U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

Special Attention of:

ESG recipients and subrecipients
CoC recipients and subrecipients
HOPWA Grantees

Notice: CPD-15-02
Issued: February 20, 2015

This notice remains effective until amended, superseded, or rescinded.

Cross References: 24 CFR 5.105(a)(2); 24 CFR parts 574 and 576; 77 FR 5662

SUBJECT: Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities

I. Purpose

On February 3, 2012, HUD published the *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity* final rule (Equal Access Rule) (77 FR 5662). This final rule requires that HUD's housing programs be made available to individuals and families without regard to actual or perceived sexual orientation, gender identity, or marital status. The rule defines "gender identity" to mean "actual or perceived gender-related characteristics." 24 CFR 5.100; 77 FR at 5665. The final rule also prohibits owners and administrators of HUD-assisted or HUD-insured housing, approved lenders in an FHA mortgage insurance program, and any other recipients or subrecipients of HUD funds from inquiring about sexual orientation or gender identity to determine eligibility for HUD-assisted or HUD-insured housing. The rule does not, however, prohibit voluntary self-identification of sexual orientation or gender identity, and it provides a limited exception for inquiries about the sex of an individual to determine eligibility for temporary, emergency shelters with shared sleeping areas or bathrooms, or to determine the number of bedrooms to which a household may be entitled. 24 CFR 5.105(a)(2).

In response to public comments, HUD stated in the preamble to the final rule that it was not mandating a national policy on placement of transgender persons in single-sex shelters, but would instead monitor its programs to determine whether additional guidance or setting a national policy may be necessary or appropriate. 77 FR at 5666, 5669. Following the issuance of the Equal Access Rule, HUD has determined that it is necessary to provide additional guidance on how best to provide shelter to transgender persons in a single-sex facility. HUD is continuing to evaluate whether setting a national policy through rulemaking is necessary.

After evaluating practices of HUD recipients, reviewing research on transgender discrimination in shelter settings,[1] hearing about both client and provider experiences and concerns, and reviewing the gender-identity nondiscrimination policies of several other federal agencies, HUD is providing this guidance to recipients and subrecipients that place eligible persons in single-sex emergency shelters or other facilities receiving Emergency Solutions Grants (ESG), Continuum of Care (CoC) or Housing Opportunities for Persons with AIDS (HOPWA) funds.[2] This notice also provides guidance on appropriate and inappropriate inquiries related to a potential or current client's sex for the purposes of placing transgender persons in temporary, emergency shelters or other facilities with shared sleeping areas or bathrooms.

II. Guidance from Other Federal Agencies

Earlier this year, the Office for Civil Rights in the Office of Justice Programs at the U.S. Department of Justice (DOJ) published guidance entitled "Frequently Asked Questions: Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013"[3] (VAWA 2013 FAQs). VAWA 2013 authorizes certain grants administered by DOJ, including grants to provide housing assistance for victims of domestic violence. VAWA 2013 also imposes a new grant condition that prohibits discrimination on the basis of sexual orientation and gender identity. VAWA 2013 FAQ number 14 addresses how a recipient of DOJ funds can operate a single-sex facility funded through VAWA and not discriminate on the basis of gender identity. The DOJ guidance states:

> A recipient that operates a sex-segregated or sex-specific program should assign a beneficiary[4] to the group or service which corresponds to the gender with which the beneficiary identifies, with the following considerations. In deciding how to house a victim, a recipient that provides sex-segregated housing may consider on a case-by-case basis whether a particular housing assignment would ensure the victim's health and safety. A victim's own views with respect to personal safety deserve serious consideration. The recipient should ensure that its services do not isolate or segregate victims based upon actual or perceived gender identity. A recipient may not make a determination about services for one beneficiary based on the complaints of another beneficiary when those complaints are based on gender identity.

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[1] Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey.* Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

[2] This guidance does not address the legality of single-sex facilities except to point out that all facilities must comply with applicable civil rights laws, including the Fair Housing Act, and HUD regulations. The Fair Housing Act broadly prohibits discrimination in housing on the basis of race, color, religion, sex, familial status, disability, and national origin.

[3] The guidance is dated April 9, 2014, and can be found at http://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf.

[4] The beneficiary is the individual seeking services from the recipient or service provider.

