

VIA MAIL AND EMAIL

November 9, 2010

Leroy McKinney, Jr.
Departmental Reports Management Officer, QDAM
Department of Housing and Urban Development
451 7th Street, SW.
Room 4178
Washington, DC 20410-5000

RE: Docket No. FR-5383-N-16: Notice of Submission of Proposed Information Collection to OMB; Certification of Domestic Violence, Dating Violence, or Stalking

Dear Mr. McKinney,

On behalf of the National Housing Law Project, American Civil Liberties Union, National Network to End Domestic Violence, and the Sargent Shriver National Center on Poverty Law, we respectfully submit the following comments to the Department of Housing and Urban Development (HUD) on its proposed information collection requirement regarding certification of domestic violence, dating violence, and stalking. During the past four years, our organizations have worked with advocates, owners, and public housing agencies (PHAs) nationwide to implement the housing provisions of the Violence Against Women Act (VAWA). Our recommendations focus on clarifying the language of the form and ensuring that its language reflects VAWA's statutory intent. At the end of this document we have included our proposed amendments in track changes format.

1. List “domestic violence, dating violence, or stalking” consistently throughout the form.

We suggest that the terms “domestic violence, dating violence, or stalking” be used consistently throughout the form. Currently, the form does not list dating violence or stalking in the “To Be Completed” section, or the confidentiality paragraph at the end of the form. Consistent inclusion of dating violence and stalking is not burdensome and will ensure that Form 50066 and the VAWA housing protections are understood to apply to victims of all three categories of abuse.

2. Clarify that housing providers are not required to obtain documentation of domestic violence, dating violence, or stalking.

The form should make clear that an owner, manager, or PHA is not required to request that an individual complete the form to be protected by VAWA. The statute provides that the owner or PHA may provide benefits to an individual based solely on that individual's statement or other corroborating evidence. *See* 42 U.S.C. § 1437f(ee). In some circumstances, the owner or PHA may already know that the individual is a victim prior to the relevant incident, obviating the need to request additional documentation or certification. The form should also make clear that

housing providers have discretion to extend the 14-business-day deadline for providing documentation. *See* 42 U.S.C. § 1437f(ee).

3. Clarify that a housing provider may only request documentation in actions involving denials of housing, terminations of tenancy, or terminations of housing assistance.

The form should clarify to housing providers that it only be used in actions involving denials of housing, terminations of tenancy, or terminations of housing assistance. *See* 42 U.S.C. § 1437f (ee)(1)(A); 24 C.F.R. § 5.2007(a). The certification form is not a routine form required in any instance in which domestic violence, dating violence, or stalking occurs. We propose clarifying in the narrative that certification may be requested of an individual only in response to a specific prospective eviction, termination action, or denial of housing that is potentially related to domestic violence, dating violence, or stalking.

4. Clarify who may complete and/or submit the form.

Form 50066 states, “A family member must complete and submit this certification, or the information that may be provided in lieu of the certification, within 14 business days of receiving the written request for this certification by the PHA, owner or manager.” This suggests that only a family member may complete and submit the certification. In other words, the language of the form casts doubt on whether the tenant herself or himself is permitted to complete and submit the certification. It also improperly suggests that only a family member may assist an individual in completing the form, when of course an individual should be permitted to rely on the assistance of any third party in completing or submitting the certification. Indeed, such third-party assistance, whether from family members or others, may be of particular importance for individuals with disabilities or limited English proficiency.

For these reasons, we suggest that Form 50066 be revised to state, “This certification, or the information that may be provided in lieu of this certification, must be completed and submitted within 14 business days of receiving the written request for this certification by the PHA, owner or manager. A tenant, family member, or lawful occupant who needs or wants help in filling out or turning in the form may rely on the help of any other person.”

If the suggested language is not used, Form 50066 should otherwise be revised to state in clear, simple, highly visible language that would be easily understood by persons with a low reading level or limited English proficiency that anyone who needs help with the form is permitted and encouraged to seek that help.

5. Provide definitions of domestic violence, dating violence, and stalking.

Housing providers, applicants, and tenants often have questions regarding what types of conduct constitute domestic violence, dating violence, or stalking. As a result, it would be helpful to include the statutory definitions of these terms as they are found in VAWA. *See* 42 U.S.C. §§ 13925(a), 1437f(f)(10).

