

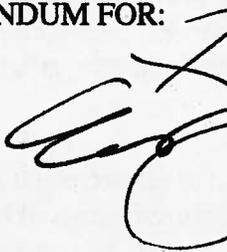


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-0500

DEC 17 2013

OFFICE OF GENERAL COUNSEL

MEMORANDUM FOR: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, DGH

FROM:  Eaton J. Lester, Deputy General Counsel for Housing Programs, Office of General Counsel, CAH

SUBJECT: Applicability of the Equal Access Rule to the Self-Help Homeownership Opportunity Program (SHOP)

This memorandum responds to your request for clarification regarding the applicability of HUD's Equal Access Rule to the Self-Help Homeownership Opportunity Program (SHOP). All SHOP grant funds awarded on or after the effective date of the Equal Access Rule must be used in accordance with the Equal Access Rule.

HUD issued a final rule in the Federal Register at 77 Fed. Reg. 5662 entitled "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity" (Equal Access Rule) on February 3, 2012, with an effective date of March 5, 2012. The stated purpose of this rule is to ensure that HUD's core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. The Equal Access Rule includes the following provisions found at 24 C.F.R. § 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 to the individual 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.

SHOP grantees' responsibility to comply with the provisions of the Equal Access Rule was incorporated into SHOP grant agreements starting with Fiscal Year 2012. Beginning with Fiscal Year 2013, the General Section to NOFAs for discretionary programs incorporates the Equal Access Rule. (Fiscal Year 2013 General Section, at III.C.4.g (Aug. 9, 2012)). All statutory and regulatory requirements cited in section III.C of the Fiscal Year 2013 General Section were incorporated into the SHOP NOFA by reference. (Fiscal Year 2013 SHOP NOFA, at VI.D. (Jan. 10, 2013)).

The Equal Access Rule creates additional program requirements to ensure equal access to HUD programs for all eligible families. As such, a violation of these requirements will be handled in the same manner that violations of other program requirements are handled. If a program participant fails or refuses to comply with these requirements, such failure or refusal is a violation of the SHOP program requirements and the participant is subject to all sanctions and penalties for violation of SHOP program requirements.

The Equal Access Rule does not amend the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, which would require legislative action. However, certain violations of the Equal Access Rule, including discrimination because of nonconformity with gender stereotypes or sexual harassment, may also provide HUD with jurisdiction to process a complaint under the Fair Housing Act.

The Equal Access Rule does not alter a grantee's responsibility to comply with applicable state or local antidiscrimination laws that cover sexual orientation or gender identity.

Helpful resources regarding the Equal Access Rule, including a link to the Federal Register publication of the final rule, a webinar explaining the rule's provisions, and other relevant material are available at: [www.hud.gov/lgbthousingdiscrimination](http://www.hud.gov/lgbthousingdiscrimination).

If you have any further questions, please contact Brian Stecker, Attorney-Advisor, at (202) 402-3270. Thank you.