

# **Tenant Protections in HUD Housing Admissions**

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Who are we?



## *Live Content Slide*

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**Poll: 1) How familiar are you with tenant protections available to HUD tenants in housing admissions cases?**

## Key tenant protections

- Fair Housing Act (FHA)
- Reasonable Accommodations (RA)
- Violence Against Women Act (VAWA)

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## Protected Classes

- Race
- Color
- National Origin
- Religion
- Disability
- Sex (*including actual or perceived gender identity and sexual orientation*)
- Familial Status (*including families with minor children, pregnant people*)

## Covered Housing

- “Dwellings”

- Including houses, apartments, university student housing, farmworker housing, nursing homes
- Excluding: motels, jails, bed & breakfasts

- Exemptions

- Owner-occupied buildings with four or fewer units
- Single-family housing rented without advertisement
- 55+ and 62+ communities (restrictions apply) - *familial status discrimination exemption only*

## Prohibited Discriminatory Practices

### Refusal to:

- sell, rent or lease (including loans & mortgages), or otherwise make housing unavailable
- negotiate for a sale, rental or lease
- permit, at a disabled person's expense, reasonable modification of the premises
- make reasonable accommodations

### Additionally:

- misrepresenting availability of housing
- provision of inferior housing terms, conditions, privileges, facilities or services
- harassment in connection with housing accommodations
- cancellation or termination of a sale or rental agreement
- provision of segregated or separated housing accommodations



## Theories of Liability

- Disparate Treatment
- Discriminatory Effects
  - Disparate Impact
  - Perpetuation of Segregation

## Disparate Treatment

- Treating someone differently because they are a member of a protected class
- Evidence of discriminatory intent through
  - direct evidence of discrimination, or
  - “similarly situated entity,” demonstrating a prima facie case of discrimination

“Plaintiffs’ allegation that Defendants departed from their usual procedure when they conducted an additional investigation of Lyman’s background-- after an initial finding that his criminal history satisfied Montclair’s requirements-- supports their disparate-treatment claim.”

## Discriminatory Effects

- Disparate Impact
  - Neutral practice or policy that disproportionately impacts a protected class without justification
- Perpetuation of Segregation
  - A decision or action – often by a governmental entity – that reinforces segregation

## Disparate Impact

- Three step test
  - Step 1: Is there a disparate impact on a protected class?

“The weight of caselaw strongly indicates that-by pointing to local statistics showing that African Americans are significantly more likely to have a history of incarceration in the specific state and county where Defendants are located[,] Plaintiffs have plausibly pleaded that Defendants' alleged policy of excluding all applicants with felony convictions has a disparate impact on African Americans.”

## Disparate Impact

- Three step test
  - Step 1: Is there a disparate impact on a protected class?
  - Step 2: Is the policy justified? Is the housing decision necessary to achieve a substantial, legitimate, and necessary interest?

## Disparate Impact

- Three step test
  - Step 1: Is there a disparate impact on a protected class?
  - Step 2: Is the policy justified? Is the housing decision necessary to achieve a substantial, legitimate, and necessary interest?
  - Step 3: Is there a less discriminatory alternative?



## HUD's Disparate Impact Rule

- March 2023: Reinstatement of HUD's Discriminatory Effects Standard
  - Rescinds 2020 rule and recodifies 2013 rule and standard
- September 2023: *NAMIC v. HUD*
  - Upholds the 2023 rule

## HUD Fair Housing Guidance

- November 2015: discouraging PHAs and housing providers from using of arrest records in housing decisions (PIH Notice 2015-19)
- April 2016 & June 2022: advising HUD housing providers how not to violate the Fair Housing Act when screening applicants with conviction histories
- June 2023: includes discussion of best practices for HUD housing providers on use of conviction records in admissions policies (PIH Notice 2023-13)

## Key tenant protections

- Fair Housing Act (FHA)
- Reasonable Accommodations (RA)
- Violence Against Women Act (VAWA)

## Overview

- Change to a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy the dwelling and public and common use areas or an equal opportunity to obtain, use, or enjoy a housing opportunity.

## What is a disability?

- Change to a rule, policy, practice, or service that may be necessary to allow a **person with a disability** the equal opportunity to use and enjoy the dwelling and public and common use areas or an equal opportunity to obtain, use, or enjoy a housing opportunity.
  - Includes people recovering from addiction – successfully completed or currently undergoing substance abuse treatment
  - Excludes current use of illegal substances, direct threat to health/safety of others, and if tenancy would result in substantial physical damage to property

## Requirements

- Must be reasonable and necessary.
- Must show nexus between disabling condition and requested accommodation.
- If disability is not obvious or readily apparent, housing provider may ask for documentation to support the requested accommodation.\*\*
- Can be requested at any time, even for the first time in an eviction.\*\*\*
- Can be made in any format, though writing is suggested to keep a record of the request.

