

To: Lynn Rosenthal, White House Advisor on Violence Against Women
From: Rosie Hidalgo, JD, Director of Public Policy, Casa de Esperanza
Date: July 23, 2010
Re: Access to Transitional Housing for Survivors of Domestic Violence with
Undocumented Immigration Status

We would like to request your assistance in addressing critical issues that are impacting the ability of immigrants who are victims of domestic violence to access critical services. In particular, it has come to our attention that some transitional housing programs that receive federal funding through HUD are denying access to survivors of domestic violence based on their undocumented immigration status, contrary to applicable laws and regulations.

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), while limiting access to federal public benefits for certain categories of immigrants, also created exceptions considered “necessary for the protection of life or safety.” Congress specifically authorized the Attorney General to designate the kinds of government-funded community programs, services or assistance necessary to protect life or safety for which all immigrants, including undocumented immigrants, would continue to be eligible (8 U.S.C. 1611(b)(1)(D)). The Attorney General subsequently issued Final Order Number 2353-2001, 66 Fed. Reg. 3613-3616 (1/16/01) which specifies the types of federally funded programs for which all aliens remain eligible.

The Secretary of HUD at the time, Andrew Cuomo, issued a directive to HUD fund recipients, dated January 19, 2001, which provided further guidance based on the Order issued by the Attorney General. The letter stated that both emergency shelter and transitional housing programs are “necessary for the protection of life or safety” and that “[t]herefore, HUD-funded programs that provide emergency shelter and transitional housing for up to two(2) years, are to make these services equally available to all needy persons, including aliens who are not ‘qualified aliens’.”

At the outset of that letter in 2001, the HUD Secretary stated: “It has come to HUD’s attention that some agencies providing emergency shelter and transitional housing are not offering these services to battered immigrants. As we understand it, some agencies have been misinterpreting national policies which set forth the types of public benefits that are to be made available to all aliens, including those who have not established legal immigrant status.”

Unfortunately, we find ourselves in a similar situation in which it has come to the attention of national advocacy organizations for victims of domestic violence that a number of transitional housing programs around the country that receive HUD funds are misinformed or misinterpreting policies and have been denying services to survivors with undocumented immigration status. Furthermore, it appears that some local HUD officials are not aware of applicable law or of this directive issued by the HUD Secretary in 2001 which continues to be in effect, or are misinterpreting policies and thus are not ensuring compliance by HUD funding recipients.

An example of this situation was brought to our attention recently by a local community-based organization in Albuquerque, New Mexico, Enlace Comunitario, which works with victims of domestic violence. When an advocate from Enlace Comunitario referred a victim of domestic violence to the local transitional housing program funded by HUD she

was initially told that even though there was space in the program, they would not accept the referral since that victim was a monolingual Spanish speaker. She was informed in writing by the transitional housing program that their one Spanish-speaking case manager had a full load and the other case managers did not speak Spanish. Even when the advocate from Enlace Comunitario offered to assist with interpretation and co-advocacy, the transitional housing program refused to allow that domestic violence victim access to their transitional housing program. The Director of Enlace Comunitario wrote a letter to the transitional housing program letting them know that their action could be considered a violation of Title VI of the Civil Rights Act and Executive Order 13166, prohibiting national origin discrimination and requiring all recipients of federal funds to ensure meaningful access to individuals with Limited English Proficiency (LEP).

The transitional housing program director responded by saying that she believed her program to be in compliance with Title VI and that furthermore they had decided to review the criteria for access to the transitional housing program and had now put in place more restrictive criteria for undocumented immigrants. Those criteria, similar to the ones in use by another HUD-funded transitional housing program in Albuquerque, deny access to undocumented immigrants if they are not in the process of filing to adjust their immigration status.

A meeting was convened by the CPD Field Office Director of HUD office in Albuquerque, Frank Padilla, on May 28, 2010 to address these issues, in which the director of Enlace Comunitario and the directors of the two HUD-funded transitional housing programs were present. Claudia Medina, the Director of Enlace Comunitario, also wrote a letter, dated June 2, 2010, to Mr. Padilla outlining the pertinent issues (a copy of which is attached).

The response letter sent by Mr. Padilla on July 1, 2010, stated that: "We are currently awaiting the official response to our inquiry from HUD-CPD Headquarter as of yet." (See copy attached). However, he goes on to state that PRWORA applies to the HUD "Shelter plus Care assistance" programs and then cites the "steps for determining if an immigrant is a qualified alien". In so doing, he completely fails to acknowledge and apply the Attorney General Order and the directive that was issued by Andrew Cuomo to HUD funding recipients on January 19, 2001, setting forth the special protections within PRWORA for undocumented immigrants who are victims of domestic violence to ensure that they are able to access services critical for the protections of life or safety, including shelters and transitional housing for up to two years.

Additionally, Mr. Padilla refers Ms. Medina to consult the HUD Supportive Housing Program desk guide for more specific program guidance and provides a link: www.hudhre.info/documents/SHPDeskguide.pdf. However, the desk guide, on page 18 has a section on "Specific Guidance on Serving Persons Who May be Illegal Aliens" and it states that Supportive Housing program is exempt from PRWORA because it is "necessary for the protection of life or safety". As stated in the desk guide: "SHP transitional housing has been determined to be excepted because it provides short-term shelter or housing assistance, non-cash services at the community level, and is not means- tested."

Since they the HUD Field Office is still awaiting guidance from HUD headquarters, we would greatly appreciate your assistance in reaching out to individuals at HUD to ensure that they send guidance to the field letting them know that the prior HUD directive from

Secretary Cuomo and the Order from the Attorney General regarding the proper implementation of PRWORA to provide access to services necessary to protect life or safety for undocumented victims of violence are still in effect. Additionally, organizations that receive HUD funds should not be permitted to put in place additional restrictive criteria requiring verification of employment eligibility or other such criteria when these criteria have the effect of denying access to undocumented immigrant women whom Congress specifically sought to protect when PRWORA was enacted.

This example in New Mexico is but one example, but we are hearing about similar situations with transitional housing programs in other parts of the country and would appreciate your assistance and that of the Inter-Agency task force to ensure access to shelters and transitional housing to all persons without regard to immigration status.