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RE: Docket No. FR-5037-N-51: Implementation of the Violence Against Women (VAWA) and Justice Department Reauthorization Act of 2005

To Whom It May Concern:

On behalf of the American Civil Liberties Union (ACLU), and its hundreds of thousands of members, activists, and fifty-three affiliates nationwide, we respectfully submit the following comments to the Department of Housing and Urban Development (HUD) on its proposed information collection requirement for the implementation of the Violence Against Women Act (VAWA). The ACLU is a national, nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals. Through its Women's Rights Project, the ACLU has long been a leader in the legal battles to ensure women's full equality. This commitment includes fighting for equal housing and employment 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 and employment opportunities for survivors of domestic violence and their children.

In an effort to address the ongoing housing crisis faced by survivors of domestic violence, VAWA 2005 included provisions that protect tenants and family members of tenants who are victims of domestic violence, dating violence, or stalking from being evicted or from having their housing assistance terminated based on acts of violence against them. The law requires HUD to produce a certification form for public housing authorities, owners, or management to collect information about incidents of domestic violence from victims seeking protection under VAWA. With this new form, domestic violence victims will be able to present documentation of their circumstances to housing officials in order to maintain housing for themselves and their families.

Our comments will focus on HUD's proposed "Sample Certification of Domestic Violence, Dating Violence, or Stalking" form and the "Certification of Domestic Violence, Dating Violence, or Stalking for

Protection under VAWA 2005” that accompanies it. These comments are outlined in two parts: the first portion addresses the certification form and the second addresses the accompanying narrative document.

Comments regarding the proposed “Sample Certification of Domestic Violence, Dating Violence, or Stalking”

HUD’s form is simple and clear and we applaud HUD for its work to date. However, we propose several clarifications that would make the form easier to use and more consistent with the statute.

First, we recommend that the form request that the eviction notice, notice of voucher termination, or description of incident which forms the basis for a possible eviction be attached to the form itself. Without such documentation of the incident which forms the basis for a possible eviction, attorneys, medical providers, and victim service providers will not know to what they are responding. Because they are attesting under penalty of perjury that the incidents described are bona fide incidents of abuse, this is very important.

In accordance with this, at the bottom of the form, language noting that the incidents forming the basis for eviction are “described above” should be changed to “described in the attached notice.”

Additionally, the form (and accompanying document, as discussed below) should make clear, as set forth in the statute, that a PHA or owner is not *required* to demand that an individual complete the form or produce any specific documentation to be protected by these provisions. It should indicate that at their discretion, a PHA or owner may provide benefits based on an individual’s statement or other corroborating evidence. This may allow PHAs and owners to reduce paperwork in appropriate situations.

Second, in the “to be completed by resident” portion of the form under “certification of violence,” the two options could be made more user friendly by removing the brackets from around “temporary or permanent restraining order” and “other” and deleting “(bracketed language is not in the statute),” as well as making minor grammatical changes. Temporary and permanent restraining orders are court records, so explicitly including them is statutorily permitted and may be helpful to persons completing the form.

Third, including “penalty of perjury” in the “to be completed by resident” portion of the form, conflicts with the statute. The statute makes a very clear distinction between the attestations to be made by residents and those to be made by professionals on the form, and only professionals are required to attest “under penalty of perjury.” Because this distinction is articulated in the statute and the resident is not required to sign under penalty of perjury, the form should not request that the resident do so.

See Violence Against Women Act and Department of Justice Reauthorization Act of 2005, Public Law 109-162, § 606(6) (codified at 42 U.S.C. § 1437f(ee)) (providing in relevant part that “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.”) (emphasis added).

Fourth, reference to the “foregoing” could be confusing for residents and professionals completing the certification form. We propose replacing that with “information I have provided.” This is also important because the statute states that the professionals are only attesting to “the professional’s belief that the incident or incidents in question are bona fide” and not to the veracity of the “to be completed by resident” section of the form. The phrase “information I have provided” makes this clear.

Fifth, the professional completing the form may want space to include a note about the situation. Lengthy information would not be appropriate, but we propose the inclusion of two lines at the bottom of the form (before the signature) and a note that additional information, as appropriate, may be added below.

