

FAIR HOUSING REVIEW HUD LGBT EQUAL ACCESS RULE

Background

In a 2011 survey of 6,450 transgender and gender non-confirming persons, 19% reported having been refused a house or an apartment because of gender identity, and 19% reported having been homeless because of gender identity. A 2007 Michigan study found that same sex couples face bias and discriminatory treatment based on sexual orientation when trying to access rental housing. Recognizing these issues, the U.S. Department of Housing and Urban Development (HUD) has taken important steps to ensure that lesbian, gay, bisexual, and transgender (LGBT) persons have equal access to HUD funded programs.

The Federal Fair Housing Act does not specifically include sexual orientation and gender identity as protected classes. However, an LGBT person's experience with housing discrimination may still be covered by the Fair Housing Act. In 2011, HUD issued guidance treating discrimination based on gender nonconformity or sex stereotyping as sex discrimination under the Fair Housing Act. In 2012, HUD published new regulations prohibiting discrimination on the basis of sexual orientation, gender identity or marital status in HUD programs. As a result, housing providers that receive HUD funding, have Federal Housing Administration (FHA) insured loans, as well as lenders insured by FHA, are subject to the new rule and must ensure that LGBT persons have equal access of to their HUD funded services.

General Equal Access Provision (HUD "LGBT Rule")

The final rule, entitled "*Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity*", requires that housing assisted by HUD or insured by FHA shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

LGBT Equal Access Rule Definitions

The HUD LGBT Rule clarifies the definition of 'family' (Section 5.403) and 'household' (Section 570.3) to include LGBT inclusive language. The clarification is critical because the definition of 'family' and 'household' identifies who is eligible to participate in a HUD funded program. This has no impact on other program eligibility requirements (income qualification, annual certification, family member's names on lease, etc.).

Sexual Orientation:
homosexuality,
heterosexuality, or bisexuality

Gender Identity: actual or
perceived gender related
characteristics

Family and Household:
includes persons regardless
of actual or perceived sexual
orientation, gender identity, or
marital status

Who must comply?

The 2012 HUD LGBT Rule applies to all HUD funded programs including Section 8 (housing vouchers), Public Housing, Community Development Block Grants, Housing Opportunities for Persons with AIDS (HOPWA), Supportive Housing for the Elderly and Persons with a Disability and FHA insured loans. The rule does not apply to private housing providers who do not receive HUD funding.

Prohibited inquiries

The rule prohibits inquiries about an applicant or occupant's sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available (Section 5.105). It does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. HUD funded programs can inquire about an applicant or occupants sex in situations where the housing provided, or to be provided, is a temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms. HUD programs can make inquiries about the applicant or occupants sex made for the purpose of determining the number of bedrooms to which the household may be entitled.

Examples of LGBT discrimination

- A tenant applies for an apartment in a Section 202 building and lists his same-sex partner as his spouse and co-tenant. The provider has a religious objection to homosexuality and denies the application.
- A loan applicant applies in person for an FHA-insured loan with a private bank bringing another woman with her. The loan officer believes that the women are a lesbian couple and the loan is denied because of the bank employee's perception of the applicant as homosexual.
- A homeless transgender couple contacts a HUD funded emergency housing hotline to locate HUD funded homeless shelters where they could spend the night. They are told that there are several shelters with available beds, but that no program will accept them due to their gender identity.

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The Housing Equality Center is a nonprofit organization leading the effort to eliminate housing discrimination in Pennsylvania through education, advocacy and enforcement of fair housing laws. We provide victims of discrimination with legal help, perform testing to determine the existence of discrimination, educate the public, consult with and train housing providers, and work with housing and related service providers to ensure compliance with anti-discrimination laws. We assist housing discrimination victims and conduct testing investigations in Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton and Philadelphia Counties.



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