

**HOMELESS SERVICES OVERSIGHT COUNCIL (HSOC)
Services Coordinating Committee Meeting Agenda**

September 9, 2024, 9am

Committee members must participate in person (except for just cause reasons, or for emergency reasons approved by the HSOC):

**Room 356, County of San Luis Obispo Department of Social Services
3433 South Higuera Street, San Luis Obispo**

Members with approved just cause reasons and the public may participate by
Zoom video call:

<https://us06web.zoom.us/j/86467155259?pwd=KRa3SwVRpKoq9GdVUvgaVSCHTAouJ8.1>

Or dial in:

+1 669 444 9171 US

Meeting ID: 864 6715 5259

Passcode: 129481

1. Call to Order and Introductions
2. Public Comment
3. Consent: Approval of Minutes
4. Action/Information/Discussion
 - 4.1. Discussion Item: 2024 Continuum of Care Notice of Funding Opportunity
 - 4.2. Committee Updates
 - 4.2.1. Information Item: Chair Update
 - 4.2.2. Discussion Item: Topics for upcoming meetings
 - 4.2.3. Discussion Item: HUD Equal Access and Non-Discrimination Policies
5. Future Discussion/Report Items
6. Next Regular Meeting: October 7, 2024

7. Adjournment

The full agenda packet for this meeting is available on the SLO County HSOC web page:

<https://www.slocounty.ca.gov/departments/social-services/homeless-services-division/homeless-services-oversight-council>

**HOMELESS SERVICES OVERSIGHT COUNCIL (HSOC)
SERVICES COORDINATING COMMITTEE MEETING MINUTES**

Date

August 5, 2024

Time

9 am-11 am

Location

Room 356, Department of Social Services
3433 S. Higuera, San Luis Obispo, CA 93403

Members Present

Abby Lassen
Allison Brandum
Amelia Grover
Jack Lahey
Chris Stanley
Michael Azevedo (alternate for Janna Nichols)

Members Absent

Devin Drake
Jane Renahan
Wendy Lewis

Other Attendees

Carrie Collins
Deborah Erb
Jeff Al-Mashat
Kari Howell
Laurel Weir
Merlie Livermore
Russ Francis
Sarah Cooper
Sarah Montes Reinhart
Rob Cogniel

1. Call to Order and Introductions

Jack Lahey called the meeting to order at 9:18 am. Introductions were made by those at the meeting.

2. Public Comment

Allison Brandum presented a sample solar backpack for the homeless. She mentioned that this backpack has a USB port for charging cellphones. Contained inside the backpack are socks, water

bottle, a rechargeable flashlight, transistor radio with alarm clock. Allison said she has 10 backpacks to give out.

Abby Lassen mentioned that Aurora Williams received a grant for the North County Connection to update the Community Resource Brochure which lists different available county wide resources.

Jack Lahey shared that the Prado Center is experiencing a surge in Covid-19 cases. There are 12 participants and staff who are currently affected. Prado Center is still providing services and observing the required protocol.

3. Consent: Approval of Minutes

Allison Brandum moved the motion to approve the minutes. Michael Azevedo seconded. Voice vote was taken, and minutes were approved.

4. Action/Information/Discussion

4.1. Information Item: 2024 Continuum of Care Notice of Funding Opportunity

Laurel Weir shared that annual application for the Continuum of Care bonus funding is out. Information has been published on DSS HSD website for interested applicants. Laurel mentioned that there is an initial intent form that needs to be filled out by interested applicants.

4.2. Committee Updates

4.2.1. Chair Updates

Jack Lahey reported that due to schedule holiday conflicts, and the absence of pressing topics, this Committee has not met since March. Jack also mentioned that this Committee is aiming to commit to a path that can start focusing on a product for the CoC.

Abby Lassen mentioned the importance of addressing the future discussion topics from the last March meeting minutes, namely follow up on WaSH project and sanitation services.

Amelia Grover also suggested finding a way to use this Committee to influence other efforts in the community such as services for aging seniors

4.2.2. Discussion Item: Changing Format and Frequency of Committee Meetings

Laurel Weir shared that last year the HSOC began the process to examine all its different committees with the focus of implementing the Five-Year Plan. With the By-law changes, the Executive Committee was given the responsibility for creating, modifying, deleting committees. When the Executive Committee met in Spring, they authorized the Services Coordinating Committee as one of the continuing committees. The staff and Committee Chair have been meeting, evaluating opportunities and needs and looking at what kind of models might be helpful to help accomplish the goal of having more implementations come out as product, in addition to just information sharing. Laurel shared that a recommendation for this Committee's structure is the use of a working group composed of individuals with interests and knowledge of a particular issue, to do more in-depth examination and bring back recommendations on a particular topic. Laurel also mentioned that one of the benefits of a working group is it can have remote meetings since it is not a Brown Act meeting.

Another recommendation is having fewer but longer meetings. In addition, these meetings are to be designed to have primary focus on a topic, and to spend more time discussing a particular issue, allowing more people to participate and provide updates on certain topics. Timeline being proposed is to have a September meeting for a preliminary update on the status of the working group. Also suggested is to get some dates and topics for the next two meetings to test the model out. Laurel also used this meeting to gather possible ideas to discuss for future meetings.

Some of the suggested topics included the following:

- Increasing access to employment resources
- Helping patients with complex needs
- Sanitation and hygiene
- Street medicine
- Aging and medical care
- Pet Care for people who needs to go to rehab
- Folks who are active in substance use- how to provide care- viewed as a big barrier in delivering services- access to services
- Encampment clearings
- Veteran population-healthcare
- Transportation as a barrier
- Locker/storage system
- Provide services to the underserved regions of the County-Los Osos, Morro Bay
- Permanent Supportive Housing- is it equipped to deal with medical issues, such as incontinence, mobility device; how to move tenants to higher levels of care (i.e. if they are aging)
- Supervision with warming/cooling centers

4.2.3. Action Item: Authorize Working Group to Focus on Access and Success

With the amendment to change the name of the working group to Access and Progress, Allison Brandum moved the motion, seconded by Amelia Grover. Roll was called and the motion passed.

5. Next Regular Meeting: September 9, 2024

6. Adjournment

Jack Lahey adjourned the meeting at 11:00 am

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 200, 203, 236, 400, 570, 574, 882, 891, and 982

[Docket No. FR 5359–F–02]

RIN 2501–AD49

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

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Through this final rule, HUD implements policy to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. This rule follows a January 24, 2011, proposed rule, which noted evidence suggesting that lesbian, gay, bisexual, and transgender (LGBT) individuals and families are being arbitrarily excluded from housing opportunities in the private sector. Such information was of special concern to HUD, which, as the Nation’s housing agency, has the unique charge to promote the federal goal of providing decent housing and a suitable living environment for all. It is important not only that HUD ensure that its own programs do not involve discrimination against any individual or family otherwise eligible for HUD-assisted or -insured housing, but that its policies and programs serve as models for equal housing opportunity.

DATES: *Effective Date:* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Carroll, Director, Fair Housing Assistance Program Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5206, Washington, DC 20410–8000; telephone number (202) 708–2333 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—the January 24, 2011, Proposed Rule

HUD published a proposed rule on January 24, 2011 (76 FR 4194), which advised of evidence suggesting that LGBT individuals and families do not have equal access to housing. Such information concerned HUD because HUD is charged with promoting the federal goal of providing decent housing and a suitable living environment for

all.¹ In the January 24, 2011, proposed rule, HUD noted that many state and local governments share the concern over equal housing opportunity for LGBT individuals and families. Twenty states, the District of Columbia, and over 200 localities have enacted laws prohibiting discrimination in housing on the basis of sexual orientation or gender identity.²

As the Nation’s housing agency, it is important not only that HUD ensure that its own programs do not involve arbitrary discrimination against any individual or family otherwise eligible for HUD-assisted or -insured housing, but that its policies and programs serve as models for equal housing opportunity. In July 2010, HUD issued guidance to assist LGBT individuals and families facing housing discrimination. (See http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_op/LGBT_Housing_Discrimination.) In addition to the guidance, HUD initiated this rulemaking in January 2011 in an effort to ensure that HUD’s rental housing and homeownership programs remain open to all eligible persons regardless of sexual orientation, gender identity, or marital status.

HUD’s January 24, 2011, rule proposed to amend 24 CFR 5.100 to include definitions of “sexual orientation” and “gender identity” among the definitions generally applicable to HUD programs. Under the proposed rule, 24 CFR 5.100 would define “sexual orientation” as “homosexuality, heterosexuality, or bisexuality,” a definition that the Office of Personnel Management (OPM) uses in the context of the federal workforce in its publication “Addressing Sexual Orientation in Federal Civilian Employment: A Guide to Employee Rights.” (See www.opm.gov/er/address.pdf at page 4.) The January 24, 2011, rule proposed to define “gender identity” as “actual or perceived gender-related characteristics,” consistent with the definition of “gender identity” in the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Public Law 111–84, Division E, Section 4707(c)(4) (18 U.S.C. 249(c)(4)).

To promote equal access to HUD’s housing programs without regard to

sexual orientation or gender identity, in the January 2011 rule, HUD proposed to prohibit inquiries regarding sexual orientation or gender identity. As proposed, the prohibition precludes owners and operators of HUD-assisted housing or housing whose financing is insured by HUD from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, the dwelling, whether renter- or owner-occupied. In the January 2011 rule, HUD proposed to institute this policy in its rental assistance and homeownership programs, which include HUD’s Federal Housing Administration (FHA) mortgage insurance programs, community development programs, and public and assisted housing programs.³ While the January 2011 rule proposed to prohibit inquiries regarding sexual orientation or gender identity, nothing in the rule proposed to prohibit any individual from voluntarily self-identifying his or her own sexual orientation or gender identity. Additionally, the January 2011 rule did not propose to prohibit otherwise lawful inquiries of an applicant or occupant’s sex where the housing involves the sharing of sleeping areas or bathrooms. This prohibition of inquiries regarding sexual orientation or gender identity was proposed to be provided in a new paragraph (a)(2) to 24 CFR 5.105.

Additionally, the January 24, 2011, proposed rule clarified in the regulations governing HUD’s housing programs that all otherwise eligible families, regardless of sexual orientation, gender identity, or marital status have the opportunity to participate in HUD programs. As noted in the January 2011 proposed rule, the majority of HUD’s rental housing and homeownership programs already interpret the term “family” broadly. The proposed rule clarified that families, who are otherwise eligible for HUD programs, may not be excluded because one or more members of the family may be LGBT or perceived to be LGBT.

Finally, the rule proposed to revise 24 CFR 203.33(b), by adding sexual orientation and gender identity to the characteristics that an FHA lender may not take into consideration in determining the adequacy of a mortgagor’s income. Marital status is already a prohibited consideration under the current version of 24 CFR 203.33(b).

³ Institution of this policy in HUD’s Native American programs will be undertaken by separate rulemaking.

¹ This goal is rooted in section 2 of the Housing Act of 1949, 42 U.S.C. 1441.

² See, e.g., *Laws Prohibiting Discrimination Based on Sexual Orientation and Gender Identity*, Institute of Real Estate Management (IREM) Legislative Staff, July 2007, which is available at www.irem.org/pdfs/publicpolicy/Anti-discrimination.pdf; see also http://www.hrc.org/files/assets/resources/Housing_Laws_and_Policies.pdf.

II. Changes Made at the Final Rule Stage

In response to public comment and upon further consideration by HUD of the issues presented in this rulemaking, HUD makes the following changes at this final rule stage:

- New § 5.105(a)(2) is revised to make explicit that eligibility determinations for HUD-assisted or -insured housing must be made without regard to actual or perceived sexual orientation, gender identity, or marital status. Also, new § 5.105(a)(2) is revised by dividing this paragraph into two sections. Section 5.105(a)(2)(i) will affirmatively state that housing assisted or insured by HUD must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. New § 5.105(a)(2)(ii) includes the prohibition of inquiries regarding sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available and further allows inquiries related to an applicant or occupant's sex for the limited purpose of determining placement in temporary, emergency shelters with shared bedrooms or bathrooms, or for determining the number of bedrooms to which a household may be entitled.

- The term "family" in § 5.403 is slightly reorganized in the opening clause to read as follows: "Family includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status * * *." This reorganization makes explicit that perceived, as well as actual, sexual orientation, gender identity, and marital status cannot be factors for determining eligibility for HUD-assisted housing or FHA-insured housing.

- The term "family" in 24 CFR 574.3 of the program regulations for the Housing Opportunities for Persons With AIDS (HOPWA) program is slightly revised to reinsert a clause in the definition of "family" in the codified HOPWA regulations that was inadvertently omitted at the proposed rule stage. As stated below in the discussion of public comments, the insertion of this clause serves to combine the original meaning of "family" as provided in the HOPWA regulations with the meaning given the term "family" in 24 CFR 5.403, as revised by this rule.

- The regulations for HUD's Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities programs are revised to provide a cross-reference to

"family" in 24 CFR 5.403, as revised by this rule.

There is one issue of significant comment for which HUD is not making a change at the final rule stage. This pertains to development and implementation of a national system that reports the sexual orientation and gender identity of beneficiaries of HUD housing programs, to allow HUD to better understand the extent to which HUD programs are serving LGBT persons. HUD is not making the requested change to the rule because HUD needs more time to consider the feasibility of such a system and the issues it raises; foremost among them being maintaining the privacy rights of the individual who would be the subject of such reporting. However, in response to comments highlighting the beneficial uses of data on LGBT individuals seeking assistance under HUD programs, and in deference to other government agencies that do collect such data, HUD is clarifying that the prohibition on inquiries is not intended to prohibit mechanisms that allow for voluntary and anonymous reporting of sexual orientation or gender identity solely for compliance with data collection requirements of state or local governments or other federal assistance programs.

With respect to permissible inquiries as to sex where the accommodations provided to an individual involve shared sleeping or bathing areas, HUD clarifies that the lawful inquiries as to sex would be permitted primarily for emergency shelters and like facilities. This temporary housing, unlike other HUD subsidized housing and unlike housing insured by the FHA, involves no application process to obtain housing, but rather involves immediate provision of temporary, short-term shelter for homeless individuals.

III. Public Comments Submitted on Proposed Rule and HUD's Responses

A. Overview of Public Comments

The public comment period for the proposed rule closed on March 25, 2011. At the close of the public comment period, approximately 376 public comments were received from a variety of commenters, including individuals, advocacy groups, legal aid offices, tenant and fair housing organizations, realtors and their representatives, law school clinics, public housing authorities, local government officials, and members of Congress. The overwhelming majority of comments were supportive of the rule. Some commenters, while supporting the rule, suggested modifications, and a

minority of the commenters opposed the rule.

Commenters supporting the rule stated that it was long overdue and noted that HUD, as the Nation's housing agency, should lead the efforts to prevent discrimination against LGBT persons in housing. The commenters supportive of the rule all pointed to the importance of equal housing opportunity for LGBT persons.

Commenters opposing the rule stated that of the many important topics that should be addressed in the housing area, this is not one of them. One commenter viewed the rule as excessive government regulation. Other commenters opined that the rule will cause owners of multifamily housing to decline to participate in the Housing Choice Voucher program. A minority of commenters opposing the rule expressed concern that HUD's proposal will create an unsuitable housing environment.

In proceeding with this final rule, HUD expresses its disagreement with the commenters opposing the rule. HUD believes that the concerns they have voiced will not be realized in practice.

B. Significant Public Comments and HUD's Responses

This section presents significant issues raised by commenters and HUD's responses to these comments.

Terminology Changes

Several commenters recommended some changes to the terms proposed to be included in 24 CFR part 5, including for "family," "gender identity," and "sexual orientation." Commenters also proposed adding definitions of "child," "marital status," and "sex."

Family. For the convenience of the reader and the discussion to follow, the term "family" proposed to be included in 24 CFR 5.403 is restated below:

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) 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);

- (b) An elderly family;
- (c) A near-elderly family;
- (d) A disabled family;
- (e) A displaced family; and

(f) The remaining member of a tenant family.