## Covered housing

- Federally assisted housing providers must provide a reasonable accommodation that would allow an applicant to meet the eligibility requirements of the program.
- Housing providers must also consider mitigating circumstances

# Reasonable Accommodations

42 U.S.C.A. §§ 3601 et seq.; 29 U.S.C.A. § 794; 42 U.S.C.A. §§ 12131 et seq.

Jane has a physical disability and uses a wheelchair. Jane got to the top of the Section 8 voucher list and was issued a voucher. After weeks of searching for a unit, Jane is unable to find a unit with a ramp and/or elevator so she can get in and out of the unit in her wheelchair. She asks the housing authority for more time to find a unit but they say that she had enough time and deny her request.



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**Poll: 2) Was the housing authority's denial of the request proper?**

# Reasonable Accommodations

42 U.S.C.A. §§ 3601 et seq.; 29 U.S.C.A. § 794; 42 U.S.C.A. §§ 12131 et seq.

Jane finds a unit that is on the ground floor and is accessible for her with her wheelchair (there is an open floor plan and she can easily navigate around the unit in her chair). The asking rent is \$100 more than the payment standard for her voucher size (\$2,000). Jane asks the housing authority to approve this unit even though it is a little more than her voucher allows because she needs a ground floor unit due to her mobility disability. The housing authority staff tell her she should have less expensive taste and learn how to budget.

## Key tenant protections

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## Overview

- VAWA provides housing protections for survivors of domestic violence, sexual assault, dating violence, and stalking who are applying for or living in federally assisted housing.

## Who is protected?

- VAWA provides housing protections for survivors of domestic violence, sexual assault, dating violence, and stalking who are applying for or living in federally assisted housing.
  - Survivors (actual or perceived), regardless of sex, gender identity, sexual orientation, disability or age

## Who is protected?

- VAWA provides housing protections for survivors of domestic violence, sexual assault, dating violence, and stalking who are applying for or living in federally assisted housing.
  - Survivors (actual or perceived), regardless of sex, gender identity, sexual orientation, disability or age, and
    - victims of actual or threatened domestic violence, dating violence, sexual assault, or stalking, or an “affiliated individual” of the victim; AND living in, or seeking admission to, a federally assisted housing unit covered by VAWA.

## Covered housing – *\*added in 2022 reauthorization*

### U.S. Department of Housing and Urban Development

- Public housing
- Section 8 Housing Choice Voucher program
- Project-based Section 8 housing
- Section 202 supportive housing for the elderly
- Section 202 Direct Loan program\*
- Section 811 supportive housing for persons with disabilities
- Section 236 multifamily rental housing
- Section 221(d)(3) Below Market Interest Rate housing (BMIR)
- HOME
- Housing Opportunities for Persons with AIDS (HOPWA)
- McKinney-Vento Act programs
- Transitional Housing Assistance for Homeless Veterans\*
- Grant programs for homeless veterans with special needs\*
- Supportive Services for Veteran Families (SSVF)\*
- Veterans Affairs Supportive Housing (VASH)\*
- National Housing Trust Fund\*
- Transitional Housing Assistance Grants for victims of domestic violence, dating violence, sexual assault, and stalking\*

### U.S. Department of Agriculture

- Rural Development (RD) multifamily housing programs, including the Rural Development Voucher program (514, 515, 516, 533, 538, and 542 of the Housing Act of 1949 (42 U.S.C. 1484, 1485, 1486, 1490m, 1490p–2, 1490r)\*)

### U.S. Department of the Treasury

- Low-Income Housing Tax Credit program (LIHTC)

And “any other Federal housing programs providing affordable housing to low- and moderate-income persons...”

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**VAWA does not apply to market-rate rental housing that is not subsidized.**



## Survivors' rights at admission

- PHAs, landlords, and owners may not deny an applicant housing on the basis or as a direct result of an applicant having been a survivor of domestic violence, dating violence, sexual assault, or stalking
- This includes adverse factors resulting from the abuse
- Although FHA does not explicitly name survivors as a protected class, because the vast majority of survivors are female, discrimination against survivors can constitute sex discrimination

## Survivors with disabilities

- Section 504 of the Rehabilitation Act of 1973 is a federal law, codified at 29 U.S.C. § 794, that prohibits discrimination on the basis of disability in federally-assisted programs or activities.
- This means, for instance, that housing providers may not deny persons with disabilities the opportunity to participate in a program or activity because of their disability; or accept a different kind or lesser program or service than what the housing provider provides to others without disabilities, even if separate programs exist.

Juana is a survivor of domestic violence and she has a temporary domestic violence restraining order against her partner, which requires her to remain at least 100 yards away from her. She found a LIHTC apartment near her job and applied online for it. When she went to go and sign the lease, she took a copy of her restraining order and gave it to the landlord. The landlord told Juana that she doesn't want cops around the apartment complex and denied the apartment to Juana.

## State & Local Law

- When local or state laws conflict with federal fair housing protections, providers must first comply with federal law
  - e.g. Crime-Free Programs / Nuisance Ordinances (CFNOs)

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- However, state fair housing laws may be more protective than what's allowed under federal law
  - Fair Chance Ordinances / Regulations

# Questions?

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# Thank you!

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**Reach out!**

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