



October 20, 2016

Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 201410-0500

Re: FR-5173-N-09-B Affirmatively Furthering Fair Housing: Assessment Tool for Public Housing Agencies (Sept. 20, 2016)

Dear Sir or Madam:

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On behalf of the American Civil Liberties Union, we write to offer our comments on the Assessment of Fair Housing Tool for Public Housing Agencies (“PHAs”).

For nearly 100 years, the ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU has advanced gender equality through litigation and policy advocacy, including by challenging housing discrimination experienced by survivors of domestic violence and sexual assault.

We previously have commented on the importance of incorporating comprehensive consideration of sex, gender, and fair housing challenges experienced by women into the affirmatively furthering fair housing analysis. We also have highlighted the fair housing barriers experienced by survivors of domestic violence and sexual assault, who are predominantly women.

We are pleased to see that HUD has taken steps in this direction with this PHA Tool, which PHAs will use to analyze their fair housing impediments, resources, and strategies to meet their affirmatively furthering obligations. In particular, we note that HUD included, in the most recent version of the PHA Tool, the barriers to fair housing choice faced by victims of domestic violence and the barriers posed by local nuisance laws. We make the following recommendations to build on these positive developments.

First, we urge that the PHA Tool call on PHAs to analyze information they are required to collect about survivors of domestic violence, dating violence, sexual assault, and stalking under the Violence Against Women Act (“VAWA”). VAWA mandates that PHAs address the housing needs of survivors in their planning documents. In the 5-Year Plan, PHAs are required to include a statement of the goals, objectives, policies, or programs that will enable the PHA to serve the needs of survivors.¹ In the Annual Plan, PHAs are required to include a description of activities, services, or programs that are provided by a victim service agency to

¹ 42 U.S.C. § 1437c-1(a)(2).

survivors that help survivors to obtain or maintain housing, and that prevent violence or enhance survivor safety in assisted families.² If PHAs are meeting these reporting requirements, then they should have readily available data and information that will help them assess the challenges that survivors face in maintaining and accessing affordable housing.

Second, we commend HUD for including “lack of safe, affordable housing options for survivors of domestic violence” as a contributing factor in the Publicly Supported Housing Analysis section. We further recommend that this contributing factor (as well as any mention of domestic violence throughout the PHA Tool) include survivors of sexual assault, dating violence, and stalking, as these categories of survivors are also protected under the Violence Against Women Act. This contributing factor should also be defined. We propose a change to the name of this contributing factor to make it more inclusive regarding concerns of displacement³ due to acts of domestic violence, dating violence, sexual assault, and stalking. Accordingly, we propose the following name and description of this contributing factor:

Lack of safe, affordable housing options for; displacement of; and lack of housing support for victims of domestic violence, dating violence, sexual assault, and stalking.

Federal laws, such as the Violence Against Women Act (VAWA) and the Fair Housing Act (FHA), offer protections from housing discrimination to survivors of domestic violence, dating violence, sexual assault, and stalking because of the abuse committed against them. Despite these safeguards, many victims continue to experience adverse housing decisions made by housing providers due to their status as victims. Many state and local jurisdictions have enacted laws and policies that provide housing protections for victims that mirror and often exceed the federal protections available. For example, approximately half of the states have eviction defense and early lease termination provisions for survivors of domestic and sexual violence, as well as other crime victims. However, many states and local jurisdictions do not have housing laws designed to protect victims, which impede victims’ abilities to access and maintain their current housing as well as quickly find safe alternative housing.

Furthermore, local nuisance and crime-free ordinances that punish crime victims or those who otherwise need emergency assistance can violate federal and state civil rights laws. As stated by HUD in guidance issued in September 2016, one step a local government can take towards meeting its duty to affirmatively further fair housing is to eliminate disparities by repealing a nuisance or crime-free ordinance that requires or encourages evictions for using emergency services, including 911 calls, by domestic violence and other crime victims.⁴ Additionally, public housing authorities are required by VAWA to describe in their annual plans and five-year plans to HUD any activities, services, or programs offered to victims that help them access and maintain housing, or enhance victim safety. For instance, some public housing authorities, in an effort to increase housing access, have admissions preferences for victims applying for certain federal housing programs, such as public housing and the Section 8 voucher programs.

² 42 U.S.C. § 1437c-1(b)(13).