Comment: One commenter proposed expanding the definition of “family” to include any person or persons, regardless of their sex or relationship to one another, with the only restriction being to allow at least one, but no more than two, persons per bedroom.

Response: HUD believes the term “family,” as presented in 24 CFR 5.403, addresses the concern of the commenter. With respect to bedroom size, the existing occupancy requirements of HUD’s public and assisted housing programs already address the number of persons who may occupy one bedroom.

Comment: Other commenters suggested that it is important that the term “family” in HUD’s rule prevent from exclusion family members who may identify as LGBT individuals or who have LGBT relationships, or who may be perceived as such.

Response: HUD submits that the term “family,” as provided in 24 CFR 5.403, and as proposed to be slightly revised by this final rule, prevents such arbitrary exclusion.

Comment: Commenters suggested that the rule include in 24 CFR 982.201(c), a Public and Indian Housing program regulation permitting public housing agencies (PHAs) to determine who qualifies as a family, an explicit statement that PHAs do not have discretion to define family groupings in a way that excludes LGBT persons, and that a PHA’s discretion cannot conflict with 24 CFR 5.403. To accomplish this, a commenter recommended adding to 24 CFR 982.201(c) the phrase “regardless of marital status, sexual orientation, or gender identity.”

Response: HUD maintains that amendment of 24 CFR 982.201(c) is not required. The rule already proposes an amendment to 24 CFR 982.4 requiring that PHA determinations regarding family be consistent with 24 CFR 5.403. PHAs submit administrative plans to HUD. These administrative plans must include family definitions that are at least as inclusive as HUD’s definition. This requirement has generally proven an effective means of ensuring compliance with HUD eligibility requirements for beneficiaries of its public housing programs. If this approach is not effective following implementation of this rule, HUD will revisit the issue.

Comment: A commenter requested that HUD ensure that the term “family” as presented in 24 CFR 5.403 not have an adverse impact on Housing Opportunities for Persons With AIDS (HOPWA) recipients. The commenter

stated that HOPWA regulations are intended to ensure that AIDS patients can structure their living situations broadly, according to their health needs.

Response: At this final rule stage, HUD makes a slight change to the definition of the term “family” in 24 CFR 574.3, the definition section of the HOPWA program regulations, to reinsert in the definition of “family” the clause “who are determined to be important to their care or well-being.” This clause was inadvertently omitted in the proposed rule. Through insertion of this clause, the final rule combines the definition of family in the proposed 24 CFR 5.403 with the other elements of the original term “family” in 24 CFR 574.3.

Comment: Commenters stated that the definition for disabled households may be read to exclude same-sex couples. They suggested that HUD amend the definition of disabled households to add an additional cross-reference to the term “family” in 24 CFR 5.403 to capture “regardless of marital status, sexual orientation, or gender identity.”

Response: HUD’s regulations for the Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities programs, codified in 24 CFR part 891, include broad definitions of “elderly family” and “disabled household.” Nevertheless, similar to the approach that HUD took with the HOPWA definition of the term “family,” HUD is adding to the regulations in 24 CFR part 891 a cross-reference to the term “family” in 24 CFR 5.403. The cross-reference to “family” in 24 CFR 5.403 will supplement the meanings already provided to “family” in 24 CFR part 891.

Comment: Commenters suggested that the term “family” could be made more inclusive by moving the phrase “actual or perceived” to explicitly include marital status, and clarifying who qualifies as a “child,” as many LGBT parents lack the ability to create legal relationships with their children.

Response: In response to the commenters’ concern and as noted in Section II of this preamble, the final rule restates the term “family” to provide in relevant part, as follows: “Family includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status * * *.” However, with respect to the second request, who qualifies as a child has not arisen as an issue in determining eligibility for housing. Accordingly, HUD will not add a definition of “child” to the final rule.

Comment: A commenter asked whether a family can be one individual.

Response: Yes, in accordance with section 3(b)(3)(A) of the U.S. Housing Act of 1937, HUD’s longstanding definition of “family” has always included a single person.

Comment: A commenter stated that the term “family” as provided in 24 CFR 5.403 of the proposed rule fails to give a “definite meaning to family” and leaves the door open for program abuse by allowing any group that wants to live together to call itself a family. Another commenter stated that the proposed regulation, with its expansion of the term “family,” could potentially allow any combination of persons to qualify as a family without the requirement of a legally recognized relationship. Another commenter stated that the term “family” as proposed in the January 2011 rule will make it impossible for the PHA to determine the family composition, the family income, or who is on the lease, as families could change on a weekly basis. The commenter submitted that the proposed change will take away the security and stability of the family, as well as the PHA’s power to determine if a tenant is suitable or whether the tenant’s behavior would have an adverse effect on other residents.

Response: As discussed in this rulemaking, in both the proposed and final rules, “family” in HUD programs had broad meaning long before these regulatory amendments. By way of this rule, HUD is merely affirming that an eligible family may not be excluded because of actual or perceived sexual orientation, gender identity, or marital status. This rule’s clarification of the term “family” has no impact on other program eligibility requirements, such as income qualification, annual certification, or the requirement that all family members are named on the household lease. The rule in no way precludes a PHA from consistently applying its otherwise lawful policies to a family consisting of LGBT members, just as it would a family with no LGBT members.

Gender Identity. For the convenience of the reader and the discussion to follow, the term “gender identity” in proposed 24 CFR 5.403 is restated below:

Gender identity means actual or perceived gender-related characteristics.

Comment: One commenter stated that the term “gender-related characteristics” is ambiguous and that this ambiguity could result in discriminatory application of the rule. The commenter called for a more precise definition for “gender identity,” but did not offer suggested language.

Another commenter was concerned that it would be very difficult to predict how the term “gender identity,” as defined in the statute, would actually be applied. Another commenter expressed similar concern that the rule does not address how “actual or perceived gender-related characteristics” would be interpreted in a given case, and recommended incorporation of an express reasonableness standard. The commenter stated that a reasonableness standard “will require claimants to meet a strenuous standard for relief, without placing them in the dubious position of having to produce proof that is most readily available to potential defendants.”

A commenter suggested replacing the term “gender identity” with the more comprehensive “gender identity or expression.” Another commenter also stated that the definition of “gender identity” should include gender-related expression, to better protect transgender individuals from discrimination.

Another commenter stated that “without more, ‘actual or perceived gender-related characteristics’ could be interpreted to be limited to those characteristics traditionally associated with the individual’s sex at birth.” The commenter further stated, “To pre-empt any suggestion that HUD condones this view,” HUD should amend the language to read: “Gender identity means actual or perceived gender related characteristics, whether or not those characteristics are stereotypically associated with the person’s designated sex at birth.” This commenter stated that the definition mirrors language currently adopted by a number of states and municipalities. Another commenter endorsed the definition suggested by the preceding commenter.

Response: HUD appreciates the suggested revisions to the definition of “gender identity” offered by the commenters, and will consider these suggested revisions further. However, HUD declines to make changes to this term at this final rule stage. The number of suggested revisions to the definition highlights the differing views among the commenters regarding the meaning of this term. Given this, HUD believes that any changes to the definition should be the subject of further public comment before HUD submits the term as the established definition under which HUD programs will operate. The definition of “gender identity” that is being established by this rule is based on the definition of “gender identity” in the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 18 U.S.C. 249(c)(4). This federal statute was enacted in 2009 to protect LGBT

individuals from targeted violence. Passage of the law resulted from the ongoing efforts of individuals personally impacted by hate crime violence, together with nearly 300 civil rights and religious organizations, education groups, and civic associations committed to gaining legal protections for members of the LGBT community. In addition, the bill received support from many major law enforcement organizations, including the International Association of Chiefs of Police, the National District Attorneys Association, the National Sheriffs Association, the Police Executive Research Forum, and 31 state Attorneys General. Congress considered the issue over multiple sessions through public hearings, reports, and floor debates. The purpose of HUD’s rule, as with the Hate Crimes Prevention Act, is to provide greater protection for LGBT persons. Accordingly, HUD believes it appropriate to use the same definition of “gender identity” as applies in the Hate Crimes Prevention Act. HUD seeks to experience how this term works in its programs before determining what, if any, changes are needed for its effective application in the housing context. Commenters should note, however, that since the definition is intended to cover actual or perceived gender-related characteristics of all persons, including transgender persons, HUD will interpret it to include those gender-related characteristics not stereotypically associated with a person’s designated sex at birth.

Sexual Orientation. For the convenience of the reader and the discussion to follow, the term “sexual orientation” in proposed 24 CFR 5.403 is restated below:

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

Comment: A commenter claimed that defining sexual orientation as “homosexuality, heterosexuality, or bisexuality” alone excludes many people. Another commenter stated that HUD should “broaden the definition of “sexual orientation” to “homosexuality, heterosexuality, bisexuality, or *sexuality as defined by the individual*” [emphasis added by commenter].

Other commenters stated that HUD could add the word “including” prior to the list in the proposed definition of “sexual orientation” to clarify that the list is not exhaustive. The commenters stated that, as written, the definition “excludes transgender individuals who self-identify as multi-gendered or between genders.” Still other commenters stated that the fluidity of the term sexual orientation must be

considered in light of transgender individuals. One of the commenters stated that the term sexual orientation should specifically include transgender individuals, due to uncertainty about whether general “sexual orientation” language would protect such individuals and in light of the historical treatment of such individuals.

Another commenter stated that the rule should broaden protections for “sexual orientation” to include persons who self-identify as heterosexuals but who have histories of same-sex relationships. Such histories could be an issue in small communities, in particular. The commenter states that protection for persons who identify as bisexuals would not be sufficient to cover this situation.

Response: As with commenters’ suggested revisions to the definition of “gender identity,” HUD appreciates the suggested revisions to the definition of “sexual orientation” offered by commenters, but for the same reasons as provided in the preceding response, HUD declines to make changes at this final rule stage. The definition of “sexual orientation,” which HUD provided in the proposed rule, is based in federal policy—the Office of Personnel Management (OPM) “Addressing Sexual Orientation in Federal Civilian Employment: A Guide to Employee Rights.” (See <http://www.opm.gov/er/address.pdf> at page 4.) The purpose of the OPM publication is to implement the Federal Government’s commitment to equal employment opportunity for LGBT individuals in the federal civil service. The OPM publication serves a goal analogous to the one served by HUD’s proposed rule, and, as with the definition of “gender identity,” HUD seeks to experience how this term will work in practice before making changes to a definition currently established in federal policy.

HUD notes that its rule covers actual or perceived sexual orientation, as well as gender identity. As such, the rule covers most of the situations presented by the commenters, such as identifying as transgender; being perceived as transgender, multi-gendered, or between genders; or having a history of same-sex relationships. No one definition in the rule need cover every situation.

Marital Status.

Comment: One commenter recommended adding a definition of “marital status” that would define this term as “the state of being unmarried, married, or separated, as defined by applicable state law. The term ‘unmarried’ includes persons who are single, divorced, or widowed.”

Response: The term “marital status” is not currently defined in HUD regulations and HUD does not find that the focus of this rule calls for a definition of “marital status.”

Sex.

Comment: One commenter stated that to foreclose the possibility of using the allowed inquiry into sex in 24 CFR 5.105(a)(2) against transgender individuals, the rule should either: (a) Define “sex” broadly as “the state of being or becoming male or female or transsexual;” or (b) substitute the more inclusive term “gender” for “sex,” and define “gender” as “sex, including a person’s gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.”

Response: HUD declines to define “sex” or to substitute “gender identity” for “sex” in HUD programs. HUD recognizes the difficulty that transgender persons have faced in finding adequate emergency shelter. HUD does not, however, believe that it is necessary to define “sex” as the commenter suggests. The rule makes clear that housing must be available without regard to actual or perceived gender identity and prohibits inquiries concerning such. Inquiries as to sex are permitted only when determining eligibility for a temporary, emergency shelter that is limited to one sex because it has shared sleeping areas and/or bathrooms, or to determine the number of bedrooms to which a household may be entitled. Such inquiries are not permitted in any other homeless shelter or housing. In light of the narrow breadth of the exception and the regulation’s overall purpose, HUD anticipates that transgender individuals will have greater access to shelters and other housing and will monitor its programs so as to ascertain whether additional guidance may be necessary.

Rule Should More Directly Prohibit Discrimination

Several commenters requested that HUD more directly prohibit discrimination. One commenter stated that “a different section of the proposed regulation completely prohibits a mortgagee from taking into account the sexual orientation or gender identity of an individual in determining whether to provide a mortgage to that person. Amending the proposed regulation to completely ban housing discrimination towards individuals based on their sexual orientation or gender identity * * * would (1) be more consistent with the complete prohibition on using sexual orientation or gender identity in

determining an individual’s adequacy for a mortgage and would (2) provide greater protection to LGBT individuals from housing discrimination.”

Other commenters agreed, stating that the rule could provide stronger protection by completely prohibiting “discrimination based on sexual orientation or gender identity toward occupants of or applicants for HUD-assisted housing (or housing with financing insured by HUD),” rather than by prohibiting certain inquiries. The commenters stated that there are ways other than direct inquiry that LGBT individuals could be identified or discriminated against.

Still other commenters expressed concern that people who are gender-nonconforming may be perceived as gay or lesbian without any inquiry into their sexual orientation and that most discrimination against LGBT persons occurs not because a person answered an inquiry about sexual orientation or gender identity, but because of assumptions about a person’s gender identity or sexual orientation. Those commenters proposed adding language that clearly prevents discrimination on the basis of real or perceived sexual orientation or gender identity.

One commenter suggested that proposed 24 CFR 5.105(a) be revised to cite 18 U.S.C. 249, the Hate Crimes Prevention Act, “for the inference that Congress intends to discourage animus against others based on their sexual orientation, and therefore HUD will similarly disallow animus against others based on their sexual orientation.” Another commenter also referenced the Hate Crimes Prevention Act, stating that HUD’s rule falls short of the goals of that Act. The commenter stated that a rule prohibiting inquiries will have little effect on those who discriminate based on their unverified perceptions.

Response: HUD believes that the revision made to § 5.105(a)(2), as discussed in Section II of this preamble, addresses the commenters’ concern.

Interpret the Fair Housing Act To Cover Discrimination Based on Sexual Orientation or Gender Identity

One commenter suggested that HUD interpret “discriminatory practice” in the Fair Housing Act to include discrimination against persons on the basis of sexual orientation or gender identity.

Response: In order to ensure equal access for all eligible families to HUD programs, this rule requires that eligibility determinations for HUD-assisted or -insured housing be made without regard to sexual orientation, gender identity, or marital status. These

additional program requirements do not, however, create additional protected classes in existing civil rights laws such as the federal Fair Housing Act. The Fair Housing Act prohibits discrimination based on race, color, national origin, religion, sex, disability, and familial status. Sexual orientation and gender identity are not identified as protected classes in the Fair Housing Act. As discussed in the following section, however, the Fair Housing Act’s prohibition of discrimination on the basis of sex prohibits discrimination against LGBT persons in certain circumstances, such as those involving nonconformity with gender stereotypes.

Interpret Sex Discrimination Under the Fair Housing Act To Reach Discrimination and Harassment of LGBT Persons

A commenter stated that proposed 24 CFR 5.403, prohibiting inquiries of “actual or perceived sexual orientation,” could be revised to prohibit inquiries of “actual or perceived sex.” The commenter stated that sex is already a protected class under the Civil Rights Act of 1964 and could be used to reach discrimination against LGBT persons.

Response: HUD declines to revise the proposed rule to prohibit inquiries of sex, but notes that certain complaints from LGBT persons would be covered by the Fair Housing Act. If an LGBT person experiences any of the forms of discrimination enumerated in the Fair Housing Act, such as race or sex discrimination, that person can invoke the protections of the Fair Housing Act to remedy that discrimination. Discrimination based on sex under the Fair Housing Act includes discrimination because of nonconformity with gender stereotypes. For example, if a PHA denies a voucher to a person because the person does not conform to gender stereotypes, that person may file a Fair Housing Act complaint with HUD alleging sex discrimination.