> For the purpose of assigning a beneficiary to sex-segregated or sex-specific services, best practices dictate that the recipient should ask a transgender beneficiary which group or service the beneficiary wishes to join. The recipient may not, however, ask questions about the beneficiary's anatomy or medical history or make burdensome demands for identity documents.[5]

Other agencies have similarly addressed how to provide equal access to transgender persons in single-sex facilities. In the employment context, the Office of Personnel Management (OPM) has issued Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace, which says that "once an employee has begun living and working full time in the gender that reflects his or her gender identity, the employees should have access to restrooms and . . . locker room facilities consistent with their gender identity. While a reasonable temporary compromise may be appropriate in some circumstances, transitioning employees should not be required to have undergone or to provide proof of any particular medical procedure . . . in order to have access to facilities designated for use by a particular gender."[6]

In December 2014, the U.S. Department of Education's Office of Civil Rights issued guidance providing that "under Title IX [of the Education Amendments of 1972], a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes."[7]

III. HUD Guidance for Single-Sex Emergency Shelters or Other Facilities that Receive ESG, HOPWA, or CoC Funds

Assignments

HUD assumes that a recipient or subrecipient ("provider") that makes decisions about eligibility for or placement into single-sex emergency shelters or other facilities will place a potential client (or current client seeking a new assignment) in a shelter or facility that corresponds to the gender with which the person identifies, taking health and safety concerns into consideration. A client's or potential client's own views with respect to personal health and safety should be given serious consideration in making the placement. For instance, if the potential client requests to be placed based on his or her sex assigned at birth, HUD assumes that the provider will place the individual in accordance with that request, consistent with health, safety, and privacy concerns. HUD assumes that a provider will not make an assignment or re-assignment based on complaints of another person when the sole stated basis of the complaint is a client or potential client's non-conformance with gender stereotypes.

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[5] *See* Department of Justice, Frequently Asked Questions: Nondiscrimination Grant Conditions in the Violence Against Women Reauthorization Act of 2013 (Apr. 9, 2013), *available at* http://www.ovw.usdoj.gov/docs/faqs-ngc-vawa.pdf.

[6] *See* OPM Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace, *available at http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance.*

[7] Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities (Q&A 31), *available at http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf.*

Appropriate and Inappropriate Inquiries Related to Sex

For temporary, emergency shelters with shared sleeping areas or bathrooms, the Equal Access Rule permits shelter providers to ask potential clients and current clients seeking a new assignment their sex.[8] Best practices suggest that where the provider is uncertain of the client's sex or gender identity, the provider simply informs the client or potential client that the agency provides shelter based on the gender with which the individual identifies. There generally is no legitimate reason in this context for the provider to request documentation of a person's sex in order to determine appropriate placement, nor should the provider have any basis to deny access to a single-sex emergency shelter or facility solely because the provider possesses identity documents indicating a sex different than the gender with which the client or potential client identifies. The provider may not ask questions or otherwise seek information or documentation concerning the person's anatomy or medical history. Nor may the provider consider the client or potential client ineligible for an emergency shelter or other facility because his or her appearance or behavior does not conform to gender stereotypes.

Privacy

If a client expresses safety or privacy concerns, or if the provider otherwise becomes aware of privacy or safety concerns, the provider must take reasonable steps to address those concerns. This may include, for example: responding to the requests of the client expressing concern through the addition of a privacy partition or curtain; provision to use a nearby private restroom or office; or a separate changing schedule. The provider must, at a minimum, permit any clients expressing concern to use bathrooms and dressing areas at a separate time from others in the facility. The provider should, to the extent feasible, work with the layout of the facility to provide for privacy in bathrooms and dressing areas. For example, toilet stalls should have doors and locks and there should be separate showers stalls to allow for privacy. Note: ESG and HOPWA funds may be used to renovate an emergency shelter to maximize privacy and safety. The provider should ensure that its policies do not isolate or segregate clients based upon gender identity.

Training

It is the responsibility of the recipient to ensure that it and its subrecipients comply with the Equal Access Rule. In furtherance of such, recipients and subrecipients should provide this Notice to staff members and contractors so as to ensure that employees and contractors who interact directly with potential clients and current clients are aware of it and take prompt corrective action to address noncompliance. Moreover, they should provide training to staff on completing intakes consistent with this guidance. If HUD finds a recipient or subrecipient has failed to meet program requirements, HUD may take actions such as those described in 24 CFR 576.501 or 24 CFR 574.540.

IV. Further information

[8] The Equal Access Rule permits inquiries into sex for temporary, emergency shelter with shared sleeping areas or bathrooms, or to determine the number of bedrooms to which a household may be entitled. 24 CFR 5.105(a)(2).

In addition to complying with the requirements of the Equal Access Rule as described above, recipients and subrecipients must comply with all of HUD's nondiscrimination and equal opportunity provisions at 24 CFR 5.105.

Questions regarding this notice should be submitted to HUD's Ask a Question at https://www.hudexchange.info/onecpd-portal/ask-a-question/. Fair Housing questions may be directed to local 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. Persons with hearing or speech impairments may file a complaint via TTY by calling the Federal Information Relay Service at (800) 877-8339.