



ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

Multifamily Regional Center/Hub Directors
Multifamily Program Center/Satellite Office
Directors
Rural Housing Services (RHS) Directors
Contract Administrators
Multifamily Owners and Management Agents

NOTICE: H 2015-06

Issued: July 13, 2015

Expires: This notice remains in effect
until amended, rescinded or
superseded.

Cross References: 24 CFR 5.100, 24
CFR 5.105(a)(2), 24 CFR 5.403, 24
CFR 200.3 and 200.300, and 24 CFR
891.105.

**Subject: Program Eligibility in Multifamily Assisted and Insured Housing
Programs in Accordance with HUD's Equal Access Rule**

- I. **Purpose and Background.** 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 Rule is intended to ensure that housing across HUD programs is open to all eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status. This notice provides guidance on how the Equal Access Rule applies to Multifamily insured and assisted housing.
- II. **Applicability.** The Rule applies to all HUD-assisted and HUD-insured housing.
- III. **Eligibility Determinations and Definitions.** The Rule revised program requirements at PART 5—General HUD Program Requirements; Waivers, by adding the following provisions at 24 CFR 5.105, and by revising generally applicable definitions at 24 CFR 5.100 and 24 CFR 5.403.

24 CFR 5.105

(a)(2) *Equal Access to HUD-assisted or insured housing.*

(i) *Eligibility for HUD-assisted or insured housing.* 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.**

(ii) *Prohibition of inquiries on sexual orientation or gender identity.* No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing or housing whose financing is insured by HUD, whether renter- or owner-occupied, for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant’s sex where the housing provided or to be provided is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

24 CFR 5.100:

Gender identity means actual or perceived gender-related characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

24 CFR 5.403:

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.

IV. Program Regulations Revised to Reference Part 5. The Rule made several changes to program regulations, including changes to PART 200—Introduction to FHA Programs and to PART 236—Mortgage Insurance and Interest Reduction Payment for Rental Projects, covering HUD-insured programs, such that:

(1) Under 24 CFR 200.3, *Definition*, “family” has the same meaning as provided in Part 5; and

(2) Under 24 CFR 200.300, *Nondiscrimination and fair housing policy*, the nondiscrimination policies in Part 5, including the prohibition on inquiries regarding sexual orientation or gender identity apply to FHA programs;

In addition, PART 891—Supportive Housing for the Elderly and Persons with Disabilities is amended at 24 CFR 891.105, *Definitions*, to refer to the same definition of “family” in Part 5.

- V. **Compliance and Enforcement.** Violations of the rule could result in HUD’s determination that the owner has failed to comply with program requirements. HUD may pursue any available remedy, including sanctions, that it determines appropriate to remedy the violation. HUD or a Contract Administrator may review an owner’s tenant selection plan or other policies and procedures to determine if it complies with the Equal Access Rule. In addition, the civil rights review done at the time of the Management and Occupancy Review may include a review to determine if the owner is in compliance with the Equal Access Rule. A review may also include requests for information concerning allegations of noncompliance. Owners will cooperate with HUD and provide access to staff, records or any information needed to conduct the review.

More extensive guidance on civil rights laws and nondiscrimination policies as they apply to Multifamily assisted housing can be found in Chapter 2 of the HUD Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs*. This Chapter of the Handbook will be updated to reflect the provisions of the Equal Access Rule. Note that Section 4 of that Chapter, on Housing Discrimination Complaints and Compliance Reviews, provides direction in the event that an applicant or tenant believes that he or she has been subject to discriminatory treatment from the owner of an assisted property. See also the Office of Fair Housing and Equal Opportunity (FHEO) webpage on lesbian, gay, bisexual, or transgender (LGBT) housing discrimination, which provides instructions for contacting HUD if a person believes he or she has experienced housing discrimination.

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination

The webpage provides instructions for contacting HUD to obtain answers to questions about LGBT fair housing issues or information about HUD regulations intended to ensure equal access of LGBT persons.

