

Proposed Rules

Federal Register

Vol. 88, No. 2

Wednesday, January 4, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR-6330-N-01]

The Violence Against Women Act Reauthorization Act of 2022: Overview of Applicability to HUD Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Initial implementation guidance; request for comment.

SUMMARY: This document highlights the key changes made by the recently enacted Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022) to the Violence Against Women Act of 1994, as amended, provides an overview of key provisions applicable to HUD programs, and explains HUD's plans to issue rules or guidance to implement VAWA 2022. In addition, this document seeks comment from HUD housing providers, grantees, and other interested members of the public on this document generally and on certain issues discussed in more detail below. Comments received in response to this solicitation will aid HUD in developing additional regulations and guidance.

DATES: *Comment Due Date:* March 6, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this document to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the docket number and title above.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the document.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202-708-3055. (This is not a toll-free number.) HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For more information about this document, please contact Karlo Ng, Director on Gender-Based Violence Prevention and Equity, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10232, Washington, DC 20410, telephone number 202-402-7642. (This is not a toll-free number.) HUD welcomes and is prepared to receive calls from individuals who are

deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 15, 2022, the President signed into law the Consolidated Appropriations Act of 2022 (Pub. L. 117-103, 136 Stat. 49), which included the Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022). VAWA 2022 reauthorizes, amends, and strengthens the Violence Against Women Act of 1994, as amended (VAWA) (Pub. L. 103-322, tit. IV, sec. 40001-40703; 42 U.S.C. 13925 *et seq.*). The provisions of VAWA 2022 that are applicable to HUD programs are found in title VI of Division W of the Consolidated Appropriations Act of 2022, which is entitled "Safe Homes for Victims." Section 2 of VAWA 2022 provides revised definitions for the statute.

As provided by section 4 of VAWA 2022, all but one of the HUD-related amendments made by VAWA 2022 took effect on October 1, 2022. The one exception is section 606, which took effect upon enactment of VAWA 2022 and requires HUD to study and report on housing and service needs of survivors of human trafficking and individuals at risk for trafficking. VAWA 2022 did not amend the majority of authorizing statutes for HUD's programs that are covered by VAWA.¹ Additionally, VAWA 2022 requires each appropriate agency to conduct notice-and-comment rulemaking for some purposes. HUD will conduct rulemaking to give full force and effect to some of the law's new protections for survivors. However, as this document further explains, there is enough clarity in several of the new provisions to render their requirements enforceable without further elaboration through rulemaking, particularly considering how VAWA's existing housing provisions have already been interpreted by HUD and the courts.

Section II of this document provides an overview of VAWA, HUD's

¹ As explained in Part III.F. of this document, VAWA 2022 did amend the McKinney-Vento Homeless Assistance Act.

implementation of prior VAWA authorities, and the VAWA 2022 changes relevant to HUD's programs. Section III explains how the new VAWA 2022 changes will be implemented for HUD programs. Section III also provides information on how VAWA 2022 affects HUD's existing guidance, regulations, and other authorities.

II. Background on VAWA

Earlier Statutory Changes

VAWA, enacted in 1994 as title IV of the Violent Crime Control and Law Enforcement Act of 1994, (Pub. L. 103–322, approved September 13, 1994), was reauthorized in 2000 through Division B of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386, 114 Stat. 1464), in 2005 through the Violence Against Women Act and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162, 119 Stat. 2960) (VAWA 2005), and in 2013 through the Violence Against Women Act Reauthorization of 2013 (Pub. L. 113–4, 127 Stat. 54) (VAWA 2013) (see summary at 78 FR 47717, 81 FR 80724). In 2016, the Justice for All Reauthorization Act (Pub. L. 114–324, 130 Stat. 1948) amended VAWA by clarifying VAWA's lease bifurcation provisions.² The Justice for All Reauthorization Act of 2016 did not reauthorize VAWA, but the statute amended VAWA.³

HUD's Previous Implementation of VAWA

HUD's implementing regulations for VAWA's protections, rights, and responsibilities are codified in 24 CFR part 5, subpart L, and related provisions in HUD's program regulations ("HUD's VAWA regulations"). These regulations, as explained in HUD's final rule issued on November 16, 2016 (81 FR 80724), implement VAWA as amended through VAWA 2013.

VAWA 2022 Changes, Including Changes to the Applicability of VAWA to HUD Statutes and Programs

Section 2 of VAWA 2022 revises the definition of "domestic violence" and

adds definitions for "economic abuse" and "technological abuse" for purposes of VAWA grants.

The amendments that VAWA 2022 makes to the Housing Rights Chapter of VAWA build on the 2013 and 2016 amendments to strengthen VAWA's housing protections for survivors of domestic violence, dating violence, sexual assault, and stalking (collectively referred to as "survivors" in this document). Section 601 of VAWA 2022 expands the "covered housing program" definition in section 41411 of VAWA (34 U.S.C. 12491) to add specific programs and a catch-all provision that includes any other Federal housing programs providing affordable housing to low- and moderate-income persons by means of restricted rents or rental assistance, or more generally providing affordable housing opportunities, as identified by the appropriate agency through regulations, notices, or any other means. HUD intends to engage Tribes regarding VAWA protections and implementation for HUD's Native American programs.

