

Gender and Housing Workshop

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**PROJECT SENTINEL FAIR HOUSING SYMPOSIUM
APRIL 12, 2017**

HOUSING JUSTICE

National Housing Law Project

Fair Housing and Domestic Violence

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THE FAIR HOUSING ACT CAN PROVIDE PROTECTIONS FOR SURVIVORS WHO HAVE FACED DISCRIMINATION BECAUSE OF THE VIOLENCE COMMITTED AGAINST THEM



Fair Housing Laws

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- Federal Fair Housing Act, 42 U.S.C. § 3601, *et seq.*
- CA Fair Employment and Housing Act, Cal. Gov. Code § § 12900, *et seq.*
- Prohibit discrimination in the renting, leasing, buying/selling, or occupying of a dwelling because of a person's membership in a protected class

The Relationship Between Fair Housing & Domestic Violence

Memo from Sara K. Pratt, HUD Deputy Assistant Secretary for Enforcement and Programs, to FHEO Office Directors and FHEO Regional Directors (Feb. 9, 2011), pgs. 1-2.

“Survivors of domestic violence often face housing discrimination because of their history or the acts of their abusers...Housing authorities and landlords evict victims under **zero-tolerance crime policies**, citing the violence of a household member, guest, or other person under the victim’s ‘control.’ Victims are often evicted after **repeated calls to the police** for domestic violence incidents because of allegations of disturbance to other tenants. Victims are also evicted because of **property damage** caused by their abusers. In many of these cases, adverse housing action **punishes victims for the violence inflicted upon them**. This ‘double victimization’ is unfair, and...may be illegal” (emphasis added; citations to footnotes omitted).

Domestic Violence and Sex

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- Survivors are not a protected class under the Fair Housing Act or FEHA, but most are female.
- HUD 2016 Nuisance/Crime-Free Ordinance Guidance, at 4:
 - “From 1994 to 2010, approximately 80 percent of the victims of intimate partner violence in the nation are women.”

Examples of Discriminatory Policies

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- Evictions or terminations based on violence against a survivor can violate fair housing laws.
- Examples of intentionally discriminatory policies:
 - Policies based on gender stereotypes may violate the Fair Housing Act (FHA)
 - ✦ Example from 2011 HUD memo: An owner does not rent to women with a history of domestic violence because he assumes they will reconcile with their abusers
 - Treating women differently because of their status as survivors of DV may violate the FHA.
 - ✦ Ex: A landlord evicts a DV survivor because the abuser broke into her unit and she called the police, but does not evict another tenant after a stranger broke into his unit and he called the police
 - ✦ Ex: A landlord evicts a survivor because of damage caused to her unit by her abuser, but does not evict a male tenant due to damage caused by a break-in.

Examples of Discriminatory Policies (cont.)

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- HUD's 2011 DV memo:
 - A neutral policy that negatively affects DV survivors may violate the FHA because of its disparate impact on women.
 - Example:
 - ✦ Women are disproportionately affected by a housing provider's zero-tolerance policy.
 - ✦ The housing provider could make exceptions to the zero-tolerance policy for DV survivors in order to avoid a disparate impact on women.

Nuisance and Crime-Free Ordinances

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- Local laws that penalize landlords and tenants when police are called too many times to the premises within a time period
 - Impose fines or criminal charges on owners
 - Nuisance activities range from violent crime to disorderly conduct
 - After citation, landlords pressured to evict tenant and abate “nuisance”
- These laws harm and punish domestic violence survivors who seek help from the police (e.g., calling 911)
- See ACLU’s “I Am Not a Nuisance” [Website](#)

Case Study: *Briggs* Litigation

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- Norristown, PA had such an ordinance (called a “three strikes rule”).
- The Norristown ordinance had no exceptions for DV survivors calling the police.
- Lakisha Briggs, a DV survivor, faced eviction because she called the police too many times over a certain time period.
- Ms. Briggs sustained serious injuries from her abuser because she was afraid to call the police out of fear of losing her housing.

Case Study: *Briggs* (cont'd)

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- The ACLU brought a lawsuit against Norristown, alleging violations of the Fair Housing Act.
 - Alleged that ordinance disproportionately impacted women
 - Alleged that, in adopting the ordinance, Norristown intentionally discriminated against Ms. Briggs
 - Complaint alleged series of other violations, including VAWA
 - ✦ *Briggs v. Norristown*, 2:13-cv-02191-ER (E.D. Pa. 2013)
- HUD subsequently initiated its own administrative complaint on the grounds that the ordinance violated the FHA due to its impact on survivors.
- Norristown settled both actions, and repealed the ordinance.

