

# HOUSING JUSTICE

National Housing Law Project

Newsletter February 2011

## HUD Proposes Rules to Prevent Discrimination Based on Sexual Orientation and Gender Identity

The Department of Housing and Urban Development (HUD) has issued proposed regulations that would prohibit discrimination in federally assisted housing based on sexual orientation or gender identity. In announcing the rules, HUD cited a survey of more than 6,000 transgender people in which 19% reported becoming homeless because of bias based on their gender identity. Further, 11% were evicted from their homes for the same reason, according to the National Center for Transgender Equity and National Gay and Lesbian Task Force

HUD's proposed rules address three major areas: the definition of family; inquiries regarding sexual orientation or gender identity; and decision making in Federal Housing Administration (FHA) and HUD programs. These historic changes, affecting well over 4 million households, aim to ensure that people are not denied federally assisted housing or federally backed mortgages because of their sexual orientation or gender identity. The protections could be invaluable for ensuring access to housing for LGBT survivors of domestic violence, who often face discrimination based on membership in both protected groups.

Public comments on the rules are due March 25, 2011. The proposed rules are available online at <http://www.gpoaccess.gov/fr/> and were published at 76 Fed. Reg. 4194 (Jan. 24, 2011).

## Proposed Protections

HUD proposes to amend its regulations to include definitions of sexual orientation and gender identity. Sexual orientation would be defined as homosexuality, heterosexuality or bisexuality—the definition used by the Office of Personnel Management for the federal workforce. Gender identity would be defined as “actual or perceived gender-related characteristics,” the definition promulgated by the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act.

The new rules would prohibit an owner or operator of HUD-assisted housing from inquiring into the sexual orientation or gender identity of an individual or family. The rule would not prevent individuals from voluntarily identifying their sexual orientation or gender identity. As an exception, the rule would allow inquiries into one's sex where there are segregated sleeping or bathroom facilities (for example, some emergency shelters). The proposed rule does not address how this prohibition would affect the collection of data to determine whether housing providers are in fact discriminating on the basis of sexual orientation or gender identity. However, HUD is conducting its first national study examining discrimination against LGBT individuals in the rental or sale of housing.

HUD has proposed explicit prohibitions against discrimination in its programs. For example, FHA-insured lenders would be required to make determinations regarding the adequacy of a borrower's income without regard to the borrower's

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### Statistic of the Month

A 2007 study found that nearly 30% of same-sex couples were treated less favorably when attempting to buy or rent a home in Michigan.

Michigan's Fair Housing Centers, Sexual Orientation and Housing Discrimination in Michigan 9 (Jan. 2007)

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perceived sexual orientation or gender identity. Further, the proposed rules would clarify the already existing policy that HUD programs must use a broad definition of family when determining eligibility for admission, a definition that does not discriminate with regard to sexual orientation, gender identity or marital status. The new rules would also explicitly allow co-heads of families, an existing informal practice that allows two individuals to be equally responsible for the lease. This clarification would apply to all HUD programs, unless otherwise stated. Similar corrections and clarifications are made throughout other federal housing programs.

Finally, HUD would change forms as necessary to reflect the new definition of family. However, because the proposed rules prohibit inquiries into one's gender identity or sexual orientation, there would be no major amendments to existing forms.

### Conclusion

HUD's proposed regulations are vital to fighting discrimination against individuals based on their gender identity or sexual orientation. They are accompanied by an already increased effort to prohibit gender identity discrimination under the Fair Housing Act's (FHA) prohibition of discrimination based on sex, and the first nationwide study of discrimination against LGBT individuals in the rental and sale of housing. These are important steps in the effort to advance housing rights of LGBT individuals. ■

## Rental Payment History Now Part of Some Credit Reports

Experian, one of the three national credit bureaus, recently announced that it will incorporate positive rental payment history into its credit reports. The agency stated that its decision was based on the fact that one-third of the U.S. population rents, and it was imperative to reflect the creditworthiness of individuals who responsibly pay their rent. The inclusion of information regarding rental payment history could boost the credit profiles of some domestic violence survivors who have poor or no credit history due to financial abuse by their abusers, but who consistently pay their rent on time.

### Impact on Consumers

Up until recently, on-time rental payments were not included in an individual's credit score. According to Experian, "[p]ositive rental history will now help many renters who are looking for ways to rebuild their credit scores due to financial hardships." At this time, the credit bureau is reporting only positive rental information. In 2012, the credit bureau will add negative data, such as missed payments.

The new reporting will not affect all tenants. For now, Experian will only include information from RentBureau, a national network of 45 property management companies that covers about 8 million tenants.

The nation's three main credit bureaus, Experian, Equifax, and Transunion, compile credit reports. These reports contain information on what credit the consumer owes and the amount that is due. They also contain a summary of how many times any account has been delinquent by 30, 60, and 90 days and the dates of the most recent and severe delinquencies. Additionally, they list any accounts that have been turned over to collections agencies or for which there are court judgments against the consumer. ■

## Upcoming NHP Trainings

### "The Housing Protections of the Violence Against Women Act"

February 24

11 a.m. Pacific/1 p.m. Central/2 p.m. Eastern

This webinar will provide an overview of the housing protections of the Violence Against Women Act (VAWA). VAWA protects tenants in certain subsidized housing programs from being evicted or having their assistance terminated due to acts of domestic violence, dating violence, or stalking committed against them. We will discuss examples of cases in which VAWA's protections have been used. We will also discuss new VAWA regulations issued by the Department of Housing and Urban Development (HUD).

Register online at <https://www1.gotomeeting.com/register/256779105>

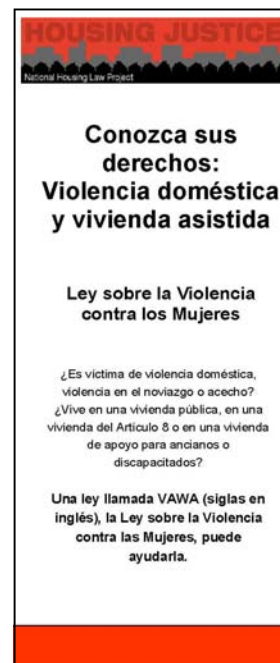
### "Fair Housing Rights of Domestic and Sexual Violence Survivors"

March 23

11 a.m. Pacific/1 p.m. Central/2 p.m. Eastern

This webinar will provide an overview of the fair housing rights and remedies available to domestic and sexual violence survivors. Many domestic violence survivors face eviction or other negative actions by their landlords because of the criminal acts committed by their abusers. In recent years, advocates have argued that fair housing laws prohibit landlords from evicting tenants based on their status as victims of domestic violence. Advocates also have used fair housing laws to protect tenants who have been victims of sexual harassment in rental housing. This training will provide examples of instances in which fair housing laws have been used to preserve the housing rights of domestic and sexual violence survivors.

Register online at <https://www1.gotomeeting.com/register/749049361>



## Brochures Available Online

NHLP has created several brochures designed for tenants that provide basic information on housing rights of domestic and sexual violence survivors. The brochures are also available in Spanish. To download the brochures, visit <http://nhlp.org/resourcecenter?tid=96>

**For technical assistance or requests for trainings or materials, please contact:**

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