

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

January 19, 2001

Dear HUD Funds Recipient:

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.

Due to language, cultural and economic barriers, battered immigrants, particularly women and children, face extensive hurdles they must overcome in order to change their quality of life. Frequently, women and children who have displayed the courage to break the cycle of violence are penalized when benefits essential for rebuilding lives shattered by violence are withheld. Without securing emergency shelter and transitional housing, battered immigrants will be unable to successfully leave abusive homes.

Congress has recognized that certain services, such as emergency shelter and transitional housing, necessary to protect health and safety, should not be barred to individuals due to immigration status. In the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("the Act"), 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, will continue to be eligible (8 U.S.C. 1611(b)(1)(D)). Despite the Act's restrictions on immigrant access to public benefits, it explicitly guaranteed access for all persons without regard to immigration status for:

"programs, services, or assistance... specified by the Attorney General, in the Attorney General's sole discretion after consultation with the appropriate Federal agencies and departments, which (i) deliver in-kind service at the community level, including through public and private nonprofit agencies; (ii) do not condition the provision of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety."

Pursuant to the authority set forth under Sections 401(b)(1)(D) and 411(b)(4) of the Act, after consulting with other Federal agencies, including the U.S. Department of Housing and Urban Development, the Attorney General exercised this discretion in 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 Order specifically includes emergency and short-term shelter for victims of domestic violence and makes

these services available to battered immigrants, who because of their lack of legal immigration status, would otherwise be barred from participation in federal programs. Any programs to be exempted from requiring verification of immigration status under this provision of the Act must meet all three of the foregoing requirements.

The list of programs open to all individuals without verification of alien eligibility includes:

crisis counseling and intervention programs, services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence (Specification 4(a)); and short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused or abandoned children. (Specification 4 (b))

Both emergency shelter and transitional housing programs are necessary for the protection of life or safety." Transitional housing is by nature short-term and intended to be a step from emergency shelter to permanent housing. Therefore, 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". (as defined in Section 431 of the Act).¹ Two (2) years of transitional housing provides battered immigrants with emergency and short-term shelter, which gives them the opportunity to safely make the transition to freedom from their abusers. In addition, emergency and transitional housing will help to stabilize homeless families by providing basic needs and safety, which will prevent battered immigrants from returning to the homes of their abusers.

Accordingly, this policy directive clarifies that all programs administering HUD grants, which provide emergency shelter, transitional housing, short-term shelter and housing assistance to victims of domestic violence are deemed necessary, under the Order, for the protection of life and safety. Therefore, programs and services of this type that deliver in-kind services at the community level and do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources are to make their programs available to all persons without verification of citizenship, nationality or immigration status, as set forth in the Order, unless mandated to conduct such verification pursuant to federal, state, or local law other than the Act.

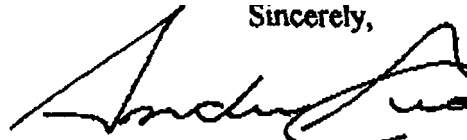
In accordance with the Federal guidelines outlined in the Attorney General's Order and in this policy directive, all recipients of HUD funding operating emergency shelters and transitional housing programs can provide services to all eligible persons.

It should be noted that even if your program does not meet the three-prong test for exempted status as set out in the Attorney General's Order, battered immigrants who are qualified aliens as defined in Section 431 of the Act are not barred from receiving "federal public benefits." Qualified aliens are not subject to the Act's bar on "Federal public benefits" to non-"qualified aliens."

Disregarding the Federal laws, guidance and directives that protect and preserve the legal rights of otherwise eligible battered immigrants, particularly women and children, to gain much needed access to emergency shelter and transitional housing may result in imposition of appropriate sanctions. Please contact the Office of Enforcement Discrimination Hotline at 1-800-669-9777, TDD at 1-800-927-9725, or on the Internet at www.hud.gov/hdiscrim.html to report any violations of this directive.

Recipients of HUD finds should also note that sections 432(d) of the Act, which provides that nonprofit charitable organizations are not required to verify the immigration status of applicants for federal, state or local public benefits, may be applicable to their programs. For more information about this exemption, see Department of Justice, Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41,662,41664 (1998) (to be codified at 8 C.F.R. pt. 104) (proposed Aug. 4, 1998).

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Cuomo", with a stylized flourish at the end.

Andrew Cuomo