



## M E M O R A N D U M

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**DATE:** June 11, 2009  
**TO:** Helen Kanovsky, HUD General Counsel  
**FROM:** Donald Saunders, Director of Civil Legal Services  
**RE:** Homeless Management Information System (HMIS) Confidentiality Issue under the Homelessness Prevention and Rapid Re-Housing Program

The National Legal Aid & Defender Association (NLADA) asks the Department of Housing and Urban Development (HUD) to work with us in resolving an issue related to client confidentiality that has surfaced around the Homeless Management Information System (HMIS) reporting requirement for the Homelessness Prevention and Rapid Re-Housing Program (HPRP) under the American Recovery and Reinvestment Act (ARRA). Some of our members seeking HPRP funds to provide legal services to help low-income people avoid homelessness are being mandated by the state or local authority administering ARRA funds to participate fully in the HMIS to receive the funds.

While it is clear under ARRA and under the March 19, 2009 HPRP Notice (Docket No. FR-5307-N01) that HPRP grantees must, *when appropriate*, use HMIS to provide data on the use of funds and persons served under ARRA, this requirement should not be read to require legal aid programs to release confidential information protected by the attorney-client privilege. As with HUD's housing counseling program, we firmly believe that the goals of the HMIS can be met by legal aid providers through appropriate protocols that protect client confidentiality.

The confidentiality issue around HMIS reporting is not new with respect to legal services grantees of HUD grant programs. Several years ago legal aid providers raised this issue with respect to the Housing Counseling Grants program, working with HUD to create workable protocols such as supplying aggregated data that gave HUD the information it needed to monitor program effectiveness while providing confidentiality protections. NLADA and the Legal Services Corporation have met in the past around the HMIS system but have not been able to reach a similar accommodation with regard to the Continuum of Care (CoC) system.

HUD has previously made an exception to full mandatory HMIS reporting in the context of domestic violence providers. Given the unique circumstances of their clients, domestic violence providers are not required to submit personal identifying client-level information to the CoC (see HUD *Homeless Management Information System (HMIS)*

*Fact Sheet*). Domestic violence providers can instead provide non-personally identifying information for reporting purposes. This protection in reporting is particularly important given that Legal Service Corporation grantees closed 44,719 domestic abuse cases in 2008, representing 14.5 percent of the family law caseload. And these numbers will likely increase due to the rise in domestic violence cases driven by the current economic climate.

As provided under the McKinney-Vento Act, HUD McKinney-Vento programs are required to participate in HMIS.<sup>1</sup> We are also aware that HUD issued HMIS guidance in its Data and Technical Standards Final Notice, 69 Fed. Reg. 45,887-45934 (July 30, 2004) and has since released a Revised Draft Notice of the HMIS Data Standards in April 2009. As noted in the Revised Draft Notice, HMIS Technical Standards related to privacy, security and other topics will be issued in a subsequent Notice.

NLADA recognizes the laudable goals of HMIS set forth by HUD and Congress. However, mandating the gathering of confidential information under the HPRP and other HUD grant programs funded through the stimulus holds the potential of creating impossible conflicts for the law firms assisting HUD in preventing homelessness through HPRP. By so doing, HUD might be preventing the participation of some of the most effective groups in the stimulus effort, the legal aid programs, in addressing the critical needs of the homeless, and potentially homeless, population.

HPRP funds are designed to assist program participants with housing stability and placement. Access to lawyers will be critical to a coordinated and comprehensive approach to this problem. Legal aid lawyers help in preventing illegal evictions or in addressing issues related to foreclosure and forfeiture of homes that are of increasing prevalence in this economy. Lawyers can also provide advice critical to allowing clients to assert their rights, advocate for them with landlords and government agencies and bring necessary litigation to vindicate their rights. In some instances lawyers help in getting additional time so that individuals who are going to have to move do not end up being evicted and having their property placed on the curb so that they not only have to find new housing, but have to reestablish a household from scratch. Housing counselors and other agencies working with people who are facing homelessness need to be able to work in a coordinated fashion with lawyers to address these and other legal issues that result in people losing their housing

**Therefore, NLADA urges HUD to consider the confidentiality issue as it revises the Technical Standards related to privacy, security and other topics and to exercise its rule-making power to implement the HMIS reporting requirement section in a way that Congress' intent does not override attorney-client privileges or professional responsibility rules.**

We appreciate your consideration of our request to resolve and provide guidance to the HMIS confidentiality issue for HPRP and other HUD programs under the stimulus affecting legal services providers. Please let me know if I can provide further information.

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<sup>1</sup> See section 416 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11375); see also section 1203 (f) providing mandatory participation in HMIS by emergency shelters and homelessness prevention and re-housing programs.