



March 12, 2009

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street, SW, Room 10276
Washington, DC 20410-0500

Re: Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Proposed Delay of Effective Date, Docket No. FR-4998-N-03

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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 delay in effectuating the final rule on "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs." Because of the impact of the January 27, 2009 rule, Docket No. FR-4998-F-02, on the housing of victims of domestic violence, dating violence, stalking, and trafficking, we support delaying its effective date to give HUD an opportunity to review the regulations in their entirety.

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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 Women's Rights Project 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.

In 2007, HUD published a proposed rule outlining new requirements regarding Social Security numbers (SSNs) and income verification for participants in HUD's public and assisted housing programs. 72 Fed. Reg. 33,844 (June 19, 2007). On January 27, 2009, HUD published a final rule, which made several changes to the June 2007 proposed rule and set an effective date of March 30, 2009. 74 Fed. Reg. 4,832 (Jan. 27, 2009). Most recently, pursuant to the Chief of Staff "Regulatory Review" memorandum of January 20, 2009, HUD issued a notice proposing to delay the effective

date for sixty days and solicited comments on the contemplated delay and on the rule generally. 74 Fed. Reg. 6,840 (Feb. 11, 2009).

We appreciate this opportunity to comment on the January 2009 rule. While the rule touches on many issues of interest to the ACLU, including technology and privacy rights, this letter focuses solely on survivors' access to federally subsidized housing. Our comments highlight the impact of this rule on survivors of domestic violence, dating violence, stalking, and trafficking and their children, particularly 1) mixed families that include survivors of violence who do not have SSNs; 2) trafficking victims who do not have SSNs; and 3) battered qualified aliens. HUD should delay the effective date and review the January 2009 rule in order to take into account the housing needs of these survivors.

- 1) HUD should incorporate the February 11, 2009 notice's clarification regarding mixed families into any final rule, so as to ensure vital housing for battered immigrants and their families.

In the February 11, 2009 notice, HUD addressed the applicability of the January 2009 rule to mixed families. It said:

HUD wishes to clarify that these requirements are not intended to apply to individuals, in mixed families, who do not contend eligible immigration status under HUD's noncitizens regulations, nor does it interfere with existing requirements relative to proration of assistance or screening for such families, or authorize their eviction or denial of admission on the basis of the new requirements pertaining to obtaining social security numbers.

74 Fed. Reg. 6,840. We commend HUD for clarifying that SSNs will not be required of all household members in mixed families. Any contrary interpretation would have a devastating impact on the many mixed families currently ineligible for a housing subsidy based on immigration status, including families impacted by domestic violence.

For battered immigrants, maintaining mixed families' eligibility for housing programs will further the federal goal of ending domestic violence. Federal law and regulations are aimed at severing the connection between domestic violence and homelessness. "Congress and the Secretary of Housing and Urban Development have recognized in recent years that families experiencing domestic violence have unique needs that should be addressed by those administering the Federal housing programs." 42 U.S.C. § 14043e(12). Since 1994, the Violence Against Women Act (VAWA) has included special protections for immigrant domestic violence victims in response to their vulnerability to abuse. Pub. L. 103-322, Stat. 1902-1955 (Sept. 13, 1994); H.R. Rep. No. 395, 103rd Cong., 1st Sess., at 26-27 (1993). Disqualifying a family based on one member's lack of a SSN will result in the homelessness of immigrant domestic violence victims and their children, or force some victims to return to abusive partners.

HUD has acknowledged the compelling housing needs of battered immigrants. In its Public Housing Occupancy Guidebook, HUD refers to situations where domestic violence occurs in a mixed family, leaving a victim without an eligible immigration status vulnerable to homelessness. HUD, *Public Housing Occupancy Guidebook* 219 (2003). HUD recommends that PHAs refer these victims to other agencies to explore possible immigration remedies. *Id.* HUD also authorizes PHAs to provide a subcategory of admissions preference for battered immigrants who are in the process of obtaining qualified alien status. *Id.* For victims who have family members, such as U.S.-born children, who are eligible for federal housing programs, continuing to allow subsidies for mixed families is a necessary component in ending the cycle of violence for immigrants.

Accordingly, we appreciate HUD's February 11, 2009 clarification regarding mixed families and recommend that this clarification be codified in any regulations that HUD issues. In particular, sections 5.216, 5.516, and 5.518 of the January 2009 rule must be corrected. HUD should also withdraw the supplementary information from the January 2009 rule that implies that mixed families will no longer be permitted. Such language can be found in the section where HUD lists the changes between the January 2009 rule and the June 2007 proposed rule, as well as throughout HUD's discussion of public comments it received about the 2007 proposed rule. 74 Fed. Reg. 4,832-4,838 (sections III and IV). For example, the supplementary information seems to suggest that every household member must provide a SSN in order for the family to be admitted and that pro-rata rental assistance will not be permitted. This discussion is confusing and could lead to illegal denials and terminations of assistance.