Section 602 of VAWA 2022 adds several new sections to VAWA's Housing Rights Chapter. These new sections include: section 41412 (34 U.S.C. 12492), which requires each appropriate agency to consult appropriate stakeholders and conduct rulemaking to establish a process for reviewing compliance with VAWA's expanded housing protections; section 41413 (34 U.S.C. 12493), which requires HUD to establish a Gender-Based Violence Prevention Office⁴ and a VAWA Director; and section 41414 (34 U.S.C. 12494), which establishes anti-retaliation and anti-coercion requirements that prohibit housing providers covered by VAWA from discriminating against any person for exercising or enjoying, or aiding or encouraging others in the exercise or enjoyment of, VAWA housing rights or for opposing an act or practice made unlawful by VAWA. Section 602 further provides the Secretary of HUD and the Attorney General with the authority to "implement and enforce this chapter consistent with, and in a manner that provides, the rights and remedies provided for in title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*)," commonly referred to as the Fair Housing Act.

Section 603 of VAWA 2022 adds a new section 41415 to VAWA (34 U.S.C. 12495) titled "Right to report crime and

emergencies from one's home." The new section provides, among other things, that landlords, homeowners, tenants, residents, occupants, and guests of, and applicants for, housing shall not be penalized based on their requests for assistance or based on criminal activity of which they are a victim or otherwise not at fault under statutes, ordinances, regulations, or policies adopted or enforced by covered governmental entities. Section 603 defines a "covered governmental entity as any municipal, county, or State government that receives funding under section 106 of the Housing and Community Development Act of 1974." It also imposes reporting and certification requirements on covered governmental entities. Section 603 further provides the Secretary of HUD and the Attorney General with the authority to "implement and enforce this chapter consistent with, and in a manner that provides, the same rights and remedies as those provided for in title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*)," commonly referred to as the Fair Housing Act.

Section 605 of VAWA 2022⁵ amends section 103(b) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(b)) to change the criteria for survivors whom HUD must consider as "homeless" under programs such as the Emergency Solutions Grants and Continuum of Care Program; amends section 423 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11383) to provide that Continuum of Care grant awards can be used for facilitating and coordinating activities to ensure and monitor compliance with VAWA's emergency transfers provision and confidentiality protections; and adds a new section 41416 to VAWA (34 U.S.C. 12496), which provides authorization for HUD to make training and technical assistance grants (subject to appropriations) to support the implementation of VAWA's Housing Rights Chapter, including technical assistance agreements with entities whose primary purpose and expertise is assisting survivors of sexual assault and domestic violence or providing culturally specific services to survivors of domestic violence, dating violence, sexual assault, and stalking.⁶

Section 606 of VAWA 2022 requires HUD to study the availability and accessibility of housing services to survivors of human trafficking or those

²In this notice, the Violence Against Women Act of 1994, as amended over the years, is referred to solely as "VAWA" unless it is necessary or appropriate to refer to a specific amendment of VAWA. The references to "VAWA" in this notice include the amendments in 2000, 2005, 2013, and 2016 unless explicitly noted otherwise. The full text of the new amending legislation, VAWA 2022, in pdf and plain text versions can be found, respectively, at <https://www.govinfo.gov/content/pkg/BILLS-117hr2471enr/pdf/BILLS-117hr2471enr.pdf>, and [https://www.congress.gov/bill/117th-congress/house-bill/2471/text](https://www.congress.gov/bills/117th-congress/house-bill/2471/text).

³HUD intends to implement changes to VAWA by the Justice for All Reauthorization Act of 2016 in its rulemaking implementing VAWA 2022.

⁴The language of this provision indicates that the establishment of this Office and the VAWA Director is required, regardless of future appropriations provided to HUD.

⁵Section 604 of VAWA 2022 amends the authorization of transitional housing assistance grants administered by the Department of Justice.

⁶Sections 605(b) and (c) relate to grants that are administered by the Department of Health and Human Services and the Department of Justice.

at risk of being trafficked, who are experiencing homelessness or housing instability.

III. Changes to Requirements and Protections Under VAWA 2022

The following sections identify specific issues on which HUD seeks comment to inform HUD in the development of regulations or guidance, or both, as may be applicable. For each issue, this document provides information on relevant VAWA 2013 requirements and existing HUD regulations, relevant VAWA 2022 changes and requirements, and HUD's proposal for implementation.

