidays and weekend days) after the date of that assault.

The wording needs to specify, in plain language, that survivors of sexual assault can qualify for an emergency transfer if they reasonably believe they will face more violence if they stay in the housing. Some housing providers think sexual assault survivors can only fall in the second eligibility category, which narrows their ability to request a transfer to 90 days of the sexual assault on the premises. That is not correct. One possibility is to use bullet points or a mini chart for a visual.

- Another example of tightening up the accuracy of information provided is in Form 5380, under “Confidentiality,” the first exception should be more specific and read: “1) If you ask us in writing to share that information for a limited time period.”

- A major clarification that HUD needs to make is contained in Form 5380 in answer to the question **Are there any reasons that I can be evicted or lose assistance?** HUD provides “VAWA also will not prevent eviction, termination, or removal if other tenants or housing staff are shown to be in immediate, physical danger that could lead to serious bodily harm or death if you are not evicted or removed from assistance.” This language ignores the very stringent standard a CHP must meet to evict or terminate assistance on this basis, and the very clear guidance contained in HUD Notice PIH 2017-08 (pg. 36-37) and HUD Notice H 2017-05 (pg. 38-39), that eviction or termination of assistance should only be used by an O/A when there are no other actions or remedies to reduce or eliminate the threat, including when actions or remedies are unavailable.
- As stated in the Forms, when an applicant or tenant requests protection under VAWA, CHPs are allowed by HUD to require the applicant or tenant to submit documentation of victim status; however, a CHP is not required to do so. Further, a major clarification that needs to be made is that it is the survivor’s choice what documentation to submit to a CHP to establish they are a victim of VAWA violence/abuse, and the CHP **must** accept the submitted documentation and is prohibited from seeking additional documentation of victim status. Additionally, it needs to be clear that only **one form** of documentation is required, unless the submitted documentation does not meet the criteria in the VAWA Final Rule or the submitted documentation contains conflicting information, including conflicting claims between two parties. This is very clearly spelled out in both HUD Notice PIH 2017-08 (pg. 13-15) and HUD Notice H 2017-05 (pg. 16-20) and is critical to state in plain language in the Forms; otherwise, it will be misinterpreted.
- HUD needs to reword the language contained in Form *HUD-5381: Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking*, regarding whether a CHP may consider whether a survivor is in good standing in determining if they are eligible for an emergency transfer. The use of the words “should not” suggests that a provider may, if they choose, make this part of a determination. We believe that is misleading, and HUD should use language making it clear that a determination of whether a survivor is in good standing is irrelevant to the determination of whether they qualify for an emergency transfer.

Also, HUD should provide examples of not being in good standing, and clarify that oftentimes, a survivor is not in good standing due to the violence/abuse they experienced. HUD Notice PIH 2017-08 provides a clear explanation of adverse factors that might be a direct result of the violence/abuse, including examples that directly connect to good standing.

- In Form 5380, under “Have your protections under VAWA been denied?”, there should be info to contact the local FHEO office, FHEO’s VAWA website, and how to file an FHEO complaint.
- Form 5380, under “What do I need to document that I am a victim?” the fourth option, “HP MAY INSERT AS #4 ANY OTHER STATEMENT OR EVIDENCE THAT CAN BE PROVIDED AS DOCUMENTATION THE APPLICANT OR TENANT IS A VICTIM,” should be separated from the third option and have its own section.
- When possible, HUD could hyperlink documents and resources when making references. For example, Form 5380 references the Self-Certification Form, allowing for a direct hyperlink to HUD Form 5383.

Thank you for considering these items as these documents are being finalized.

Sincerely,

Piltch Associates, Inc.
Enfuse Action Collective, Inc.