



June 21, 2010

Regulations Division
Office of General Counsel
Department of Housing & Urban Development
451 Seventh Street, SW, Room 10276
Washington, D.C. 20410-0500

Re: Docket No. FR-5333-P-01, Homelessness Emergency Assistance and Rapid Transition to Housing: "Defining Homeless"

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Dear Sir or Madam:

On behalf of the American Civil Liberties Union, we respectfully submit the following comments regarding the Department of Housing and Urban Development's (HUD) proposed rule on "Homeless Emergency Assistance and Rapid Transition to Housing Act: Defining 'Homeless.'" The HUD regulation will determine how government agencies, nonprofit homeless services providers, and others will be required to determine eligibility for HUD homeless assistance programs. We appreciate the opportunity to comment on HUD's definition of homelessness, which will have a profound impact on the lives of thousands of families and children, including survivors of domestic violence, dating violence, stalking, and sexual assault. We commend HUD's efforts to interpret and implement the law in a safe way for survivors.

The ACLU is a national, nonpartisan public interest organization of more than 500,000 members, dedicated to protecting the constitutional rights of individuals. Through its Women's Rights Project, founded in 1972 by Ruth Bader Ginsburg, the ACLU has long been a leader in legal battles to ensure women's full equality. This commitment includes fighting for equal housing opportunities for women and working to protect the rights of battered women. In recent years, the ACLU has taken a leading role at the local, state, and national levels in working to ensure safety and improve access to housing for survivors of domestic violence and their children.

On May 29, 2009, Congress passed the HEARTH Act, which consolidated and amended three homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program, and created the Emergency Solutions Grant Program and the Rural Housing Stability Program. Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, Pub. L. 111-22, Div. B, § 1003(a), 123 Stat. 1664, 1702 (codified as amended at 42 U.S.C. § 11302)). The HEARTH Act also expanded HUD's definition of homelessness. On April

21, 2010, HUD issued a proposed regulation implementing the new definition of homelessness. 75 Fed. Reg. 20,541 (April 20, 2010) (to be codified at 24 C.F.R. pt. 577).

These comments relate to the inclusion of survivors of domestic violence, dating violence, sexual assault, and stalking in the “homeless” definition and the interpretation of the statutory language as it relates to survivors. We recommend that HUD: 1) amend the proposed regulation to reflect the statutory text regarding those fleeing “domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions” throughout the regulation; 2) amend the proposed regulation to reflect the many barriers to employment that would constitute “multiple barriers to employment”; 3) amend the proposed 24 C.F.R. pt. 577 to mirror the statutory language so that individuals can qualify as homeless when they are fleeing dangerous or life-threatening conditions that are not related to violence; and 4) institute a simple and safe process for determining survivor eligibility.

These comments do not address the special confidentiality requirements that will be the subject of a future rule. We commend HUD for working on this important issue and urge you to consult with domestic violence and sexual assault advocates in developing those regulations.

1. HUD should amend the proposed regulation to reflect the statutory text regarding those fleeing “domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions” throughout the regulation. The regulation should not abbreviate these categories into the term “domestic violence” as it does not adequately or accurately describe each unique term.

Too often, HUD’s proposed rule conflates the terms “domestic violence”, “dating violence”, “sexual assault”, “stalking”, and “other dangerous or life-threatening conditions” into the umbrella term “domestic violence”. Domestic violence, however, describes one type of abuse that is unique and different from sexual assault, dating violence, stalking and other dangerous or life-threatening conditions. Domestic violence, dating violence, sexual assault and stalking are individually defined in the Violence Against Women Act (VAWA).

To ensure that victims of domestic violence, dating violence, sexual assault and stalking are afforded the same protections and benefits under McKinney-Vento, we recommend that each term be used consistently throughout the document.

2. HUD should amend the proposed regulation to reflect the many barriers to employment that would constitute “multiple barriers to employment”. The current list is too limited. The regulation should indicate that the list is not exhaustive (“including but not limited to”) and should include a number of additional barriers.

Victims of domestic violence, sexual assault, dating violence and stalking often struggle to find and maintain employment due to the controlling actions of perpetrators, ongoing safety concerns and the resultant trauma of victimization. See Richard M. Tolman & Jody Raphael, *A Review of Research on Welfare and Domestic Violence*, 56 J. Soc. Issues 655, 664-70 (2000). Many victims of domestic violence have been economically abused by their partners and their employment efforts have been sabotaged. U.S. Gen. Acct. Office, *Domestic Violence*:

Prevalence and Implications for Employment Among Welfare Recipients [hereinafter U.S. Gen. Acct. Office] 7-8 (1998). They may not have a history of employment because they have always been forced to be dependent upon their abusive partner. The safety concerns for these victims are very real, as abusive partners and stalkers often go to great lengths to find victims even after they have escaped. Those who have been sexually assaulted or stalked by co-workers also face grave safety concerns in the workplace. Additionally, victims of these violating crimes often suffer from post-traumatic stress and other mental health issues that can contribute to an inability to secure and maintain employment. U.S. Gen. Acct. Office, at 8-9.