A. Changes to VAWA Definition of "Domestic Violence" and Related Terms

Pre-VAWA 2022: HUD's regulations include definitions of "domestic violence," "dating violence," "sexual assault," and "stalking" at 24 CFR 5.2003, which implement and reflect almost verbatim the definitions in section 40002(a) of VAWA, as amended before VAWA 2022, provided for those terms. HUD's regulatory definition of "domestic violence" is the same as the definition provided by section 40002(a) of VAWA, as amended before VAWA 2022, except that HUD's regulatory definition of "domestic violence" also interpreted the statutory phrase "spouse or intimate partner of the victim." HUD's regulatory definition provides that domestic violence includes felony or misdemeanor crimes of violence committed by (1) a current or former spouse or intimate partner of the victim, (2) a person with whom the victim shares a child in common, (3) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or (5) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. HUD's regulatory definition further interpreted "spouse or intimate partner of the victim" to include "a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship."

VAWA 2022: Section 2 of VAWA 2022 makes changes to the definitions provided by section 40002(a) of VAWA. First, section 2(a)(1)(A) of VAWA 2022 changes the text that frames the

definitions in section 40002(a) from "In this title:" to "In this title, for purposes of grants authorized under this title." Second, VAWA 2022 amends the definition of "domestic violence" in section 40002(a) of VAWA to include any felony or misdemeanor crimes committed under the family or domestic violence laws of the jurisdiction receiving grant funding, as compared with the previous definition, which stated that "domestic violence" included felony or misdemeanor crimes of violence.⁷ As amended by VAWA 2022, "domestic violence" in section 40002(a) of VAWA also includes, in the case of victim services,⁸ the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse⁹ that may or may not constitute criminal behavior, by any one of the following: (A) a current or former spouse or intimate partner of the victim, or person similarly situated to a

⁷ 34 U.S.C. 12291.

⁸ Section 40002 of VAWA (34 U.S.C. 12291) defines "victim services" and "services" as: "services provided to victims of domestic violence, dating violence, sexual assault, or stalking, including telephonic or web-based hotlines, legal assistance and legal advocacy, economic advocacy, emergency and transitional shelter, accompaniment and advocacy through medical, civil or criminal justice, immigration, and social support systems, crisis intervention, short-term individual and group support services, information and referrals, culturally specific services, population specific services, and other related supportive services."

⁹ Section 40002 of VAWA (34 U.S.C. 12291) defines both "economic abuse" and "technological abuse".

ECONOMIC ABUSE.—The term 'economic abuse', in the context of domestic violence, dating violence, and abuse in later life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to—(A) restrict a person's access to money, assets, credit, or financial information; (B) unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or (C) exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

TECHNOLOGICAL ABUSE.—The term 'technological abuse' means an act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

spouse of the victim; (B) a person who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) a person who shares a child in common with the victim; or (D) a person who commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

Implementation: These changes took effect on October 1, 2022. However, according to VAWA 2022, the definitions in section 40002(a) of VAWA are only binding "for purposes of grants authorized under" VAWA such that the new "domestic violence" definition in VAWA 2022 or any of the related definitions are applicable only to grant programs authorized under VAWA, which do not include HUD programs. HUD notes that its current regulations implementing VAWA cover much or all of the additional conduct specified in the VAWA 2022 definition. Specifically, HUD interprets the existing regulatory definitions of "domestic violence" and "stalking" to include the acts contained in the revised statutory definition of "domestic violence."

HUD's regulatory definition of "domestic violence" is broad as it provides that "domestic violence includes felony or misdemeanor crimes of violence committed by" a list of certain relations, such as a person similarly situated to a spouse of the victim, and captures felony or misdemeanor crimes of violence committed "by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction." Furthermore, HUD's existing definition of "stalking" broadly covers any "course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's individual safety or the safety of others; or (2) suffer substantial emotional distress." Given HUD's broad and inclusive definitions of these terms, HUD believes that the specific acts that VAWA 2022 made explicitly part of the VAWA "domestic violence" definition can be reasonably interpreted to be covered by HUD's existing VAWA regulations.

Accordingly, assisted housing providers, grantees, public housing authorities, owners and managers of the covered housing programs are advised to apply HUD's VAWA requirements in a manner that encompasses the "domestic violence" definition provided by VAWA as of October 1, 2022. HUD considers its existing regulatory definition of "domestic violence" to be broad enough to, in most

circumstances, include the additional acts referred to in the VAWA 2022 reauthorization—including technological abuse, economic abuse, and a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim that may or may not constitute criminal behavior. Further, HUD will consider implementing changes to update HUD's "domestic violence" definition to include the related definitions of "economic abuse" and "technological abuse" applicable to HUD's programs as part of HUD's upcoming rulemaking.

Specific Request for Comment. HUD specifically requests comment from assisted housing providers, grantees, public housing authorities, owners and managers, and other interested members of the public on (1) common forms of economic and technological abuse that affect survivors' rental assistance and continued tenancy, and (2) how HUD policy can help prevent or mitigate such violence against survivors and best practices or appropriate services to assist survivors.

