HACLA

Build HOPE: Investing in People and Place

January 4, 2023

Ms. Colette Pollard, Reports Management Officer, REE
Department of Housing and Urban Development
451 Seventh Street SW, Room 4176
Washington, D.C. 20410-0500

RE: 60-Day Notice of Proposed Information Collection: Implementation of the Violence Against Women Reauthorization Act of 2013, OMB Control No.: 2577–0286 [Docket No. FR–7061–N–18]

Dear Ms. Pollard,

Thank you for the opportunity to provide comment on this important topic. As a large public housing authority ("PHA"), we handle many VAWA related transfer requests on an annual basis. The comments below will 1) highlight changes that will be appreciated and welcomed, 2) explain formatting issues in the notices/forms that may cause problems for housing providers, 3) point out changes that may be misleading or confusing to tenants, applicants, and housing providers, and 4) propose recommendations that will provide clarity to victims and housing providers.

While we appreciate HUD's effort to streamline the forms, we are still concerned – as we stated in our September 2017 comments on the same subject – as to the inclusion of information in the notices that is not required by the VAWA statute (34 U.S.C. § 12491, Subtitle I, CHAPTER 121, SUBCHAPTER III, Part L: Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking). The inclusion of unrequired language and the repetitive nature of the language among the different notices is also wasteful and does not add any value to the program participants we serve – especially, for example, how two of the forms (HUD 5380 and 5382) are provided simultaneously, but are duplicative in their terms, and thereby may cause confusion. Additionally, there are procedural requirements included in the forms that are more applicable to housing providers, rather than helpful or relevant information for the tenants or applicants.

One change that we appreciate is the shortening of the language regarding victims of "*domestic violence, dating violence, sexual assault, or stalking"* to the simple term of "*VAWA violence/abuse*" used throughout all the forms.

The following are our comments on the four (4) forms/notices relating to VAWA to the above-referenced Federal Register Notice.

HUD 5380 – Notice of Occupancy Rights

While the language in the Federal Register Notice in the HUD-5380 form claims that the changes made to this form streamlines the language to reduce the number of pages, in reality if the proposed HUD-5380 was modified to the same font and line spacing as the current HUD-5380, the proposed HUD-5380 would be closer to four (4) pages versus the two (2) pages as published in this Notice.

The HUD-5380 as proposed is too crowded and the font is arguably too small to be compliant for readers with low vision or other accessibility needs. Housing providers would have to adjust the formatting to increase the number of pages to make the form useable and readable to their clients.

In addition to the formatting issue, the following are other concerns with the form as proposed, more specifically:

"*How can tenants request an emergency transfer?"*

As part of HUD's answer to "*How can tenants request an emergency transfer?"* – rather than focusing on the mechanisms surrounding how to request a transfer, the form provides language that can be misleading to tenants. Added in the answer is the statement; "*You can request an emergency transfer even if you owe rent.*"

While it is true tenants can "request" a transfer and even be transferred while they owe rent, the language on the proposed form gives tenants a false sense that they are not responsible for repaying any past due rent which, can cause greater confusion to tenants later down the road. Nor does being provided a transfer due to the VAWA violence/abuse excuse the tenant from any non-VAWA related legal action against them that may have been in process at the time of the VAWA transfer request. If HUD deicides to keep the rent language, then they must include additional verbiage along the line of *"Being approved for and transferred to a different unit due to VAWA violence/abuse does not erase any such debt nor excuse the remaining lease signer from the responsibility of such debt or other terms of the lease or non-VAWA related legal action."*

"Confidentiality"

The proposed HUD-5380 does a great disservice to both tenants and housing providers by revising the language to state as one of the exceptions to housing providers to share information regarding the VAWA ETR:

"If <u>you</u> ask us to share that information."