HUD may also have jurisdiction to process a complaint filed under the Fair Housing Act if an LGBT person obtains housing but then experiences discrimination in the form of sexual harassment. Sexual harassment is illegal under the Fair Housing Act if the conduct is motivated by sex and is either so severe or pervasive that it creates a hostile environment or the provision of housing or its benefits is conditioned on the receipt of sexual favors (for example, as a *quid pro quo*). Harassment may be motivated by sex if, for example, it is due to the landlord’s view that the tenant’s appearance or

mannerisms fail to conform with stereotypical expectations of how a man or woman should look or act. Housing owners or operators may be liable for their own actions or the actions of their employees or other residents.

If HUD determines that it does not have jurisdiction to investigate a complaint from an LGBT person, the person may still be protected under state and local laws that include sexual orientation or gender identity as protected classes.

Expand the Rule's Protection To Cover Discrimination Beyond Refusal To Rent

A commenter recommended expanding the proposed rule to prohibit harassment and disparate treatment on the basis of sexual orientation or gender identity. The commenter explained that in order for the proposed rule to maximize its effectiveness, owners and operators of HUD-assisted housing or housing whose financing is insured by HUD should be precluded from negative decisionmaking based on these protected categories. HUD should be clear about its power to enforce nondiscrimination and the remedies available to individuals who have been discriminated against.

Another commenter suggested that the prohibition on inquiries be strengthened so that no information about a person's sexual orientation or gender identity can be used to deny a tenancy, harass a tenant, evict a tenant, or terminate a voucher.

Yet other commenters recognized the intent behind prohibiting inquiries regarding sexual orientation or gender identity, but submitted that the prohibition will not adequately protect LGBT persons from harassment in housing, as much housing discrimination occurs when a housing provider infers a person's sexual orientation or gender identity based on stereotypes, appearances, mannerisms, or information from a third party. The commenters urged HUD to adopt a final rule that prohibits discrimination based on sexual orientation and gender identity in all HUD-assisted and HUD-insured housing.

Response: HUD believes the revision made to § 5.105(a)(2), as discussed in Section II of this preamble, addresses the commenters' concern. In order to ensure equal access for all eligible families to HUD programs, § 5.105(a)(2) requires that eligibility determinations for HUD-assisted or -insured housing be made without regard to sexual orientation, gender identity, or marital status.

Prohibition on Inquiries

Several commenters suggested changes to the prohibition on inquiries in proposed 24 CFR 5.105(a)(2). The proposed rule provided as follows:

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, a HUD-assisted dwelling or a dwelling whose financing is insured by HUD, whether renter- or owner-occupied. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying the individual's sexual orientation or gender identity.

Comment: A commenter stated that the prohibition on inquiries may discourage open dialogue when determining appropriate placement of families applying for HUD programs. Inquiries regarding sexual orientation or gender identity may be appropriate where the safety of the individual or family being placed is of concern. There also may be other nondiscriminatory reasons for a person responsible for program placement to inquire about an individual's sexual orientation or gender identity. This commenter states that "the language [should] be changed to simply include 'actual and perceived sexual orientation and gender identity' in the section for nondiscrimination; or that the prohibition on inquiries [should be] limited to discriminatory purposes."

Response: Revised § 5.105(a)(2) addresses the commenters' nondiscrimination concerns. In addition, the prohibition on inquiries regarding sexual orientation or gender identity does not prevent individuals from volunteering to identify their sexual orientation or gender identity. They may choose to do so to address any safety concerns or for other placement-related issues, for example. Also, the commenter's concern is one that prompted HUD to include in the proposed rule its language on the permissibility of lawful inquiries as to sex, which is discussed below. However, as noted in the discussion of Section II of this preamble, and addressed in revised § 5.105(a)(2), the inquiries permissible in determining program eligibility are contemplated generally only where temporary, emergency shelter is provided to homeless individuals that involves the sharing of sleeping areas or bathrooms, or for a determination of the number of bedrooms to which a household may be entitled.

Lawful Inquiries of Sex

Several commenters requested clarification of the rule's lawful inquiry provision or expressed concern that the provision would allow for discrimination. The lawful inquiry provision provided by the proposed rule stated as follows:

[The] prohibition on inquiries regarding sexual orientation or gender identity does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual involves the sharing of sleeping areas or bathrooms.

Comment: A commenter stated that the lawful inquiry exception for the sharing of sleeping areas or bathrooms may exacerbate extant stereotypes about gays and lesbians living in close quarters with heterosexuals. The commenter stated that numerous scenarios come to mind where landlords abuse this exception to refuse to rent to homosexuals, purportedly because heterosexuals feel uncomfortable "sharing bathrooms or living space" with homosexuals. The only legitimate purpose of such an exception, the commenter stated, would be in single-sex housing situations. But even there, the commenter stated, the inquiry is "entirely irrelevant and inappropriate" as to transgender status, because the person would have already acquired a new gender.

A commenter stated that the assumption that one person's sexual orientation might disturb the rights of another person in a setting where bathrooms and bedrooms would be shared reinforces stereotypes and biases, rather than countering them. Another commenter made a similar comment, stating that the proposal continues to promote negative stereotypes and violence against LGBT persons. A commenter speculated that while such language was placed in the proposal with the intention of ensuring that other tenants remain comfortable and safe, there are several issues with that goal, the first of which is whether "leaving so much up to the discretion of the landlord will lead to greater potential risk of danger for these tenants."

Another commenter stated that this provision creates numerous problems in application. The commenter states that asking someone who identifies with the so-called "opposite" gender to identify their sex implies that their identification is not "real" or "genuine," and that reinforces the very problems the regulation seeks to resolve. This commenter stated that as with sexual orientation, it is difficult to imagine how one's gender identity, even in a shared situation, would be a problem for

any other person, as few programs require individuals to share bedrooms with strangers.

Another commenter also expressed concern about the practical effect of allowing inquiries into the applicant's or occupant's sexual orientation or gender identity. The commenter stated that it is not clear from the proposed rule whether this language provides an exhaustive or merely illustrative list of scenarios under which it is appropriate to inquire about an individual's gender. The commenter claimed that if the language is merely illustrative, a housing provider will likely be authorized to make broad inquiries into an applicant's gender identity when any shared living space is anticipated. A commenter stated that this "lawful inquiry" into sex could be used to indirectly reach gender identity, for instance in the case of a transgender individual, and this allowed inquiry could be used to accomplish the kind of discrimination the rule is meant to prevent. Another commenter expressed concern about the impact unrestricted inquiries would have on low-income transgender people who cannot afford to access legal gender change petitions.

Response: The allowance of lawful inquiries of sex for housing that provides shared bathrooms or sleeping arrangements is not a license to exclude LGBT persons from HUD-assisted housing. HUD programs must be open and available to persons regardless of sexual orientation or gender identity. The allowance of the limited inquiry of sex provided in the proposed rule is intended to apply primarily in emergency shelters for homeless persons, to ensure privacy if the shelter consists of shared sleeping or bathing areas. HUD addressed the harassment issue earlier in this preamble.

Comment: A commenter noted that HUD had not proposed a definition of what is meant by the term "housing provided * * * to the individual (that) involves the sharing of sleeping areas or bathrooms." The commenter stated that "[t]here was presumably no intention to permit inquiry of any person applying to any development that had bathrooms in common space. Additionally, by not providing that the "sharing" reference applies only to persons who are not part of the same household," it would open the door to inquiries of all applicants for all housing that permits households of more than one individual.

Response: HUD believes that revised § 5.105(a)(2), in this final rule, expressly provides that LGBT status cannot be a basis for denying participation in a program funded or insured by HUD. Moreover, the inquiry permitted by the

rule is not unrestricted. As provided in this final rule, HUD believes it is appropriate to make inquiries as to sex in temporary, emergency shelters that have shared bedrooms or bathrooms. This housing, unlike other HUD subsidized housing and housing insured by FHA, necessitates immediate provision of temporary shelter for homeless individuals.

Comment: Another commenter expressed concern that the proposed prohibition on inquiries concerning gender identity may adversely affect the assignment of households to appropriately sized housing. The commenter explained that many local programs determine housing size in part based on the gender of household members, because household members of different genders other than spouses are not required to share a bedroom. According to the commenter, sponsors may assign households to housing that is too small or too large based on members' genders, consuming unnecessary housing assistance resources. A commenter suggested that HUD clarify the existing exception or add another exception to the blanket prohibition against inquiries to permit the assignment of households to properly sized housing.

Response: With the clarification provided in this final rule that HUD intended to allow lawful inquiries to a limited sector of HUD-assisted programs, HUD does not believe the commenter's concerns will be realized.

Comment: A commenter expressed concern about the lawful inquiries provision in the rule because the commenter believed the provision would allow housing providers to inquire about someone's human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) status, and explained that gay men are often discriminated against when they are considered to have HIV/AIDS.

Response: Nothing in the lawful inquiries provision of this rule and no provision in HUD's existing regulations for its housing programs allows a housing provider to inquire about someone's HIV status, except where providing HIV/AIDS-related housing assistance and supportive services (e.g. activities under the HOPWA program (24 CFR part 574)), and subject to confidentiality requirements. Moreover, the federal Fair Housing Act, which HUD enforces and administers, prohibits discrimination against someone who has or is regarded as having a disability, including HIV/AIDS. (See 42 U.S.C. 3602(h)(3) and 3604(f)(1).)

Comment: Several commenters expressed concern that inquiries as to a person's "sex" in situations involving shared sleeping areas and bathrooms is not sufficiently clear to guard against discrimination based on gender identity and asked HUD to provide further guidance. One commenter stated that this exception for lawful inquiries "leaves landlords with significant discretion to deny housing on illegitimate grounds." This same commenter stated that HUD "should add language to more clearly confine this exception to its legitimate ends." Another commenter requested that HUD clarify what type of inquiries are acceptable and in what specific circumstances, so as not to allow this exception to become a pretext for discrimination based on gender identity.

Several commenters stated that the allowed inquiry into sex provided could be used to identify and target transgender individuals, in particular, because the term "sex" used in the rule is vague and because the "lawful inquiries" exception is too broadly defined, leaving landlords "significant discretion to deny housing on illegitimate grounds." Some of these commenters thought the exception should be more narrowly defined.

One commenter stated that the proposed rule does not provide sufficient guidance to clarify for housing providers the limits of permissible inquiry into the applicant's sex, thus placing housing administrators in the position of arbiter of the transgender individual's sex for the purpose of their housing applications, and exposing transgender persons to harm and discrimination because of varying interpretations. Another commenter similarly stated that "the exception for inquiries about sex for determining eligibility for single sex-dormitories or housing with single-sex shared-bathrooms might create opportunities for discrimination against transgender persons." The commenter asked HUD "to establish strict limitations on when these questions are appropriate."

A commenter stated that opponents of the rule will likely focus on the "niche issue of the placement of transgender individuals (or those that are pretending to be transgender) in single sex facilities." The commenter stated that HUD, in the interest of addressing these critics and for clarity overall, "should fully analyze this question instead of merely stating that the rule is 'not intended to prohibit otherwise lawful inquiries'" of sex, which is vague. The commenter asked, as an example, "[c]an a battered women's shelter still receive funding from HUD if it denies shelter to

a man, who perceives himself to be a woman? What would be the adjudicatory process in such an event? Is this event a realistic scenario? HUD should further analyze issues such as these both to undercut critics' arguments that the proposed rule would be unworkable and to better guide its local program coordinators in proper practices. The overarching goal of this proposed rule change is too important for it to be scrapped because of this rare and currently murky legal scenario."

Another commenter stated that a transgender person's actual sex may be at odds with his or her appearance, and questioned the meaning of this provision for such a person. A commenter asked if transgender persons may be excluded from shared housing or gay men excluded from sharing housing with other men. If so, would other accommodations be made for excluded groups? Other commenters urged HUD to clarify the rule to state that a housing provider may only inquire about individuals' gender identity for the purpose of placing them in gender-specific accommodations, but cannot inquire about a person's birth sex, anatomy, or medical history.

Response: In Section II of this preamble, HUD has already addressed several of the concerns raised by the commenters. HUD is committed to further review of this issue and, as necessary, will issue guidance that, through examples, elaborates on how the prohibition of inquiries on sexual orientation and gender identity, and the allowance for lawful inquiries as to sex, will work in practice.

Comment: Several commenters suggested that HUD-funded programs should accept an individual's gender identity, as opposed to "sex" in determining housing placement in sex-segregated housing programs. One commenter stated that lawful inquiries of a consumer's "sex" where housing involves the sharing of sleeping areas and bathrooms leave transgender individuals, who may need the most protection, particularly vulnerable to discrimination. Another commenter stated that even inquiries of individuals who have obtained legal gender change documents would lead to harassment and discrimination. For this reason, the commenter suggested that inquiries about sex for sex-specific housing should be made in reference to an individual's gender identity.

Another commenter stated that if applicants are not allowed to report their gender identity rather than their sex as legally defined by their state government, the considerable differences among states as to how

persons may change their sex would lead to a considerable lack of uniformity across HUD programs. The commenter further stated that transgender persons may be arbitrarily excluded from HUD programs if they are forced to report their sex as defined by their state government, instead of being permitted to report a gender identity that more accurately describes them. Several commenters expressing similar concerns recommended that the rule be revised so that a person is required only to disclose the gender they identify as regardless of sex assigned at birth and not be asked to provide proof of that identity.

Other commenters stated that the rule should allow for voluntary self-reporting where sex designations are required. In such cases, the commenter stated that "HUD could allow applicants to list the sex designation they would like to have rather than their biological or as yet medically un-reassigned sex." The commenter stated that this would help to avoid the problem of using allowed inquiries regarding sex to get to issues of gender identity. Another commenter stated that it is important to ensure that persons are able to self-select their sex in order to protect the access of transgender persons to housing facilities. Another commenter, after querying how the "lawful inquiries" regarding sex will apply to transgender individuals, stated that "in these instances, self-identification is probably the best way to go; however, this may be an area best left with some discretion."

Response: HUD recognizes the serious problem of housing instability among transgender persons. The housing discrimination, harassment, and homelessness that transgender persons face are part of what precipitated HUD's rulemaking in this area. These issues also contributed to HUD's recent recognition that housing discrimination because of nonconformity with gender stereotypes may constitute sex discrimination under the Fair Housing Act. HUD is aware of the significant challenges that transgender persons face when attempting to access shelters. By way of this rule, however, HUD is not mandating a national policy related to appropriate placement of transgender persons in shelters limited to one sex. HUD needs additional time to review this issue and determine whether setting national policy is appropriate.

Comment: A commenter expressed concern about being required to identify the sex of tenants on the Form HUD-50059, given that the applicant/tenant is not asked to self-identify sex but rather the information is assigned by a third party based on observation. Form HUD-

50059 is used to determine the number of bedrooms a family may need, based on the age and sex of the children. The commenter submitted that requiring information on sex to be reported on Form 50059 conflicts with the proposed rule prohibiting inquiries about sex, and suggested that individuals should self-identify their gender and sex.

Response: HUD will further examine this form, to determine whether a change is needed. The form is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which requires notice and comment when changes are made. Accordingly, any changes made to this form will provide the public the opportunity to comment, and such comment will not only be helpful in addressing the specific issues raised about this form, but may inform HUD on changes that may be needed to other forms.

Collect Data To Protect LGBT Community

Several commenters suggested that HUD establish a confidential data collection system to identify LGBT beneficiaries of HUD housing programs to ensure that their housing needs are met and that they are protected from discrimination.

