



National Housing Law Project

Newsletter September 2014

Q & A: HUD Issues Notice to Housing Authorities About LGBT Housing Access

Lesbian, gay, bisexual, and transgender (LGBT) survivors often face heightened barriers to escaping abuse and obtaining safe, decent, and affordable housing. For example, LGBT survivors encounter difficulties in obtaining protection from the authorities, as police often do not know how to identify appropriately perpetrators or hold the mistaken belief that domestic violence cannot occur in LGBT relationships. Additional barriers stem from discrimination by housing providers who do not wish to provide housing to LGBT individuals. In August 2014, the U.S. Department of Housing and Urban Development (HUD) issued Notice PIH 2014-20 (HA), entitled “Program Eligibility Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD’s Equal Access Rule” (Notice). The Notice discusses how HUD regulations prohibiting LGBT discrimination apply to public housing authorities (PHAs). The following Q&A highlights important aspects of the Notice.

Q: What is the legal authority behind the Notice?

A: In 2012, HUD issued a final rule to address discrimination against LGBT individuals trying to access HUD housing programs. The rule, known as the “Equal Access Rule,” changed existing HUD regulations to include protections for LGBT individuals and families. The Equal Access Rule re-

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Program Eligibility Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD’s Equal Access Rule, Notice PIH 2014-20 (HA) (Aug. 20, 2014), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2014-20.pdf>

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, Final Rule, 77 Fed. Reg. 5662 (Feb. 3, 2012), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=12lgbtfinalrule.pdf>

quires that HUD-assisted and HUD-insured housing providers make housing available without considering “actual or perceived sexual orientation, gender identity, or marital status.” Additionally, the Rule prohibits HUD-assisted and HUD-insured housing providers, as well as HUD-funded recipients and sub-recipients, from asking about sexual orientation or gender identity for the purposes of determining an applicant or occupant’s housing eligibility or for otherwise providing housing. The Rule also updated HUD’s definition of “family” so that LGBT families would be included. The Notice details how the Equal Access Rule applies to PHAs and the programs they administer.

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Q: What HUD programs are covered by the Notice?

A: The Office of Public and Indian Housing (PIH) issued the Notice, so this particular Notice's coverage is limited to HUD PIH programs. The Notice applies to all PIH programs that are administered by PHAs and their affiliates. Programs covered by the Notice include public housing, the Section 8 voucher program, project-based vouchers, as well as the Project-Based Certificate and Moderate Rehabilitation programs. In addition, the Notice applies to PHAs operating under certain special agreements with HUD such as the Rental Assistance Demonstration (RAD) or Moving to Work (MTW). Note that the Equal Access Rule itself applies to a broader array of HUD programs not referenced in the Notice.

Q: Are private landlords covered by Equal Access Rule?

A: The Notice states that private landlords who accept Section 8 vouchers are covered by the Equal Access Rule, and, therefore, cannot discriminate against LGBT individuals and families. These owners are covered by the Rule when they enter into a Section 8 contract. However, private landlords who do not participate in HUD programs are not covered. As discussed below, other laws may provide protections for LGBT individuals seeking privately-owned housing not affiliated with a HUD program.

Q: How does the Equal Access Rule define key terms such as "sexual orientation," "gender identity," and "family"?

A: The Equal Access Rule defines "sexual orientation" to mean "homosexuality, heterosexuality, or bisexuality." The Rule defines "gender identity" to mean "actual or perceived gender-related characteristics." Additionally, the Rule defines "family" as including, but not limited to: (1) single persons, and (2) a group of individuals residing together

(including both families with and without children), regardless "of actual or perceived sexual orientation, gender identity, or marital status."

Q: What does the Notice require housing authorities to do?

A: In addition to prohibiting PHAs from discriminating on the basis of sexual orientation, gender identity, or marital status, the Notice also directs PHAs to take certain actions. First, the Notice instructs PHAs to review and, if necessary, update planning documents and policies to be consistent with the Equal Access Rule, including their Admissions and Continued Occupancy Policies (ACOPs), Administrative Plans, and public housing tenant selection policies. Such updates include changing the definition of "family" in planning documents and policies to reflect HUD regulations, as amended by the Equal Access Rule. The Notice also instructs PHAs to include a statement in its Annual Plans regarding "eligibility, selection and admissions to reflect the change in the definition of family and the requirement to provide equal access regardless of sexual orientation, gender identity or marital status." PHAs' Administrative Plans will also include changes to the existing definition of "family composition" as a result of the Rule.

Q: Are there any times when a housing authority may ask about a person's sexual orientation or gender identity?

A: The Equal Access Rule prohibits housing authorities from asking about an individual's sexual orientation or gender identity for the purposes of establishing housing eligibility or otherwise providing housing. A person is still free to self-identify as LGBT. Additionally, the Notice states that PHAs may also collect anonymous information about program participants' gender identity and/or sexual orientation for reporting purposes, as long as the information does not impact one's ability to access HUD housing.