Not only is it a disservice it is also counter to the language found in the VAWA statute (34 U.S.C.§12491(c)(4)) which states:

> *"…except to the extent that the disclosure is – (A) requested or consented to by the individual in **writing**…"* (***emphasis*** added)

We highly recommend that HUD maintain the language as it is in the current HUD-5380 which states:

> "*HP, however, may disclose the information provided if: You give written permission to HP to release the information on a time limited basis…"*

Property Rights - Under "Other Laws"

In the proposed version of HUD-5380, the information regarding property rights starts with a short lead-in sentence as follows:

> *"…VAWA does not prevent or excuse us from following laws that provide more protections to victims or court orders that concern your home or property…"*

Which is then followed by other applicable laws regarding reasonable accommodations and limited English proficiency (LEP) rights.

Whereas in the current version of the HUD-5380 there is a standalone paragraph regarding property rights:

> "*VAWA does not limit HP's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up*."

Given the importance of this issue, tenants should be reminded that property rights to a unit and personal property rights are not taken away from individuals who sign a lease simply due to being accused of being an abuser. We have had situations where lacking a court order, we were being asked to change locks or other such actions that as a landlord, under some circumstances, we were unable to perform. This is an important issue for victims to be aware of and the language addressing it should remain as is, not buried among reasonable accommodation and LEP requirements.

HUD-5381- Model Emergency Transfer Plan

While it is clearly stated that the language provided in HUD-5381 is a "model" and that the language in the "drafting notes" must not appear word-for-word in adopted plans, what is not clear is if HUD is requiring the other language (not in the shaded drafting notes) to be incorporated completely in any adopted plan. HUD needs to clarify what language – other than what is required in the VAWA statute - will be mandatory for all housing providers to include in a housing provider's transfer plan.

Under the criteria for eligibility for an emergency transfer, the word "*imminent*" needs to remain. The language in 34 U.S.C. § 12491(e)(1)(B)(i) states:

> *"…the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same dwelling unit assisted under a covered housing program;…"*

The revised HUD-5381 merely states:

> *"…(3) Tenant reasonably believes* they will soon face more violence if they stay in their housing…"*

In addition, for reasons further discussed under the section discussing HUD-5383 form below, we respectfully request that the word "imminent" be inserted when discussing transfers.

External transfers

Under the discussion of External Transfers, there is the following language:

> *"The plan states "VAWA provisions do not supersede eligibility or other occupancy requirements that may apply under a covered housing program. **[HP ACRONYM]** may be unable to transfer a tenant to a particular unit if the tenant cannot establish eligibility for that unit.*"

As a large housing authority, we administer multiple housing assistance programs (Public Housing, Section 8, HUD-VASH, CoC, HOPWA, Moderate Rehabilitation SRO), each one of them with specific eligibility criteria. Furthermore, CoC and HOPWA have various program components: permanent supportive housing for persons with disabilities, tenant-based, project-based or sponsor based rental assistance. While housing authorities such as us have policies and procedures in place to transfer participant families **within** components if units are available within the portfolio, it will be challenging to fulfill this requirement if there are no units available and the victim request an external transfer to another housing program component.

HUD-5382 – VAWA Certification

The changes made to this HUD-5382 form do a disservice to not only housing providers but to VAWA victims as well. The last OMB approved version is much more straight forward than this proposed version.

The opening paragraph of the proposed version incorrectly misleads the victim by stating (and stressing): "…*you are not expected and **cannot be asked or required**- to claim, document, or prove victim status or VAWA violence/abuse other than as stated in the VAWA Notice*."

While the proposed language in the HUD-5380 later states:

> ***"What do I need to document that I am a victim?** If you ask for VAWA protection, we may request documents showing that you are a victim (which includes if a member of your household is a victim). BUT this request must be in writing and must give you at least 14 business days (weekends and holidays do not count) to respond, AND you are free to choose any ONE of the following:…"*

Additionally, the VAWA statute clearly states under 34 U.S.C. § 12491(c)(1):

> *"If an applicant for, or tenant of, housing assisted under a covered housing program represents to a public housing agency or owner or manager of the housing that the individual is entitled to protection under subsection (b), the public housing agency or owner or manager may request, in writing, that the applicant or tenant submit to the public housing agency or owner or manager a form of documentation described in paragraph (3)."*

By referring a victim, who could be under significant stress and anxiety at the time of completing this form, back to the complicated multipage VAWA Notice rather than clearly providing guidance as the current form does, is less than helpful to the victim.

