

# HOUSING JUSTICE

National Housing Law Project

Newsletter August 2015

## New HUD Multifamily Notice Outlines Protections and Enforcement for LGBT Individuals

Discrimination against lesbian, gay, bisexual, and transgender (LGBT) individuals creates barriers for members of the LGBT community who seek safe, decent, and affordable housing. LGBT survivors of domestic violence, dating violence, sexual assault, or stalking may face similar and additional obstacles to obtaining housing. To combat this discrimination, the Department of Housing and Urban Development (HUD) issued the Equal Access Rule in 2012. The Equal Access Rule is a regulation that prohibits housing discrimination on the basis of actual or perceived sexual orientation, gender identity, or marital status in housing that is assisted or insured by HUD. In July 2015, HUD issued a notice regarding the Equal Access Rule, specifically focusing on the Rule's application to HUD multifamily programs. HUD's multifamily programs include project-based Section 8 housing, Section 202 supportive housing for the elderly, and Section 811 supportive housing for persons with disabilities, among other programs. HUD previously released a notice in February 2015, providing guidance on how the Equal Access Rule applies to multifamily programs. The July 2015 notice offers additional information on complying with and enforcing the Equal Access Rule. The following article provides a summary of the July 2015 notice.

**Program regulations.** The notice begins by restating the multifamily program regulations that were revised to comply with the Equal Access Rule. Specifically, these regulations provide that owners and administrators of HUD-assisted or HUD-insured housing, approved lenders in a Federal Housing Administration mortgage insurance program, and other recipients of HUD funds must make eligibility determinations for HUD-assisted or -insured housing programs without regard to actual or perceived sexual orientation, gender identity, or marital status. Furthermore, these entities cannot inquire about an applicant's or occupant's sexual orientation or gender identity in determining eligibility for the housing or in making the housing available. However, the regulations permit inquiries of an applicant's or occupant's sex if the housing provided is temporary, the situation involves an emergency shelter with shared sleeping areas or bathrooms, or the inquiries are being made to determine the number of bedrooms to which a household can be entitled. The rules were also amended to include new definitions of "gender identity" and "sexual orientation" as well as to change the existing definition of "family."

**Fair Housing Act.** The notice clarifies that the Fair Housing Act (FHA) does not expressly include sexual orientation, gender identity, or

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marital status as protected characteristics. However, LGBT individuals can still be protected by the FHA if, for example, they experience housing discrimination because of non-conformance with sex stereotypes. In these situations, HUD can investigate complaints involving alleged discrimination based on sexual orientation or gender identity. In addition, many states and localities have laws prohibiting housing discrimination based on sexual orientation or gender identity. Therefore, in cases where HUD lacks jurisdiction, the agency may refer complaints to state and local enforcement agencies. The notice encourages owners and managers to inform individuals alleging discrimination to file a fair housing complaint with HUD via phone, online, or using HUD's free housing discrimination mobile application.

**Compliance and enforcement.** The notice discusses remedies that may be available if an owner does not comply with program requirements. For example, HUD or a Contract Administrator may review the owner's tenant selection plan or other policies for compliance with the Equal Access Rule. A review may also include requests for information regarding allegations of noncompliance. In addition, if, after an investigation of a complaint, a HUD Regional Center or Hub Director finds that an owner or manager has violated the Equal Access Rule, the Regional Center or Hub Director will provide notice to the owner or manager concerning the violation and the need to address the violation. Owners and managers who violate the Equal Access Rule may be liable for various sanctions including debarment (exclusion from conducting business with any federal agency government-wide for three years), limited denial of participation (exclusion from further participation in a certain HUD program area for up to 12 months), and civil money penalties.

## Resources

Program Eligibility in Multifamily Assisted and Insured Housing Programs in Accordance with HUD's Equal Access Rule, H 2015-06 (July 13, 2015), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=15-06hsgn.pdf>

Notice of Program Eligibility for HUD Assisted and Insured Housing Programs for All People Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD's Equal Access Rule, H 2015-01 (Feb. 6, 2015), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=15-01hsgn.pdf>

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5,662–76 (Feb. 3, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-02-03/pdf/2012-2343.pdf>

HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, REV-1, CHG-4 (Nov. 2013), available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/handbooks/hsggh/4350.3](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsggh/4350.3)

For more extensive guidance on civil rights and nondiscrimination policies in the multifamily housing program, the notice refers owners and managers to Chapter 2 of *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs*. Importantly, Chapter 2 includes a section that directs applicants and occupants who believe they have been illegally discriminated against by an owner to file a complaint with HUD. In addition, if applicants or tenants express to owners that they

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want to file a housing discrimination complaint, the Handbook encourages owners to refer the individuals to HUD and provide the individuals with HUD's Office of Fair Housing and Equal Opportunity's (FHEO) pamphlet on fair housing. The notice also mentions FHEO's webpage on LGBT housing discrimination, which also includes directions on how to file a discrimination complaint with HUD and how to contact HUD to get answers to questions about LGBT fair housing issues. ■

### **Notice of Funding Availability for VAWA-HOPWA Demonstration Project**

The Department of Housing & Urban Development's Office of HIV/AIDS Housing, in partnership with the Office on Violence Against Women, is conducting the VAWA-HOPWA Demonstration Project, funding 9 projects for 36 months. Programs will work to improve cross-agency planning, resource utilization, and service integration among HIV/AIDS housing providers and sexual assault, domestic violence, dating violence, and stalking service providers.

Selected applicants will provide housing assistance and supportive services to low-income persons living with HIV/AIDS who are homeless, or in need of transitional housing or other housing assistance, as a result of sexual assault, domestic violence, dating violence, or stalking; and for whom emergency shelter services or other crisis intervention services are unavailable or insufficient. Each project must include an organization that provides significant services or housing to persons with HIV/AIDS and an organization that has a documented history of effective work concerning sexual assault, domestic violence, dating violence, or stalking. Each project will receive two grants: (1) HOPWA Grant to

provide housing assistance (maximum of \$1.1 million); (2) Transitional Housing Assistance Program Grant to provide voluntary supportive services (maximum of \$200,000).

Previous and current HOPWA and OVW Transitional Housing Grantees are eligible to apply. For all interested applicants, HUD will hold a pre-application webcast on **September 8, 2015 from 2:00-3:30pm EDT**. More information on the webcast will be provided through the HOPWA mailing list. To sign up for the mailing list, please visit <https://www.hudexchange.info/ mailinglist/>

**FR-5900-N-11 Violence Against Women Act (VAWA) and Housing Opportunities for Persons With AIDS (HOPWA) Project Demonstration Department of Housing and Urban Development**

<http://www.grants.gov/web/grants/view-opportunity.html?oppld=278647> ■

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

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