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July 10, 2017

RE: Amendments to RD AN No. 4814 (1944-N) to implement the Violence Against Women Reauthorization Act of 2013

Dear Ms. Chism:

The National Housing Law Project (NHLP) and the undersigned organizations commend RD for issuing Administrative Notice (AN) No. 4814 (1944-N) (January 18, 2017) (Notice), the updated guidance for implementing the housing protections of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). We submit the below comments to recommend amendments to the Notice that would more accurately reflect the requirements of VAWA 2013 as well as HUD's final VAWA 2013 rule, which RD has indicated the agency will follow for VAWA implementation and policy purposes.¹ Additionally, we strongly urge RD to promulgate VAWA regulations that are at least as protective as those issued by HUD last year so as to ensure that victims accessing and maintaining housing are afforded the same, critical protections across all the covered programs.

HUD Notice 2017-05

On June 30, 2017, HUD's Office of Housing issued Notice 2017-05,² which provides important guidance to HUD-subsidized multifamily owners and managers on how to implement VAWA 2013. As this notice explicitly applies to RD units that are subsidized by HUD's project-based Section 8 programs, RD must remind covered owners and managers that they are subject to this new piece of authority and reference it in the Notice.

Sexual Assault Victims

In 2013, Congress expanded VAWA's housing protections to cover victims of sexual assault. While the Notice reflects this coverage in some parts of the document, sexual assault victims

¹ RD, Administrative Notice (AN) No. 4814 (1944-N), 2 (Jan. 18, 2017) ("RD's implementation and policies shall follow those outlined in this Notice, and in the U.S Department of Housing and Urban Development (HUD) Final Rule, dated November 16, 2016, (80724 FR Vol. 81, No. 221), at 24 CFR part 5, Subpart L – Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking (see 5.2001 - 5.2011).")

² HUD, Violence Against Women Act (VAWA) Reauthorization Act of 2013- Additional Guidance for Multifamily Owners and Management Agents, Notice H 2017-05 (June 30, 2017).

are left out in other sections—most notably on pages 2 and 3, in the bulleted list under the section “Highlights of VAWA 2013.” It is important to make sure that sexual assault is included in all instances where VAWA crimes are listed in the Notice.

“On the Basis or as a Direct Result of” and Adverse Factors

We strongly recommend that RD revise the Notice to reflect critical clarifying language that covered housing providers must not make adverse housing decisions against victims for reasons directly related to the violence committed against them. Under HUD’s regulations implementing VAWA 2013, victims cannot be denied admission to, denied assistance, terminated from, or evicted from a covered housing program “**on the basis or as a direct result of** the fact that the applicant or tenant is or has been a victim...”³ HUD added the “as a direct result of” language to prohibit housing providers from making negative housing decisions based on “adverse factors” that directly result from the fact that an applicant or tenant is or has been a victim. Subsequently, HUD issued a notice explaining how housing providers can determine whether an adverse factor is a “direct result” of the VAWA crime; listing examples of when adverse factors might be direct results of VAWA crimes, such as poor credit history, criminal records, and poor rental history; and providing a framework to determine whether an adverse factor is a direct result of a VAWA crime.⁴ Importantly, the guidance highlighted that housing providers must ensure that individuals are not denied housing and VAWA protections for arrest records directly related to the violence committed against them.⁵

The HUD guidance on this issue has been crucial for housing providers struggling to decide how to make housing decisions involving such VAWA factors and without violating the law. Therefore, we strongly recommend that RD incorporate this guidance into the Notice.

Lease Bifurcation

On page 2 of the Notice, RD states, “Whether or not the individual is a signatory to the lease and lawful tenant, if he/she engages in a criminal act of **physical violence** against family members or others, he/she stands to be evicted, removed, or have his/her occupancy rights terminated” (emphasis added). A “physical” act of violence is not necessary to trigger a lease bifurcation. VAWA protects actual and threatened victims of VAWA crimes. We recommend that this sentence be revised accordingly to reflect the statutory language that provides greater protection for victims: “Whether or not the individual is a signatory to the lease and lawful tenant, if he/she engages in a criminal act directly relating to domestic violence, dating violence, sexual assault, or stalking against family members or others, he/she stands to be evicted, removed, or have his/her occupancy rights terminated.”⁶

³ 24 C.F.R. § 5.2005(b)(1) (2017) (emphasis added).

