

HUD Equal Access Rule and Not Separating Families

Agenda

- Equal Access Final Rule
- Gender Definitions
- Applying Equal Access
- Preventing Family Separation

Equal Access Final Rule

What is the Equal Access Rule?

HUD's Equal Access Rule, which was expanded in 2016, ensures that HUD's housing and shelter programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status.

What does the rule cover?



Access to shelter, housing, and services is provided to an individual in accordance with the individual's gender identity

- 1** Required for all Community Planning and Development (CPD) Programs
- 2** Individuals are placed in accordance with their gender identity
- 3** No requirements for individuals to “prove” gender identity
- 4** Providers must update policies and procedures to reflect requirements

Evolution of the Rule

February 2012

- Sexual orientation & gender identify defined
- Access to housing regardless of actual or perceived sexual orientation, gender identity or marital status
- Prohibited inquiries into sexual orientation or gender identity for eligibility

February 2015

- Placement decisions based on gender which a person identifies – and not another person's stereotypes
- Consider personal health & safety concerns of transgender & gender non-conforming persons
- Guidance on best practices

November 2015

- Owners, operators, & managers of shelters & other buildings & providers of services provide equal access to programs, benefits, services & accommodations in accordance with an individual's gender identity
- Placement & accommodation in facilities that are permitted to be single-sex are made in accordance with an individual's gender identity

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Rule

This Rule requires that a determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by HUD shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. The rule includes a definition for sexual orientation and gender identity and expands the definition of family in most of HUD's programs.

Equal Access in Accordance with an Individual's Gender Identity in CPD Programs Rule

This Rule ensures that all individuals have equal access to the Department's core programs, including shelters and other buildings and facilities, in accordance with their gender identity and in a manner that affords equal access to the individual's family.

- Providers that operate single-sex projects using funds awarded through CPD are required by the rule to provide all individuals, including transgender individuals and other individuals who do not identify with the sex they were assigned at birth, with access to programs, benefits, services, and accommodations in accordance with their gender identity without being subjected to intrusive questioning or being asked to provide documentation.
- This requirement includes tenant selection and admission preferences. The rule also amended the original EAR definitions for sexual orientation and gender identity.

Gender Definitions

Definitions

Sex:

- The classification of a person as male, female or intersex. At birth, infants are assigned a sex, usually based on the appearance of their external anatomy. (This is what is written on the birth certificate.)
- A person's sex, however, is a combination of bodily characteristics including: chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics.

Gender Identity:

- A person's internal, deeply held sense of being a woman, man, neither of these, both, or another gender. For transgender people, their own internal gender identity does not match the expectations based on the sex they were assigned at birth. Cisgender is a term for people whose gender identity matches the expectations based on the sex they were assigned at birth.
- For some people, their gender identity does not fit neatly into one of those two choices (see non-binary and/or genderqueer below.) Unlike gender expression (see below) gender identity is not visible to others.

Definitions

Gender Expression:

- How we express our gender identity to the world ~ expressed through a person's name, pronouns, clothing, haircut, behavior, voice, and/or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine or feminine changes over time and varies by culture.
- Typically, transgender people seek to align their gender expression with their gender identity, rather than the sex they were assigned at birth, although we can't necessarily know how someone identifies by their gender expression, or how we perceive that expression.

Sexual Orientation:

- Describes a person's enduring physical, romantic, and/or emotional attraction to another person. Gender identity and sexual orientation are not the same. Attraction can be related to various factors, not just gender identity.
- Transgender people may be straight, lesbian, gay, bisexual, or queer. For example, a person who transitions from male to female and is attracted solely to men would typically identify as a straight woman.

Self-Identifying Gender

- Actual Gender Identity:
I am a Man

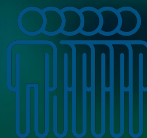
May be different than the gender or sex listed on an individual's identity documents and that those documents should not determine a person's gender identity.



Vs.

- Perceived Gender Identity:
You seem like a man

The gender with which a person is perceived to identify (as opposed to the gender with which the person actually identifies).



Health and Safety Exception

HUD removed language from the 2012 rule that stated that under narrow circumstances, a written case-by-case determination could be made on whether an alternative accommodation for a transgender individual would be necessary to ensure health and safety.

Addressing Privacy Concerns

1

The new rule states that all placements, including admission to facilities that require shared sleeping or bathing quarters, shall be made based on an individual's gender identity.

2

After admissions, programs may take “nondiscriminatory steps that may be necessary and appropriate” to address privacy concerns raised by residents or occupants.

Confidentiality



Continuums of Care and projects should consider including sex assigned at birth on their list of confidential information.



Further guidance will be provided by HUD in the future.

Applying Equal Access

Equal Access in Outreach, Engagement, & Assessment Means:

Accepting the name & gender given by the individual

Using the preferred pronoun as indicated by the individual

If ID is required → **Still use the individual's current gender identity** as indicated by the individual, not the ID

Equal Access in Enrollment Means:

Providing a confidential area to describe services that the client may want to access to ensure the client's confidentiality

Not asking about the client's sex assigned at birth during the intake process

If project services are based on gender

Accepting the client whose gender expression does not fit the stereotypical gender expression.