Comment: Several commenters proposed that HUD provide a mechanism by which applicants and tenants of HUD-assisted housing or HUD-insured housing can voluntarily report their sexual orientation and gender identity. Such data would be collected for informational purposes only, and in a manner to protect the confidentiality of the responder.

Commenters identified varying need for such data. One commenter explained that data on the sexual orientation and gender identity of HUD program participants is crucial to demonstrate the need for affirmative outreach, assess its effect, and attract resources to address problems in this area. Other commenters stated that the data would be of substantial value for the development of appropriate programs and policies. One commenter specified that information on program participants' sexual orientation and gender identity can be useful to determine whether appropriate services are being delivered and to assess whether progress is being made in meeting the housing needs of LGBT youth and adults. Other commenters stated that data should be collected only to assess whether the rule is achieving its goals.

Commenters provided specific suggestions for safeguarding confidentiality. One commenter

proposed that inquiries should not be permitted until after admission decisions have been made, and another stated that only staff involved in the collection and analysis of the data should have access to it. Other commenters urged HUD to continue to work with fair housing organizations and the housing community to collect demographic information on the LGBT community in a way that cannot be used to discriminate, by including appropriate restrictions on the acquisition, retention, and use of the information to protect the privacy of those whose data is being collected. Several commenters discussed the effect of the proposed prohibition on inquiries on data collection. One commenter stated there are a myriad of potential mechanisms for achieving the dual goals of protection against discrimination while gathering sufficient data to monitor LGBT housing discrimination. The commenter proposed a voluntary reporting system that would allow persons who wish to self-identify to bypass housing providers and PHAs and submit demographic information directly to HUD. The commenter suggested that language be added to existing forms that would direct all applicants and occupants of HUD-assisted housing wishing to provide such information to a Web site and mailing address for HUD's Office of Fair Housing and Equal Opportunity. The commenter stated that this could enable the person to submit the information anonymously, while providing HUD with sufficient demographic information to monitor discrimination.

Another commenter also viewed voluntary disclosure as the appropriate balancing of the right to privacy "against the rule's purpose in ensuring equal access to housing." But according to the commenter, "[w]hile the rule proposal notes that the inquiry prohibition does nothing to limit voluntary disclosure, it also does nothing to channel such disclosures in a way that promotes the rule's underlying goal."

One commenter recommended that HUD conform its data collection systems related to the sex of household members to the proposed prohibition of inquiries concerning gender identity. Another commenter stated that the prohibition on inquiries regarding gender identity could result in the inadvertent housing of dangerous individuals because, in the commenter's view, gender identity is an important component of the applicant information collected to gather accurate criminal background information. The commenter supported the establishment

of a database containing gender identity information of applicants.

Response: For the reasons discussed in Section II of the preamble, HUD declines to include in this regulation a national reporting system of sexual orientation and gender identity. HUD understands the concerns of the commenters, but believes that further consideration must be given to this proposal. This final rule is not intended to prohibit mechanisms that allow for voluntary and anonymous reporting of sexual orientation or gender identity for compliance with data collection requirements of state and local governments or other federal assistance programs, but only after determining the individual's or family's eligibility for HUD assistance.

Comment: Commenters urged HUD to look for ways to collect and maintain data to help identify and combat LGBT housing discrimination, while protecting and preserving privacy and safety, and preventing further discrimination or retaliation so that additional policy efforts can be further developed. The commenters stated that because discrimination against LGBT individuals is substantially underreported, the final rule should contain language requiring covered housing providers and grantees to provide accessible information about these protections, as well as necessary information on how people can submit complaints when they believe their rights have been violated.

One commenter urged HUD to work with the LGBT community and fair housing organizations to collect demographic data on sexual orientation and gender identity to better enable the LGBT community to advocate for increased funding for geographic and programmatic areas where LGBT persons remain vulnerable. Another commenter stated that because sexual orientation and gender identity are still not identified in the Fair Housing Act as prohibited bases for discrimination, data must be collected to reflect the number of LGBT individuals and families seeking access to HUD programs and services to help advocate for necessary policy changes and to identify areas where LGBT persons remain particularly vulnerable to discrimination.

Response: HUD appreciates all the proposals submitted by the commenters. As discussed in Section II of the preamble, HUD declines to add a data collection mechanism to the rule. HUD notes, however, that it has existing mechanisms for collecting and reporting on discrimination claims filed with its Office of Fair Housing and Equal

Opportunity. (See http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination.)

Enforcement Procedures

Comment: Several commenters noted that the proposed rule was not explicit as to how HUD plans to enforce the rule. One commenter stated that there must be a mechanism by which claims of discrimination in HUD programs can be voiced by the LGBT community. Another commenter echoed that concern, stating that if sexual orientation or gender identity discrimination does occur, it must be clear to the landlords and future tenants that these matters will be addressed in a fair and timely manner.

A commenter suggested that HUD include in the final rule a clear procedure for submitting complaints, holding hearings, and making determinations of violations of HUD program rules. Another commenter suggested including an appeals process. One commenter suggested that HUD create a centralized complaint system through which persons can submit information about discrimination under the rule. That commenter proposed that HUD establish a telephone number for complaints based on violations of the proposed rule, and that HUD designate a coordinator to direct complaints to the appropriate persons in the program offices. The commenter proposed that HUD create a complaint intake form similar to the existing Form HUD-903 that persons use to file complaints under the Fair Housing Act. The commenter stated that creating a centralized intake system would have the benefit of facilitating the filing of reports of discrimination, as well as providing more information about the occurrence of discrimination in HUD programs. The commenter stated that "[p]ractical mechanisms for enforcement will allow LGBT families and advocates to fully utilize these changes to access housing."

One commenter questioned whether HUD anticipates an expansion of its Investigations Division to support the proposed rule, and if so, what if any training the existing staff would undergo to adequately prepare for this type of investigation. Another commenter simply suggested that HUD consider expanding its investigative units to respond to the likely increase in complaints.

A commenter inquired whether the regulations create a new right for aggrieved parties. The commenter explained that while an aggrieved party can file a complaint alleging discrimination on grounds expressly

forbidden in the Fair Housing Act, the proposed rule does not seem to give victims of discrimination based on sexual orientation or gender identity the same right. The commenter requested clarification regarding what method of enforcement HUD will implement if it does not explicitly extend this right to victims of discrimination based on sexual orientation or gender identity. The commenter concluded that without zealous and informed enforcement, these regulations will provide only lip service to the broader goals of promoting access to HUD programs for all eligible families.

Response: As noted in response to an earlier comment, this rule creates additional program requirements to ensure equal access to HUD programs for all eligible families. Therefore, a violation of the program requirements established by this rule will be handled in the same manner that violations of other program requirements are handled. Each HUD program has in place mechanisms for addressing violations of program requirements. If a participant in HUD-assisted or HUD-insured housing programs believes that the housing provider is not complying with program requirements, the individual may complain to the appropriate HUD office that administers the program (e.g., the Office of Public and Indian Housing, the Office of Community Planning and Development). In addition, as also noted in the earlier response to a comment, certain complaints would be covered by the Fair Housing Act. A claim of discrimination based on nonconformity with gender stereotypes may be investigated and enforced under the Fair Housing Act as sex discrimination. HUD recently published guidance on this. See http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination. Such claims would be filed through HUD's Office of Fair Housing and Equal Opportunity at the Web site noted earlier in this preamble: http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination or 1-(800) 669-9777. Many states and localities have laws prohibiting discrimination based on one's LGBT status. HUD's guidance, referenced above, contains a list of such states. As noted below, HUD will develop training materials to educate recipients of HUD funding of their rights and responsibilities under this rule.

Remedies

Other commenters recommended that HUD clearly explain its authority to

provide remedies under the rule, whether it is to sanction, suspend, debar, or seek civil penalties against those individuals or entities who deny individuals and families safe, clean, affordable housing because of their gender identity or sexual orientation. The commenters believe that "setting the rules in stone" would deter housing providers from violating the terms of the rule.

Response: Whenever a participant in a HUD program fails or refuses to comply with regulatory requirements, such failure or refusal shall constitute a violation of the requirements under the program in which the participant is operating and the participant will be subject to all sanctions and penalties for violation of program requirements, as provided for under the applicable program, including the withholding of HUD assistance. In addition, as is discussed in the prior response, HUD may pursue an enforcement action when the Fair Housing Act is implicated. A housing provider who is found to have violated the Fair Housing Act may be liable for actual damages, injunctive and other equitable relief, civil penalties, and attorney's fees.

Education, Outreach, and Guidance

A commenter stated that HUD should add education requirements. The commenter stated that within 9 months after this regulation goes into effect, entities that participate in HUD programs should educate their relevant staff on the rule. An Internet-based training program could be efficiently used. This requirement could be waived in rural areas that currently lack Internet access, or an alternative means of satisfying the requirement could be created, such as participation via telephone. This commenter also stated that within 9 months, HUD should require participating entities to begin providing individuals with updated information regarding their rights to be free from discrimination. This commenter stated that given limited resources, HUD should focus its efforts on areas with large LGBT populations and in jurisdictions that do not currently possess anti-discrimination statutes that cover sexual orientation or gender identity.

Another commenter stated that whether this policy has its desired effect will greatly depend on outside factors. The anti-discrimination policies in place should be brought to the attention of applicants for HUD housing through HUD application forms, interviews, and Web site pages. HUD employees should be instructed as to the reasons for these policies and should be sanctioned for

any behavior or comment that discriminates against individuals covered under HUD's policies. Employees who are sensitive to LGBT issues should be enlisted to provide information to assist LGBT individuals and their families in making decisions as to the most comfortable and safe housing. Another of the commenters stated that in order to ensure compliance with the proposed rule, it will be necessary to educate the affected agencies and programs on the meaning of "actual or perceived gender-related characteristics," a definition cited in the rule and drawn from the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009.

Another commenter recommended that HUD develop comprehensive outreach goals and advertise in the LGBT media. The commenter recommended that forms HUD-935.2(a) or (b) be amended for this purpose to include categories for gender identity and sexual orientation as target groups, and that such forms be available for all HUD-assisted programs. The commenter also suggested that PHAs affirmatively market to underrepresented populations as they are required to affirmatively market housing under the Fair Housing Act. Other commenters recommended that HUD-assisted housing providers be required to affirmatively market to the LGBT population through community centers and other outreach groups. One of these commenters stated that HUD program staff, PHAs, subsidized housing providers, and housing-related service providers will need education on the final rule to ensure that they are in compliance.

A commenter recommended that HUD conduct a public relations campaign that explains the new regulation and welcomes LGBT families. The commenter suggested that owners and operators of HUD-assisted housing and FHA-insured housing be aware of the proposed rule and its impact on their day-to-day dealings with tenants and mortgagors, while also suggesting that HUD create literature, posters, and other materials directed at LGBT families. The commenter stated that these advertisements should advise LGBT families that HUD wants to ensure their equal access to its core rental assistance and homeownership programs, while the media campaign should convey that HUD is committed to taking actions necessary to ensure that LGBT families are not excluded on the basis of their sexual orientation, gender identity, or other criteria irrelevant to the purpose of HUD.

Another commenter stated that if LGBT individuals do not know about

the proposed regulation, it will be much less effective. If enforcement of the proposed regulation largely depends on litigation by those who have been discriminated against, then those individuals must know that the discrimination that they faced was actually illegal. HUD should work with prominent LGBT organizations, as well as with nonprofits that deal with fair housing and with state and local governments to disseminate these proposed rules in a simple and easy-to-understand way.

A commenter specifically inquired about whether HUD's Fair Housing Enforcement Office would provide training on the implementation of the rule. Another commenter states that, in particular, HUD should: (1) Publicize the new regulation, (2) develop know-your-rights materials for LGBT individuals to promote the reporting of violations, and (3) provide mandatory trainings to owners and operators of HUD-assisted housing programs to encourage compliance.

Another commenter recommended that HUD issue clear guidelines that will ensure that LGBT tenants of single-sex housing will not be singled out for harassment or disparate treatment on the basis of their sexual orientation or gender identity. The commenter suggested that HUD owners and operators be given instructions on how to provide reasonable accommodations for LGBT families, including, where possible, mechanisms that provide privacy in public showers. The commenter stated that HUD staff, as well as HUD owners and operators, should be trained on the importance of safe housing for persons who self-identify as transgender.

Response: Without question, HUD plans to engage in education and outreach about this rule, and will consider many of the proposals offered by the commenters on how such education and outreach may be conducted.

Rule Should Wait for Completion of Study

Comment: A commenter expressed concern that HUD's proposed rule was published before HUD completed its study on housing discrimination based on sexual orientation and gender identity. The commenter suggested that HUD complete its study and consider the study's evidence in revising and finalizing the proposed rule rather than developing the regulation and conducting the study simultaneously.

Response: The study to which the commenter refers concerns the private sector and not HUD's programs.

Accordingly, HUD does not find it necessary to wait for the completion of the study. It is HUD's desire to proactively address the possibility of discrimination against LGBT individuals and families in HUD's housing programs.

Rule Did Not Properly Address Federalism Concerns

Comment: A commenter stated that this rule fails to properly address federalism concerns because protecting LGBT persons from discrimination is a matter of state law, and while some states have chosen to enact such protections, other states have declined to do so. Another commenter stated that HUD is overstepping its authority by defining family in the proposed regulation. The commenter thought this could be construed as an infringement on states' rights because the Federal Government has primarily left it to the states to make determinations regarding the definition of family. Another commenter stated that HUD is violating Executive Order 13132 on federalism by regulating marriage and housing. According to the commenter, these are states' rights issues, as regulation of marriage and housing occur at a state level, notwithstanding that the Federal Government provides funding for housing.

Response: HUD's rule is not in violation of the executive order on federalism, Executive Order 13132, nor is it regulating marriage. HUD's rule only pertains to HUD's housing programs. There is no requirement for any multifamily housing owner to participate in HUD's programs or for any lender to become an FHA-approved lender. However, if these individuals or entities choose to participate, then they must abide by the program requirements established by HUD.

Rule Exceeds HUD's Legal Authority

Comment: A few commenters stated that this rule exceeds HUD's legal authority. The commenters stated that making "sexual orientation" and "gender identity" protected classifications for purposes of federal housing programs has no support in any act of Congress, and that forbidding such discrimination undermines the Defense of Marriage Act. The commenters stated that HUD should not create new protected classifications where there is no statutory policy undergirding it.

Response: The rule creates additional program requirements to ensure equal access of all eligible families to HUD programs, which is well within the scope of HUD's authority. HUD's

mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. This includes LGBT persons, who have faced difficulty in seeking housing. Excluding any eligible person from HUD-funded or HUD-insured housing because of that person's sexual orientation or gender identity contravenes HUD's responsibility under the Department of Housing and Urban Development Act to work to address "the needs and interests of the Nation's communities and of the people who live and work in them." (See 42 U.S.C. 3531.) Congress has repeatedly charged the Department with serving the existing housing needs of all Americans, including in section 2 of the Housing Act of 1949, 42 U.S.C. 1441 ("The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require * * * the realization as soon as feasible the goal of a decent home and a suitable living environment for every American family * * *"); section 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701t ("The Congress affirms the national goal, as set forth in section 2 of the Housing Act of 1949, of 'a decent home and a suitable living environment for every American family'"); sections 101 and 102 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12701-702 ("The Congress affirms the national goal that every American family be able to afford a decent home in a suitable environment. * * * The objective of national housing policy shall be to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American by strengthening a nationwide partnership of public and private institutions able * * * to ensure that every resident of the United States has access to decent shelter or assistance in avoiding homelessness * * * [and] to improve housing opportunities for all residents of the United States"); and section 2(b) of the Housing and Community Development Act of 1974, 42 U.S.C. 5301 note ("The purpose of this Act, therefore, is—(1) to reaffirm the principle that decent and affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require the addition of new housing units to remedy a serious shortage of housing for all Americans.")

