Ensuring Equal Access of LGBT Persons to Housing and HUD Programs

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HUD Fair Housing Role

• Enforces and administers the federal Fair Housing Act
• Receives about 9,000 complaints of housing discrimination per year
• Investigates, attempts resolution, and litigates complaints OR refers complaints to substantially equivalent state or local agencies for processing
What is LGBT?

- "LGBT" refers to people who are Lesbian, Gay, Bisexual, or Transgender
- Sexual orientation, gender identity, and transgender are distinct terms
October 21, 2009 Press Release

Obama Administration to Ensure Inclusion of the LGBT Community in HUD Programs

• Clarify definition of “family” in HUD regulations
• Include sexual orientation and gender identity as prohibited factors in determining eligibility for FHA-insured loan
• Require grantees to comply with state and local laws that prohibit LGBT discrimination
• Study nature and extent of LGBT discrimination
HUD LGBT Equal Access Rule

New HUD Rule:

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity
LGBT Equal Access Rule: Why?

- LGBT housing instability and discrimination
  - *Injustice at Every Turn (survey of 6,450 transgender persons): 19% refused housing because of gender identity and 19% homeless at some point because of gender identity* ([www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf))
1) General Equal Access Provision:

Housing assisted by HUD or insured by FHA shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. *24 CFR Section 5.105 (a)(2).*
2) Clarifies definition of “family” (Section 5.403) and “household” (Section 570.3) with LGBT inclusive language

-Family includes persons regardless of actual or perceived sexual orientation, gender identity, or marital status

-Section 8, public housing, FHA, Community Development Block Grants, HOPWA, 202/811
3) Prohibits inquiries of an applicant or occupant’s sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available. *24 CFR Section 5.105.*

- The inquiry provision does not prohibit:
  - Any individual from voluntarily self-identifying sexual orientation or gender identity
  - Lawful inquiries of an applicant or occupant’s sex where the housing provided or to be provided is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms
  - Lawful inquiries of an applicant or occupant’s sex made for the purpose of determining the number of bedrooms to which the household may be entitled
  - Voluntary and anonymous reporting of sexual orientation or gender identity pursuant to state, local, or federal data collection requirements
4) Prohibit FHA-approved lenders from basing eligibility determinations for FHA-insured loans on actual or perceived sexual orientation or gender identity. 24 CFR Section 203.33.

-Prior regulation listed race, color, religion, sex, national origin, familial status, handicap, marital status, and source of income as prohibited characteristics to consider
Enforcement of LGBT Equal Access Rule

– Contact local HUD program office to allege violation of rule
– Also, call HUD’s housing discrimination hotline at 800-669-9777
First Formal Resolution: *LGBT Equal Access Rule Complaint*

- Otherwise eligible lesbian denied FHA-insured mortgage because Florida does not recognize same-sex marriage
- November 2012 – HUD and BofA entered into settlement agreement.
  - BofA paid HUD $7,500
  - BofA agreed to notify employees of resolution
  - BofA agreed to instruct employees on Rule
The Fair Housing Act and LGBT Housing Discrimination

Guidance: Assessing Complaints that Involve Sexual Orientation, Gender Identity, and Gender Expression

- Thoroughly review for HUD jurisdiction (e.g., complaint may be covered as sex discrimination)
- Track LGBT inquiries
- Refer for jurisdiction determination under state and local law
Charge: Gender Identity Discrimination Under the Fair Housing Act

• The Complainant, a transgender female alleged discrimination on the basis of gender identity/sex under the Fair Housing Act.
  – Specifically, the Complainant alleged that owner of RV park where she resided told her she could not dress as a female while at the park, and evicted her for refusing to sign park rules that permitted discrimination on the basis of sex.

• HUD issued charge on August 15, 2013.
Require Grantee Compliance with State and Local Anti-Discrimination Laws

• General Section of HUD NOFA
  – Requires HUD grantees comply with state and local laws that prohibit sexual orientation and gender identity housing discrimination
What do these authorities mean for FHAP agencies?

• For all FHAPs: If a respondent has violated the LGBT Equal Access rule, please notify your HUD/FHEO regional contacts.
What do these authorities mean for FHAP agencies? – cont.

- If substantially equivalent law enumerates LGBT protections:
  - FHAP agency should dual file gender identity/gender expression fair housing complaints with HUD; if otherwise jurisdictional, these complaints will be reimbursable as sex (gender stereotyping) complaints
  - FHAP agency should send sexual orientation, gender identity, and marital status cause determinations to HUD at LGBTfairhousing@hud.gov
What do these authorities mean for FHAP agencies? – cont.

• If substantially equivalent law does not enumerate LGBT protections:
  
  – FHAP agency, like HUD, should interpret the prohibition of sex discrimination as including discrimination because of non-conformity with gender stereotypes; FHAP agency should proceed with investigating such complaints and will be eligible for reimbursement from HUD on such complaints
HUD LGBT Study

• HUD commissioned a study to measure housing discrimination in the rental market faced by same-sex couples
• First national study of its kind
• Over 7,000 fair housing tests conducted nationwide
HUD LGBT Study: Results

- Same-sex couples experience discrimination in the online rental housing market, relative to heterosexual couples.
- Same-sex couples received fewer responses to email inquiries than heterosexual couples.
- States with legislative protections show slightly more adverse treatment for gays and lesbians than states without protections.
- Adverse treatment of same-sex couples is present in every metropolitan area where tests were conducted.
www.hud.gov/lgbthousingdiscrimination
HUD *Live Free* LGBT Poster

Should gender stereotypes influence where you live?

Learn more about the U.S. Dept. of Housing & Urban Development Office of Fair Housing & Equal Opportunity's LGBT initiatives.

@ www.hud.gov/fairhousing

Live Free
“The story of HUD is a story of expanding civil rights – a story that begins with a painful history, but leaves a proud legacy: one of opening doors of America’s homes to all Americans.”

HUD Secretary Shaun Donovan,
National Center for Transgender Equality
November 15, 2011
LGBTFairhousing@hud.gov

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