B. Additional Covered Housing Programs

Pre-VAWA 2022: VAWA 2013 expanded VAWA's protections to additional HUD programs beyond those covered by VAWA 2005. HUD's VAWA 2013 final rule amended the "covered housing programs" as defined at 24 CFR 5.2003 to list the following as HUD programs subject to VAWA statutory requirements and protections and the corresponding program regulations:

- Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.
- Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.
- Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 *et seq.*), with implementing regulations at 24 CFR part 574.
- HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 *et seq.*), with implementing regulations at 24 CFR part 92.
- Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 *et seq.*), including the Emergency Solutions Grants program (with implementing regulations at 24 CFR part 576), the Continuum of Care program (with implementing regulations at 24 CFR part 578), and the Rural Housing Stability

Assistance program (with regulations forthcoming).

- Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221.
- Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z–1), with implementing regulations at 24 CFR part 236.
- HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); specifically, public housing under section 9 of the 1937 Act (42 U.S.C. 1437d) (with regulations at 24 CFR chapter IX), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1937f) (with implementing regulations at 24 CFR chapters VIII and IX), and the Section 8 Moderate Rehabilitation Single Room Occupancy (with implementing regulations at 24 CFR part 882, subpart H).
- The Housing Trust Fund (12 U.S.C. 4568) (with implementing regulations at 24 CFR part 93).

While not included in the VAWA 2013 statute, HUD included the Housing Trust Fund in its regulatory definition of "covered housing program" by using its general rulemaking authority. This document refers to these programs as "2013 HUD covered programs".

VAWA 2022: VAWA 2022 amended the statutory definition of "covered housing program," to add the following programs relevant to HUD:¹⁰

- Direct loan program under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);
- Assistance from the Housing Trust Fund established under section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501); and
- Any other Federal housing programs providing affordable housing to low- and moderate-income persons by means of restricted rents or rental assistance, or more generally providing affordable housing opportunities, as identified by the appropriate agency through regulations, notices, or any other means (referred to as a "catch all" provision).

This document refers to these programs as "VAWA 2022 HUD covered programs".

Implementation: Consistent with VAWA 2022, HUD will implement changes through regulations, notices, or

any other means in identifying when VAWA applies to a HUD program. The inclusion of new programs into the "covered housing program" definition means new grantees, owners, and managers will need to apply VAWA's protections and requirements to their programs as identified through regulations, notices, or any other means identifying when VAWA applies to a HUD housing program. When HUD initially applied VAWA protections and requirements to the "2013 HUD covered programs," HUD did so by notice-and-comment rulemaking. For the new programs, specifically the direct loan program under section 202 and the broad catch-all category, HUD will issue regulations, notices, or any other means to identify when VAWA applies to a HUD housing program. Under VAWA 2022, HUD also has the discretion to identify additional covered housing programs that are subject to VAWA through regulations, notices, or any other means. For the Housing Trust Fund program, HUD already applied the VAWA requirements in effect at that time to those grantees. As part of rulemaking, HUD will update the regulations that apply to the Housing Trust Fund program, and other HUD covered housing programs, to incorporate VAWA 2022 requirements. HUD offices that previously issued notices with lists of covered housing programs will issue new notices with revised lists.

C. Compliance Reviews—NEW Provision Applicable to HUD in 2022

Pre-VAWA 2022: Before VAWA 2022, the housing title of VAWA did not include statutory requirements for compliance reviews, and HUD does not currently have regulations addressing VAWA compliance reviews specifically, although all HUD programs are subject to general performance or compliance review requirements provided by program-specific regulations, 24 CFR part 200, or both. HUD programs are also subject to compliance reviews conducted by HUD's Office of Fair Housing and Equal Opportunity (FHEO) pursuant to civil rights authorities. *See, e.g.,* 24 CFR part 1 (Title VI of the Civil Rights Act); 24 CFR part 8 (Section 504 of the Rehabilitation Act); 24 CFR part 145 (Age Discrimination Act).

VAWA 2022: Section 602 of VAWA 2022 adds a new section 41412 to VAWA (34 U.S.C. 12492), which requires Federal agencies to establish a process to review compliance with the applicable requirements in title IV of VAWA (34 U.S.C. chapter 121, subchapter III, Part L). The new section requires agencies to incorporate this

¹⁰This list does not include programs that are controlled by the U.S. Department of Veterans Affairs and U.S. Department of Agriculture.

process into their existing compliance review processes where possible, enumerates six items for examination, provides that each agency “shall conduct the review . . . on a regular basis, as determined by the appropriate agency,” and requires that agencies ensure that they publicly disclose an agency-level assessment of the information collected during the compliance review process. The six items for examination are: (1) compliance with requirements prohibiting the denial of assistance, tenancy, or occupancy rights on the basis of domestic violence, dating violence, sexual assault, or stalking; (2) compliance with confidentiality provisions set forth in section 41411(c)(4) of VAWA (34 U.S.C. 12491(c)(4)); (3) compliance with the notification requirements set forth in section 41411(d)(2) of VAWA (34 U.S.C. 12491(d)(2)); (4) compliance with the provisions for accepting documentation set forth in section 41411(c) of VAWA (34 U.S.C. 12491(c)); (5) compliance with emergency transfer requirements set forth in section 41411(e) of VAWA (34 U.S.C. 12491(e)); and (6) compliance with the prohibition on retaliation set forth in section 41414 of VAWA (34 U.S.C. 12494). The new section 41412 of VAWA also requires each appropriate agency to develop regulations in consultation with “appropriate stakeholders”¹¹ to implement these changes related to compliance review.