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Q: Are there any times when a housing authority may ask a person to identify his or her sex?

A: Yes. The Equal Access Rule permits a PHA to ask an applicant to identify his or her sex for the purposes of calculating how many bedrooms a household is eligible for. Furthermore, the Notice states that PHAs *must* collect information about participants' sex for certain reporting purposes. However, there is no reporting requirement for participants' sexual orientation.

While outside the scope of the PIH Notice, the Rule also permits a housing provider to ask about an individual's sex "where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms."

Q: I know the Equal Access Rule only applies to HUD programs. What additional protections exist for LGBT individuals and families trying to access housing?

A: The federal Fair Housing Act (FHA) provides protections against discrimination in both federally-assisted and private housing. Although LGBT individuals are not explicitly protected by the FHA—since sexual orientation, gender identity, and marital status are not protected categories—an LGBT individual may still be able to pursue FHA claims to the extent he or she falls within a protected category. The Notice provides an example of how this intersection occurs: a PHA denies housing to a public housing applicant who is gay based on the belief that because the applicant is gay, the applicant is also HIV-positive and will pose a health threat to other tenants. Such a denial would violate the Equal Access Rule because the PHA has discriminated on the basis of the individual's sexual orientation. Additionally, the PHA has also violated the FHA because it is discriminating on the basis of the applicant's perceived disability of having HIV/AIDS.

Upcoming NHELP Webinar

Please mark your calendar for NHELP's webinar, "Credit History and Housing Access for Domestic Violence Survivors," on October 23, 2014, 2:00 p.m.— 3:30 p.m. EST.

The session will address options for survivors with negative credit history who are seeking to apply for housing. Register online at:

<https://attendee.gotowebinar.com/register/9101743321558457858>

State and local laws may offer additional protections for LGBT persons, even those residing in private housing that is not funded by HUD. For example, state or local law may prohibit private, non-HUD-assisted landlords from discriminating on the basis of sexual orientation, gender identity, or marital status.

Q: What should someone do if he or she experiences housing discrimination on the basis of sexual orientation, gender identity, or marital status in housing covered by the Rule?

A: Individuals who believe they have been discriminated against due to sexual orientation, gender identity, or marital status can file a complaint with their local PHA. According to the Notice, the PHA must then follow its written procedures to investigate the complaint and take corrective action, if necessary, or provide an explanation of why corrective action will not be taken. Furthermore, a person can also file a complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). In either instance, the party alleged to have engaged in discrimination will be alerted as to the filing of the complaint. ■

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Updated Guidebook Section Advises Housing Authorities on Preventing Homelessness Among Survivors

The United States Interagency Council on Homelessness (USICH) has released a guidebook for public housing authorities (PHAs) that provides guidance and best practices on how PHAs can assist in preventing and ending homelessness. The *PHA Guidebook to Ending Homelessness* includes a section that has been updated to reflect the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). This section discusses what PHAs can do to prevent homelessness for survivors of domestic violence. USICH reminds PHAs that under VAWA 2013, survivors of domestic violence, sexual assault, dating violence, and stalking may not be denied housing because of the violence committed against them. In addition, the Guidebook notes that PHAs have the flexibility to implement policies and programs to provide survivor protections beyond those required by VAWA 2013. Such protections can help ensure that survivors do not become homeless because of the violence. Furthermore, as a way to increase affordable housing access for survivors, HUD has encouraged housing providers to adopt admissions preferences for domestic violence survivors. USICH advises that PHAs that also have homelessness preferences should use a point system prioritizing applicants who “qualify for more than one preference.”

Furthermore, USICH reminds PHAs to make sure that they are fulfilling their duties under VAWA 2013. To do so, it is important for PHAs to respond appropriately to situations involving domestic violence. One way to do so is by collaborating with community partners that can recognize and respond to domestic violence situations for assisted families. For example, PHAs can form “partnerships with domestic violence service providers to train PHA staff on understanding domestic violence and trauma” and “facilitate outreach and referrals.” In addition, PHAs can establish poli-

cies that allow survivors to access and maintain safe and affordable housing, such as facilitating transfers due to domestic violence or performing lease bifurcations so that abusers are evicted from the housing.

In addition, the Guidebook directs PHAs to domestic violence and housing resources, including the National Housing Law Project’s webpage of archived webinars, available at <http://nhlp.org/node/1484/>. The Guidebook further provides examples of partnerships that local PHAs have formed with victim service providers, government agencies, and other organizations to better serve survivors who are trying to access and maintain affordable housing.▪

Resources

U.S. Interagency Council on Homelessness (USICH), *PHA Guidebook to Ending Homelessness*, available at http://usich.gov/resources/uploads/asset_library/PHA_Guidebook_Final.pdf
(Relevant discussion begins on page 32.)

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