³ We note that, while the accompanying Federal Register Notice referenced a new contributing factor entitled “Involuntary displacement of survivors of domestic violence,” no such standalone contributing factor was included in the Draft PHA Assessment Tool. We also note that displacement of domestic violence survivors is referenced as part of the contributing factor “Admissions and occupancy policies and procedures, including preferences in publicly supported housing.”

⁴ See HELEN R. KANOVSKY, GENERAL COUNSEL, U.S. DEP’T OF HOUS. & URBAN DEV., *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* (2016).

We propose that this contributing factor be included in the following sections of the Fair Housing Analysis: Disparities in Access to Opportunity, Disproportionate Housing Needs, and Publicly Supported Housing Analysis.

Third, we call on HUD to add a separate contributing factor that considers survivors of harassment, including sexual and racial harassment. HUD included this factor in the latest draft of the Local Government Assessment Tool. The language for this contributing factor description should incorporate language from HUD's recent final Harassment Rule.⁵ We propose the following language:

Displacement of and/or lack of housing support for victims of harassment based on membership in a protected class.

Harassment on the basis of race, color, sex, religion, national origin, familial status, or disability, when occurring in and/or around one's home or prospective home, or in connection with a housing transaction, can violate the Fair Housing Act.⁶ Harassment can be perpetrated by housing providers, housing provider employees or staff, or other tenants. HUD regulations recognize harassment under two legal theories: (1) quid pro quo harassment and (2) hostile environment harassment. "Quid pro quo harassment" refers to "an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to" the sale, rental, or availability of a dwelling, or is otherwise related to a residential real estate-related transaction. For example, a housing provider engages in quid pro quo harassment on the basis of sex by demanding sexual favors from a tenant as a condition of making repairs in the tenant's unit. An unwelcome "request or demand may constitute quid pro quo harassment even if a person acquiesces in the unwelcome request or demand." "Hostile environment harassment" refers to unwelcome conduct "that is sufficiently

severe or pervasive as to interfere with" the sale, rental, or use or enjoyment of a dwelling, or otherwise interferes with a residential real estate-related transaction "from the perspective of a reasonable person in the aggrieved person's position." Hostile environment harassment "does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction."

We propose that this contributing factor be included in the following sections of the Fair Housing Analysis: Disparities in Access to Opportunity, Disproportionate Housing Needs, and Publicly Supported Housing Analysis.

Fourth, we appreciate the addition of a new contributing factor related to nuisance laws. The ACLU has long been concerned about the impact of these laws on communities.⁷ Our experience has shown us that nuisance and crime-free ordinances often undermine the housing security of victims of crime and people with disabilities. We therefore recommend that the proposed definition of this contributing factor include the following underlined amendment, to highlight the impact of these laws:

⁵ See generally 24 C.F.R. § 100.600(a) (2016).

⁶ Consistent with its discussion of the recently issued final Harassment Rule, HUD should make clear in the Assessment of Fair Housing Tool for Local Governments that the prohibition on sex discrimination includes discrimination based on pregnancy, gender identity, sex stereotypes, and sexual orientation.

⁷ See www.aclu.org/notanuisance.

Nuisance laws

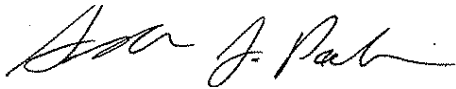
Nuisance ordinances – also called disorderly house ordinances or crime free ordinances – label a property as a nuisance when it is the site of a certain number of calls for police or alleged nuisance conduct (a category that can include assault, harassment, stalking, disorderly conduct, and many other kinds of behavior). These laws usually apply regardless of whether a resident was a victim of the nuisance activity. Local nuisance ordinances can negatively impact crime victims by endangering their housing security and housing choice by creating barriers through evictions and/or threats to evict, as well as penalties for property owners based on the number of times police are called. Nuisance ordinances also can undermine the housing rights of people with disabilities, whom may be penalized under these laws when accessing emergency assistance. An eviction record, particularly one for nuisance conduct, makes it difficult for tenants to secure replacement housing and an eviction can exacerbate and increase a crime victim's risk of homelessness. The existence of a nuisance ordinance in a community can also limit housing opportunities for renters if housing providers assume that the renter will be victims of crime or domestic violence.

Thank you for your consideration of these comments. If you have any questions, please be in touch with Sandra Park, Senior Staff Attorney, at spark@aclu.org.

Sincerely,



Karin Johanson
Director



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