

May 16, 2012

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Dear Secretary Donovan:

We are writing to urge you to issue a proposed regulation as soon as possible regarding sexual harassment and other types of harassment covered by the Fair Housing Act, and to finalize that regulation by the end of this year.

As you likely know, on November 13, 2000, HUD published a proposed regulation outlining the application of the Fair Housing Act to acts of sexual harassment in the housing context. However, HUD never issued a final regulation.

HUD's failure to issue a regulation governing this important topic is extremely unfortunate. Sexual harassment in housing is a very common subject of complaints and litigation. Just last week, the U.S. Department of Justice announced a settlement of a fair housing case involving sexual harassment in which the defendants agreed to pay more than \$2 million to victims of sexual harassment.¹ It is reportedly the largest recovery by the Civil Rights Division in a sexual harassment in housing case. In its complaint, the Justice Department alleged that a superintendent of properties in New York City had sexually harassed female tenants by attempting to enter their apartments and demanding sex, subjecting them to unwanted verbal sexual advances, demanding sexual favors in return for housing benefits and taking adverse action against women who refused to comply with his demands.²

Over the years, several court decisions have established the contours of the law, relying in large part on sexual harassment law developed in the fair employment context under Title VII of the 1964 Civil Rights Act.³ Yet there is a longstanding need for a HUD

¹ "Manhattan U.S. Attorney Recovers \$2 million for Victims of Alleged Sexual Harassment by Landlord," May 9, 2012, United States Attorney's Office, Southern District of New York.

² *Id.*

³ See, e.g., *Shellhammer v. Llewellyn*, Fair Housing Fair Lending Report., para 15742 (W.D. Ohio 1983), *aff'd* 770 F. 2nd 167 (6th Cir. 1985) (unpublished); *Krueger v. Cuomo*, 115 F. 3rd 487 (7th Cir. 1997); *Honce v. Vigil*, 1 F.3d 1085 (10th Cir. 1993); *Henson v. City of Dundee*, 682 F. 2d 897(11th Cir. 1982); *HUD v. Kogut*, HUDALJ 09-93-1245-1 (April 17, 1995); *Beliveau v. Caras*, 873 F. Supp. 1393, 1397 (C.D. Cal. 1995); *Williams*

regulation to establish HUD's position on sexual harassment in housing and to do so with clarity. Indeed, in a 1996 case, *DiCenso v. Cisneros*, 96 F.3d 1004 (7th Cir. 1996), the Seventh Circuit noted that it could not defer to HUD's interpretation of a hostile housing environment -- under the agency deference doctrine set forth in *Chevron U.S.A. Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) -- because, unlike the Equal Employment Opportunity Commission, which *had* issued guidelines defining sexual harassment as a form of sex discrimination, "HUD has not even enacted guidelines regarding hostile housing environment sex discrimination." (96 F.3d at 1007) There is no question but that firm administrative guidance is long overdue to provide housing providers and fair housing enforcers critical information about the application of the fair housing law to sexual harassment. As HUD's 2000 proposed regulation noted, "the Department's current Fair Housing regulations do not address the standards to be applied in cases of sexual harassment."⁴ In 2012, when civil rights laws have recognized sexual harassment as a form of discrimination based on sex for decades, it is simply unconscionable that the Department has no position on sexual harassment.

Sexual harassment in housing is pervasive, and it affects our nation's most vulnerable populations. A survey of rape crisis centers and legal services providers found that 58% of them had received at least one report from a tenant who was sexually assaulted by a landlord, property manager, or property owner.⁵ Many sexual harassment cases involve tenants living in subsidized or affordable housing who cannot pay market rates for housing and must choose between being harassed or being homeless. Landlords and their agents have repeatedly targeted single, low-income mothers for sexual harassment, since these tenants are less likely to report incidents of harassment.⁶

Many incidents of sexual harassment at home go unreported for various reasons. Low-income women are often reluctant to report incidents of sexual harassment by landlords

v. Poretsky Mgm't, 955 F. Supp. 490 (D. Md. 1996); *New York ex rel. Abrams v. Merlino*, 694 F. Supp 1101 (S.D.N.Y. 1988); *Reeves v. Carrollsburg Condominiums*, 1997 U.S. Dist. LEXIS 21762 (Dec. 18, 1997); *United States v. Koch*, 352 F. Supp. 2d 970 (D. Neb. 2004).

⁴ Fair Housing Act Regulations Amendments Standards Governing Sexual Harassment Cases, Department of Housing and Urban Development, 24 CFR Part 100, Federal Register, November 13, 2000.

⁵ Theresa Keeley, *Landlord Sexual Assault and Rape of Tenants: Survey Findings and Advocacy Approaches*, 40 CLEARINGHOUSE REV. 441 (2006).

⁶ See, e.g., Press Release, U.S. Dep't of Justice, Justice Department Obtains Record \$1.1 Million Verdict in Sexual Harassment Case Against Landlord in Kansas City, Missouri (May 13, 2004) (noting that most of the victims in a sexual harassment case were lower-income, single women who had limited opportunities to seek other housing); Press Release, Fair Hous. Advocates Ass'n, Jury Awards \$31,452 in Sexual Harassment Case (May 14, 2002) (noting that a single mother delayed reporting incidents of sexual harassment because she did not want to risk homelessness).

because of risk of eviction, blacklisting, or retaliation from homeowners and landlords.⁷ That landlords are often the perpetrators of sexual harassment and hold a key to a home makes reporting abuses especially dangerous for women and families. By issuing a final rule on sexual and other forms of harassment in housing, HUD can provide an educational tool for vulnerable populations more effectively to avoid and report harassment at home by landlords and homeowners.