⁴ HUD, Violence Against Women Reauthorization Act of 2013 Guidance, Notice PIH 2017-08 (HA), 6-9 (May 19, 2017); HUD, Violence Against Women Act (VAWA) Reauthorization Act of 2013 - Additional Guidance for Multifamily Owners and Management Agents, Notice H 2017-05, Section VII (June 30, 2017).

⁵ See HUD, Notice PIH 2017-08 at 14 (“When denying VAWA protections, the PHA or owner must ensure that it complies with PIH Notice 2015-19.”).

⁶ See 42 U.S.C.A. § 14043e-11(b)(3)(B)(i) (West 2017) (“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

Additionally, the Notice must be edited to reflect a recent statutory amendment to VAWA 2013. This amendment clarifies that lease bifurcations and post-lease bifurcation protections apply to both victim tenants **and residents**.⁷ Therefore, even if the victim's name is not included on the lease or housing assistance, the victim, as an individual residing in the unit, has the right to establish eligibility for the assistance, apply for another covered housing program, or find alternative housing. The amendment reflects Congress's intent to provide lease bifurcation safeguards for victims who are living in federally assisted units covered by VAWA, but whose names do not appear on housing assistance contracts or leases because of the power and control of their abusers.

Emergency Transfers

The discussion of emergency transfers on the bottom of page 5 of the Notice seems to indicate that it is optional for managers and owners to assist qualified tenants with an emergency transfer request. This is not the case. Covered housing providers are required to follow the procedures outlined in the RD emergency transfer plan for qualified tenants.⁸ We urge RD to change the language in the Notice to reflect this requirement.

Additionally, on page 6, the Notice incorrectly states that victims must provide third-party documentation to owners and managers in cases where the occupant is the abuser.⁹ As RD highlights in other parts of the Notice, owners and managers cannot require that survivors provide a specific type of documentation, unless there are issues involving conflicting certifications.¹⁰ We recommend that RD revise the statement in the Notice accordingly.

Confidentiality

The confidentiality language in the Notice must be updated to reflect that HUD's VAWA regulations require **strict confidence** when handling victim documentation, not just

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...").

⁷ 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii) (West 2017) ("If 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 or resident** an opportunity to establish eligibility for the covered housing program. If a **tenant or resident** described in the preceding sentence cannot establish eligibility, the public housing agency or owner or manager of the housing shall provide the **tenant or resident** a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program." (emphasis added)).

⁸ See 42 U.S.C. § 14043e-11(e) (West 2017); 24 C.F.R. § 5.2005(e) (2017).

⁹ RD, Administrative Notice (AN) No. 4814 (1944-N), 6 (Jan. 18, 2017) ("Cases involving conflicting certifications or which the occupant is the abuser require that third-party documentation be submitted to the Borrower.")

¹⁰ See *e.g. id.* ("If a Borrower chooses to request documentation that the tenant is a victim of a VAWA-related crime, they...must accept any form of documentation the tenant or applicant chooses to provide..."). See also 24 C.F.R. § 5.2007(b)(1) (2017) ("In response to a written request to the applicant or tenant from the covered housing provider, as provided in paragraph (a) of this section, the applicant or tenant may submit, as documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking, any one of the following forms of documentation, where it is at the discretion of the tenant or applicant which one of the following forms of documentation to submit...").

“reasonable” measures and strategies for maintaining confidentiality.¹¹ For information on best practices for housing providers in ensuring victims’ confidentiality and handling confidential information, see Section 11.2 of HUD Notice, PIH-2017-08 (HA), “Best Practices to Collect Information and Avoid Unintentional Disclosure.”

HUD VAWA Forms

HUD’s VAWA regulations require that covered housing providers provide the HUD VAWA housing rights notice, Form HUD-5380, and VAWA self-certification form, Form HUD-5382, to all existing tenants by December 16, 2017.¹² Since RD is following HUD’s rules and policies in implementing VAWA, this deadline must also be included in the Notice. Additionally, we recommend including the HUD form numbers in the Notice when these forms are mentioned. Microsoft Word as well as translated versions (in 11 additional languages) of these documents are available on HUD’s website.¹³ We strongly recommend that RD mention and cite to these HUD forms in the Notice.