Congress has given HUD broad authority to fulfill this mission and implement its responsibilities through rulemaking. Section 7(d) of the Department of Housing and Urban Development Act specifically states that

the Secretary “may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.”

HUD does not agree that the Defense of Marriage Act, which relates to the definition of marriage, overrides the Department’s responsibility to ensure that its programs are carried out free from discrimination. This rule does not define or otherwise regulate marriage. Rather, it seeks to make housing available to LGBT persons who might otherwise be denied access to HUD-funded or assisted housing.

Rule Creates Conflict With Religious Freedom

Comment: A commenter stated that the rule may force faith-based and other organizations, as a condition of participating in HUD programs and in contravention of their religious beliefs, to support shared housing arrangements between persons who are not joined in what the commenter referred to as “the legal union of one man and woman.” Another commenter explained that, while not insisting that any person should be denied housing, faith-based and other organizations should retain the freedom to make housing placements in a manner consistent with their religious beliefs. The commenter further stated that the rule, by infringing on religious freedom, may have the ultimate effect of driving away faith-based organizations with a long and successful track record in meeting housing needs. The commenter concluded that given their large role in serving unmet housing needs, it is imperative that such faith-based organizations not be required to compromise or violate their religious beliefs as a condition of participating in HUD-assisted housing programs and receiving government funds to carry out needed services.

Other commenters stated that protecting sexual orientation and gender identity without provisions for protecting rights of conscience and belief results in governmental discrimination favoring one version of morality and belief over another. The commenters stated that there are many individuals and faith-based organizations who have already been penalized for adherence to religious beliefs that will not permit them to support same-sex relationships.

Response: Faith-based organizations have long been involved in HUD programs and provide valuable services to low-income populations served by HUD. It is HUD’s hope that faith-based organizations will continue to actively participate in HUD programs. However, the exclusion of an individual or family

from HUD housing for no reason other than that the individual is LGBT or the family has one or more LGBT members is inconsistent with HUD’s mission to ensure decent housing and a suitable living environment for all. Accordingly, it is incumbent on HUD to ensure that the regulations governing its housing programs make clear that such arbitrary exclusion will not be tolerated.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. A determination was made that this rule is a “significant regulatory action,” as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial

number of small entities. This rule does not impose any new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the rule is to ensure open access to HUD’s core programs, regardless of sexual orientation or gender identity. In this rule, HUD affirms the broad meaning of “family” that is already provided for in HUD programs by statute. The only clarification that HUD makes is that a family is a family as currently provided in statute and regulation, regardless of marital status, sexual orientation, or gender identity. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development,

Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 236

Grant programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 574

Community facilities, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD amends 24 CFR parts 5, 200, 203, 236, 291, 570, 574, and 982, as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

■ 2. The heading of subpart A is revised to read as follows:

Subpart A—Generally Applicable Definitions and Requirements; Waivers

* * * * *

■ 3. In § 5.100, definitions for “family,” “gender identity,” and “sexual orientation” are added to read as follows:

§ 5.100 Definitions.

* * * * *

Family has the meaning provided this term in § 5.403, and applies to all HUD programs unless otherwise provided in the regulations for a specific HUD program.

* * * * *

Gender identity means actual or perceived gender-related characteristics.

* * * * *

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

* * * * *

■ 4. In § 5.105, revise the introductory text, redesignate paragraph (a) as paragraph (a)(1), and add paragraph (a)(2) to read as follows:

§ 5.105 Other Federal Requirements.

The requirements set forth in this section apply to all HUD programs, except as may be otherwise noted in the respective program regulations in title 24 of the CFR, or unless inconsistent with statutes authorizing certain HUD programs:

(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.

* * * * *

Subpart D—Definitions for Section 8 and Public Housing Assistance Under the United States Housing Act of 1937

■ 5. In § 5.403, the definitions of “disabled family”, “elderly family”, “family”, and “near elderly family” are revised to read as follows:

§ 5.403 Definitions.

* * * * *

Disabled family means a family whose head (including co-head), spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

* * * * *

Elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

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

(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:

(i) 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);

- (ii) An elderly family;
- (iii) A near-elderly family;
- (iv) A disabled family;
- (v) A displaced family; and
- (vi) The remaining member of a tenant family.

* * * * *

Near-elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 6. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 7. In § 200.3, paragraph (a) is revised to read as follows:

§ 200.3 Definitions.

(a) The definitions “department”, “elderly person”, “family”, “HUD”, and “Secretary”, as used in this subpart A, shall have the meanings given these terms in 24 CFR part 5.

* * * * *

■ 8. Section 200.300 is revised to read as follows:

§ 200.300 Nondiscrimination and fair housing policy.

Federal Housing Administration programs shall be administered in accordance with:

(a) The nondiscrimination and fair housing requirements set forth in 24 CFR part 5, including the prohibition on inquiries regarding sexual orientation or gender identity set forth in 24 CFR 5.105(a)(2); and

(b) The affirmative fair housing marketing requirements in 24 CFR part 200, subpart M and 24 CFR part 108.

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 9. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

■ 10. In § 203.33, paragraph (b) is revised to read as follows:

§ 203.33 Relationship of income to mortgage payments.

* * * * *

(b) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, actual or perceived sexual orientation, gender identity, source of income of the mortgagor, or location of the property.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

■ 11. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

■ 12. Section 236.1 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 236.1 Applicability, cross-reference, and savings clause.

(a) *Applicability.* * * * The definition of “family” in 24 CFR 200.3(a) applies to any refinancing of a mortgage insured under section 236, or to financing pursuant to section 236(j)(3) of the purchase, by a cooperative or nonprofit corporation or association of a project assisted under section 236.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 13. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d), and 5301–5320.

Subpart A—General Provisions

■ 14. In § 570.3, the definitions of “family” and “household” are revised to read as follows:

§ 570.3 Definitions.

* * * * *

Family refers to the definition of “family” in 24 CFR 5.403.

Household means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403; two or more families living together; or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived, sexual orientation, gender identity, or marital status.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 15. The authority citation for 24 CFR part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 16. In § 574.3, the definition of “family” is revised to read as follows:

§ 574.3 Definitions.

* * * * *

Family is defined in 24 CFR 5.403 and includes one or more eligible persons living with another person or persons, regardless of actual or perceived sexual orientation, gender identity, or marital status, who are determined to be important to the eligible person or person’s care or well-being, and the surviving member or members of any family described in this definition who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death.

* * * * *

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 17. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 18. In § 891.105, the definition of “family” is added to read as follows:

§ 891.105 Definitions.

* * * * *

Family is defined in 24 CFR 5.403.

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 19. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 20. In § 982.4, remove the colon at the end of paragraph (a) subject heading and add a period in its place, revise paragraph (a)(1), remove paragraph (a)(2), and redesignate paragraph (a)(3) as paragraph (a)(2); and revise the definition of “family” in paragraph (b) to read as follows:

§ 982.4 Definitions.

(a) *Definitions found elsewhere—(1) General definitions.* The following terms are defined in part 5, subpart A of this title: 1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, other person under the tenant’s control, public housing, Section 8, and violent criminal activity.

* * * * *

(b) * * *
Family. A person or group of persons, as determined by the PHA consistent

with 24 CFR 5.403, approved to reside in a unit with assistance under the program. See “family composition” at § 982.201(c).

* * * * *

■ 21. In § 982.201, paragraph (c) is revised to read as follows:

§ 982.201 Eligibility and targeting.

* * * * *

(c) *Family composition.* See definition of “family” in 24 CFR 5.403.

* * * * *

Dated: January 27, 2012.

Shaun Donovan,

Secretary.

[FR Doc. 2012-2343 Filed 2-2-12; 8:45 am]

BILLING CODE 4210-67-P

FDA believes that the special controls, in addition to the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness.

A magnetic surgical instrument system device is not safe for use except under the supervision of a practitioner licensed by law to direct the use of the device. As such, the device is a prescription device and must satisfy prescription labeling requirements (see 21 CFR 801.109, *Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the magnetic surgical instrument system they intend to market.

II. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 878.4815 to subpart E to read as follows:

§ 878.4815 Magnetic surgical instrument system.

(a) *Identification.* A magnetic surgical instrument system is a prescription device used in laparoscopic surgical procedures consisting of several components, such as surgical instruments, and a magnetic controller. The magnetic controller is provided separately from the surgical instrument and is used outside the patient. The external magnetic controller is magnetically coupled with the internal surgical instrument(s) at the surgical site to grasp, hold, retract, mobilize, or manipulate soft tissue and organs.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) In vivo performance data must demonstrate that the device performs as intended under anticipated conditions of use. Testing must demonstrate the ability of the device to grasp, hold, retract, mobilize, or manipulate soft tissue and organs.

(2) Non-clinical performance data must demonstrate that the system performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Magnetic field strength testing characterization to identify the distances from the magnet that are safe for patients and users with ferromagnetic implants, devices, or objects.

(ii) Ability of the internal surgical instrument(s) to be coupled, de-coupled, and re-coupled with the external magnet over the external magnet use life.

(3) The patient-contacting components of the device must be demonstrated to be biocompatible.

(4) Performance data must demonstrate the sterility of the device components that are patient-contacting.

(5) Methods and instructions for reprocessing reusable components must be validated.

(6) Performance data must support shelf life by demonstrating continued sterility of the device or the sterile components and device functionality over the labeled shelf life.

(7) Training must be developed and validated by human factors testing and analysis to ensure users can follow the instructions for use to allow safe use of the device.

(8) Labeling must include:

(i) Magnetic field safe zones.

(ii) Instructions for proper device use.

(iii) A screening checklist to ensure that all patients and operating staff are screened from bringing ferromagnetic implants, devices, or objects near the external magnet.

(iv) Reprocessing instructions for any reusable components.

(v) Shelf life.

(vi) Use life.

Dated: September 15, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22709 Filed 9–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR 5863–F–02]

RIN 2506–AC40

Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Through this final rule, HUD ensures equal access for individuals in accordance with their gender identity in programs and shelter funded under programs administered by HUD's Office of Community Planning and Development (CPD). This rule builds upon HUD's February 2012 final rule entitled "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity" (2012 Equal Access Rule), which aimed to ensure that HUD's housing programs would be open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. The 2012 Equal Access Rule, however, did not address how transgender and gender non-conforming individuals should be accommodated in temporary, emergency shelters, and other buildings and facilities used for shelter, that have physical limitations or configurations that require and that are permitted to have shared sleeping quarters or shared bathing facilities. This final rule follows HUD's November 2015 proposed rule, which addressed

this issue and solicited public comment on measures to ensure that recipients and subrecipients of CPD funding—as well as owners, operators, and managers of shelters and other buildings and facilities and providers of services funded by CPD—grant equal access to such facilities and services to individuals in accordance with an individual's gender identity.

This rule amends HUD's definition of "gender identity" to more clearly reflect the difference between actual and perceived gender identity and eliminates the prohibition on inquiries related to sexual orientation or gender identity, so that service providers can ensure compliance with this rule. The removal of the prohibition on inquiries related to sexual orientation or gender identity does not alter the requirement to make housing assisted by HUD and housing insured by the Federal Housing Administration (FHA) available without regard to actual or perceived sexual orientation or gender identity. Lastly, without changing the scope of the requirement to provide equal access without regard to sexual orientation, this rule makes a technical amendment to the definition of "sexual orientation," which HUD adopted from the Office of Personnel Management's (OPM) definition of the term in 2012, to conform to OPM's current definition.

In order to ensure that individuals are aware of their rights to equal access, HUD is publishing elsewhere in this issue of the **Federal Register** for public comment, in accordance with the Paperwork Reduction Act of 1995, a document entitled "Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status" for owners or operators of CPD-funded shelters, housing, facilities, and other buildings to post on bulletin boards and in other public spaces where information is typically made available.

DATES: *Effective:* October 21, 2016.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-7000; telephone number 202-708-4300 (this is not a toll-free number). Persons with who are deaf or hard of hearing or have speech impairments can access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. HUD's Previous Efforts To Ensure Equal Access

On February 3, 2012, at 77 FR 5662, HUD issued its 2012 Equal Access Rule, which defined the terms "sexual orientation" and "gender identity," and required that HUD-assisted housing, including all housing funded by CPD, and housing insured by FHA be made available to individuals and families without regard to actual or perceived sexual orientation, gender identity, or marital status. The 2012 Equal Access Rule also generally prohibited inquiries into sexual orientation or gender identity for the purpose of determining eligibility for, or availability of, such housing. In the 2012 Equal Access Rule, HUD declined to adopt a national policy on the placement of transgender persons in temporary, emergency shelters with shared sleeping quarters or shared bathing facilities, deciding instead to conduct research and monitor its programs to determine whether additional guidance or national policy was needed to ensure equal access for transgender and gender nonconforming persons.¹ HUD also decided to conduct a similar review to determine whether additional guidance was needed with regard to the prohibition on inquiries.

As a result of its review, HUD determined that the 2012 Equal Access Rule did not adequately address the significant barriers faced by transgender and gender nonconforming persons when accessing temporary, emergency shelters and other facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or bathing facilities. Specifically, HUD found that transgender and gender nonconforming persons continue to experience significant violence, harassment, and discrimination in attempting to access programs, benefits, services, and accommodations. For instance, at a listening session on lesbian, gay, bisexual, and transgender (LGBT) issues conducted with the U.S. Interagency Council on Homelessness, homeless service providers reported that transgender persons are often discriminatorily excluded from shelters or face dangerous conditions in the shelters that correspond to their sex assigned at birth. Some commenters reported that, if given the choice between a shelter designated for assigned birth sex or sleeping on the

¹ Gender nonconforming persons are persons who do not follow other people's ideas or stereotypes about how they should look or act based on their sex assigned at birth.

streets, many transgender shelter-seekers would choose the streets.

HUD also investigated individual cases where transgender persons were not provided equal access as required by the 2012 Equal Access Rule, or they faced unlawful discrimination under the Fair Housing Act. HUD also reviewed national research that revealed that lack of access to shelter for transgender and gender nonconforming persons, particularly those who were also homeless youths, was a pervasive problem and reviewed the efforts of other Federal agencies to provide equal access to transgender and gender nonconforming persons. HUD found that multiple agencies prohibit discrimination on the basis of sexual orientation and gender identity and also require that grant recipients treat transgender persons consistent with their gender identity. Specifically, HUD found guidance from other Federal agencies supporting the position that grant recipients could accommodate transgender individuals in accordance with their gender identity in Federal programs, including those program that funded single-sex facilities.

On February 20, 2015, CPD issued guidance, entitled "Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities" (CPD-15-02), which applied to the following CPD programs: Housing Opportunities for Persons With AIDS (HOPWA), Emergency Solutions Grants (ESG), and Continuum of Care (CoC). This guidance clarified that HUD expected recipients and subrecipients under these programs to base placement decisions on the gender with which a person identifies—and not on another person's stereotype-based complaints—taking into consideration health and safety concerns and giving serious consideration to the transgender or gender nonconforming person's own personal health and safety concerns. The guidance also outlined best practices for providers.

B. The November 2015 Proposed Rule

On November 20, 2015, at 80 FR 72642, following careful review of information about the treatment of transgender persons in temporary, emergency shelters, HUD proposed a second Equal Access rule, entitled "Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs" (CPD Equal Access). In this rulemaking, HUD proposed to add a new section to its regulations in 24 CFR part 5 that would require recipients and subrecipients of assistance under CPD programs—as well as owners, operators,

and managers of shelters and other buildings and facilities and providers of services funded in whole or in part by CPD programs—to provide equal access to programs, benefits, services, and accommodations in accordance with an individual's gender identity.

Specifically, the rule proposed to add to 24 CFR part 5 a new § 5.106, which would contain equal access provisions tailored to CPD programs. Section 5.106(a) proposed to identify the scope of its coverage as including recipients and subrecipients of assistance under the following CPD programs: HOME Investment Partnerships (HOME) (24 CFR part 92), Community Development Block Grant (CDBG) (24 CFR part 570), HOPWA (24 CFR part 574), ESG (24 CFR part 576), CoC (24 CFR part 578), as well as owners, operators, managers of shelters and other buildings and facilities and providers of services funded in whole or in part by any of these programs.