People who are homeless lack basic resources and therefore do not have adequate access to the various supports necessary for securing and maintaining employment. These include childcare, transportation, appropriate work clothing such as uniforms, and basic supplies. See National Coalition for the Homeless, Employment and Homelessness, *available at* <http://www.nationalhomeless.org/factsheets/employment.html> (last visited Jun. 16, 2010). In addition to the personal barriers to employment, it is important to note the barriers that result from a poor economy and weak job market. Those who may otherwise have few barriers to employment are still subject to the lack of available employment opportunities.

To ensure that the list of “barriers to employment” is comprehensive and reflective of the realities of homeless persons and their families, the proposed rule should: 1) include the phrase “including but not limited to”; and 2) include the following additional barriers - a) history of victimization including domestic violence, sexual assault, stalking or dating violence, b) lack of child care, c) lack of transportation, and d) lack of resources for necessary job-specific items (such as uniforms). The phrase “a history of unstable employment” should be amended to “a lack of employment history or a history of unstable employment.”

3. HUD should amend the proposed regulation so the statutory language regarding those fleeing “other dangerous or life-threatening conditions” is not read to be limited to violent situations, or to define the level of violence required to qualify as homeless.

HUD’s proposed rule significantly narrows a category of homeless families defined in the HEARTH Act. The HEARTH Act defines as “homeless”:

(b) Domestic violence and other dangerous or life-threatening conditions

Notwithstanding any other provision of this section, the Secretary shall consider to be homeless any individual or family who is fleeing, or is attempting 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.

Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, Pub. L. 111-22, Div. B, § 1003(a), 123 Stat. 1664, 1702 (codified as amended at 42 U.S.C. § 11302)).

HUD's proposed regulation, Docket No. FR-5333-P-01, defines those who are homeless under this statutory provision as follows:

HUD will consider as homeless any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life threatening conditions that relate to violence against the individual or family member that has taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence, and who has no other residence and lacks the resources or support networks to obtain other permanent housing. The victimized member of the household is not required to be the owner or renter of the unit.

75 Fed. Reg. 20,541 (April 20, 2010) (to be codified at 24 C.F.R. pt. 577) (emphasis added).

It is the expressed policy of the federal government "to assist States and political subdivisions of States to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families." 42 U.S.C. § 1437(a)(1)(A). Pursuant to this policy, Congress expanded the definition of homelessness, and therefore eligibility for HUD programs, with the passage of the HEARTH Act. Recognizing that many homeless individuals may have shelter, but live in sub-standard and dangerous conditions, Congress included within the definition of "homeless persons" any individual or family fleeing or attempting to flee "dangerous or life-threatening conditions in the individual's or family's current housing situation." This provision encompasses a range of dangerous housing conditions that do not necessarily relate to violence. The title of this section of the statute makes this distinction clear by encompassing "Domestic Violence and Other Dangerous or Life-Threatening Conditions." If Congress had intended to cover only those dangerous or life-threatening conditions related to domestic violence, it could simply have titled this section "Domestic Violence."

Moreover, HUD's proposed regulation ignores the reality of the conditions in which many families live. There are many "dangerous or life-threatening" conditions in homes that do not relate to violence. The federal Housing Quality Standards ("HQS") define the minimum quality criteria for "standard housing," 24 C.F.R. § 982, which are used to evaluate whether housing provided through the Housing Choice Voucher ("HCV") program is "decent, safe, and sanitary." 24 C.F.R. § 982.1(a). Among such minimum standards are: a sink in proper operating condition that runs hot and cold water; a dwelling unit with at least one bedroom or living/sleeping room for each two persons, and children of the opposite sex, except for very young children, may not sleep in the same room; a safe heating system to assure a healthy living environment appropriate to the climate; ceilings, walls and floors without any serious defects; and a dwelling free from dangerous levels of carbon monoxide, gas, dust, and other harmful pollutants. 24 C.F.R. § 982.41. The primary goal of HQS is to ensure health and safe housing for its occupants. Therefore, although acceptable housing quality varies according to local housing codes and climatic or geographic conditions, no variation will be approved by HUD if it is likely to adversely affect the health or safety of participant families. 24 C.F.R. § 982.41(a)(4). Rather than covering those individuals and families living in dangerous or life-threatening conditions, including those that fall below the HQS, HUD's proposed regulation denies

eligibility to individuals living in dangerous or life threatening housing conditions unless it is related to violence.

HUD should therefore remove the requirement that the “dangerous or life-threatening” conditions relate to violence and specifically incorporate the statutory language regarding the health and safety of children. Other federal funding programs contain express provisions for the health and safety of children. For example, childcare providers applying for a Childcare and Development Block Grant must certify that there are “in effect within the State, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided.” 42 U.S.C. § 9828(c). Health and safety requirements include: (i) the prevention and control of infectious diseases; (ii) safety of the building and physical premises; and (iii) health and safety training for providers. 42 U.S.C. § 9828(c). The Asbestos Control Loan Program provides loans for the removal and replacement of asbestos materials in school building that “pose an imminent hazard to the health and safety of children or employees.” 20 U.S.C. § 3605(2).