Implementation: These changes will be implemented by regulations to the extent necessary. Section 41412 of VAWA (34 U.S.C. 12492) requires the issuance of regulations no later than two years after the date of enactment of VAWA 2022, March 15, 2024. Section 41412 further requires that these implementing regulations define standards of compliance under HUD covered programs, include detailed reporting requirements on emergency transfers,¹² and include standards for corrective action plans where

¹¹ Section 41412(b)(2) of VAWA provides that “appropriate stakeholders” include, but are not limited to, “(A) individuals and organizations with expertise in the housing needs and experiences of victims of domestic violence, dating violence, sexual assault and stalking; and (B) individuals and organizations with expertise in the administration or management of covered housing programs, including industry stakeholders and public housing agencies.”

¹² While HUD intends to issue rulemaking defining more specifically the compliance requirements set out by statute, HUD’s existing regulations implementing VAWA 2013 already require that covered housing providers maintain records with respect to emergency transfer requests. See 24 CFR 5.2005(e)(12). HUD, therefore, intends to seek approval under the *Paperwork Reduction Act* to collect such information while HUD updates its regulations to describe compliance standards.

compliance standards have not been met. To the extent possible, HUD will identify existing compliance review procedures that already allow for such reviews, including those currently administered by FHEO.

D. Prohibiting Retaliation Against Victims—New Provision

Pre-VAWA 2022: VAWA 2013 did not address protections against retaliation for survivors and other persons who oppose acts made unlawful by VAWA, who seek to enforce VAWA’s protections, or who participate in enforcement proceedings. Thus, HUD’s VAWA 2013 final rule did not, and HUD’s existing VAWA regulations at 24 CFR part 5, subpart L, do not address these protections and related requirements.

VAWA 2022: Section 602 of VAWA 2022 adds a new section 41414 to VAWA (34 U.S.C. 12494), which provides that no public housing agency or owner or manager of housing assisted under a covered housing program shall discriminate against any person because that person has opposed any act or practice made unlawful by the housing title of VAWA (34 U.S.C. chapter 121, subchapter III, Part L), or because that person testified, assisted, or participated in any related matter. The new section also provides that no public housing agency or owner or manager of housing assisted under a covered housing program shall coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under the housing title of VAWA. Section 602 further includes an implementation provision, which states that the Secretary of HUD and the Attorney General “shall implement and enforce this chapter consistent with, and in a manner that provides, the rights and remedies provided for in title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*).”

Implementation: These changes took effect on October 1, 2022. HUD does not consider rulemaking to be necessary to enable Office of Fair Housing and Equal Opportunity’s enforcement of the new requirements as of October 1, 2022, although HUD may conduct rulemaking to further implement this provision. Additionally, HUD’s regulations at 24 CFR part 103 provide for HUD’s Fair Housing Act complaint processing requirements, including complaint filing, investigation, and conciliation, and, at 24 CFR part 180, they provide for HUD’s consolidated hearing procedures and requirements for civil rights matters. The regulations have

long been used successfully to process fair housing complaints. In accordance with the plain language of section 602 requiring implementation and enforcement of the chapter consistent with title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), HUD will enforce the Housing Rights Chapter of VAWA 2022, including section 602, using HUD’s existing Fair Housing Act complaint process. While HUD plans to issue guidance and prepares to help answer questions from grantees and Federal financial assistance recipients on this process, grantees, PHAs, owners and managers of housing assisted under VAWA 2022 covered housing programs should ensure that policies and practices include the statutory non-retaliation requirement and prohibition on coercion. HUD may further implement this provision through rulemaking if the specific needs of enforcement of VAWA requires additional processes or clarity. HUD will also implement this provision for grantees of covered housing programs as well as PHAs, owners, and managers of housing assisted under VAWA 2022 covered housing programs through rulemaking to include program enforcement mechanisms.

E. The Right To Report Crime and Emergencies—New Provision

Pre-VAWA 2022: VAWA 2013 did not address protections against actual or threatened penalties for persons requesting law enforcement or emergency assistance. Thus, HUD’s existing VAWA regulations at 24 CFR part 5, subpart L, do not address these protections and related requirements. In 2016, however, HUD did issue guidance on applying the Fair Housing Act standards to the enforcement of local nuisance or crime-free ordinances, including in instances in which such ordinances operate to require evictions or otherwise penalize people for requesting law enforcement or emergency assistance.¹³ The guidance outlines how a local government may violate the Fair Housing Act by enforcing nuisance or crime-free ordinances in a manner that is intentionally discriminatory or results in an unjustified discriminatory effect based on protected class. Additionally, HUD has taken action under both the Fair Housing Act and Title VI of the

¹³ Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services, September 13, 2016, <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>.