HUD 2016 Guidance re: Nuisance Ordinances

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- Nuisance and crime-free ordinances can violate the Fair Housing Act by disproportionately impacting certain groups.
 - Example: Each year, women comprise nearly 80 percent of persons subjected to domestic violence.
 - Jurisdictions cannot rely on stereotypes about people engaging in nuisance or criminal activities to defend ordinances.
- Jurisdictions can violate the Fair Housing Act by intentionally using the adoption or enforcement to discriminate (e.g. selective enforcement).

HUD 2016 Guidance (cont.)

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- State and local governments conducting an Assessment of Fair Housing should evaluate nuisance and crime-free ordinances, and how they're enforced.
- Suggests repealing ordinances that penalize survivors or other crime victims for calling 911 or other emergency services.

Examples of Nuisance Ordinance Cases

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- **Briggs v. Norristown, Pennsylvania (2013)**
 - <https://www.aclu.org/cases/briggs-v-borough-norristown-et-al?redirect=womens-rights/briggs-v-borough-norristown-et-al>
- **Berlin, New Hampshire (2014)**
 - <https://portal.hud.gov/hudportal/documents/huddoc?id=TownBerlin.pdf>
- **Markham v. City of Surprise, Arizona (2015)**
 - <https://www.aclu.org/cases/nancy-markham-v-city-surprise>
- **Watson v. Maplewood, Missouri (filed 2017)**
 - <https://www.aclu.org/news/aclu-sues-city-missouri-nuisance-law-targets-domestic-violence-victims>

Cal. Gov't Code § 53165

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- Local agencies are prohibited from requiring a landlord to terminate a tenancy based upon an act against a tenant or a tenant's household member that constitutes domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult, **or based on the number of calls made to an emergency (911) system regarding such acts.**
- Local agencies include entities such as counties, cities, and towns.

HUD's VAWA 2013 Final Rule

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**VAWA 2013 PROVIDES IMPORTANT SAFEGUARDS FOR
SURVIVORS IN FEDERALLY ASSISTED HOUSING**



Violence Against Women Act (VAWA)

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- Is intended to encourage survivors who are receiving housing subsidies to report and seek help for the abuse committed against them, without being afraid of being evicted.
- **Only applies to federal housing programs**
- Protects individuals applying for or living in federally subsidized housing from being discriminated against because of acts of domestic violence, sexual assault, dating violence, and stalking (VAWA crimes) committed against them.
- Applies to survivors regardless of sex, gender identity, or sexual orientation.

What is HUD's VAWA 2013 Final Rule?

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- VAWA was reauthorized in 2013 and signed into law on March 7, 2013.
- HUD issued final regulations implementing VAWA 2013 on November 16, 2016.
 - 81 Fed. Reg. 80,724 (Nov. 16, 2016)
 - For more in-depth info, check out NHLP's March 2017 webinar, available at:
 - ✦ <http://nhlp.org/node/1484/>

What Programs are Covered?

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HUD Programs

- | | |
|---|--|
| • Public Housing | • § 236 Multifamily rental housing |
| • Section 8 vouchers | • § 221d3/d5 Below Market Interest Rate (BMIR) |
| • Project-based Section 8 | • HOME |
| • Section 202 Supportive Housing for the Elderly | • HOPWA (Housing Opportunities for Persons w/AIDS) |
| • Section 811 Supportive Housing for People with Disabilities | • McKinney-Vento Homelessness Programs (includes ESG; CoC) |
| • Housing Trust Fund | |

Department of Agriculture

- Rural Development (RD) Multifamily

Department of Treasury/IRS

- Low Income Housing Tax Credit (LIHTC)

Who is Protected?

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VAWA covers people who are subject to:

Domestic violence: Any felony or misdemeanor crimes of violence committed by: a current/former spouse or intimate partner, person with whom the victim shares a child, person who is or has cohabitated with the victim; a person against a victim protected from acts under state/local domestic and family violence laws.

