

# EQUAL ACCESS RULE TRAINING

County of Orange

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Office of  
**CARE COORDINATION**  
*County Executive Office*

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# What is the Equal Access Rule?

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- To ensure that HUD programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status.
- Individuals shall have access to housing according to their gender identity.
- No requirements to “prove” gender identity.
- Equal Access shall be provided in all HUD assisted programs.
- Providers must update policies and procedures to reflect requirement.



# Equal Access Rule History



2011

HUD published

2012

HUD finalized

2016

HUD updated

2020

HUD proposed  
changes

2021

HUD withdrew  
changes

## **Background: Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity**

- HUD proposed the rule in 2011 and established the rule 2012 after concerns that LGBT individuals and families did not have equal access to housing.
- HUD was concerned as the federal goal is to provide decent, safe and affordable housing to all.
- An effort to ensure that HUD's rental housing and homeownership programs remain open to all eligible persons regardless of sexual orientation, gender identity, or marital status.



# Background: Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity

- On June 15, 2020, the Supreme Court issued a decision in *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020), which held that Title VII’s prohibition against sex discrimination includes sexual orientation and gender identity.
- Following that decision on January 20, 2021, President Biden issued Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.
- Pursuant to that Executive Order, HUD’s Office of Fair Housing and Equal Opportunity issued a memorandum on February 11, 2021, “[Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act](#),” which addresses discrimination because of actual or perceived sexual orientation and gender identity under the Fair Housing Act.
- Where reasonable cause exists to believe that discrimination because of sex (including actual or perceived sexual orientation or gender identity) has occurred, FHEO will make a determination of reasonable cause and refer the case to HUD’s Office of General Counsel.

## What Entities does the Equal Access Rule Apply To?

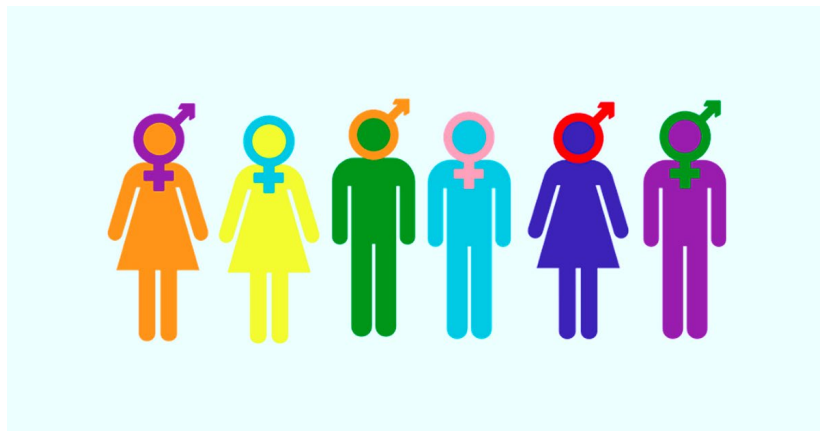
- ❖ HOME Investment Partnerships program
  - ❖ Housing Trust Fund program
  - ❖ Community Development Block Grant program
  - ❖ Housing Opportunities for Persons With AIDS program
  - ❖ Emergency Solutions Grants program
  - ❖ **Continuum of Care Program**
  - ❖ Stability Assistance Program
  - ❖ HUD Home Ownership Programs, including Federal Housing Administration (FHA)
- ❖ The requirements of this section apply to **recipients and subrecipients, as well as to owners, operators, and managers of shelters and other buildings and facilities and providers of services** funded in whole or in part by any Community Planning and Development (CPD) program.



# Background: Equal Access Rule, 2016

## Amended Definition

- This rule amends HUD's definition of “gender identity” to more clearly reflect the difference between actual and perceived gender identity and eliminates the prohibition on inquiries related to sexual orientation or gender identity, so that service providers can ensure compliance with this rule.



## Barriers to Access

- HUD determined that the 2012 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 physical limitations or configurations that require and are permitted to have shared sleeping quarters or bathing facilities.
- Specifically, HUD found that transgender and gender nonconforming persons continue to experience significant violence, harassment, and discrimination in attempting to access programs, benefits, services, and accommodations.

