

# HOUSING JUSTICE

National Housing Law Project

Newsletter February 2012

## CDC Study Provides Critical Information on Intimate Partner and Sexual Violence

In December, the Centers for Disease Control and Prevention (CDC) released its first National Intimate Partner and Sexual Violence Survey (NISVS). The study describes the overwhelming prevalence of intimate partner violence, sexual assault, and stalking in our nation. This article focuses on the data in the study that may be useful for advocates who are working on housing issues on behalf of survivors. For example, advocates who are seeking to urge housing providers or local housing officials to do more to protect survivors of violence can use the study's data to demonstrate the pervasiveness of these crimes. The study includes both national data as well as statistics for each state. The study also may be helpful in demonstrating the connection between intimate partner violence, sexual assault, and gender, which can be critical in housing discrimination cases involving survivors.

### Link Between Gender and Violence

The study finds that women are disproportionately affected by sexual violence, intimate partner violence, and stalking. Specifically:

- One in five women have been raped in their lifetime, while one in 71 men have been raped in their lifetime.
- One in six women have been stalked during their lifetime. One in 19 men have experienced

stalking in their lifetime.

- One in four women have been the victim of severe physical violence by an intimate partner, while one in seven men experienced severe physical violence by an intimate partner.

These statistics regarding the disproportionate effect of sexual assault, stalking, and intimate partner violence on women may be important in cases involving housing discrimination against survivors. A housing policy that has a disproportionate effect upon women may constitute sex discrimination under fair housing laws. For example, a "zero-tolerance" policy under which an owner can evict an entire household for violent criminal activity, regardless of who committed the violence, could result in the evictions of innocent victims of intimate partner violence. As explained by the NISVS, these victims are more likely to be women. As a result, zero-tolerance policies could disproportionately affect women in violation of fair housing laws. Advocates should consider citing NISVS statistics in efforts to challenge housing policies that have a negative impact on survivors.

### Impacts of Violence

The study describes several of the health consequences of intimate partner violence, sexual assault, and stalking. Of women experiencing these forms of violence, 81% reported significant short or long-term impacts related to the violence, such as post-traumatic stress disorder (PTSD) and injuries, while 35% of men reported such impacts. Men and women experiencing these forms of violence were more likely to report frequent head-

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aches, chronic pain, difficulty with sleeping, activity limitations, poor physical health, and poor mental health.

This information may be critical for advocates who are working on behalf of domestic and sexual violence survivors with disabilities, because these survivors may risk losing their housing for reasons related to their disabilities. For example, a survivor suffering from post-traumatic stress disorder (PTSD) may be afraid to leave her home to attend a mandatory meeting with a housing provider, or may have difficulty remembering to pay rent or utilities. Advocates can use the statistics in the NISVS to demonstrate to housing providers the link between domestic violence and health consequences, and to explain why survivors may have difficulty conforming to all of the housing provider's rules and policies.

### **Stalking**

Many housing providers are unaware of the seriousness of stalking and the need to provide additional security measures for tenants experiencing stalking. The NISVS demonstrates the gravity of stalking, reporting that nearly one in six women has experienced stalking so severe that she felt very fearful or believed that she or someone close to her would be harmed or killed. One in 19 men have experienced the same level of stalking. Advocates can use this information to educate housing providers regarding the seriousness and prevalence of stalking.

### **Conclusion**

The NISVS reports that 3.4 million victims of intimate partner violence, rape, and stalking needed housing services in 2010. This figure illustrates the overwhelming need for housing advocacy on behalf of survivors, and the need for housing providers to ensure that their programs are accessible and safe for survivors. For more information on the NISVS, visit <http://www.cdc.gov/violenceprevention/nisvs/>. ■

## **Discrimination Based on Sexual Orientation, Gender Identity Now Prohibited in HUD Programs**

The Department of Housing and Urban Development (HUD) has published final regulations to prevent discrimination in its programs on the basis of sexual orientation and gender identity. Among several other protections, the regulations require owners and operators of HUD-assisted housing to make housing available without regard to the sexual orientation or gender identity of applicants or occupants. The regulations will be a critical tool for advocates who are seeking to improve access to housing for LGBT clients.