Civil Rights Act of 1964 against localities and recipients of Federal financial assistance from HUD for discriminatory enactment and enforcement of nuisance or crime-free ordinances.

VAWA 2022: Section 603 of VAWA 2022 adds a new section 41415 to VAWA (34 U.S.C. 12495), which protects the right to report crime and emergencies from one's home. The new section provides that landlords, homeowners, tenants, residents, occupants, and guests of, and applicants for, housing ("listed protected persons") "shall have" the right to seek law enforcement or emergency assistance on their own behalf or on behalf of another person in need of assistance. This section also prohibits application of actual or threatened penalties¹⁴ to the listed protected persons based on their requests for assistance or based on criminal activity of which they are a victim or otherwise not at fault under the laws or policies adopted or enforced by covered governmental entities.

"Covered governmental entities" are defined as any municipal, county, or State government that receives funding under section 106 of the Housing and Community Development Act of 1974.

Additionally, section 603 provides that covered governmental entities must report on their laws or policies (or laws or policies adopted by subgrantees) that impose penalties on the listed protected persons based on requests for law enforcement or emergency assistance or based on criminal activity that occurred at a property. These entities must also certify compliance with these protections or explain how they will come into compliance or ensure compliance among subgrantees¹⁵ within 180 days of providing their report.

Section 603 also includes an implementation provision that provides that the Secretary of HUD and the Attorney General "shall implement and

¹⁴ Penalties prohibited under section 603 include (1) actual or threatened assessment of monetary or criminal penalties, fines, or fees; (2) actual or threatened eviction; (3) actual or threatened refusal to rent or renew tenancy; (4) actual or threatened refusal to issue an occupancy permit or landlord permit; and (5) actual or threatened closure of the property, or designation of the property as a nuisance or a similarly negative designation.

¹⁵ There are additional compliance requirements for covered governmental entities that distribute funds to subgrantees. For these entities' reports on their laws and policies that impose penalties on the listed protected persons, compliance includes inquiring about the existence of laws and policies adopted by subgrantees that impose penalties on landlords, homeowners, tenants, residents, occupants, guests, or housing applicants based on requests for law enforcement or emergency assistance or based on criminal activity that occurred at a property.

enforce this chapter consistent with, and in a manner that provides, the same rights and remedies as those provided for in title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*)." *Implementation:* Section's 603 protections took effect October 1, 2022. HUD will issue guidance and help answer questions from grantees and Federal financial assistance recipients on this process. HUD also anticipates issuing implementing regulations, to include any costs of conforming to the requirements that may be allowable under HUD programs affected by this provision, including the CDBG program.

While HUD prepares to issue guidance and help answer questions from grantees and Federal financial assistance recipients on this process, any municipal, county, or State government that receives funding under section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306) must not, as of October 1, 2022, engage in any practices that violate the right to report provided for in section 603 of VAWA 2022. In addition, any municipal, county, or State government that receives funding under section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306) must conduct the required review and reporting¹⁶ of their laws and policies (and, in some cases, laws and policies of subgrantees) to ensure that their laws and policies do not conflict with the statutory right to report. HUD will issue further guidance regarding the timing and process of this reporting.

The Paperwork Reduction Act (PRA) of 1995 requires that Federal agencies, including HUD, seek and obtain Office of Management and Budget (OMB) approval before providing forms to grantees to be used to collect information from the public, including information related to record-keeping, certifications, and reports. HUD, therefore, intends to seek approval under the PRA to collect such information from covered governmental entities required for reporting under section 603 while HUD updates its regulations related to record-keeping, certifications, and reports.

In the meantime, any municipal, county, or State government that receives funding under section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306) is advised to update applicable policies and practices to include the

¹⁶ Reporting would be required only after HUD conducts appropriate Paperwork Reduction Act process and issuance of reporting procedures.

statutory right to report to avoid potential liability under the law.

In 2016, HUD issued guidance on applying the Fair Housing Act to local nuisance or crime-free ordinances that discriminate because of a protected characteristic.¹⁷ The guidance outlines how a local government may violate the Fair Housing Act by enforcing nuisance or crime-free ordinances in a manner that is intentionally discriminatory or results in an unjustified discriminatory effect. The Fair Housing Act continues to apply.¹⁸ HUD's regulations at 24 CFR part 103 provide HUD's Fair Housing Act complaint processing requirements, including complaint filing, investigation, and conciliation. Also, at 24 CFR part 180, the regulations provide for HUD's consolidated hearing procedures and requirements for civil rights matters. HUD will continue enforcement under the Fair Housing Act and other applicable civil rights authorities, including title VI and section 504, for any violation committed by a local government for enforcing nuisance or crime-free ordinances. In addition, in accordance with the plain language of section 603, requiring implementation and enforcement of the chapter consistent with Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) and HUD's current enforcement of these protections, HUD will enforce the Housing Rights Chapter of VAWA 2022, including section 603, using its existing Fair Housing Act complaint process.