If client is non-binary, discuss the housing options and ask what would be most comfortable for the client.

Equal Access in Unit/Bed Assignment Means:

Quickly resolving conflicts (e.g., harassment by another client).

Modeling appropriate respectfulness & coaching clients that express verbal & non-verbal disrespect.

Providing confidential space to allow clients to discuss issues related to harassment or other concerns connected to their current gender expression within the project

Equal Access in Ongoing Service Means:

Recognizing the client's right to access all services for which they are eligible.

Correcting clients' misperceptions that gender expression creates a safety risk.

Ensuring that all clients understand that verbal & physical bullying are not tolerated.

Changing the Culture

Expectations should be clear & consistent at every level of the organization:

Written policies & procedures

Supervision & management of staff

Communication of expectations to clients

Day-to-day interactions with clients

Staff training

Written procedures in response to harassment or safety concerns

Federal Guidance

- Equal Access Final Rule:
<https://www.hudexchange.info/resources/documents/Equal-Access-Final-Rule-2016.pdf>
- Equal Access for Transgender People:
Supporting Inclusive Housing and Shelters:
<https://www.hudexchange.info/resources/documents/Equal-Access-for-Transgender-People-Supporting-Inclusive-Housing-and-Shelters.pdf>

Preventing Family Separation

Prohibitions Against Involuntary Family Separation

CoC - 24 CFR 578.93(e) - The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a project that receives funds under this part.

ESG – 24 CFR 576.102(b) - The age, of a child under age 18 must not be used as a basis for denying any family's admission to an emergency shelter that uses Emergency Solutions Grant (ESG) funding or services and provides shelter to families with children under age 18.

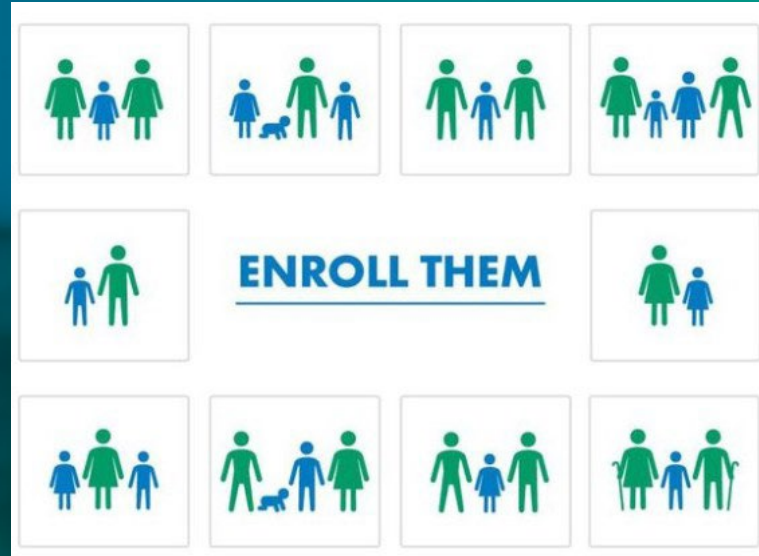
Defining Family under the Equal Access Rule

Family includes, but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, the following:

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:
 - 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);
 - An elderly family;
 - A near-elderly family;
 - A disabled family;
 - A displaced family; and,
 - The remaining member of a tenant family.

What does this mean?

- A group of people that present together for assistance and identify themselves as a family, regardless of age or relationship or other factors = a family
- A family must be served together as such, regardless of how they present.
- Providers need to be able to serve every kind of family, regardless of the ages and sexes of the adults and children.
- Involuntarily separating families based on the gender or age of their minor children is a violation of HUD regulations.



Examples

A shelter cannot separate teenage boys from their families

A program cannot separate out or deny assistance to adult men that present as a part of the family (e.g., fathers, uncles, the mother's boyfriend, etc.)

A shelter or housing program may limit assistance to households with children, it may not limit assistance to only women with children.

If two adults present together as a family for housing, you must serve the two adults as a family and may not require proof of marriage and may not limit assistance to couples in a heterosexual relationship.

A housing program cannot reduce the size of a family because one child is in foster care.

How to Accommodate Families

If a shelter has private rooms in which a family can stay together, then the family must be able to stay in a room together if they choose.

If the standard practice is to put down mats in a conference room for everyone who is considered "overflow" (beyond the capacity of the shelter beds), then it can shelter a family together in that space.

If the standard practice is to place a family in its own room, it would be acceptable to leave a bed empty to accommodate the family, (e.g., a family of four could stay in a unit with 5 beds, and the fifth bed could be open).

If a family presents for permanent housing and one child is in foster care, it would be acceptable to house them in a larger unit and document it is necessary for family reunification

Ensure you have policies & procedures compliant with the rule.