The proposed HUD-5382 eliminated reference to the 14-business day window to submit such documentation following receipt of a written VAWA request, while 34 U.S.C. § 12491(c)(2)(A) provides for the 14-day window for the requested documentation to be submitted if requested.

Additionally, we recommend that the following language be reinstated into the certifying statement that the resident signs:

> *"I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction."*

HUD-5383 VAWA Emergency Transfer Request

While we have many of the same issues with this HUD-5383 form regarding unnecessary language changes, the most concerning changes is the portion to be completed by the tenants and applicants. Except for the minor changes to Numbers 1 – 8, and the addition of "Best Method to Contact" (which we appreciate the inclusion of), the remaining deletions and additions to the form are problematic.

Our concerns are primarily with the following language:

Question # 8: *What features are requested for a safe unit*?

This is totally inappropriate and would give the resident a false sense of security/guarantee that they would be able to be transferred to units with such amenities/features. "New Neighborhood", "New Building", specific floor level, "24 Hour Security", etc. are not necessarily options available within a housing provider's portfolio. The most realistic or practical consideration of what is considered "safe" is the geographic location of a property; and for housing providers with low vacancy rates, even that limited criteria can be a challenge in offering safe alternative units.

Furthermore, this question would create confusion and could have the unintended consequence of delaying transfers. The VAWA Statute makes clear that housing providers have the obligation to transfer victims to a unit that is "available" and "safe", and the Final Rule defines a safe unit as a unit the victim "believes is safe". We currently offer what is available within our portfolio and allow the victim to decline any offer they believe would not be safe. But having this question with

victims listing different features related to safety, could be interpreted as a unit not being "safe" unless it has all the features listed and could lead to housing providers withhold offers of available units that may have otherwise been considered acceptable or safe for the victim.

We also believe the confusion created by this question will lead to the contradiction of what was intended by the VAWA Final Rule. We interpret the Final Rule as requiring housing providers to offer units available without foreclosing any available option to the victim, evident by HUD's response covering transfers within the same development when that is the only available option.

> *"If the unit in the same development is the only one available, the victim should be allowed to consider transferring to the unit. This option should not be foreclosed to the victim. The victim is in the best position to make this decision". (VAWA Final Rule, Pg. 80752)*

Question # 9 states, "*Your housing provider might, in certain circumstances, request written documentation that you are a victim of VAWA violence/abuse."* This statement totally downplays housing providers rights as provided in the VAWA Statute (e.g. 34 U.S.C. § 12491(c)) to request documentation.

Question # 11 from the current form - We would also request that this question "*Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit*" be reinstated and added back to HUD-5383. One of the criteria under 34 U.S.C. § 12491(e)(1)(B)(i) - Emergency Transfers clearly states:

> *"… the tenant reasonably believes that the tenant is threatened with **imminent** harm from further violence if the tenant remains within the same dwelling unit assisted under a covered housing program…"* (***emphasis*** added)

The key term for providing an emergency transfer is that there is an "imminent threat" to a member of the household. As such, it is reasonable for the tenant to explain to the housing provider why they believe there is such an imminent threat.

Thank you for the opportunity to provide feedback to these forms. We appreciate the importance of the VAWA statute and hope that HUD will be able to make the changes necessary to the forms to ensure that the forms adhere to the legal requirements, provide the information necessary for tenants to clearly understand their rights, reduce redundancies, and minimize administrative burdens on housing providers.

Sincerely,

Douglas Guthrie

Douglas Guthrie
President & CEO