6. Update and highlight the confidentiality protections.

Currently, a paragraph describing the confidentiality provisions appears at the end of Form 50066, below the space for the victim's signature. We recommend placing the confidentiality provisions in bold type and moving them to the top of the form. Highlighting the confidentiality protections in these ways would enable a recipient of the form to learn immediately that any disclosures would be kept private and possibly influence his or her decision to complete the form.

We also recommend updating the confidentiality provisions so that they are consistent with HUD's recently published VAWA final rule. The final rule clarifies VAWA's confidentiality provisions and states that housing providers shall not allow their employees to have access to documentation of domestic violence, dating violence, or stalking unless explicitly authorized by the housing provider. HUD Programs, Violence Against Women Act Conforming Amendments, 75 Fed. Reg. 66,246, 66,259 (Oct. 27, 2010) (to be codified at 24 C.F.R. § 5.2007(b)(4)). This new language should be included in the form.

7. Revise the language regarding the consequences for failing to timely submit proof of domestic violence, dating violence, or stalking.

Currently, the language in the certification form regarding the consequences of failing to timely submit proof of domestic violence, dating violence, or stalking does not match VAWA's statutory language or HUD's VAWA final rule. VAWA states that if a family member does not timely provide proof, "nothing . . . may be construed to limit the authority of an owner or manager to evict, or the public housing agency or assisted housing provider to terminate voucher assistance for, any tenant or lawful occupant that commits violations of a lease." 42 U.S.C. § 1437f(ee)(1)(B). The preamble to HUD's VAWA final rule states that if an individual is unable to provide documentation, the PHA, owner, or management agent must provide an opportunity for an informal review or an informal hearing prior to ultimate denial of protection under VAWA. 75 Fed. Reg. at 66,253. In contrast, the form currently states that if a family member fails to provide proof, "none of the protections afforded to victims of domestic violence, dating violence, or stalking . . . apply." Unlike the statute and the final rule, the form does not clearly address the authority of an owner or manager in cases where proof is not provided. To avoid confusion and ensure that the form is consistent with statutory intent, we recommend amending the form's language to reflect the language of the statute.

8. Shorten the proposed expiration date of the certification form from three years to eighteen months.

HUD's paperwork reduction act submission states that HUD is requesting an expiration date that is three years from the date on which the certification form is approved. Due to the likelihood that VAWA will be reauthorized sometime during the next 12 months, we recommend that HUD seek an expiration date of 18 months. Following VAWA's reauthorization, it is possible that the Act's housing protections will be amended. As a result, it may become necessary to revise the certification form once VAWA is reauthorized. We encourage HUD to adapt the form to reflect any new or amended housing protections enacted as part of the reauthorization. For example,

several advocates have suggested that the housing protections cover victims of sexual assault in addition to victims of domestic violence, dating violence, or stalking. If such an amendment is enacted, it should be reflected in the certification form so that sexual assault victims know that they can use this document.

Thank you for the opportunity to submit these comments. We appreciate HUD's efforts to improve the housing security of survivors of domestic violence, dating violence, and stalking. If you have any questions, please contact Meliah Schultzman of the National Housing Law Project at 510-251-9400 x. 3116 or mschultzman@nhlp.org.

Sincerely,

National Housing Law Project
American Civil Liberties Union
National Network to End Domestic Violence
Sargent Shriver National Center on Poverty Law

CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0249
Exp. (11/30/2010)

Public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. Information provided is to be used by PHAs and Section 8 owners or management agents to request a tenant to certify that the individual is a victim of domestic violence, dating violence or stalking. The information is subject to the confidentiality requirements of the HUD Reform Legislation. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Purpose of Form: The Violence Against Women and Justice Department Reauthorization Act of 2005 protects qualified tenants, participants, and applicants, and family members of tenants, participants, and applicants, who are victims of domestic violence, dating violence, or stalking from being denied housing assistance, evicted, or terminated from housing assistance based on acts of such violence against them. In actions involving denials of housing, evictions, or terminations of housing assistance, a PHA, owner, or management agency may request in writing that an individual complete this certification.