Section 5.106(b) proposed to require CPD recipients, subrecipients, owners, operators, managers, and providers to establish or amend, as necessary, and administer program admissions, occupancy, and operating policies and procedures, including policies and procedures to protect individuals' privacy and security, so that equal access to programs, shelters, other buildings and facilities, benefits, services, and accommodations are provided to individuals in accordance with their gender identity. That section also proposed to require that such equal access be provided in a manner that affords equal access to the individual's family.

Section 5.106(c) proposed to require that the placement and accommodation of individuals in facilities that are permitted to be single-sex must be made in accordance with the individual's gender identity. The proposed rule provided that, under narrow circumstances, a written case-by-case determination could be made as to whether an alternative accommodation is necessary to ensure health and safety. The proposed rule contained a prohibition for such a determination to be based solely on a person's actual or perceived gender identity or on complaints of other shelter residents when those complaints are based on actual or perceived gender identity. It also proposed to prohibit the denial of appropriate placement based on a perceived threat to health or safety that can be mitigated some other, less burdensome way (e.g., by providing the transgender shelter seeker the option to use single occupant bathing facilities). Lastly, the rule proposed that, to avoid

unwarranted denials of placement in accordance with an individual's gender identity, decisions to provide accommodations based on concern for the health and safety of the individual seeking accommodations should be based on the individual's own request to be otherwise accommodated.

Section 5.106(d) proposed to require that when a case-by-case determination based on health and safety is made under § 5.106(c), the entity providing the alternative accommodation must provide either (1) equivalent alternative accommodation, benefits, and services or (2) a referral to a comparable alternative program with availability that meets the needs of the individual.

Section 5.106(e) proposed to require recipients, subrecipients, or providers to keep records of compliance with paragraphs (b) and the case-by-case determinations under paragraph (c) of this section, including the facts, circumstances, and reasoning relied upon that lead to any alternative admission, accommodation, benefit, or service to an individual and the individual's family; the facts and circumstances regarding the opportunities to access alternative accommodations provided to an individual and the individual's family; and the outcomes regarding referral to an alternative program of an individual and the individual's family.

In addition, the rule proposed to amend the definition of "gender identity" at § 5.100 to separate the definitions of "actual" and "perceived" gender identity. In brief, the rule proposed to replace HUD's current definition, which mirrored the definition in the Matthew Shepard/James Byrd Hate Crimes Prevention Act of 2009 (Public Law 114–38, approved October 28, 2009) and instead adopt a definition that clarified the difference between actual and perceived gender identity.

Lastly, the proposed rule sought to remove the prohibition on inquiries provision at § 5.105(a)(2)(ii), which prohibited providers in most circumstances from asking individuals their sexual orientation or gender identity. HUD reasoned that the provision raised several legitimate questions about implementation, and its removal would allow temporary, emergency shelters or other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities to ask an individual's gender identity for nondiscriminatory purposes, such as to determine the appropriate placement for the individual or the number of

bedrooms to which a household is entitled.

C. Recent Developments in the Interpretation of Federal Law and Applicable Research

After HUD issued the November 2015 proposed rule, the Center for American Progress released a new study specifically focusing on discrimination experienced by transgender individuals seeking access to shelters, the Department of Justice (DOJ) and the Department of Education issued guidance for educators on providing equal access for transgender students in schools, and the Department of Health and Human Services issued a final rule to ensure equal access to health programs and activities administered by that Department or established under title I of the Affordable Care Act.

On January 7, 2016, the Center for American Progress released the results of a discrimination telephone test, carried out across four States, that measured the degree to which transgender homeless women can access a shelter in accordance with their gender identity, as well as the types of discrimination and mistreatment they face in the process.² The study consisted of 100 phone calls to homeless shelters in four States, over 3 months, by testers who identified themselves as transgender women seeking access to both women's shelters and general shelters. The study found that only 30 percent of the shelters contacted by the testers were willing to house the transgender women with other women, 13 percent offered to house the transgender women in isolation or with men, 21 percent refused service altogether, and another 21 percent were unsure or unclear as to whether they could house transgender women with other women. The survey results also found that women's shelters were more likely to provide services consistent with an individual's gender identity than were mixed gender shelters. During interactions on the phone with shelter employees, testers experienced the following: they were often referred to using the wrong gender or shelter employees made other statements to discredit their gender identity, shelter employees made references to the testers' genitalia or to surgery as requirements for appropriate housing, and shelter employees stated

² Caitlin Rooney, et al., Center for American Progress and the Equal Rights Center *Discrimination Against Transgender Women Seeking Access to Homeless Shelters*, January 7, 2016, available at: <https://cdn.americanprogress.org/wp-content/uploads/2016/01/06113001/HomelessTransgender.pdf>.

that other residents would be made uncomfortable or unsafe by the tester. Of the shelters called, 27 percent had received HUD funds at some point.

In May 2016, DOJ and the Department of Education released guidance summarizing the legal obligations of schools regarding transgender students.³ The guidance specifically emphasizes that schools must “treat a student’s gender identity as the student’s sex for purposes of Title IX and its implementing regulations.” In sex-segregated activities and facilities, transgender students “must be allowed to participate in such activities and access such facilities consistent with their gender identity.” The guidance also requires schools to provide a safe environment for all students, including transgender students, and requires that schools treat students consistent with their gender identity regardless of records or identification documents indicating a different sex.

Also in May 2016, the Department of Health and Human Services issued final regulations entitled “Nondiscrimination in Health Programs and Activities,” which implement section 1557 of the Affordable Care Act.⁴ Section 1557 prohibits discrimination in health programs and activities on the basis of sex, and the rule provides that “a covered entity shall treat individuals consistent with their gender identity, except that a covered entity may not deny or limit health services that are ordinarily or exclusively available to individuals of one sex, to a transgender individual based on the fact that the individual’s sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available.”

II. Changes Made at the Final Rule Stage

In response to public comment and upon further consideration by HUD of the issues presented in this rulemaking, HUD makes the following changes at this final rule stage:

In § 5.100, the proposed definition of “perceived gender identity” is modified so that the definition states that “perceived gender identity” means the gender with which a person is perceived to identify based on that person’s appearance, behavior, expression, other gender-related characteristics, sex

assigned at birth, or identification in documents. This change was made in response to public comments stating that transgender persons often face difficulty in being accommodated in accordance with their gender identity because it is difficult to obtain identity documents that accurately list their gender identity. The words “identified in documents” were added to the definition to make clear that the identification of gender or sex on an individual’s identity document may be different than a person’s actual gender identity. The definition of “gender identity” in the final rule, which is unchanged from the proposed rule, makes clear that “gender identity” means the gender with which a person identifies, regardless of the sex assigned to that person at birth and regardless of the person’s perceived gender identity. Reading these definitions together, “gender identity” is therefore determined regardless of the gender identified on an individual’s identity documents.

This rule also makes a technical amendment to the definition of “sexual orientation.” The 2012 Equal Access Rule defined “sexual orientation” as “homosexuality, heterosexuality, or bisexuality,” following a definition that OPM used in the context of the Federal workforce in its publication “Addressing Sexual Orientation in Federal Civilian Employment: A Guide to Employee Rights.” OPM’s publication was revised in June 2015, and HUD is amending its definition to conform to the new OPM definition, which is “sexual orientation means one’s emotional or physical attraction to the same and/or opposite sex.” (See <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/addressing-sexual-orientation-and-gender-identity-discrimination-in-federal-civilian-employment.pdf>.) This change in definition does not change the coverage provided by the prior definition but is simply intended to use terminology that is up-to-date.

In § 5.105(a)(2), HUD adopts the proposal to eliminate the inquiries provision in § 5.105(a)(2)(ii). With the removal of § 5.105(a)(2)(ii), § 5.105(a)(2)(i) is redesignated as § 5.105(a)(2).

In § 5.106, HUD makes several changes. HUD has changed the heading of this section from “Providing access in accordance with the individual’s gender identity in community planning and development programs” to “Equal access in accordance with the individual’s gender identity in community planning and development

programs.” Although this is not a substantive change, the change appropriately emphasizes that the purpose of the rule is equal access in accordance with an individual’s gender identity in CPD programs generally. Equal access ensures that, when consideration of sex is prohibited or not relevant, individuals will not be discriminated against based on actual or perceived gender identity, and where legitimate consideration of sex or gender is appropriate, such as in a facility providing temporary, short term shelter that is not covered by the Fair Housing Act⁵ and which is legally permitted to operate as a single-sex facility,⁶ the individual’s own self-identified gender identity will govern.

Section 5.106(a) is revised at the final rule stage to clarify that § 5.106 applies to recipients and subrecipients of assistance from CPD, which include the specific programs identified at the proposed rule stage (HOME, CDBG, HOPWA, ESG, and CoC), as well as to the Housing Trust Fund program (with regulations at 24 CFR part 93) and the Rural Housing Stability Assistance Program (with regulations to be codified in 24 CFR part 579). As noted throughout the proposed rule, the rule was always intended to apply to recipients and subrecipients of CPD programs, as well as those who administer programs and services and provide temporary, emergency shelter funded by CPD programs, and HUD did not intend to exclude the new Housing Trust Fund and Rural Housing Stability

⁵ The Fair Housing Act prohibits discrimination in the sale, rental, making unavailable, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, and national origin, and thus prohibits making housing unavailable to a person because of that person’s sex. 42 U.S.C. 3601 *et seq.* The Fair Housing Act contains no exemptions that permit covered housing to be sex-segregated. See 42 U.S.C. 3603(b) (limited exemptions from Fair Housing Act coverage for sales of certain single family homes and for rooms or units in certain owner-occupied dwellings), and § 3607 (exemptions from Fair Housing Act coverage for private clubs and religious organizations).

⁶ Temporary, emergency shelters and other buildings and facilities that are not covered by the Fair Housing Act because they provide short-term, temporary accommodations may provide sex-segregated accommodations, which they sometimes do to protect the privacy and security of individuals when the buildings and facilities have physical limitations or configurations that require shared sleeping quarters or shared bathing facilities. For purposes of this rule, shared sleeping quarters or shared bathing facilities are those that are designed for simultaneous accommodation of multiple individuals in the same space. For example, a single-user bathing facility with a lock on the door is not designated for simultaneous occupancy by multiple individuals, so it is not a “shared bathing facility” for purposes of the Equal Access Rule or this rule.

³ Dear Colleague Letter on Transgender Students May 13, 2016, <https://www.justice.gov/opa/file/850986/download>.

⁴ See 81 FR 31375, <https://www.federalregister.gov/articles/2016/05/18/2016-11458/nondiscrimination-in-health-programs-and-activities>.

Assistance programs from the list of CPD programs in this paragraph.

Section 5.106(b) addresses the admissions, occupancy, and operating policies and procedures of recipients, subrecipients, owners, operators, managers, and providers covered by this rule. Revised paragraph (b) adds that policies and procedures to protect health and safety, as well as privacy and security noted in the proposed rule, must be established, maintained, or amended, as necessary, and provides that all policies must be administered in a nondiscriminatory manner. HUD recognizes that in the temporary, emergency shelters covered by this rule, privacy, security, safety, and health concerns may arise as a result of the varied populations that reside in such facilities at any given time. The rule requires policies and procedures, if such policies and procedures have not already been updated, to reflect the obligation and to document the commitment of the provider to maintain a healthy and safe environment for all occupants and respect individual privacy without doing so in a way that is discriminatory or violates applicable Federal laws and regulations.

HUD also revises paragraph (b) to add a provision that the policies and procedures must ensure that individuals are not subjected to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence of the individual's gender identity. This revision was made in response to public comment advising that transgender persons and gender nonconforming persons are often asked inappropriate, intrusive questions; asked to provide evidence about their physical anatomy; or asked for medical records relating to their gender identity or identification documents that record their gender identity. There are multiple reasons why this documentation is problematic and prohibited by this rule. Homeless persons encounter difficulties in maintaining their identification documents, and individuals whose gender identities differ from sex assigned at birth experience varying levels of difficulty in updating gender markers on identification documents. These barriers make it likely that an individual seeking homeless services and whose gender identity differs from their sex assigned at birth will possess identification documents that do not reflect that individual's gender identity, if they have identification documents at all. Further, gender identity is distinct from sex assigned at birth, is not associated with physical anatomy, and may not be indicated in medical

records. For these reasons, HUD agrees with public commenters that it is important that transgender or gender nonconforming persons can self-identify their gender identity orally and not be asked intrusive questions or asked to provide documentary, physical, or medical evidence to prove their gender identity.

Lastly, revised paragraph (b) also requires that such revisions ensure that amendments to CPD programs policies and procedures continue to include the existing requirement in § 5.105(a)(2) that individuals are provided equal access to housing in CPD programs without regard to actual or perceived gender identity. While this rule's focus is on programs, owners, operators, and managers of shelters, buildings, and other facilities and providers of CPD-funded services that were not covered under HUD's 2012 Equal Access Rule, housing under CPD programs has already been required to ensure equal access to individuals based on their gender identity. HUD adds this provision to clarify that, when amending CPD program policies and procedures, they should continue to reflect the existing 2012 Equal Access Rule requirement that housing be made available without regard to gender identity.

In § 5.106(c), which addresses placement and accommodation in temporary, emergency shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities, HUD removes the proposed rule language 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. Public commenters expressed concern that the exception could be inappropriately used to avoid compliance with the equal access requirement, and that this "exception" also targeted transgender individuals as a cause of concern with respect to health and safety. HUD was persuaded by the public commenters that the "exception" provision had the opposite effect than that intended by HUD. HUD's intention in the inclusion of this language was to strive to ensure the health and safety of transgender individuals in temporary, emergency shelters and other buildings and facilities. It was not to indicate that the very presence of transgender individuals was a cause for health and safety concerns nor to indicate, by allowing alternative accommodation,

that HUD's only concern was the health and safety of transgender individuals and HUD was not concerned about any other occupants. HUD's regulations for the ESG program and the implementing guidance, make clear that temporary, emergency shelters, and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities have had, and continue to have, a responsibility to create a safe environment for all occupants, particularly those of special populations (see 24 CFR 576.400(e)(3)(iii) for more information).

This final rule thus revises paragraph (c) of § 5.106 to provide that placement and accommodation of individuals shall be made in accordance with an individual's gender identity, and it removes language that permits an exception to this rule where a provider makes a written case-by-case determination on whether an alternative accommodation for a transgender individual would be necessary to ensure health and safety. There are various measures that HUD's providers may take to fulfill their duty to create a safe environment for all, including transgender and gender nonconforming individuals, and to ensure that HUD-funded projects are free from discrimination. As preemptive steps, providers are strongly encouraged to post a notice of rights under this rule and under HUD's 2012 Equal Access Rule on bulletin boards and in other public spaces where information is made available, to clearly establish expectations. In order to ensure that individuals are aware of their rights to equal access, HUD proposes to require owners and operators of CPD-funded shelters and facilities to post on bulletin boards and in other public spaces where information is typically made available a notice entitled "Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status for HUD's Community Planning and Development Programs," which HUD is publishing in today's **Federal Register** for public comment, in accordance with the Paperwork Reduction Act of 1995. In addition, HUD Technical Assistance materials provide a sample antidiscrimination policy that providers may consider adopting to further clarify expectations to persons as they enter the project.⁷

⁷ See *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>.

