

HUD Issues Notices on Equal Access Rule

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Earlier this year, the Department of Housing and Urban Development (HUD) issued two notices concerning the implementation of the agency's "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity" final rule (Equal Access Rule), published on February 3, 2012.¹ The Equal Access Rule prohibits discrimination on the basis of gender identity, sexual orientation, or marital status in HUD-assisted or HUD-insured housing programs.² Three years later, HUD's Office of Housing, which administers the agency's multifamily programs and oversees the Federal Housing Administration (FHA), released a notice to program participants concerning program eligibility under the Equal Access Rule.³ This notice reiterates the Equal Access Rule's requirements, highlighting changes to HUD's general regulations and FHA regulations. The notice reminds participants that housing assisted by HUD or subject to an FHA mortgage must be made available to all persons regardless of actual or perceived sexual orientation, gender identity, or marital status.⁴ Additionally, owners and managers of HUD-assisted housing and lenders of FHA mortgages cannot inquire about an applicant's sexual orientation or gender identity in determining eligibility for a program or mortgage.⁵ Owners and managers may ask about sex, however, to determine the number of bedrooms to which a household may be entitled.⁶ Finally, the notice explains that the Equal Access Rule does not create any additional protected classes under the federal Fair Housing Act or other civil rights law.⁷ Although the Fair Housing Act does not expressly prohibit housing discrimination based on sexual orientation, gender identity, or marital status,⁸ the notice advises that the Act may prohibit housing discrimination against a lesbian, gay, bisexual, or transgender person under a gender discrimination theory.⁹

Shortly after the Office of Housing issued Notice H-2015-01, HUD's Office of Community Planning and

Development released a notice concerning the appropriate placement of transgender individuals in single-sex emergency shelters and other facilities.¹⁰ Shelters receiving HUD funding are subject to the Equal Access Rule's non-discrimination requirements, but temporary emergency shelters with shared bathrooms or sleeping areas may still inquire about a person's sex.¹¹ This notice provides guidance on how single-sex shelters—specifically those receiving Emergency Solutions Grants (ESG), Continuum of Care (CoC), or Housing Opportunities for Persons with AIDS (HOPWA) funds—can best serve transgender persons. Specifically, shelter providers may not ask questions or seek information concerning an individual's anatomy or medical history.¹² In addition, a provider cannot preclude someone's eligibility for an emergency shelter or other facility because the client's appearance or behavior does not conform to gender stereotypes.¹³ The guidance further directs shelter staff to assign individuals to housing or services in a manner consistent with their gender identity and/or the individual's own concerns about their personal health and safety.¹⁴ The notice also instructs shelters to "take reasonable steps" to address safety or privacy concerns expressed by transgender clients.¹⁵ Recipients may use ESG and HOPWA funds to renovate an emergency shelter to maximize privacy and safety.¹⁶ ■

¹Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5,662–76 (Feb. 3, 2012).

²See generally *id.*

³Notice of Program Eligibility for HUD Assisted and Insured Housing Programs for All People Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD's Equal Access Rule, H 2015-01 (Feb. 6, 2015), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=15-01hsgn.pdf>.

⁴*Id.* at 1-2.

⁵*Id.*

⁶*Id.* at 2.

⁷*Id.* at 2-3.

⁸*Id.* at 3.

⁹*Id.*

¹⁰Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities, CPD-15-02 (Feb. 20, 2015), available at <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf>.

¹¹*Id.* at 4.

¹²*Id.*

¹³*Id.*

¹⁴*Id.* at 3.

¹⁵*Id.* at 4.

¹⁶*Id.*