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Use of Form: A family member must complete and submit this certification, or the information that may be provided in lieu of the certification, within 14 business days of receiving the written request for this certification by the PHA, owner or management agent. This certification, or the information that may be provided in lieu of this certification, must be completed and submitted within 14 business days of receiving the written request for this certification by the PHA, owner or management agent. A tenant, family member, or lawful occupant who needs or wants help in filling out or turning in the form may rely on the help of any other person. The owner, management agent, or public housing agency may extend the 14-business-day deadline at their discretion. The certification or alternate documentation must be returned to the person and address specified in the written request for the certification. If the family member has not provided the requested certification or the information that may be provided in lieu of the certification by the 14th business day or any extension of the date provided by the PHA, management agent and owner, none of the protections afforded to victims of domestic violence, dating violence or stalking (collectively "domestic violence") under the Section 8 or public housing programs apply. The PHA, management agent, or owner may evict or terminate voucher assistance for any tenant that commits violations of a lease, PHAs, owners, and management agents are not required to demand official documentation and, at their discretion, may rely solely on an individual's statement or other corroborating evidence.

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Note that a family member may provide, in lieu of this certification (or in addition to it):

- (1) A Federal, State, tribal, territorial, or local police or court record; or
- (2) Documentation signed by an employee, agent or volunteer of a victim service provider, an attorney or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence or stalking, or the effects of abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation.

All information provided to a PHA, owner or management agent relating to the incident(s) of domestic violence, including the fact that an individual is a victim of domestic violence shall be retained in confidence by a PHA, owner, or management agent. A PHA, owner, or management agent shall not enter the information into any shared database, allow employees to have access to such information unless explicitly authorized by the PHA, owner, or management agent, or disclose this information to any other entity or individual, except to the extent that such disclosure is (i) requested or consented to by the individual in writing; (ii) required for use in an eviction proceeding or termination of assistance; or (iii) otherwise required by applicable law.

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TO BE COMPLETED BY THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING:

Date Written Request Received By the Victim of Domestic Violence, Dating Violence, or Stalking, or the Victim's Family Member:

Name of the Victim of Domestic Violence, Dating Violence, or Stalking: _____

Name(s) of other family members listed on the lease _____

Name of the abuser perpetrator: _____

Relationship to Victim: _____

Date the incident of domestic violence, dating violence, or stalking occurred: _____

Time: _____

Location of Incident: _____

Name of victim: _____

Description of Incident:

[INSERT TEXT LINES HERE]

I hereby certify ~~under penalty of perjury~~ that the information that I have provided is true and correct and I believe that, based on the information I have provided, that I am a victim of domestic violence, dating violence or stalking and that the incident(s) in question are bona fide incidents of such actual or threatened abuse. I acknowledge that submission of false information relating to program eligibility is a basis for termination of assistance or eviction.

Signature _____ Executed on (Date) _____

~~All information provided to a PHA, owner or manager relating to the incident(s) of domestic violence, including the fact that an individual is a victim of domestic violence shall be retained in confidence by an owner and shall neither be entered into any shared database nor provided to any related entity, except to the extent that such disclosure is (i) requested or consented to by the individual in writing; (ii) required for use in an eviction proceeding or termination of assistance; or (iii) otherwise required by applicable law.~~

Definitions

Domestic violence. The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction ... or 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.
42 U.S.C. § 13925(a)(6).

Dating violence: The term “dating violence” means violence committed by a person—
(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
(i) The length of the relationship.
(ii) The type of relationship.
(iii) The frequency of interaction between the persons involved in the relationship.
42 U.S.C. § 13925(a)(8).

Stalking: The term “stalking” means—
(i) (I) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
(II) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
(ii) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to—
(I) that person;
(II) a member of the immediate family of that person; or
(III) the spouse or intimate partner of that person.
42 U.S.C. § 1437d(u)(3); 42 U.S.C. § 1437f(f)(10).

Immediate Family Member: The term “immediate family member” means, with respect to a person—
(i) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or
(ii) any other person living in the household of that person and related to that person by blood or marriage.
42 U.S.C. § 1437d(u)(4); 42 U.S.C. § 1437f(f)(11).

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