The Fair Housing Act covers harassment not only against women but against all protected classes. Private fair housing organizations across the country report abusive behavior constituting harassment against women and others within protected classes. In 2011, these organizations reported that of all harassment complaints, 44.7 percent were based on race; 18.5 percent were based on sex; 15.2 percent were based on disability; and 10.9 percent were based on familial status.⁸ Members of the LGBT community have also been victims of harassment in housing because of sex and familial status discrimination which motivated the Department to issue its groundbreaking rule, *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity*, 77 Fed. Reg. 5662 (2-3-12). It only makes sense for the Department to continue this critical work by issuing a final regulation that explains why the Fair Housing Act prohibits harassment against all protected groups, including sexual orientation and gender identity to the maximum extent possible in compliance with HUD's most recent guidance and rulemakings.⁹

The high incidence of racial harassment in housing is intolerable. Almost forty-five years after the passage of the Fair Housing Act, our neighborhoods are still largely segregated and when efforts to integrate a community or apartment complex are undertaken by racial and ethnic minorities, they are still often met with resistance, which can take the form of egregious and sometimes violent racial harassment.

In addition, better documentation of persistent harassment on the basis of disability also warrants HUD's attention. Spurred by the 1998 murders of Matthew Shepard and James Byrd, Jr., Congress enacted the Hate Crimes Prevention Act of 2009 (HCPA).

⁷ Maggie E. Reed, Linda L. Collinsworth & Louise F. Fitzgerald, *There's No Place Like Home: Sexual Harassment of Low-Income Women in Housing*, PSYCHOL. PUB. POL'Y & L. 439, 440 n.2 (2005).

⁸ *Fair Housing in a Changing Nation; 2012 Fair Housing Trends Report*, National Fair Housing Alliance, April 30, 2012, 10.

⁹ Memorandum from John Trasviña to FHEO Regional Directors, *Assessing Complaints that Involve Sexual Orientation, Gender Identity, and Gender Expression* (June 2010), http://www.fhco.org/pdfs/news/NEWS_HUDmemoSexOrient06152010.pdf. See also *Macy v. Holder*, E.E.O.C. Appeal No. 0120120821 (Apr. 23, 2012) clarifying that harassment based on actual or perceived gender identity is a prohibited form of sex discrimination under Title VII.

While prior federal law covered violent crimes motivated by racial and religious bias, the HCPA extended protection to targets of gender, sexual orientation, gender identity, and disability-based bias crimes. The law was based on a wealth of data, including a Department of Justice report that, as of 2007, the age-adjusted rate of nonfatal violent crime against persons with disabilities was 1.5 times higher than the rate for persons without disabilities, and individuals with disabilities had an age-adjusted rate of rape or sexual assault that was more than twice the rate for persons without a disability.¹⁰

The benefits of such a rule for victims of harassment would clearly far outweigh any minimal costs to HUD, HUD's partners including public housing authorities, HUD grantees, and every American neighborhood. This regulation, in fact, would stretch far beyond the reach of HUD programs and work to protect women and many other protected groups nationwide. A harassment regulation and its implementation will make the rules clearer for everyone, including landlords, residents and administrators. This in turn will reduce administrative burdens for public housing authorities and the housing industry as a whole by reducing uncertainty and abuses that result from the absence of effective training and supervision.

The absence of such a regulation is part of the unfinished civil rights business of this Department. We urge the Department to do everything within its power to protect women and others from harassment and to ensure that women's rights are fully enforced when it comes to housing.

Please feel free to contact Shanna Smith at (202) 898-1661 to discuss this in more detail. We are also happy to meet with you in the near future about this.

Sincerely,

African American Ministers in Action
American Association of University Women
The Arc of the United States
Bazelon Center for Mental Health Law
A Better Balance
Consortium of Citizens with Disabilities - Housing Task Force
Family Equality Council
Hadassah, The Women's Zionist Organization of America, Inc.

¹⁰ Bureau of Justice Statistics, Special Report, *National Victimization Survey: Crime Against People with Disabilities, 2007* (Rand & Harrell, 10/2009, NCJ 227814), p. 1.

Human Rights Campaign
Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
Mental Health America
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Alliance to End Sexual Violence
9to5, National Association of Working Women
National Center for Transgender Equality
National Coalition Against Domestic Violence
National Council of Jewish Women
National Council of La Raza
The National Council on Independent Living
National Disability Rights Network
National Fair Housing Alliance
National Gay and Lesbian Task Force
National Housing Law Project
National Low Income Housing Coalition
National Organization for Women
National Women's Conference Committee
National Women's Law Center
NETWORK, A National Catholic Social Justice Lobby
People For the American Way
Poverty & Race Research Action Council
Turning Anger into Change
Union for Reform Judaism
Wider Opportunities for Women
Women's Law Project
YWCA USA