

Understanding the definition of "Family" and how that definition is included and applies in the Equal Access to Housing in HUD Programs – Regardless of Sexual Orientation or Gender Identity to recipients and subrecipients of ESG and CoC Program Funds

The Equal Access Rule defines family as follows:

Family includes, but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, the following:

1. A **single person** who may be,
 - an elderly person
 - a displaced person
 - a disabled person
 - a near-elderly person
 - or any other single person; or
2. A **group of persons** residing together, and such group includes, but is not limited to:
 - a. A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
 - b. An elderly family
 - c. A near-elderly family;
 - d. A disabled family;
 - e. A displaced family; and
 - f. The remaining member of a tenant family

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.

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 family and must be served together as such.

Example: An emergency shelter, transitional housing project, or permanent housing project that serves households with children.

While it is acceptable for a shelter or housing program to limit assistance to household with children, it may **not** limit assistance to only women with children. Such a shelter must also serve the following family types:

- Single male head of household with minor child(ren); and
- Any household made up of two or more adults, regardless of sexual orientation, marital status, or gender identity, presenting with minor child(ren).

The following information was supplied by Dr. Abby Miller from the SNAPS Office, HUD and David Cannavan SNAPS TA Provider, HUD.

Projects required to comply with the Equal Access Rule are as follows:

All HUD Programs, from sheltering to mortgage programs must comply with the Equal Access Rule. This includes all Community Planning and Development Programs such as CDBG, HOPWA, HOME, Housing Trust Fund, CoC, Rural Housing, ESG. HUD's Equal Access and Gender Identity Rule became in effect on October 21, 2016.

Requirements of Gender Identity Rule

- Individuals are placed in accordance with gender identity
- There are no requirements for individuals to "prove" their gender identity
- Requires that 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:
 - Equal access to all CPD programs is provided in accordance with gender identity
 - In single-sex facilities, individuals are placed, served and accommodated in accordance with one's gender identity; and
 - 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.
- Plus non-discriminatory steps must be taken to address privacy concerns, including updating operating policies and procedures.
- Providers must update policies and procedures to reflect requirements

Next Steps in Regard To:

Frontline staff:

- Do we have an anti-discrimination policy?
- Is it publicly posted? If not, get a notice of rights at:
www.hudexchange.info/resources/documents/Notice-on-Equal-Access-Rights.pdf
(Copy attached)

Managers and Directors:

- Do we have an anti-discrimination policy?
- Do we regularly train staff and volunteer on the policy and how to implement? Please see staff training scenarios to get started at: <https://www.hudexchange.info/resources/documents/Equal-Access-Expectations-Training-Scenarios.pdf>

CoC Boards and other planning bodies:

- Along with anti-discrimination policies and support projects to train staff on the policy and how to implement, we must be clear that projects must comply with these requirements.

NACH agencies within the North AL CoC must send their anti-discrimination policy to the NACH office by March 24th, 2017.

Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs

<https://www.gpo.gov/fdsys/pkg/FR-2016-09-21/pdf/2016-22589.pdf>

Federal Register 24 CFR Part 5 (Key Points)

- I. Summary Abstract:** Through this final rule, HUD ensures equal access for individuals in accordance with their gender identity in programs and shelter funded under programs administered by HUD's Office of Community Planning and Development (CPD).
 - 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.
- II. Changes Made at the Final Rule Stage:**
 - "Perceived Gender Identity" is modified so that the definition states that "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, sex assigned at birth, or identification in documents.
 - The definition of "gender identity" in the final rule makes clear that the gender with which a person identifies, regardless of the sex assigned at birth and regardless of the person's "perceived" gender identity.

Reading these definitions together, “gender identity is therefore determined regardless of the gender identified on an individual’s identity documents.

HUD makes a technical amendment to the definition of “sexual orientation to mean one’s emotional or physical attraction to the same and/or opposite sex.”

Equal access ensures that, when consideration of sex is prohibited or not relevant, individuals will not be discrimination 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.

Section 5.106(b) addresses the admissions, occupancy, and operating policies and procedures of recipients, sub-recipients, owners, operators, managers, and providers covered by this rule. Revised paragraph (b) adds that 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.

HUD also revises paragraph (b) to add a provision that the policies and procedures must ensure that transgender or gender nonconforming persons can self-identify their gender identity orally and cannot be asked intrusive questions or asked to provide anatomical information or documentary, physical, or medical evidence of the individual’s gender identity.

Gender nonconforming persons are persons who do not follow other people’s ideas or stereotypes about how they should look or act based on their sex assigned at birth.

Section 5.106(c) which addresses placement and accommodation 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, HUD removes the proposed rule language that under narrow circumstances,

- a written case-by-case determination could be made on whether an alternative accommodation for a transgender individual would be necessary to ensure health and safety.

HUD's regulations for the ESG program and the implementing guidance, makes clear that 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 have had, and continue to have, a responsibility to create a safe environment for all occupants, particularly those of special populations.

This final rule thus revises paragraph (c) of 5.106 to provide that placement and accommodation of individuals shall be made in accordance with an individual's gender identity.

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. HUD proposes to require owners and operators of CPD-funded shelters and facilities to post on bulletin boards and in other public spaces a notice entitled "**Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status for HUD's Community Planning and Development Programs.**"

Revised paragraph (c) provides for post-admission accommodations, 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 occupants, and operating policies and procedures. These provisions apply to all individuals, regardless of gender identity. If an individual requests certain accommodations because of privacy concerns, staff may offer those accommodations to that individual but may not require that the individual use the accommodations.

In no case may a provider's policies isolate or segregate transgender or gender nonconforming occupants.

Additional information can be found at:

www.hudexchange.info/resource/1991/equal-access-to-housing-final-rule/

www.hudexchange.info/resource/4959/equal-access-for-transgender-people-supporting-inclusive-housing-and-shelters/

www.hudexchange.info/faqs/1529/how-is-the-definition-of-family-that-was-included/

www.hudexchange.info/trainings/courses/equal-access-and-gender-identity-rules-training/

www.hudexchange.info/resources/documents/Notice-on-Equal-Access-Rights.pdf