- VI. **Enforcement Options.** If, after conducting a thorough investigation of a complaint brought to HUD or to the Contract Administrator or other information brought to the attention of HUD or the Contract Administrator, the Regional Center/Hub Director determines that the owner or agent has committed one or more violations of the requirements contained in the Equal Access Rule, the Regional Center/Hub Director will provide written notice of the violations to the owner. The notice will describe the violations and call for a response within 30 days. If the applicable regulatory agreement and/or HAP contract requires the owner to “provide management for the project that is acceptable to HUD” or to “administer the subsidy contract in accordance with HUD regulations and requirements,” the Regional Center/Hub Director’s notice will further inform the owner that its violations of the Equal Access Rule constitute unacceptable

management and, therefore, are also violations of the regulatory agreement and/ or the HAP contract.

If the owner fails to respond, or the response does not satisfactorily address the violations alleged in the Regional Center/Hub Director's letter, then the Regional Center/Hub Director or designee may send a referral to the Departmental Enforcement Center (DEC) and the owner must be flagged in the Active Partners Participation System (APPS).

Owners, management agents, principals, or affiliates of projects that are under an insured mortgage or are assisted, who violate any provision of the Equal Access Rule may be liable for one or more of the following sanctions:

- A. Debarment - an exclusion of an individual, organization and its affiliates from conducting business with any Federal Agency government-wide. Debarment is a very serious compliance sanction and is typically imposed for a three-year period. See 2 CFR Parts 180 and 2424 (applies only to nonprocurement activities with the federal government).
- B. Suspension - a temporary action with the same effect as debarment. See 2 CFR Parts 180 and 2424.
- C. Limited Denial of Participation (LDP) - an action that excludes a party from further participation in a certain HUD program area. The scope of the LDP may also be limited to a certain geographic area, and generally remains in effect for up to 12 months. See 2 CFR Parts 180 and 2424.
- D. Civil Money Penalties - fines which may be imposed on owners, principals of owners, and management agents who knowingly and materially fail to comply with any provision of the Equal Access Rule, and, therefore, fail to provide management for the project acceptable to the Secretary, or fail to administer the subsidy contract in accordance with HUD regulations and requirements. By adjustment under the Federal Civil Penalties Inflation Adjustment Act of 1990, the maximum civil money penalty for each offense is currently \$42,500, but the actual amount of the penalty is determined by applying the factors listed in 24 CFR 30.80. These include, among other things, the gravity of the offense, the Owner's history of prior offenses, injury to the public resulting from the violations, the Owner's culpability for the violations, and the Owner's ability to pay the penalty. As these will vary from case to case, there is no schedule of Civil Money Penalty (CMP) amounts. The actual amount sought in any particular case depends on the Departmental Enforcement Center's (DEC) analysis of the factors as they apply to each case.

The enforcement options under A., B., and C., above, may be applied to any insured or assisted project owner, agent or affiliate. Option D., Civil Money Penalties, may only be applied to projects under an insured mortgage or that have a project-based Section 8

contract that has been renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). In addition, HUD may also pursue abatement of, or termination of, a Section 8 contract to sanction an owner or agent who HUD determines has violated any provisions of the Equal Access Rule.

- VII. Fair Housing Implications.** Although the Fair Housing Act does not expressly include sexual orientation, gender identity or marital status as protected characteristics, a lesbian, gay, bisexual, or transgender person may still be protected by one or more of the Fair Housing Act's prohibitions against discrimination. 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.

Persons alleging such discrimination should be informed of their right to file a fair housing discrimination complaint with HUD and directed to HUD's Office of Fair Housing and Equal Opportunity at (800) 669-9777 (voice) or (800) 927-9275 (TTY). Housing discrimination complaints may also be filed by visiting www.hud.gov/fairhousing, or by downloading HUD's free housing discrimination mobile application, which can be accessed through Apple and Android devices.

If HUD lacks jurisdiction to investigate a complaint from an LGBT person, such person may still be protected under state and local laws that include sexual orientation, gender identity and/or marital status as protected classes.

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.

- VIII. Paperwork Reduction Act.** The information collection requirements contained in this Equal Access Housing Notice were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Compliance and Enforcement are covered by OMB control numbers 2502-0577 and 2502-0598. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.
- IX. Contact Information.** Inquiries about this notice may be directed to Kate Brennan at Catherine.M.Brennan@hud.gov in the Office of Multifamily Housing Programs.

Edward L. Golding, Principal Deputy Assistant Secretary
for Housing