### **Definitions**

The regulations update HUD's definition of "family" to clarify that households may not be excluded from HUD-assisted housing because of sexual orientation, gender identity, or marital status. Perceived, as well as actual, sexual orientation, gender identity, and marital status cannot be factors for determining eligibility for HUD-assisted housing. "Gender identity" means actual or perceived gender-related characteristics. "Sexual orientation" means homosexuality, heterosexuality, or bisexuality.

### **Equal Access to Housing**

The final regulations require owners and operators of HUD-assisted housing to make housing available regardless of the actual or perceived sexual orientation, gender identity, or marital status of applicants or occupants. This policy covers HUD's rental assistance and homeownership programs. The covered programs include public and assisted housing programs, Federal Housing Administration (FHA) mortgage insurance programs, and community development programs. This includes transitional housing programs receiving HUD funds, such as Community Development

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Block Grant, Supportive Housing, or HOME. HUD added this provision to make clear that eligibility decisions for HUD-assisted housing must be made without regard to sexual orientation, gender identity, or marital status.

Additionally, the regulations prohibit owners and operators of HUD-assisted housing from asking about an applicant's or occupant's sexual orientation or gender identity for purposes of determining housing eligibility or otherwise making housing available. Domestic and sexual violence programs should note that the regulations do not prohibit inquiries of an applicant's or occupant's sex where the housing is temporary, emergency shelter with shared sleeping areas or bathrooms. HUD states that inquiries as to sex are permitted only when determining eligibility for a temporary, emergency shelter that is limited to one sex because it has shared sleeping areas or bathrooms. According to HUD, "[s]uch inquiries are not permitted in any other homeless shelter or housing." HUD anticipates that the regulations will improve transgender individuals' access to shelters.

With regard to FHA-insured mortgages, the final regulations prohibit lenders from using sexual orientation or gender identity as a basis to determine a borrower's eligibility. The regulations require that a lender's determination of the adequacy of a borrower's income be made without regard to the borrower's actual or perceived sexual orientation or gender identity.

### Other Issues

A significant shortcoming of the regulations is that they do not clearly explain how HUD plans to enforce the new protections. Commenters requested that HUD provide a mechanism by which claims of discrimination in HUD programs can be voiced by the LGBT community. Commenters also suggested that HUD provide a clear procedure for submitting complaints, holding hearings, and making determinations of violations of the regulations. In response, HUD declined to adopt any procedures to specifically address violations of the LGBT

## Free Manual Available Online

The National Housing Law Project is pleased to announce the publication of "Maintaining Safe and Stable Housing for Domestic Violence Survivors: A Manual for Attorneys and Advocates." The manual focuses on the rights of survivors who are facing loss of housing, who need to improve the safety of their housing, or who need to relocate.

The Manual is available for download at <http://www.nhlp.org/node/1745>

The Appendices to the Manual contain several sample advocacy documents. Contact [mschultzman@nhlp.org](mailto:mschultzman@nhlp.org) to obtain the Appendices.

rules. Instead, HUD states that individuals may complain to the HUD office that administers the program. In addition, HUD notes that certain complaints would be covered by the Fair Housing Act, such as a claim of discrimination based on non-conformity with gender stereotypes. Still, much of the burden will fall on advocates to investigate and challenge discrimination against LGBT individuals in HUD programs.

### Conclusion

As stated by HUD Secretary Shaun Donovan, "With this historic rule, the Administration is saying you cannot use taxpayer dollars to prevent Americans from choosing where they want to live on the basis of sexual orientation or gender identity—ensuring that HUD's housing programs are open, not to some, not to most, but to all." The final rule will be especially critical in jurisdictions that do not have state law protections prohibiting housing discrimination on the basis of sexual orientation or gender identity, and regions that lack housing and homelessness resources for LGBT individuals. The full regulation is published at 77 Federal Register 5,662 (Feb. 3, 2012) and is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-02-03/pdf/2012-2343.pdf#page=1>. ■

## **Obama Administration, States Take Steps to Assist Homeowners at Risk of Foreclosure**

Two recent developments may expand the relief available to homeowners who are at risk of foreclosure. First, the federal government and 49 state attorneys general agreed to a \$25 billion settlement with the nation's five largest mortgage servicers. Second, the Obama Administration announced improvements to the Home Affordable Modification Program (HAMP) that are intended to extend assistance to a greater number of homeowners. While these programs do not specifically address financial abuse related to domestic violence, they are still relevant to advocates seeking information on how to assist survivors who are behind on their mortgage payments.

