



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-1000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: February 6, 2015

To: All Approved Single Family, Multifamily and Healthcare Mortgagees

Mortgagee Letter 2015-05

Subject: Notice of Program Eligibility for HUD Insured Housing Programs for All People Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD's Equal Access Rule

Purpose: The purpose of this Mortgagee Letter (ML) is to:

Increase awareness of Office of Housing program participants and insured product partners, of the requirements of the HUD Equal Access Rule for actual or perceived discrimination based on sexual orientation, gender identity, or marital status.

Introduction: On February 3, 2012, HUD published a final rule entitled *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity* (77 FR 5662) ("Equal Access Rule" or "rule"). The final rule ensures that housing across HUD programs are open to all eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Changes to HUD's General Regulations: The rule revises HUD's general program requirements by adding the following provisions at 24 CFR 5.105(a)(2):

(a) A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status, and

(b) No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, or any other recipient or sub-recipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted or HUD-insured housing for purposes of determining eligibility or otherwise making such housing available. However, permissible inquiries into sex are permissible for temporary, emergency shelter with shared sleeping areas or bathrooms, or to determine the number of bedrooms to which a household may be entitled.

The rule also revises HUD's generally applicable definitions at 24 CFR 5.100:

(a) The term "family" includes, but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

(1) A single person, who may be an elderly person, displaced person, disabled person, 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:
 - (i) 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);
 - (ii) An elderly family;
 - (iii) A near-elderly family;
 - (iv) A disabled family;
 - (v) A displaced family; and
 - (vi) The remaining member of a tenant family.

(b) The term “gender identity” means actual or perceived gender-related characteristics.

(c) The term “sexual orientation” means homosexuality, heterosexuality or bisexuality.

**Changes to
FHA
Regulations:**

The rule made two changes to 24 CFR part 200-Introduction to FHA Programs and one change to 24 CFR part 203-Single Family Mortgage Insurance.

(a) The rule incorporated in FHA Programs the new definition of “family” found in 24 CFR 5.100. 24 CFR 200.3

(b) The rule incorporated the nondiscrimination requirements of the Equal Access Rule in FHA programs. 24 CFR 200.30

(c) The rule incorporated the requirement that “marital status, actual or perceived sexual orientation or gender identity” not be considered when determining the adequacy of the mortgagor’s income for single-family mortgage insurance. 24 CFR 203.33

Fair Housing:

Through this ML, HUD’s Office of Housing strives to make its insured program participants aware of the requirements of the Equal Access Rule. The rule does not create any additional protected classes under the Fair Housing Act or any other civil rights law. Although the Fair Housing Act does not expressly include sexual orientation, gender identity, and marital status as protected classes, a lesbian, gay, bisexual, or transgender person's experience with sexual orientation or gender identity housing discrimination may still be covered by the Fair Housing Act’s prohibition on discrimination based on sex. For example, courts have recognized that the Fair Housing Act’s prohibition against discrimination because of sex includes discrimination based on non-conformance with sex stereotypes. Therefore, under certain circumstances, complaints involving sexual orientation or gender identity may be investigated under the Fair Housing Act.

Many states and local jurisdictions prohibit housing discrimination based on sexual orientation, gender identity and/or marital status, and HUD may refer complaints or other information concerning these protected classes to appropriate state and local fair housing enforcement agencies.

Applicability: The Office of Single Family Housing has incorporated this change into its Single Family Housing Policy Handbook, 4000.1, which will be effective June 15, 2015. Other FHA insured program offices will provide additional guidance on how the rule specifically affects insured programs through additional Mortgagee Letters, or other appropriate communications.

Paperwork Reduction Act: This ML does not contain information collection requirements subject to the Paperwork Reduction Act.

Questions: If you have questions regarding this ML, please call the FHA Resource Center at 1-800-CALLFHA (1-800-225-5342).

Persons with hearing or speech impairments may reach this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

Or you may leave a question for response by email at: answers@hud.gov

The FHA Resource Center can accept emails with attachments. To ensure proper attention to the attachment please reference it within the body of the email.

For additional information on this Mortgagee Letter, please visit www.hud.gov/answers.

Fair Housing questions may be directed to local Office of Fair Housing and Equal Opportunity Offices. Complaints of discrimination based on gender identity may be filed by calling 1-800-669-9777 or electronically at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint.

Signature:

Biniam Gebre
Acting Assistant Secretary for Housing - Federal Housing Commissioner