Documentation and Conflicting Certifications

To be consistent with HUD’s rules and policies in implementing VAWA 2013, we recommend that the Notice be amended in the following ways:

First, the Notice should clarify that the housing provider’s “[s]imply providing the victim the form HUD-5382 does not constitute a written request for documentation, unless the form HUD-5382 is accompanied by a dated letter requesting documentation.”¹⁴ Second, the Notice should state that an “individual’s failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual’s right to challenge the denial of assistance or termination, nor does it preclude the individual’s ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings”.¹⁵ Lastly, in situations involving conflicting certification, the parties must have at least 30 days to provide third-party documentation.¹⁶ While 30 days is the timeframe provided by HUD regulations, managers and housing authorities are free to extend deadlines as a reasonable accommodation and for other reasons on a case-by-case basis.

¹¹ 24 C.F.R. § 5.2007(c) (2017).

¹² 24 C.F.R. § 5.2005(a)(2)(iv) (2017).

¹³ HUD, HUD Forms 5 through 5974,

https://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud5a

¹⁴ HUD, Violence Against Women Reauthorization Act of 2013 Guidance, Notice PIH 2017-08 (HA), 11 (May 19, 2017); HUD, Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents, Notice H 2017-05, 14 (June 30, 2017).

¹⁵ HUD, Notice 2017-08 at 13; HUD, Notice H 2017-05 at 16.

¹⁶ 24 C.F.R. § 5.2007(b)(2) (2017).

Reasonable Accommodations

With research showing that women with disabilities are twice as likely to suffer domestic violence and sexual assault than women without disabilities,¹⁷ it is critical that RD acknowledge in the Notice that under fair housing and civil rights laws, managers and owners must make reasonable accommodations as necessary to ensure that victims with disabilities can appropriately access VAWA protections. Examples provided by HUD, which we suggest also be included in a revised Notice, are as follows:

...providing reasonable accommodations to permit individuals to follow or access any rules, policies, practices, or services, such as modifying a policy requiring that the victim come into the office to pick up the certification form to instead deliver the form to the victim. This also includes ensuring effective communication with persons with disabilities, e.g., providing sign language interpreters for persons who are deaf, accessible documents and assistance filling out forms for persons who are blind or have low vision, and providing language assistance for persons with limited English proficiency.¹⁸

Applicability of RD Grievance Hearing

We recommend that the RD Notice be amended to clarify that owners or managers must inform victims that they have a right to a grievance hearing, in accordance with 7 C.F.R. § 3560.170, if owners or managers deny any VAWA protections to the victim. As HUD has done in its Guidance to Public Housing Authorities, this right should extend to instances where an owner or manager does not receive third-party documentation in response to a request for documentation.¹⁹

In addition, owners and managers should be encouraged to consult a local domestic violence experts or victim service providers that has not worked with either the victim or perpetrator, to be on the grievance hearing panel.²⁰

Clarification

The following statement on page 2 of the Notice – “The authority to evict or terminate assistance is not limited with respect to a victim that commits **unrelated criminal activity**.” – should be revised for clarity to state, “The authority to evict or terminate assistance is not limited with respect to a victim that commits criminal activity unrelated to the actual or threatened incidents of domestic violence, dating violence, sexual assault, or stalking.”

¹⁷ U.S. Dep’t of Health and Human Services, Office on Women’s Health, Violence Against Women, <https://www.womenshealth.gov/violence-against-women/types-of-violence/violence-against-women-with-disabilities.html>

¹⁸ HUD, Notice PIH-2017-08 at 20-21; HUD, Notice H 2017-05 at 24.

¹⁹ HUD, Notice PIH-2017-08 at 14.

²⁰ *Id.* at 32.

We appreciate RD's publication of AN No. 4814. The Notice takes great strides towards implementing critical housing protections for victims. To ensure VAWA's safeguards for victims are fully implemented, we urge that the agency promptly adopt the aforementioned recommendations. Furthermore, we recommend that RD's regulations implementing VAWA 2013 explicitly provide, at minimum, the same safeguards as those provided by HUD's final VAWA 2013 rule. We also strongly encourage RD to outline via regulations or guidance, the specific HUD VAWA 2013 rules and policies that the agency will adopt. This would decrease confusion among housing providers, victims, and their advocates, and ensure that victims can claim the same, crucial VAWA protections across all the covered housing programs.

If you have any questions, please contact Gideon Anders (ganders@nhlp.org) and Karlo Ng (kng@nhlp.org).

Thank you for your consideration.

Sincerely,

National Housing Law Project

American Civil Liberties Union

National Coalition Against Domestic Violence

National Law Center on Homelessness and Poverty

National Low Income Housing Coalition

National Network to End Domestic Violence

Sargent Shriver National Center on Poverty Law