Dating violence: Violence committed by a person who is/was in a social relationship of intimate nature with victim as determined by considering three factors

Sexual assault: Any nonconsensual sexual act prohibited by law

Stalking: Any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress

VAWA applies to applicants and tenants

Ada

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- Ada fled her public housing unit after being attacked repeatedly by her abuser.
- Ada notified the PHA that she had moved out, but the PHA continued to charge her for rent after she left.
- Two years later, Ada's name was at the top of the Section 8 voucher waiting list.
- The PHA refused to process her application unless she paid the back rent on her public housing unit.
- **Did the PHA's rejection of Ada's application violate any laws?**

Admissions

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- 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.
 - Adverse factors resulting from the abuse (e.g. poor credit history or criminal history)

Evictions

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- PHAs, landlords, and owners may not evict a tenant “on the basis or as a direct result of” their status as a survivor.
- Crimes against a survivor directly relating to the abuse are not grounds for evicting the survivor or terminating their rental subsidy.
- An incident of actual/threatened abuse does not constitute a “serious or repeated violation” of the lease or “good cause” for evicting the survivor or terminating their rental subsidy.

Limitation

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- Housing providers can still evict or terminate assistance if they can demonstrate an “actual and imminent threat” to other tenants or employees/personnel at the property if the survivor “is not evicted or terminated from assistance.”
 - “Actual and imminent threat” consists of “a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm.”
- Housing providers can evict or terminate assistance for a violation not premised on VAWA crimes.
 - Important note re: abusers who are unauthorized occupants
 - Survivors cannot be subjected to higher standard than other tenants.

Proving Abuse – Documentation Options

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1. Self-certification form

- New HUD VAWA self-certification form for all HUD programs
- **HUD Form 5382 (all HUD programs)**, HUD Forms 50066 & 91066

2. Police, court or administrative record

- Record can be from a federal, state, tribal, territorial, or local entity or administrative record.

3. Statement from third party

- Can be from a victim service provider, medical professional, mental health professional or attorney.
- Must be signed by both third party and survivor under penalty of perjury.

4. Statement or other evidence (housing provider's discretion)

HUD Form 5382

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CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, AND ALTERNATE DOCUMENTATION

U.S. Department of Housing and Urban Development

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: The Violence Against Women Act ("VAWA") protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

1. Date the written request is received by victim: _____
2. Name of victim: _____
3. Your name (if different from victim's): _____
4. Name(s) of other family member(s) listed on the lease: _____

5. Residence of victim: _____
6. Name of the accused perpetrator (if known and can be safely disclosed): _____

7. Relationship of the accused perpetrator to the victim: _____
8. Date(s) and times(s) of incident(s) (if known): _____

10. Location of incident(s): _____

In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

Proving Abuse

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- Survivor gets to choose the HUD-approved option of documentation; housing providers must accept whatever documentation the survivor gives.
 - Housing providers must accept self-certification.
 - Survivors do not have to contact the police or initiate legal proceedings against the abuser or perpetrator.
- Only exception – when there is conflicting evidence, housing providers can ask for third-party documentation.
 - Housing providers may require 30 days to submit third-party documentation and can grant extensions.

HUD Notice and Self-Certification Form

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- HUD has developed a notice of VAWA rights (HUD notice), Form 5380, for applicants and tenants
- Housing provider must provide HUD notice and self-certification form to applicants and tenants
 - (1) at the time an applicant is denied admission or assistance;
 - (2) at the time individual is admitted or given assistance; and
 - (3) with any notification of eviction or assistance termination.
- HUD notice and form must be provided to all tenants by **December 15, 2017** during annual recertification or lease renewal process, or, if there is no recertification or lease renewal, by other means.
- HUD will translate HUD notice and form.

Other Topics Covered by the VAWA Rule

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- **Confidentiality**
 - Information must be maintained in “strict confidence”
- **Emergency transfers**
- **Maintaining assistance for the survivor**
 - Lease bifurcations
 - Family breakups
 - Moving with a Section 8 voucher (portability)

California Protections for DV Survivors

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Additional California Protections

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- Under California law, survivors who rent their homes enjoy the following protections:
 - Cal. Code Civ. Proc. § 1161.3 (protection from eviction)
 - Cal. Civ. Code §§ 1941.5, 1941.6 (lock changes)
 - Cal. Civ. Code § 1946.7 (early lease termination)

Jenny

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- Jenny rents a market-rate apartment in Sacramento; she has previously allowed her ex-husband to visit their children at the apartment.
- Recently, the ex-husband has become violent towards her. Despite telling her ex he is no longer welcome, he has begun showing up at the unit unannounced. Jenny has called the police on several occasions.
- Jenny's landlord is now seeking to evict her because of unit damage caused by her ex. What can Jenny do to defend the eviction?

Jenny (cont.)