Even with antidiscrimination policies clearly articulated, occupants may express concerns or engage in other behavior toward transgender or gender nonconforming persons. If some occupants initially present concerns about transgender or gender nonconforming occupants to project staff and managers, staff should treat those concerns as opportunities to educate and refocus the occupants. HUD recognizes that, even then, conflicts may persist and complaints may escalate to verbal or physical harassment. In these situations, providers should have policies and procedures in place to support residents and staff in addressing and resolving conflicts that escalate to harassment. These policies should include specific behaviors that violate standards of respectful behavior, escalate corrective actions if an individual repeats the same violation of standards after educational opportunities are offered, and focus corrective actions on aggressors who violate project rules, not on the person targeted by the harassment. If an occupant continues to harass a transgender individual, the provider should consider requiring that the harassing occupant stay away from the transgender individual, making changes in sleeping arrangements without limiting the freedom of the transgender individual, or pursuing other interventions. When appropriate, providers may consider expelling harassing residents, or any staff or volunteer members who perpetuate discrimination. In no instance, however, should any steps taken to address harassment or discrimination involve expulsion of harassed occupants.

Revised paragraph (c) provides for post-admission accommodations, where after an individual has been admitted to a temporary, emergency shelter, or other building or facility with shared sleeping quarters or shared bathing facilities, the provider must take non-discriminatory steps that may be necessary and appropriate to address privacy concerns raised by all residents or occupants, and, as needed, update its admissions, occupancy, and operating policies and procedures. These provisions apply to all individuals, regardless of gender identity. If an individual requests certain accommodations because of privacy concerns, staff may offer those accommodations to that individual but may not require that the individual use the accommodations. For example, if available, staff may offer that occupant a room, floor, or bed that is close to staff workstations or access to rooms, floors, or beds set aside for residents with

increased vulnerability. At the request of an individual, providers may also offer use of a single-occupant bathroom or provide certain times during the day that a shared bathroom can be scheduled by any client with a request to use a private bathing facility. If feasible, providers can ensure that toilet and shower stalls have locking doors or, at a minimum, curtains to allow for modesty and privacy. For shower use, providers may consider implementing a schedule for all clients if communal showers are the only available type of shower. HUD stresses that all such accommodations should be offered only to fulfill the request of individuals seeking accommodations for themselves, should be available to clients based on a variety of factors that can increase one's vulnerability, and should not be restricted for use only by transgender or gender nonconforming residents. In no case may a provider's policies isolate or segregate transgender or gender nonconforming occupants.

This final rule removes from § 5.105(d) in the proposed rule the language relating to referrals, HUD has removed the provision from the proposed rule that permitted housing providers to make a written case-by-case determination that a transgender individual should receive an alternative accommodation for health and safety reasons. This does not preclude the possibility that any occupant may request a referral to an alternate project for health and safety reasons, and in such cases staff may provide a referral or offer clients a hotel or motel voucher.⁸

This final rule redesignates the recordkeeping requirements from § 5.106(e) to 5.106(d) and states that providers must document and maintain, for a period of 5 years, records of compliance with the requirements of this rule regarding establishing or amending policies and procedures. This rule also removes the more specific requirements related to case-by-case determinations and referrals.

To strengthen enforcement mechanisms for this rule, HUD is publishing in today's **Federal Register** a notice for public comment, in accordance with the Paperwork Reduction Act of 1995, entitled "Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status for HUD's Community Planning and Development Programs." HUD proposes to require owners and

⁸ In the ESG program, a hotel or motel voucher may be offered only if there are no other accessible or appropriate emergency shelter beds available for that night.

operators of CPD-funded shelters and facilities to post this notice on bulletin boards and in other public spaces where information is typically made available.

III. Public Comments Submitted on Proposed Rule and HUD's Responses

A. Overview of Public Comments

The public comment period for the November 20, 2015, proposed rule closed on January 19, 2016. As of the close of the comment period, HUD received approximately 184 public comments, in addition to a number of mass mailings, from a variety of commenters, including housing authorities, direct legal services providers, community development agencies, homeless shelters, healthcare providers, social workers, clergy, counselors, nonprofit social service providers, and LGBT advocacy organizations. The overwhelming majority of comments were supportive of the rule. Some commenters, while supporting the rule, suggested modifications, and a minority of the commenters opposed the rule. Commenters opposing the rule stated that it failed to balance the needs of all shelter occupants and lacks flexibility. All comments can be viewed at <http://www.regulations.gov>.

1. Commenters Supporting the Rule

Many commenters supporting the rule suggested no changes and offered a variety of reasons why they supported the rule and why HUD should conclude the rulemaking as expeditiously as possible. Commenters stated that transgender persons, like all persons, need access to safe shelter and housing and that transgender persons are some of the most vulnerable members of society. Commenters stated that transgender individuals are disproportionately represented in the homeless population because of the frequent discrimination they face at home, in school, and on the job. Some cited a survey showing that one in five transgender or gender nonconforming individuals experienced homelessness at some point in their lives because of their transgender status. Commenters stated that transgender individuals were at greater overall risk of violence, murder, and homelessness-related death than people who are not transgender and may also experience mental and physical health problems because of the abuse they face.

Commenters stated that the rule would promote civil rights and expanded housing opportunity by addressing the effects of stigma on equal access to housing for transgender and

gender nonconforming persons. Commenters supporting the rule frequently stated that the rule would eliminate major barriers to access to safe, temporary, emergency shelter and other facilities and programs for transgender and gender nonconforming persons, particularly vulnerable subgroups within the population that need access to such accommodations. Some commenters stated that the rule will yield other positive societal outcomes. Many commenters provided extensive data to support the rule, including a January 2016 study conducted by the Center for American Progress that found, among other things, that only 30 percent of shelters studied were willing to accommodate transgender women in accordance with their gender identity. The commenters stated that LGBT providers were twice as likely to be willing to provide a shelter-seeker with accommodations in accordance with the individual's gender identity; that women's shelters were more likely than mixed-gender shelters to provide a shelter-seeker with accommodations in accordance with the individual's gender identity; and that many shelters did not correctly classify shelter-seekers in accordance with the individual's gender identity or stated that transgender or gender nonconforming individuals would have to submit to invasive medical examinations or inquiries, or demonstrate that they had undergone surgery, as a prerequisite to obtaining shelter.⁹

Other commenters supporting HUD's rule stated that the rule is needed because the willingness to house transgender people in accordance with their gender identity currently varies, depending on State laws and shelter type, and HUD's rule would provide some consistency. Commenters stated that because 32 States lack explicit gender identity protections in housing, HUD's rule will help ensure equal access to shelters nationwide for transgender and gender nonconforming individuals. Commenters said that even in jurisdictions with express protections for transgender individuals, discriminatory practices still persist. Commenters stated that HUD's rule is in step with recent Federal case law holding that discrimination on the basis of sexual orientation and gender identity constitutes unlawful discrimination on the "basis of sex," in

violation of Title VII of the Civil Rights Act and Title IX of the Education Amendments of 1972.

2. Comments Opposing the Rule

Commenters opposing the rule provided many reasons for their opposition but the primary reason concerned the safety of nontransgender individuals in a shelter. Commenters stated that the rule should not open female, single-sex spaces to individuals who were born male, citing their fear that individuals could deliberately misrepresent their gender identities and compromise the privacy or safety of vulnerable women and children. Commenters stated that there is a risk of causing female survivors of male-perpetrated domestic or sexual violence, who are disproportionately represented in the homeless population and shelters, to feel unsafe. Commenters said the rule does not respect legitimate safety and privacy concerns of biological women, and that the rule treats women's fear of being assaulted in a shelter as unreasonable "bigotry." Commenters stated that the rule should require providers to create segregated facilities for transgender individuals, rather than placing individuals into male or female facilities that correspond to the individual's gender identity. Commenters stated that transgender men are also vulnerable to assault in shelters. Several commenters opposing the rule cited to articles recounting the stories of individuals who had been raped in shelters. A commenter stated that it is untrue that transgender women can be safe only in a women's shelter. Commenters stated that the rule must balance the various needs, perspectives, personal histories, and expectations of privacy of both transgender individuals and other shelter seekers. Commenters stated that the rule should provide equal consideration to the health and safety concerns of transgender and nontransgender individuals and guidelines on what constitutes threats to health and safety for transgender and nontransgender individuals.

3. Responses to Comments in Support and Opposition

HUD appreciates all of the comments offered in response to HUD's proposed rule. Comments supporting the rule as well as comments opposing the rule gave HUD much to consider in the development of this final rule. While HUD is proceeding with this rulemaking, HUD is making the changes highlighted in Section II of this preamble.

B. Significant Public Comments and HUD's Responses

This section presents significant issues raised by commenters and HUD's responses to these comments. The issues presented in this section highlight changes requested by commenters, and questions about or requests for clarifications about certain provisions of the rule.

Comment: Commenters stated that the rule exceeds HUD's current statutory mandate because Congress has not given HUD the authority to prohibit discrimination based on gender identity. Commenters stated that the rule's definitions of "gender identity" and "perceived gender identity" are overbroad and exceed HUD's authority by creating a new protected class and that HUD failed to specify the basis for this prohibition of discrimination.

HUD Response: The rule creates additional program requirements to ensure equal access for transgender and gender nonconforming persons, in accordance with their gender identity, in shelters, buildings, facilities, and programs funded in whole or in part by CPD. The creation of such program requirements is well within the scope of HUD's authority. HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. This mission encompasses providing shelter for transgender and gender nonconforming persons, who have faced significant difficulty in obtaining access to shelters, and buildings and facilities that provide shelter. Excluding any eligible person from HUD-funded temporary, emergency shelters, buildings, facilities, housing, or programs because of that person's gender identity or nonconformance with gender stereotypes would contravene HUD's responsibility under the Department of Housing and Urban Development Act to work to address "the needs and interests of the Nation's communities and of the people who live and work in them." (See 42 U.S.C. 3531.) Congress has repeatedly charged HUD with serving the existing housing needs of all Americans.¹⁰

Congress has not only given HUD this broad mission but also given HUD broad authority to fulfill this mission and implement its responsibilities through rulemaking. Section 7(d) of the Department of Housing and Urban

⁹Center for American Progress, *Discrimination Against Transgender Women Seeking Access to Homeless Shelters* (Jan. 7, 2016), available at <https://cdn.americanprogress.org/wp-content/uploads/2016/01/06113001/HomelessTransgender.pdf>.

¹⁰See section 2 of the Housing Act of 1949 (42 U.S.C. 1441); section 2 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701t), sections 101 and 102 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701-702), and section 2(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 note).

Development Act specifically states that the Secretary “may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.” Moreover, as discussed in the preamble to HUD’s 2012 Equal Access Rule and as discussed in greater detail in response to the following comment, HUD is charged with administering and enforcing the Fair Housing Act, which prohibits discrimination on the basis of protected characteristics, including sex. Discrimination because of gender identity is covered within the Fair Housing Act’s prohibition of sex discrimination. In 2010, HUD issued a memorandum recognizing that sex discrimination includes discrimination because of gender identity. In 2012, the Equal Employment Opportunity Commission (EEOC) reached the same conclusion with regard to gender identity claims, “clarifying that claims of discrimination based on transgender status, also referred to as claims of discrimination based on gender identity, are cognizable under Title VII’s sex discrimination prohibition.”¹¹ Following the EEOC’s decision, the U.S. Attorney General also concluded that:

the best reading of Title VII’s prohibition of sex discrimination is that it encompasses discrimination based on gender identity, including transgender status. The most straightforward reading of Title VII is that discrimination “because of . . . sex” includes discrimination because an employee’s gender identification is as a member of a particular sex, or because the employee is transitioning, or has transitioned, to another sex.¹²

HUD reaffirms its view that discrimination based on gender identity is sex discrimination.

Comment: HUD received comments on sex discrimination under the Fair Housing Act and the proposed requirement that individuals be provided accommodations in accordance with their gender identity. A commenter stated that, while it is

¹¹ *Macy v. Dept. of Justice*, No. 0120120821, 2012 EEO PUB LEXIS 1181, *13 (EEOC Apr. 20, 2012); see also *Lusardi v. Dept. of the Army*, No. 0120133395, 2015 EEO PUB LEXIS 896, *17 (EEOC Apr. 1, 2015).

¹² Attorney General Memorandum, Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (Dec. 15, 2014), posted at <http://www.justice.gov/file/188671/download>. Similarly, the Office of Personnel Management revised its nondiscrimination regulations to make clear that sex discrimination under Title VII includes discrimination based on gender identity. See, e.g., 5 CFR 300.102–300.103; see also OFCCP Directive 2014–02, Gender Identity and Sex Discrimination (Aug. 19, 2014) (stating that discrimination based on gender identity or transgender status is discrimination based on sex), posted at http://www.dol.gov/ofccp/regs/compliance/directives/Directive_2014-02_508c.pdf.

helpful that HUD already considers the Fair Housing Act’s provision against discrimination on the basis of sex to cover nonconforming gender expression, it would be helpful to make that protection explicit in the new rule.

HUD Response: HUD does not believe it is necessary to modify the proposed regulatory text as the commenter recommends. In § 5.100 of the proposed rule, HUD included a definition of “perceived gender identity” in order to differentiate between actual gender identity and perceived gender identity for purposes of this rule and the 2012 Equal Access Rule. Under that definition, perceived gender identity means the gender with which a person is perceived to identify based on that person’s appearance, behavior, expression, other gender-related characteristics, or sex assigned to the individual at birth. In the final rule, the definition is amended to read as follows: Perceived gender identity means the gender with which a person is perceived to identify based on that person’s appearance, behavior, expression, other gender-related characteristics, or sex assigned to the individual at birth or identified in documents. Because the definition of perceived gender identity included in the proposed rule and adopted by this rule includes gender expression, § 5.105(a)(2) of the rule addresses the commenter’s concern that HUD-assisted or -insured housing shall be made available without regard to an individual’s gender expression. HUD does not believe any revision to the text of § 5.105(a)(2) is necessary to address this concern. Any suggested amendment to Fair Housing Act regulations is outside the scope of this rulemaking.

Comment: Some commenters stated that the rule should create similar equal access to housing policies for transgender or gender nonconforming persons in all emergency shelters and facilities. Another commenter stated that the Fair Housing Act does not prohibit discrimination based on gender identity in shelters. A commenter stated that the lack of a law prohibiting discrimination against transgender persons in shelters has not stopped rescue missions and other shelter providers from meeting the diverse needs of transgender persons in crisis.

HUD Response: While HUD appreciates that commenters want to have this rule apply to all emergency shelters, the scope of this rulemaking is limited to shelters, other buildings and facilities, and programs funded in whole or in part by CPD. CPD is the HUD office that funds various types of shelters. While HUD believes that all emergency

shelters, including those temporary, emergency shelters that are not subject to the requirements of the Fair Housing Act and that HUD does not fund, should provide equal access in accordance with an individual’s gender identity, imposing those requirements on all emergency shelters is outside the scope of this rulemaking.

With respect to the commenter’s statement about the Fair Housing Act, HUD seeks to clarify that, contrary to the commenter’s stated view, the Fair Housing Act’s prohibition of discrimination because of sex *does* include the prohibition of discrimination based on gender identity or nonconformance with gender stereotypes, which includes discrimination against an individual having a gender identity that does not conform to an individual’s sex assigned at birth. While HUD disagrees with the commenter’s broad statement that there is no law prohibiting discrimination based on gender identity in shelters, HUD agrees that it is beneficial for all shelters, including rescue missions, to continue to provide accommodation and services to transgender persons.

Comment: A commenter sought clarity regarding the application of the Fair Housing Act to shelters. The commenter asserted that the Fair Housing Act does not apply to homeless shelters because, in the commenter’s view, they are not “dwellings” covered under the Fair Housing Act. The commenter stated that the term “dwelling” is not well-defined in case law, that emergency shelters are not dwellings under the Act; and that the prohibitions of section 3604 of the Fair Housing Act do not apply to “free” shelters and similar facilities because, in the commenter’s view, such prohibitions only apply to housing that is for sale or rental. The commenter stated that, if HUD adopted a statement that the Fair Housing Act does not apply to homeless shelters, such adoption would “strengthen fair housing and mitigate confusion and misinterpretation among providers, fair-housing agencies, and shelter guests.”