### **National Mortgage Settlement**

After more than 14 months of negotiations, the federal government and 49 state attorneys general have reached a settlement with the nation's five largest mortgage servicers over abusive foreclosure and mortgage servicing practices. The \$25 billion settlement involves Bank of America, JP Morgan Chase, Wells Fargo, Citigroup and Ally Financial.

Settlement talks first began in late 2010. At that time, reports surfaced that thousands of mortgage documents were "robo-signed" by individuals who had no personal knowledge of the contents of the documents that they were signing. Following public uproar over these practices, a group of state attorneys general began settlement talks with the mortgage servicers.

### **Relief for Borrowers**

The settlement first requires the five servicers to dedicate more than \$20 billion for relief to homeowners who currently are facing foreclosure. At least \$10 billion will be dedicated to reducing the principal balance for underwater borrowers—those who owe more than their homes are worth.

At least \$3 billion will be used to enable underwater borrowers to refinance their loans to take advantage of lower interest rates. The remaining \$7 billion will go toward principal forbearance for unemployed borrowers, short sales and assistance for service members. The settlement also will establish a \$1.5 billion fund to provide relief for borrowers whose homes were sold through foreclosure between 2008 and 2011. Homeowners eligible for cash payments, principal reductions, and refinancing will be identified over the course of the next six to nine months.

### **Funding for Legal Aid and Housing Counseling**

Approximately \$3.5 billion will go to state and federal governments as compensation for public funds lost due to mortgage servicer misconduct. The money is intended to fund housing counselors, legal aid and other purposes to be determined by the state attorneys general.

### **New Mortgage Servicing Standards**

To address abuses, the settlement establishes new standards for mortgage servicing. Servicers must provide borrowers with a pre-foreclosure notice 14 days before a delinquent mortgage loan is referred to a foreclosure attorney. The notice must contain:

- Facts supporting the bank and/or servicer's right to foreclose;
  - The borrower's right to request payment history, a copy of the mortgage note, and the name of the investor that holds the loan;
  - An itemized plain language account summary; and
  - A summary of the loss mitigation efforts the bank and/or servicer has undertaken to date.
- The servicing standards also include heightened obligations to review borrowers for loan modifications and other programs. Some of the steps servicers must take include:
- Notify homeowners of all options before referring a delinquent loan to a foreclosure

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attorney;

- Review and make determinations on loan modifications within 30 days of receipt;
- Offer a loan modification if certain criteria are met;
- Notify the borrower of the reason he or she was denied a loan modification;
- Provide an appeal process for borrowers who were denied a loan modification; and
- Promptly convert trial period modifications into permanent modifications.

The practice of proceeding with foreclosure while simultaneously reviewing borrowers for loan modifications, also known as dual tracking, will be prohibited. The settlement preserves the right of homeowners to pursue individual cases against their lenders and mortgage servicers.

#### **Home Affordable Modification Program**

On January 27, the Obama Administration announced changes to the Home Affordable Modification Program (HAMP) to extend assistance to more homeowners. HAMP is designed to help homeowners avoid foreclosure by modifying loans to an affordable level. The Administration hopes that changes to the program will help to improve the current pace of loan modifications under HAMP. Although the program was set to expire this year, it has now been extended to 2013.

#### **Expanded Eligibility**

Effective in May 2012, HAMP's eligibility criteria will be expanded to help borrowers burdened by payments on second mortgages and other debts. Currently, a borrower who pays less than 31% of his or her income on a first mortgage is ineligible for HAMP, even if payments on a second mortgage on the same home render the total mortgage payment unaffordable. Under the new guidelines, borrowers with other debts will be offered an alternative evaluation for HAMP.

#### **Principal Reductions**

Even though loan modifications that include principal reductions are much more sustainable in the long run, servicers have been reluctant to offer modifications that include principal reductions. In an effort to encourage more modifications under the principal reduction alternative, the Treasury Department announced that it will triple financial incentives paid to investors who agree to reduce the loan principals of underwater homeowners.

#### **Conclusion**

Advocates assisting domestic and sexual violence survivors who are struggling to make their mortgage payments can visit <http://www.makinghomeaffordable.gov> for more information about the Home Affordable Modification Program. It may be several months before these clients will know whether they are eligible for relief under the national mortgage settlement. In the meantime, advocates can visit <http://www.nationalmortgagesettlement.com/help>. The website includes contact information for each of the five participating mortgage servicers. ■

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