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- Jenny has eviction defenses under state and federal law.
 - CA Code Civ. Proc. § 1161.3
 - Fair Housing Act/FEHA
- What other steps can Jenny take to secure her home?
 - Jenny can request in writing that the landlord change the locks, and provide the required documentation. The landlord must change the locks within 24 hours or Jenny can do so. *See Cal. Civ. Code § 1941.5.*

Jenny (cont.)

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- What if Jenny wants to leave her unit because her ex-husband knows where she lives, and she doesn't feel safe?
 - Under CA Civ. Code § 1946.7, Jenny can give written notice to her landlord plus supporting documentation. Note that Jenny will be responsible for up to 14 days' rent.

LGBT Housing Rights

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LGBT Fair Housing Rights

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- Sexual orientation and gender identity are not explicitly protected from housing discrimination under the federal Fair Housing Act.
- However:
 - FEHA does offer these protections. *See e.g.*, Cal. Gov. Code § 12955 (prohibiting housing discrimination on the basis of gender identity, gender expression, and sexual orientation)
 - Under certain circumstances, discrimination against LGBT persons can violate the Fair Housing Act as well (e.g., sex discrimination).

HUD's Equal Access Rule

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- In 2012, HUD issued the Equal Access Rule, which requires that HUD-assisted and -insured programs be “made available without regard to actual or perceived sexual orientation, gender identity, or marital status.”
 - *See* 24 C.F.R. § 5.105(a)(2).

See generally, 77 Fed. Reg. 5662 (Feb. 3, 2012)

HUD's 2016 Gender Identity Rule

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- 2016 amendments to 2012 Equal Access Rule
 - Provides updated definitions for “gender identity” and “sexual orientation”
 - ✦ Distinguishes between a person’s perceived and actual gender identity
 - Removes earlier prohibition on asking questions about individual’s gender identity or sexual orientation.
 - ✦ Housing must still be made available without regard to a person’s actual/perceived gender identity or sexual orientation.

See generally, 81 Fed. Reg. 64,763 (Sept. 21, 2016)

HUD's 2016 Gender Identity Rule (cont.)

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- HUD concluded that the Equal Access Rule “did not adequately address the significant barriers faced by transgender and gender nonconforming persons when accessing temporary, emergency shelters and other facilities” with shared sleeping/bathing facilities.
- HUD found transgender/gender non-conforming individuals continued to experience discrimination, harassment, and violence in accessing services.

81 Fed. Reg. at 64,764 (Sept. 16, 2016) (Preamble)

HUD's 2016 Gender Identity Rule (cont.)

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- HUD CPD requirements include (24 C.F.R. § 5.106):
 - Policies and procedures related to admissions, occupancy, and operations must be established, amended, and administered in a way that does not discriminate on basis of gender identity, including:
 - ✦ Equal access to shelters in accordance with a person's gender identity.
 - ✦ Individuals are placed, accommodated, and served in accordance with their gender identity.
 - ✦ Individuals cannot be subject to intrusive questioning, or asked to provide evidence of gender identity.
 - Placement in temporary, emergency shelters with shared bathing/sleeping spaces must be done in accordance with one's gender identity.
 - Operators/managers must take nondiscriminatory steps that may be required to address privacy concerns.
 - Recordkeeping.

Equal Access to HUD Native American and Native Hawaiian Programs (2016)

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- HUD also issued a final rule to apply the Equal Access Rule's protections to HUD's Native American and Native Hawaiian programs.

See generally, 81 Fed. Reg. 80,989 (Nov. 17, 2016)

Domestic Violence Resources

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- HUD 2011 Domestic Violence and Fair Housing Memo:
 - <http://nhlp.org/files/FHEO%20domestic%20violence%20memo.pdf>
- HUD 2016 Nuisance and Crime-Free Ordinance Guidance:
 - <https://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>
- HUD's VAWA 2013 Final Rule (2016):
 - <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>
- NHLP's domestic violence resources webpage:
 - <http://nhlp.org/OVWgrantees>

LGBT Resources

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- HUD's 2012 Equal Access Rule:
 - https://www.hudexchange.info/resources/documents/EqualAccess_FinalRule_2.3.12.pdf
- HUD's 2016 Gender Identity Rule for HUD CPD Programs:
 - <https://www.hudexchange.info/resources/documents/Equal-Access-Final-Rule-2016.pdf>
- HUD's 2016 Rule Applying the Equal Access Rule to Native American and Native Hawaiian Programs:
 - <https://www.gpo.gov/fdsys/pkg/FR-2016-11-17/pdf/2016-27196.pdf>

Thank You!

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