Finally, professionals completing the form may find it useful to have the definitions of “domestic violence,” “dating violence,” “stalking,” and “immediate family” member readily available. The statutory definitions could be included on the back of the form, ensuring that anyone completing the form knows exactly how the crimes are defined, allowing them to more accurately attest to their belief that the incident forming the basis for eviction meets the statutory requirements of a bona fide incident.

Comments regarding the proposed “Certification of Domestic Violence, Dating Violence, or Stalking for Protection under VAWA 2005”

VAWA 2005 provides that a PHA or owner may request that a victim claiming protection under these provisions provide a “certification” form verifying the violence.

The Act is very clear that such certification may only be requested by an owner or PHA responding to the specific sections that provide that incidents of such violence and criminal activity directly related to such violence cannot be grounds for an eviction or termination action. *See Violence Against Women Act and Department of Justice Reauthorization Act of 2005, Public Law 109-162, § 606(6) (codified at 42 U.S.C. § 1437f(ee)) (“An owner, manager, or public housing agency responding to subsections (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(D), (o)(20), and (r)(5) of this section may request that an individual certify via a HUD approved certification form...”)* (emphasis added) & § 607(5) (codified at 42 U.S.C. § 1437d(u)) (“A public

housing agency *responding to subsection (1)(5) and (6)* may request that an individual certify via a HUD approved certification form...””) (emphasis added).

The document submitted to the Office on Management and Budget includes language that might suggest to owners or PHAs that they could request such certification for incidents of domestic violence, dating violence, or stalking that are not related to a potential eviction or termination action. It would clearly be illegal under the Act for an owner or manager to request a certification other than specifically in response to these provisions. The suggested revisions attached are intended to clarify that such certification may only be requested in response to a bona fide prospective eviction or termination that is (at least potentially) related to domestic violence, dating violence, or stalking.

It is also important that the document make clear that an owner, manager, or PHA is not required to request that an individual complete the form to be protected by the statute. The statute provides that the owner or PHA may provide benefits to an individual based on that individual’s statement or on other corroborating evidence. *See Violence Against Women Act and Department of Justice Reauthorization Act of 2005, Public Law 109-162, § 606(6) (codified at 42 U.S.C. § 1437f(ee))* (“Nothing in this subsection shall be construed to require an owner, manager, or public housing agency to demand that an individual produce official documentation or physical proof of the individual’s status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this section. *At their discretion, the owner, manager, or public housing agency may provide benefits to any individual based solely on the individual’s statement or other corroborating evidence.*”) (emphasis added) & § 607(5) (codified at 42 U.S.C. § 1437d(u)) (same, specifically with respect to public housing agencies).

Relevant credible evidence could include an approval notice or prima facie determination in a VAWA immigration case, medical records, or the victim’s own statement. Additionally, in some circumstances, the owner or PHA may already know that the individual is a victim prior to the relevant incident and there may be no need to request additional documentation or certification.

Additionally, we propose removing the reference to “sexual assault” and adding references to “territorial” and “tribal” police or court records in accord with the statutory language. *See Violence Against Women Act and Department of Justice Reauthorization Act of 2005, Public Law 109-162, § 606(6) (codified at 42 U.S.C. § 1437f(ee)) & § 607(5) (codified at 42 U.S.C. § 1437d(u)) and the Department of Justice Appropriations Authorization Act of 2005 (S. 3693) which makes technical corrections to PL 109-162 but has not yet been codified.*

Likewise, we propose adding additional statutory language regarding the confidentiality provisions so that owners and PHAs can better understand their responsibility to maintain this information in confidence. *See* Violence Against Women Act and Department of Justice Reauthorization Act of 2005, Public Law 109-162, § 606(6) (codified at 42 U.S.C. § 1437f(ee)) & § 607(5) (codified at 42 U.S.C. § 1437d(u)). The statement should include language that makes it clear that all information provided to the PHA or owner will be kept confidential and will not be entered into any shared database nor provided to any entity, without the written consent of the individual submitting the certification form.

Although this form has been developed to meet the statutory requirements specifically set forth in Sections 606 and 607 of VAWA, it is important to note that other forms of documentation may be appropriately considered by PHAs and owners in other contexts, such as transfer requests, admissions, or preferences for access to housing.

Thank you for your consideration of these comments.

Sincerely,



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