

HOUSING JUSTICE

National Housing Law Project

Newsletter December 2009

HUD Proposed Rule Could Affect Battered Immigrants

On October 15, 2009, the Department of Housing and Urban Development (HUD) published a proposed rule designed to obtain Social Security Numbers (SSNs) from residents of HUD-assisted housing. The proposed rule was published at 74 Fed. Reg. 52,931. It would dramatically alter existing regulations to require SSNs and other documents from assisted housing applicants and participants. This could threaten housing security for many, including battered immigrants. The rule would apply to virtually all HUD-assisted permanent housing, including public housing, project-based Section 8, and Section 8 vouchers.

Background

The proposed rule is the result of nearly nine months of review by HUD of a final SSN rule it published on January 27, 2009. The review was prompted in part by public comments submitted by advocacy organizations, including several agencies that serve domestic violence survivors. These agencies were concerned that the January 27 final rule would result in denials of housing to significant numbers of battered immigrants who would be unable to produce the demanded documentation. HUD issued a notice delaying the effective date of the January 27 final rule until January 31, 2010. It is believed that HUD will finalize the October 15 proposed rule sometime before January 31, 2010, and that the proposed rule will likely replace at least some portions of the January 27, 2009 final rule.

Exceptions to SSN Disclosure Requirements

There are some exceptions to the proposed rule's SSN disclosure requirements. First, current residents would not be required to provide an SSN if they will be age 62 or older as of January 31, 2010, and their initial determination of eligibility for federally assisted housing was initiated before January 31, 2010. Second, participants who have previously submitted SSNs are exempt unless their SSN has been determined to be invalid, or the participant has obtained a new SSN.

Existing regulations provide that individuals who are applying for housing and have not been issued an SSN may file a certification to that effect, but they must disclose their SSN if they are assigned one later on. The January 27 and October 15 rules eliminate this certification process. They allow the application process to continue pending disclosure and documentation of SSNs, but preclude an applicant from moving from a waiting list to participant status without full disclosure and documentation of an SSN.

While somewhat unclear in its drafting, the proposed rule appears to state that if SSNs are not available for children under age 6, the children would be counted as members of the household during a 90-day period, and under certain circumstances, an additional 90 days, to give the family time to obtain the SSN and supporting documentation. Similarly, because of difficulties experienced by people who are homeless, applicants may be admitted to the Section 8 Moderate Reha-

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bilitation Single Room Occupancy (SRO) Program during a 90-day period and additional 90-day discretionary extension.

Treatment of Mixed Households Still Unclear

Importantly, the SSN disclosure requirements set forth in the October 15 proposed rule are not applicable to individuals who do not claim eligible immigration status. This is particularly crucial for so-called mixed households, which include some household members who have qualifying immigration status and some who do not. In their comments, advocates reminded HUD that the mixed-household option is critical for battered immigrants who do not have eligible immigration status for purposes of applying for federally subsidized housing, but have minor children or other household members who qualify.

The October 15 proposed rule is apparently intended to clarify the January 27 rule, which would have made verification of immigration status mandatory for all household members, including those not claiming eligible immigration status, and would have required all household members to produce certain types of documentation. The proposed rule's clarification that these documentation requirements do not apply to those who do not claim eligible immigration status reflects HUD's decision to advance this process in smaller steps. The October 15 notice states that any changes deemed necessary to the noncitizens requirements will be addressed in a separate rule.

SSN Verification

Currently, 24 C.F.R. § 5.216 provides that citizenship may be verified by submission of a valid SSN card issued by the Social Security Administration, or such other evidence of the SSN as HUD and, where applicable, the housing authority may prescribe in administrative instructions. The October 15 proposed rule would require: (i) A valid SSN card issued by the SSA; (ii) An original document issued by a federal or state government agency, which contains the name of the individual and the

SSN of the individual, along with other identifying information of the individual; or (iii) Such other evidence of the SSN as HUD may prescribe in administrative instructions. HUD states that this proposal to authorize reliance on the SSN documentation provided by other government agencies will address concerns raised about the difficulties experienced in obtaining SSNs.

Next Steps

HUD accepted comments on the October 15 proposed rule through November 16, 2009. HUD will consider these comments in developing a final rule that likely will supersede the January 27 rule. NHLP will provide an update on the status of the SSN rules and their potential impact on battered immigrants in a future issue of this newsletter. ■

HUD to Ensure Inclusion of LGBT Community in its Programs

The Department of Housing and Urban Development (HUD) recently announced an initiative to ensure that its housing programs are accessible to all, regardless of sexual orientation or gender identity. As part of this initiative, HUD will publish a proposed rule and will provide an opportunity for public comment. The proposed rule will clarify that the term "family," as used to describe beneficiaries of public housing and Section 8 voucher programs, includes lesbian, gay, bisexual, or transgender (LGBT) individuals and couples. The proposed rule will also require housing authorities and landlords that participate in HUD's subsidized programs to comply with local and state anti-discrimination laws that cover sexual orientation or gender identity. Further, the rule will specify that any FHA-insured mortgage loan must be based on the credit-worthiness of the borrower and not on unrelated factors such as sexual orientation or gender identity.

Additionally, HUD will commission its first-ever national study of discrimination against members of the LGBT community in the rental and sale of housing. ■

New HUD Form May Improve Communication Between Tenants and Housing Providers

A new Department of Housing and Urban Development (HUD) form will enable federally subsidized tenants to include an advocate or ally in any communication between the tenant and the housing provider. Form HUD-92006 allows applicants for public and federally assisted housing to submit the contact information of a third party whom the housing provider may contact in certain tenant-specified situations. This form may be particularly beneficial to survivors of domestic violence, dating violence, or stalking who are facing housing issues related to the acts of violence committed against them.

The form allows each housing applicant to submit the contact information for one or more persons or organizations, as well as the reason each person or organization may be contacted. Housing providers cannot require tenants who have not provided contact information to do so, and tenants may request to update, remove or change the information on the form at any time. Housing providers are urged to provide the form to residents at the time of their annual recertification to give them an opportunity to update, remove or change contact information. The housing provider must retain the contact information for as long the tenant is a resident and keep it confidential, releasing it only for certain purposes, such as to seek services or special care for tenants and to resolve tenancy issues.

Statistic of the Month

The National Domestic Violence Hotline saw a significant increase in calls in the third quarter of 2008 and found that 54 percent of victims surveyed reported a change in their household financial situation in the past year, with 64 percent stating that they believe the abusive behavior had increased over that period.

National Domestic Violence Hotline, Increased Financial Stress Affects Domestic Violence Victims, <http://www.ndvh.org/2009/01/increased-financial-stress-affects-domestic-violence-victims/>

Advocates should advise clients of the availability of the form. Those who are newly applying for federally assisted housing should receive the form as part of their application packet. Individuals who are already living in public and assisted housing can wait until their annual recertification process or can contact their housing provider to add the form to their files immediately.

Use of the form can potentially benefit survivors of domestic violence, dating violence, or stalking in emergency situations, such as where a tenant requires immediate assistance or where housing benefits are in danger of being terminated. Survivors must often keep their whereabouts confidential and frequently lack permanent, stable housing. The form will allow survivors to list, as a contact, a safe organization or person, such as a service provider, counselor or relative. This contact can safely relay information to the survivor and explain why the survivor may be unable to provide certain application information, such as employment, credit or tenancy history. Tenants with disabilities and persons with limited English proficiency may also find the form helpful. ■

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