# Definition: What does HUD define as Gender Identity and Sexual Orientation?

## GENDER IDENTITY

- The gender with which a person identifies, regardless of the sex assigned to that person at birth and regardless of the person's perceived gender identity.
- Perceived gender identity means the gender with which a person is perceived to identify based on that person's appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents.

## SEXUAL ORIENTATION

- One's emotional or physical attraction to the same and/or opposite sex (*e.g.*, homosexuality, heterosexuality, or bisexuality).

24 Code of Federal Regulations Subtitle A, Part 5, Subpart A, § 5100

(<https://ecfr.federalregister.gov/current/title-24/subtitle-A/part-5/subpart-A/section-5.100>)



A silhouette of a family of five (two adults and three children) walking hand-in-hand against a bright, glowing sunset or sunrise background. The family is positioned on the left side of the frame, with the sun low on the horizon behind them, creating a strong backlight effect. The background transitions from a deep orange at the bottom to a lighter yellow at the top.

## Definition: What does HUD define as a Family?

Family includes:

*Family* includes, but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, any group of persons presenting for assistance together with or without children and irrespective of age, relationship, or whether or not a member of the household has a disability.

A child who is temporarily away from the home because of placement in foster care is considered a member of the family.

## Definition: What does HUD define as a Family?

- What this means is that any group of people that present together for assistance and identify themselves as a family, regardless of age or relationship or other factors, are considered to be a family and must be served together as such. Further, a recipient or subrecipient receiving funds under the CPD Programs cannot discriminate against a group of people presenting as a family based on the composition of the family (e.g., adults and children or just adults), the age of any member's family, the disability status of any members of the family, marital status, actual or perceived sexual orientation, or gender identity.



## **Definition: What does HUD define as a Family, or a Household?**

- The definition of Household will also receive the “actual or perceived, sexual orientation, gender identity, or marital status” clarification:
  - Household means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403; two or more families living together; or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived, sexual orientation, gender identity, or marital status.



# Background: Final Rule - Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs

## 2016 Final Rule

- The 2012 Equal Access Rule did not address how transgender, and gender non-conforming individuals should be accommodated in temporary, emergency shelters, and other buildings and facilities used for shelter, that have physical limitations or configurations that require and that are permitted to have shared sleeping quarters or shared bathing facilities.
- This final rule ensures that recipients and subrecipients of CPD funding - as well as owners, operators, and managers of shelters and other buildings and facilities and providers of services funded by CPD - **grant equal access** to such facilities and services to individuals in accordance with an individual's gender identity.



## Background: Community Planning and Development Notice

### CPD-15-02

- On February 20, 2015, CPD issued guidance, entitled “Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities” (CPD-15-02), which applied to CPD programs, including CoC.
- This guidance clarified that HUD expected recipients and subrecipients under these programs to base placement decisions on the gender with which a person identifies—and not on another person's stereotype-based complaints—taking into consideration health and safety concerns and giving serious consideration to the transgender or gender nonconforming person's own personal health and safety concerns.

NOTICE



## Code of Federal Regulations - 24 CFR part 5 § 5.106

- Section 5.106(b) CPD recipients, subrecipients, owners, operators, managers, and providers to establish or amend, as necessary, and administer program admissions, occupancy, and operating policies and procedures, including policies and procedures to protect individuals' privacy and security, so that equal access to programs, shelters, other buildings and facilities, benefits, services, and accommodations are provided to individuals in accordance with their gender identity.
- Equal access also includes the individual's family.



A stylized illustration of several houses in various colors (red, orange, green, blue, grey) with white windows and chimneys, arranged in a cluster.

## **Code of Federal Regulations 24 CFR part 5**

### **§ 5.106**

#### ***(b) Equal access in accordance with gender identity.***

The admissions, occupancy, and operating policies and procedures of recipients, subrecipients, owners, operators, managers, and providers, including policies and procedures to protect privacy, health, safety, and security, shall be established or amended, as necessary, and administered in a nondiscriminatory manner to ensure that:

- (1) Equal access to CPD programs, shelters, other buildings and facilities, benefits, services, and accommodations is provided to an individual in accordance with the individual's gender identity, and in a manner that affords equal access to the individual's family;
- (2) An individual is placed, served, and accommodated in accordance with the gender identity of the individual;
- (3) An individual is not subjected to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence of the individual's gender identity; and
- (4) Eligibility determinations are made and assisted housing is made available in CPD programs as required by § 5.105(a)(2).