Another concern raised by the current language of the proposed definition is that the phrase “dangerous or life-threatening” could be construed as describing the level of domestic violence, dating violence, sexual assault, or stalking needed to qualify for programs. This could result in the denial of assistance to many victims who may not appear to be in immediate physical danger. Should the current language be interpreted to require that violence be “dangerous or life-threatening,” the regulation could exclude many victims of violence whose situations may not be deemed “dangerous or life-threatening” by untrained third parties, in defiance of Congressional intent. Congress has long recognized the connection between domestic violence and homelessness and sought to expand the benefits and protections available to survivors. 42 U.S.C. § 14043(e)(1).

4. Survivor eligibility should be determined in a simple, safe manner, consistent with the statute.

We recommend that HUD simplify the provisions relating to determining survivor eligibility for programs given concerns about confidentiality and survivor access to services. The proposed rule provides that acceptable evidence of eligibility for an individual or family in this category may include an oral statement from the individual or family. While this oral statement need not be verified, it must be documented by either self-certification (signed statement by the victim certifying an oral statement’s veracity) or a certification by the intake worker (signed statement by the intake worker certifying the victim’s oral statement). Alternatively, written observation by the intake worker or written referral by a housing or service provider, social worker, the hospital, or the police will also serve to establish eligibility.

Individuals and families fleeing domestic violence must have access to immediate shelter in order to ensure their safety. Given this urgency, providers must offer shelter with as little administrative burden as possible. HUD has an obligation and opportunity to ensure that victims can access life saving services such as shelter, with the minimal documentation and evidence requirements.

Because the law only requires an oral verification, the proposed rule's requirement that an oral statement can only be found credible if it is verified in writing goes beyond the plain meaning of the statute. The logic behind this proposal is circular in nature. If a "credible oral statement" is *per se* sufficient evidence, as it is through the use of the statutory phrase "shall be considered credible evidence," then a written statement should not be required.

Requiring written certification in emergency situations raises particular concerns for victims of domestic violence, dating violence, sexual assault, or stalking. By granting intake workers discretion to certify statements in writing, this policy not only risks undermining the confidentiality of sensitive information, but also introduces the potential for subjective judgment to result in discrimination against victims. Similarly, written third-party referrals could potentially contain information beyond the scope of what administrative necessity, not to mention safety, dictates.

Protecting confidentiality for victims of domestic violence, dating violence, sexual assault, or stalking is of vital importance. At its most basic level, confidentiality equals safety; private information that reaches the hands of abusers or other third parties can easily jeopardize the security and well being of victims attempting to begin new lives. Sharing information about victims not only poses a threat to their privacy, but also could undermine their confidence in service providers and deter them from accessing necessary resources. In recognition of this concern, federal and state laws provide clear guidance to ensure that information provided by victims to prove eligibility for homeless services remain confidential and limited in scope. Not only has Congress included confidentiality provisions for service providers in the Violence Against Women Act, the Victims of Crime Act, and the Family Violence Prevention and Services Act, but many states have also passed laws to prevent potential disclosure of victim information to third parties.


By failing to specify precisely what type of certification statement will be required of applicants, the proposed regulation creates the possibility for intake workers to demand such sensitive personal information as details regarding the violence, personal characteristics of the abuser, and other data that could jeopardize the safety of victims if accessed improperly. Additionally, intake workers may believe they have the discretion to use such information in order to determine whether the applicant is in fact a victim. While the proposed rule distinguishes between certification and documentary verification, without additional guidance, intake workers may well conflate the two requirements.

Pursuant to the statute, HUD's final rule should allow an applicant for homeless assistance who provides a credible oral verification of imminent housing loss to obtain services. Moreover, any certification of status as a domestic violence victim should be limited in scope, including only the name of the victim and family members and a box to check in order to indicate victim status; by limiting the scope of information requested of applicants, HUD would limit the risk of confidential information being disclosed as well as the potential for intake workers to use such information in a discriminatory manner. This degree of brevity should also characterize the documentation submitted by housing or service providers, social workers, hospital staff, or police when making referrals on behalf of victims.

Giving the paramount importance of protecting homeless families and children, we respectfully urge HUD to take into account the considerations described above that especially affect survivors of domestic violence, dating violence, sexual assault, and stalking and their families.

Thank you for considering these comments. Please contact Vania Leveille at 202 715-0806 or vleveille@dcacclu.org if you have further questions.

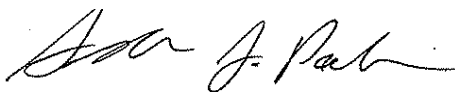
Sincerely,



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