

**HUD's Final Rule Regarding Equal Access to Community Planning & Development Programs  
Based on Gender Identity**

On September 21, 2016, the Department of Housing and Urban Development (HUD) issued a [Final Rule](#) designed to ensure equal access to programs funded and administered by HUD's Office of Community Planning and Development (CPD) for individuals in accordance with their gender identity.<sup>1</sup> The Rule applies to recipients and sub-recipients of CPD funding, and to those who administer programs and services that provide temporary, emergency shelters funded by CPD programs. CPD programs include those funded through the HOME Invest Partnerships Program (HOME) and the National Housing Trust Fund.<sup>2</sup> The Rule requires applicable projects to provide all individuals, including transgender and other individuals who do not identify with the sex they were assigned at birth, with equal access to programs, benefits, services and accommodations in accordance with their gender identity.<sup>3</sup>

The Rule aligns with HUD's mission to create inclusive communities and quality affordable housing for all. The Rule serves as a supplement to the [2012 Equal Access Rule](#) which had postponed the adoption of a national policy regarding the placement of transgender individuals in temporary, emergency shelters until further research was conducted. At the conclusion of HUD's research efforts, they determined new regulations needed to be promulgated because the 2012 Equal Access Rule did not adequately address the significant barriers and discrimination faced by transgender and gender nonconforming persons when accessing single-sex facilities or other programs, benefits, services and accommodations.<sup>4</sup>

The Rule requires applicable projects to establish, amend or maintain policies and procedures that ensure an individual is placed, served and accommodated in accordance with the gender identity of the individual.<sup>5</sup> More specifically, the Rule requires that transgender or gender nonconforming individuals seeking accommodation in temporary, emergency shelters or other single-sex facilities that are configured to have shared sleeping quarters and bathing facilities to be placed in accordance with the individual's gender identity.<sup>6</sup> Furthermore, after an individual has been accommodated, the housing provider must take nondiscriminatory steps that may be necessary to address privacy concerns or address harassment issues.<sup>7</sup> The Rule provides that policies should be enacted that address specific behaviors that violate standards of respectful behavior and provide a procedure for resolving conflicts among occupants.<sup>8</sup>

---

<sup>1</sup> *Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs*, 81 Fed Reg. 183, 64763 (Sept. 21, 2016) (to be codified at 24 C.F.R. part 5).

<sup>2</sup> §5.106(a).

<sup>3</sup> Brian Sullivan, *HUD Issues Final rule to Ensure Equal Access to Housing and Services Regardless of Gender Identity*, HUD No. 16-137. (Sept. 20, 2016).

<sup>4</sup> 81 Fed Reg. 183, 64764.

<sup>5</sup> §5.106(b)(2).

<sup>6</sup> §5.106(c)(1).

<sup>7</sup> §5.106(c)(2).

<sup>8</sup> 81 Fed. Reg. 183, 64788.

In addition, housing providers are prohibited from subjecting individuals to intrusive questioning or asking individuals to provide documentary, physical or medical evidence of the individual's gender identity.<sup>9</sup> New definitions included in the Rule were set out to ensure compliance with this prohibition. "Perceived gender identity" is defined as the gender with which a person is perceived to identify based on that person's appearance, behavior, expression, other gender-related characteristics, and sex assigned at birth, or identification in documents. An individual's actual gender identity is the gender with which a person identifies, regardless of the sex assigned at birth and regardless of the person's perceived gender identity.<sup>10</sup> The clarified definition of gender identity makes it clear that an individual's gender identity can differ from those identified on documents, and that a person can orally communicate their gender identity without needing to provide documentary evidence.<sup>11</sup>

HUD encourages housing providers to post a notice of rights under the new Rule on bulletin boards and in other public spaces where information is made available in order to clearly establish expectations. Further guidance issued by HUD may make this posting of notice mandatory in the future.<sup>12</sup> Resources and guidance that may assist in the creation of policies and the notice of rights under the new Rule are available through [HUD](#). HUD has also developed a [poster](#) that housing providers may choose to display. Housing providers are encouraged to review the Final Rule and make any changes necessary to their policies to ensure compliance.

---

<sup>9</sup> §5.106(b)(3).

<sup>10</sup> §5.100

<sup>11</sup> 81 Fed. Reg. 183, 64766.

<sup>12</sup> *Id.* at 64767.