2) HUD should accommodate trafficking victims who qualify for public and subsidized housing programs but do not have Social Security numbers.

Victims of trafficking are eligible for federal housing programs, regardless of their immigration status. 22 U.S.C. § 7105(b). However, the January 2009 rule could exclude some trafficking victims from federal housing programs if they do not have a SSN. The U.S. Department of Health and Human Services Office of Refugee Resettlement ("ORR") has the authority to certify victims who are willing to assist in the prosecution of a severe form of trafficking in persons as eligible for federal benefits, notwithstanding their immigration status. Office of Refugee Resettlement, State Letter #01-13, Trafficking Protections Act of 2000, available at <http://www.acf.hhs.gov/programs/orr/policy/sl01-13.htm>. Yet many victims who are certified by ORR are not immediately eligible for a work permit, which is a condition for a regular work SSN, and thus could face housing denial or eviction pursuant to the January 2009 rule. These victims may have applied for a T-visa for trafficking victims, but are awaiting work authorization because of immigration processes and delays, or they may not seek to stay in the U.S. beyond the prosecution of their traffickers. HUD should continue to allow subsidized housing to be provided to trafficking victims who lack SSNs. Strict application of the SSN requirement in these cases would result in denying benefits to victims who are clearly eligible for housing benefits under federal law.

3) HUD should recognize that battered immigrants who are “qualified aliens” under section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1641, are eligible for public and subsidized housing programs.

In issuing any final rule, HUD should also clarify the eligibility for federal housing programs of immigrants who are “qualified aliens,” including battered qualified aliens. Many battered immigrants, who are in the process of regularizing their immigration status through VAWA and are qualified aliens eligible for other federal benefits, have been denied housing benefits they desperately need to escape abuse. These are a few examples:

- In Massachusetts, a PHA sought to terminate a Section 8 voucher after an immigrant domestic violence victim obtained an order of protection against her U.S. citizen husband, excluding him from the home. The PHA stated that the wife’s pending VAWA self-petition did not confer any status that would make her eligible for a subsidy, and that because her U.S. citizen child was a minor, neither of them could be the new head of household.
- In Virginia, a VAWA self-petitioner living in a transitional housing program for domestic violence victims was eligible for housing assistance for only one of her three children, a U.S. citizen. She had not yet received work authorization and thus faced the daunting prospect of paying the pro-rated rent for herself and her two other children.
- In New York, a 60-year-old VAWA self-petitioner who had been choked and raped by her U.S. citizen husband, and was considered ineligible for federal housing programs because of her immigration status, ended up in substandard, illegal housing. She eventually returned to her country of origin, despite serious health concerns, because she was unable to locate stable housing.
- In California, a VAWA self-petitioner managed to find safe housing through the Section 8 program after fleeing her home with her two children, and moving repeatedly after her physically abusive husband located her. However, because the PHA concluded that she was ineligible for a subsidy for herself, her rent portion increased from \$105 to \$505 per month. She was unable to pay the larger amount and was forced to relocate her family yet again.

These domestic violence victims, all VAWA self-petitioners, should be deemed eligible for federal housing programs under prevailing law. Battered immigrant qualified aliens, which include VAWA self-petitioners, were made statutorily eligible to receive federal benefits as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996. 8 U.S.C. § 1641(c). In 2003, Congress directed HUD and the Justice Department to interpret housing statutes consistently with immigration and public benefits statutes so that qualified alien battered immigrants would be eligible for federally subsidized housing. H.R. Rep. No. 108-10, 108th Cong., 1st Sess. 476, 1495 (Feb. 12, 2003). In May 2005, the U.S. Department of Homeland Security complied with Congress’ directive by issuing a letter informing HUD how to process immigration status verifications of battered immigrant qualified aliens.


Despite Congress' instruction and Homeland Security's letter, there has been no further progress on this issue, and qualified alien battered immigrants continue to be denied housing benefits that are necessary to escape abuse. Those who are unable to access public or assisted housing are often forced to return to their abusers or become homeless. HUD must inform all programs administering federally subsidized housing that battered immigrant qualified aliens are statutorily eligible to receive housing benefits.

Thank you for considering these comments. Please feel free to contact Vania Leveille, legislative counsel at the ACLU Washington Legislative Office at (202) 715-0806 or vleveille@dcaclu.org, if you have any further questions.

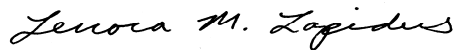
Sincerely,



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