## Code of Federal Regulations 24 CFR part 5 § 5.106

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- **Placement and accommodation in temporary, emergency shelters and other buildings and facilities with shared sleeping quarters or shared bathing facilities -**

**(1) Placement and accommodation.** Placement and accommodation of an individual in temporary, emergency shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities shall be made in accordance with the individual's gender identity.

**(2) Post-admission accommodations.** A recipient, subrecipient, owner, operator, manager, or provider must take nondiscriminatory steps that may be necessary and appropriate to address privacy concerns raised by residents or occupants and, as needed, update its admissions, occupancy, and operating policies and procedures.



## Equal Access: Policies and Procedures

- Section 5.106(b) addresses the admissions, occupancy, and operating policies and procedures of recipients, subrecipients, owners, operators, managers, and providers covered by this rule.
- Equal access ensures that, when consideration of sex is prohibited or not relevant, individuals will not be discriminated against based on actual or perceived gender identity, and where legitimate consideration of sex or gender is appropriate, such as in a facility providing temporary, short-term shelter that is not covered by the Fair Housing Act and which is legally permitted to operate as a single-sex facility, the individual's own self-identified gender identity will govern.



## Equal Access: Policies and Procedures

- Policies and procedures to protect health and safety, as well as privacy and security noted in the proposed rule, must be established, maintained, or amended, as necessary, and provides that all policies must be administered in a nondiscriminatory manner.
- The rule requires policies and procedures, if such policies and procedures have not already been updated, to reflect the obligation and to document the commitment of the provider to maintain a healthy and safe environment for all occupants and respect individual privacy without doing so in a way that is discriminatory or violates applicable Federal laws and regulations.
- The policies and procedures must ensure that individuals are not subjected to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence of the individual's gender identity.

## Equal Access: Policies and Procedures

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- As preemptive steps, providers are strongly encouraged to post a notice of rights under this rule and under HUD's 2012 Equal Access Rule on bulletin boards and in other public spaces where information is made available, to clearly establish expectations.
- In order to ensure that individuals are aware of their rights to equal access, HUD proposes to require owners and operators of CPD-funded shelters and facilities to post on bulletin boards and in other public spaces where information is typically made available a notice entitled "Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status for HUD's Community Planning and Development Programs"

# LGBT Equal Access to HUD Programs



The U.S. Department of Housing  
and Urban Development enforces  
regulations that ensure its  
programs are open to all  
eligible individuals regardless  
of actual or perceived sexual  
orientation or gender identity.



[www.hud.gov/lgbthousingdiscrimination](http://www.hud.gov/lgbthousingdiscrimination)

<https://www.hud.gov/sites/documents/LGBTFLYER.PDF>

## Equal Access: Policies and Procedures



- These policies should include specific behaviors that violate standards of respectful behavior, escalate corrective actions if an individual repeats the same violation of standards after educational opportunities are offered, and focus corrective actions on aggressors who violate project rules, not on the person targeted by the harassment.
- If an occupant continues to harass a transgender individual, the provider should consider requiring that the harassing occupant stay away from the transgender individual, making changes in sleeping arrangements without limiting the freedom of the transgender individual, or pursuing other interventions.
- When appropriate, providers may consider expelling harassing residents, or any staff or volunteer members who perpetuate discrimination. In no instance, however, should any steps taken to address harassment or discrimination involve expulsion of harassed occupants.

## Equal Access: Policies and Procedures

- Where after an individual has been admitted to a temporary, emergency shelter, or other building or facility with shared sleeping quarters or shared bathing facilities, the provider must take non-discriminatory steps that may be necessary and appropriate to address privacy concerns raised by all residents or occupants, and as needed, update its admissions, occupancy, and operating policies and procedures.
- In no case may a provider's policies isolate or segregate transgender or gender nonconforming occupants.







## Equal Access: Policies and Procedures

- Recordkeeping Requirements:
  - This final rule redesignates the recordkeeping requirements from § 5.106(e) to 5.106(d) and states that providers must document and maintain, for a period of 5 years, records of compliance with the requirements of this rule regarding establishing or amending policies and procedures.

Thank you!

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