F. Changes to the McKinney-Vento Homeless Assistance Act Definition of Homelessness

Pre-VAWA 2022: HUD's current definition of "homeless" for programs authorized by the McKinney-Vento Homeless Assistance Act is based on the statutory definition of homeless provided in section 103 of that Act. Although survivors have always been able to qualify as homeless under this definition, a new subsection (b) was added in 2009 to clarify that "Notwithstanding any other provision of this section, the Secretary shall consider to be homeless any individual or family who is fleeing, or is attempting

¹⁷ Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services, September 13, 2016, <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>.

¹⁸ As a reminder, local governments who are recipients of Federal financial assistance must also comply with, among other laws, Title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act.

to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual's or family's current housing situation, including where the health and safety of children are jeopardized, and who have no other residence and lack the resources or support networks to obtain other permanent housing." HUD implemented this provision as part of its final rules defining "homeless," and an additional eligibility category for this population now appears as paragraph (4) of the homeless definitions provided at 24 CFR 91.5, 576.2, and 578.3.

VAWA 2022: Section 605 of VAWA 2022 amended section 103(b) of the McKinney-Vento Homeless Assistance Act to require HUD to consider as homeless any individual or family who—

(1) is experiencing trauma or a lack of safety related to, or fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous, traumatic, or life-threatening conditions related to the violence against the individual or a family member in the individual's or family's current housing situation, including where the health and safety of children are jeopardized;

(2) has no other safe residence; and

(3) lacks the resources to obtain other safe permanent housing.

Implementation: Rulemaking will be needed to require Emergency Solutions Grants (ESG) recipients and subrecipients, Continuums of Care (CoCs), and CoC Program recipients and subrecipients to make corresponding changes to the applicable written standards, coordinated entry policies, and documentation policies used to qualify individual and families as homeless under the CoC Program. That said, because HUD must recognize as "homeless", families and individuals who meet the new statutory criteria in section 103(b) of the McKinney-Vento Homeless Assistance Act as of October 1, 2022, ESG and CoC recipients may implement the new definition prior to HUD rulemaking, provided that ESG recipients and CoCs update the relevant written standards and policies as needed to reflect the new statutory criteria.

G. Gender-Based Violence Prevention Office and VAWA Director—New Provision

Pre-VAWA 2022: VAWA 2013 did not require HUD to create a specific office or position for VAWA-related matters. Thus, HUD's implementation of VAWA 2013 did not address these matters.

VAWA 2022: Section 602 of VAWA 2022 directed HUD's Secretary to establish a Gender-based Violence Prevention Office with a Violence Against Women Act Director. The Director shall support implementation of VAWA's housing provisions, coordinate with other federal agencies and with state and local governments, ensure the provision of technical assistance and support for agencies and housing providers, implement internal systems to track, monitor and address compliance failures, and address the housing needs and barriers faced by persons who have been victims of sexual assault, sexual coercion or sexual harassment by a public housing agency, owner, or manager of housing assisted under a covered housing program.

Implementation: No regulatory action is needed for this section to be implemented. Congress was authorized to appropriate such sums as may be necessary to carry out this section for fiscal years 2023 through 2027.

H. Continuum of Care Program Eligible Activities

Pre-VAWA 2022: VAWA 2013 and HUD's implementing regulations added homeless programs under title IV of the McKinney-Vento Homeless Assistance Act to the statutory and regulatory definitions of "covered housing program"¹⁹ HUD's 2016 VAWA final rule also revised and added regulations addressing the VAWA requirements for the Continuum of Care Program in 24 CFR part 578.

VAWA 2022: Section 605 amends section 423(a) of the McKinney-Vento Homeless Assistance Act to add the following expressly eligible Continuum of Care Program activity:

(13) Facilitating and coordinating activities to ensure compliance with [the emergency transfer plan requirement in 34 U.S.C. 12491(e)] and monitoring compliance with [the confidentiality protections of the confidentiality requirement in 34 U.S.C. 12491(c)(4)].

Implementation: The statutory change took effect on October 1, 2022, although HUD will need to make a conforming change to the Continuum of Care program regulations at 24 CFR part 578. Because this new eligible activity category is distinct from the eligible activity categories that authorize and limit the use of Continuum of Care Program funds for "payment of administrative costs" under section 423(a)(10), (11), and (12) of the McKinney-Vento Homeless Assistance Act, HUD does not consider this new

activity category to be subject to the CoC Program's spending caps on administrative costs.

I. VAWA Training and Technical Assistance

Pre-VAWA 2022: VAWA 2013 did not address training, technical assistance, and technical assistance agreements to support VAWA implementation for HUD covered programs. Thus, HUD's VAWA 2013 final rule did not amend HUD's regulations to address these matters. However, HUD's VAWA 2013 final rule summarized public commenters' requests that HUD provide guidance and technical assistance to PHAs about domestic violence and VAWA regulations. HUD responded that HUD intended to provide guidance and technical assistance to aid-covered housing providers in implementing VAWA.²⁰

VAWA 2022: Section 605 of VAWA 2022 added a provision authorizing appropriations in "such sums as may be necessary for fiscal years 2023 through 2027" for training and technical assistance to support VAWA implementation, including technical assistance agreements with entities whose primary purpose and expertise is assisting survivors of sexual assault and domestic violence or providing culturally specific services to victims of domestic violence, dating violence, sexual assault, and stalking.

Implementation: Section 605(d) of VAWA 2022 took effect October 1, 2022. No regulatory action is needed to implement this provision.

Specific Request for Comment. HUD specifically requests comment on entities' needs for training and technical assistance; training and technical assistance in this context means to support the implementation of VAWA as envisioned by VAWA 2022.

J. Study and Report on Housing and Service Needs of Survivors of Trafficking and Individuals at Risk for Trafficking

Pre-VAWA 2022: VAWA 2013 did not require HUD to study the housing and service needs of survivors of trafficking and individuals at risk for trafficking. Thus, HUD's VAWA 2013 final rule did not address these matters.

VAWA 2022: Section 606 of VAWA 2022 requires that HUD study the availability and accessibility of housing and services for survivors of trafficking or those at risk of being trafficked, who are experiencing homelessness or housing instability. The provisions under Section 606 of VAWA 2022

¹⁹ See 24 CFR 5.2003.

²⁰ 81 FR 80780.

outline the key requirements for the study: a definition for the terms “survivor of a severe form of trafficking” and “survivor of trafficking,”²¹ the requirements for coordination²² and consultation²³ while conducting the study, and the contents of the study.²⁴ Lastly, section 606 of VAWA 2022 provides that not later than September 15, 2023, the Secretary shall submit a report containing the contents of the study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, as well as making the report publicly available.

Implementation: Section 606 of VAWA 2022 was effective upon enactment of VAWA 2022. No regulatory action is needed to implement this provision. HUD began work on the study in Spring 2022, including conducting the required consultations with stakeholders, and expects to complete the report on schedule.

IV. Solicitation of Comment

In this document, HUD has highlighted certain issues for which comment is specifically sought but welcomes comment on any aspect of this document.

Marcia L. Fudge,

Secretary.

[FR Doc. 2022–28073 Filed 1–3–23; 8:45 am]

BILLING CODE 4210–67–P

²¹ Section 606 applies the same meaning given to the respective terms as in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).

²² The Secretary shall coordinate with: (i) the Interagency Task Force to Monitor and Combat Trafficking established under section 105 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7103), (ii) the United States Advisory Council on Human Trafficking, (iii) the Secretary of Health and Human Services; and (iv) the Attorney General.

²³ The Secretary shall consult with: (i) the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States; (ii) survivors of trafficking; (iii) direct service providers, including—(I) organizations serving runaway and homeless youth; (II) organizations serving survivors of trafficking through community-based programs; and (III) organizations providing housing services to survivors of trafficking—and (iv) housing and homelessness assistance providers, including recipients of grants under (I) the Continuum of Care program authorized under subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381 *et seq.*) and (II) the Emergency Solutions Grants program authorized under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*).

²⁴ See section 606(b)(3).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1006

[Docket No. FR–6273–P–01]

RIN 2577–AD13

Implementing Rental Housing Assistance for the Native Hawaiian Housing Block Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: Through this notice of proposed rulemaking, the Department of Housing and Urban Development (HUD) is proposing to amend its regulations covering rental housing assistance for the Native Hawaiian Housing Block Grant (NHHBG) program, consistent with the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). HUD proposes to clarify and improve consistency with NAHASDA’s statutory requirements and HUD’s Indian Housing Block Grant program regulations. This proposed rule would also help make affordable housing opportunities, in the form of NHHBG-assisted rental housing, more available to eligible Native Hawaiian families.

DATES: *Comment Due Date:* March 6, 2023.

ADDRESSES: There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the proposed rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Claudine Allen, Lead Native Hawaiian Program Specialist, Office of Native American Programs, HUD Honolulu Field Office, 1003 Bishop Street, Suite 2100, Honolulu, HI 96813; telephone number 808–457–4674 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Background

The Hawaiian Homelands Homeownership Act of 2000 (HHH Act) was enacted as both title II of the Omnibus Indian Advancement Act (Pub. L. 106–568, 114 Stat. 2868, approved December 27, 2000) and subtitle B of title V of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000). Section 513 of the HHH Act, Public Law 106–569, amended the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) by adding to it a new “Title VIII—Housing Assistance for Native Hawaiians”. Title VIII established the Native Hawaiian