HUD Response: The commenter misunderstands HUD’s statement about emergency shelters and the coverage of the Fair Housing Act. Contrary to the commenter’s assertion, HUD does not categorically exclude temporary, emergency shelters providing short-term housing accommodations from coverage under the Fair Housing Act. In fact, HUD’s established policy and regulations explicitly identify homeless shelters and other short-term or transient housing as “dwellings” subject

to the Act.¹³ The Act defines “dwelling” as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families” and includes vacant land.¹⁴ Thus, shelters generally are covered within the definition of dwelling, and many courts have held shelters and other short-term accommodations to be dwellings covered by the Fair Housing Act.¹⁵ However, some shelters may not qualify as a “dwelling” under the Fair Housing Act, and, therefore, HUD has endorsed the following multiple factor analysis for determining whether a shelter is a covered dwelling for purposes of the Fair Housing Act: (1) Length of stay; (2) whether the rental rate for the unit will be calculated based on a daily, weekly, monthly, or yearly basis; (3) whether the terms and length of occupancy will be established through a lease or other written agreement; (4) what amenities will be included inside the unit, including kitchen facilities; (5) how the purpose of the property will be marketed to the public; (6) whether the resident possesses the right to return to the property; and (7) whether the resident has anywhere else to which to return.¹⁶

Determining whether a particular emergency shelter is a covered dwelling for purposes of the Fair Housing Act

¹³ See, e.g., Final Report of HUD Review of Model Building Codes, 65 FR 15740, 15746, 15747 (March 23, 2000) (“HUD specified as dwellings covered by the Act . . . such short-term housing as . . . homeless shelters.”). See also, e.g., 24 CFR 100.201 (the definition of “dwelling units” includes, e.g., sleeping accommodations in shelters intended for occupancy as a residence for homeless persons); Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 56 FR 9472, 9500 (March 6, 1991) (same); Implementation of the Fair Housing Amendments Act, 54 FR 3232, 3245 (January 23, 1989) (same).

¹⁴ 42 U.S.C. 3602(b).

¹⁵ See, e.g., *Schwartz v. City of Treasure Island*, 544 F.3d 1201, 1215 (11th Cir. 2008) (halfway houses for recovering addicts); *Lakeside Resort Enter. v. Bd. of Supervisors of Palmyra Twp.*, 455 F.3d 154, 158–60 (3rd Cir. 2006) (treatment facility); *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941, 942 (9th Cir. 1996) (homeless shelter); *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096, 1103 (3rd Cir. 1996) (nursing home); *U.S. v. Columbus Country Club*, 915 F.2d 877, 881 (3rd Cir. 1990) (summer bungalows); *Connecticut Hosp. v. City of New London*, 129 F. Supp. 2d 123, 135 (D. Conn. 2001) (halfway houses for substance abuse treatment); *Lauer Farms, Inc. v. Waushara County Board of Adjustment*, 986 F. Supp. 544, 557, 559 (E.D. Wis. 1997) (migrant farmworker housing); *Louisiana Acorn Fair Hous. v. Quarter House*, 952 F. Supp. 352, 359–60 (E.D. La. 1997) (time-share unit); *Woods v. Foster*, 884 F. Supp. 1169, 1175 (N.D. Ill. 1995) (homeless shelter); *Baxter v. City of Belleville*, 720 F. Supp. 720, 731 (S.D. Ill. 1989) (residence for terminally ill); *U.S. v. Hughes Mem'l Home*, 396 F. Supp. 544, 549 (W.D. Va. 1975) (home for needy children).

¹⁶ See 65 FR at 15746.

requires application of the multiple factors to its operation. No single factor is determinative. For instance, the absence of a rental fee or lease does not disqualify an accommodation from coverage under the Fair Housing Act.¹⁷ Further, contrary to the commenter’s view, section 3604 of the Fair Housing Act does not only apply to discriminatory conduct that involves a sale or rental. The Fair Housing Act has no such limitation. In addition to prohibitions against refusals “to sell or rent after making of a bona fide offer” and “to refuse to negotiate for the sale or rental,” section 3604(a) also prohibits “otherwise mak[ing] unavailable or deny[ing]” a dwelling to any person protected under the Fair Housing Act.¹⁸ HUD and courts have long made clear that a variety of conduct that does not involve sale or rental can make housing otherwise unavailable.¹⁹ Similarly, section 3604(b) is not limited to conduct involving a sale or rental, as it also prohibits discrimination in the “provision of services or facilities in connection” with a dwelling.²⁰ HUD strongly disagrees that adopting a broad statement that the Fair Housing Act does not apply to homeless shelters would strengthen fair housing. HUD also emphasizes that this rule covers CPD-funded shelters and other buildings and facilities regardless of whether the facility qualifies as a dwelling under the Fair Housing Act.

Comment: Some commenters stated that the proposed rule is inconsistent with the Fair Housing Act, which forbids sex discrimination as to covered dwellings but not as to free, temporary, emergency shelters or other buildings or facilities, and which, therefore, evinces the intent of Congress to permit single-sex housing in the latter case. Commenters expressed concern that the decision by Congress to allow single-sex facilities that do not qualify as dwellings would be unenforceable if this rule is implemented as proposed; for example, if a women’s shelter were required to admit a biological man based merely upon his assertion that he

¹⁷ See, e.g., *Woods v. Foster*, 884 F. Supp. 1169, 1175 (N.D. Ill. 1995) (homeless shelter did not charge rent).

¹⁸ 42 U.S.C. 3604(a).

¹⁹ See, e.g., *Ojo v. Farmers Grp., Inc.*, 600 F.3d 1205, 1208 (9th Cir. 2010) (discriminatory pricing and denial of homeowners insurance violates 804(a) and (b)); *Nationwide Mut. Ins. Co. v. Cisneros*, 52 F.3d 1351, 1357–58 (6th Cir. 1995) (same); *Keith v. Volpe*, 858 F.2d 467, 482–484 (9th Cir. 1988) (municipal’s refusal to permit low-income housing violates 804(a)). See also, e.g., 24 CFR 100.70(d)(4) (refusing to provide municipal services or property or hazard insurance because of protected class).

²⁰ 42 U.S.C. 3604(b); see, e.g., 24 CFR 100.65(b)(2) (failing or delaying maintenance because of protected class).

“identifies as” a woman, or if a men’s shelter were required to admit a biological woman based merely upon her assertion that she “identifies as” a man.

HUD Response: As previously stated, the rule is not inconsistent with the Fair Housing Act. While the Fair Housing Act includes nondiscrimination requirements applicable to dwellings covered by the Act, it does not prohibit HUD from establishing additional program requirements through rulemaking. Temporary, emergency shelters and other buildings and facilities with physical limitations or configurations that require shared sleeping quarters or bathing facilities and that do not qualify as dwellings under the Fair Housing Act may operate single-sex shelters unless doing so would violate some other Federal, State, or local law. Under this rule, such shelters or other buildings and facilities funded by programs administered by CPD²¹ must determine placement in such single-sex facilities in accordance with each applicant’s or occupant’s gender identity, regardless of sex assigned at birth or other factors. As noted in response to a prior comment, HUD’s establishment of programmatic requirements for temporary, emergency shelters and other buildings and facilities funded through HUD programs is well within HUD’s statutory authority and an important part of HUD’s mission in ensuring access to housing for all Americans. Contrary to the public comment that suggests what Congress’s intent was in creating single-sex facilities, HUD does not opine on Congress’s intent behind permitting single-sex facilities, but does make clear in this rule that, for purposes of determining placement in a single-sex facility, placement should be made consistent with an individual’s gender identity. This rule does not attempt to interpret or define sex.

Comment: One commenter expressed concern that Congress would see no need to enact the Equality Act, a bill that would expressly forbid discrimination in housing on the basis of sexual orientation and gender identity, once HUD issued a rule prohibiting such discrimination.

HUD Response: While HUD appreciates the commenter’s desire to see Congress enact new legislation expanding antidiscrimination

²¹ HUD provided similar guidance to recipients and subrecipients that place eligible persons in single-sex temporary, emergency shelters or other facilities receiving ESG, CoC, or HOPWA funds. See Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities, (Notice: CPD–15–02 (February 20, 2015)).

protections in housing, HUD does not believe the introduction of such legislation warrants delaying issuance of this important rule. Because many transgender persons are being denied access to temporary, emergency shelters and other building and facilities or are being placed and served in such shelters in accordance with their sex assigned at birth instead of in accordance with their gender identity, HUD believes it is necessary to issue this rule at this time to ensure that transgender and gender nonconforming persons are accorded equal access and are accommodated in accordance with their gender identity in programs, shelters, buildings, and facilities assisted by CPD. Given that this rulemaking applies only to providers that receive HUD funds and not more broadly, HUD does not believe that its rulemaking in this important area will impact any broader legislative action that Congress may choose to take.

Comment: Commenters stated that the rule is not based on sufficiently exhaustive research and data, such as interviews with people not in the LGBT community, and only presents one-sided research on the issue of gender identity. A commenter said that while the rule notes that many transgender shelter-seekers would choose sleeping on the street rather than a shelter for their sex assigned at birth, HUD's rule does not address whether biological women would choose to sleep on the streets if their only other option were to share sleeping and bathing spaces with anatomically biological males who self-identify as women. Commenters stated that, before HUD institutes this rule, HUD needs more research on what risks placing males in female-only facilities will pose to women, and HUD should continue to search for solutions for providing safe services for particularly vulnerable males and, if vulnerable males must be placed at a women's shelter, female clients should be able to sleep, bathe, and use the toilet away from biological males.

HUD Response: As HUD program participants and the public are aware, HUD spent considerable time studying this issue. During the development of HUD's 2012 Equal Access Rule, commenters requested HUD to address the issue of temporary, emergency shelters that contain shared sleeping quarters and shared bathing facilities. HUD, however, declined to address that issue in the 2012 Equal Access Rule because of the need to conduct further research and examination of the issue. During the time since the 2012 Equal Access Rule was issued, HUD monitored and reviewed its own programs, national research, and other

Federal agency policy to determine if transgender individuals had sufficient access to temporary, emergency shelters or if additional guidance or a national policy was warranted. HUD considered the issue not only from the perspective of transgender persons and other gender nonconforming persons, but also from the perspective of individuals whose sex assigned at birth and whose gender identity are the same. HUD has learned through its review that all individuals, including transgender persons and other gender nonconforming persons, can be safely accommodated in shelters and other buildings and facilities in accordance with their gender identity. Privacy concerns can be addressed through policy adjustments, such as the use of schedules that provide equal access to bathing facilities, and modifications to facilities, such as the use of privacy screens and, where feasible, the installation of single occupant restrooms and bathing facilities. Further, the 2016 Center for American Progress study cited in the Background section of this preamble revealed that shelters were willing to provide transgender women with appropriate shelter only 30 percent of the time. Given the 4-year examination of this issue prior to this rule and the recent evidence of continued and widespread practices that deny access or subject transgender individuals to unequal treatment, HUD is ready to address this matter in regulation and believes that this final rule sets the right approach.

Comment: Commenters stated that because the rule requires shelters and other programs and services to change their policies and procedures, oversight and accountability should be created or strengthened. Commenters stated that current lack of oversight within the shelter and emergency housing system threatens the lives of transgender, gender nonconforming, and intersex people; subjects them to violence and degradation without any accountability or protection; and violates their basic human rights and the equal protections that should be accorded them. Commenters stated that HUD should clarify, in the final rule or in another form, how HUD will monitor and enforce the CPD Equal Access Rule, including an amendment stating that without meaningful monitoring and enforcement as is done for protected groups under the Fair Housing Act, the promise of the rule may go unfulfilled. Other commenters stated that the system for filing complaints needs to be improved, and a complaint filing system needs to be incorporated at the local

level, where marginalized transgender and gender nonconforming individuals seeking shelter have ready access to advocates who can assist them. A commenter stated that no organization should receive Federal funds without standing proof of compliance.

HUD Response: HUD agrees that safety, respectful treatment, and equal access are critical issues for transgender and gender nonconforming individuals, as they are for everyone, and HUD's regulations for the ESG program make it clear that all ESG-funded emergency shelters, including those with configurations that require shared sleeping quarters or shared bathing facilities, have had, and continue to have, a responsibility to create a safe environment for all occupants, particularly those of special populations (see 24 CFR 576.400(e)(3)(iii) for more information). Recipients, subrecipients, owners, operators, and managers of temporary, emergency shelters and other buildings and facilities and providers of services are expected to take the steps necessary to comply with this rule and maintain safe conditions for all shelter and facility residents and employees. When there is a threat to the safety of any resident, HUD expects recipients, subrecipients, and shelter or facility owners, operators, managers, and providers to take appropriate steps to address such threats. Such mitigating steps may include proactive measures to reduce risks such as increasing the shelter's security personnel, making adjustments to a facility's operating policies and schedules, and modifying shelter facilities to provide a single occupant bathing facility. HUD has heard from providers that adjusting a facility's operating policies and schedules is usually sufficient and does not cost additional funds, and thus HUD encourages agencies to start with this modification. HUD also notes that, for additional modifications that are necessary, some funded facilities, such as those under the ESG program, can use ESG funds to modify the shelter facility or provide additional security.

HUD believes that by requiring equal access for transgender individuals and other gender nonconforming persons in this regulation, HUD will be better able to monitor and enforce actions required to ensure equal access in temporary, emergency and other CPD-assisted buildings, facilities, and programs. Section 5.106(b) requires that recipients, subrecipients, operators, managers, and providers of temporary, emergency shelters, other buildings and facilities, programs, and services update their policies, if not already updated, to comply with providing equal access,

which HUD can review when monitoring its recipients', subrecipients', and providers' compliance with the new requirements established by this final rule. In addition, § 5.106(d) requires that providers must document and maintain records of compliance with the requirements in § 5.106(b) of this rule for a period of 5 years.

Transgender and other gender nonconforming persons are encouraged to file complaints if they have been denied equal access to temporary, emergency shelters, other buildings and facilities, programs, or services in accordance with their gender identity. Individuals may file complaints of discrimination based on gender identity by calling 1-800-669-9777 (toll-free) or online at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint. Persons who are deaf or hard of hearing or who have speech impairments may file a complaint via TTY by calling the Federal Relay Service at 1-800-877-8339 (toll-free).

Transgender and other gender nonconforming persons are encouraged to file complaints with HUD's CPD program office if they have been denied equal access to any services, accommodations, or benefits under CPD programs. Whenever a recipient (including subrecipients) of HUD funds fails or refuses to comply with program requirements, whether in statute or regulation, such failure or refusal shall constitute a violation of the requirements under the program in which the recipient is operating, and the recipient is subject to all sanctions and penalties for violation of program requirements, as provided for under the applicable program. Sanctions may include the withholding of HUD assistance. In addition, HUD may pursue an enforcement action when the Fair Housing Act is implicated. A housing provider who is found to have violated the Fair Housing Act may be liable for actual damages, injunctive and other equitable relief, civil penalties, and attorney's fees. As previously discussed, along with this rule, HUD is publishing in today's **Federal Register** for public comment a notice entitled "Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status for HUD's Community Planning and Development Programs" that HUD proposes to require owners or operators of CPD-funded programs and facilities to post on bulletin boards and in other public spaces.

Comment: A commenter stated that the rule may place a significant burden upon the associational and religious

liberty of beneficiaries and other stakeholders; for example, by requiring residents to share facilities with opposite-sex adults where their religions prohibit that.

HUD Response: The exclusion of an individual or family from CPD-funded shelter because the individual is transgender or the family has one or more transgender members is inconsistent with HUD's mission to ensure decent housing and a suitable living environment for all. It is equally inappropriate to isolate or ostracize individuals because their gender identity is not the same as their sex assigned at birth. It is incumbent on HUD to ensure that the regulations governing its housing programs make clear that such arbitrary exclusion, isolation, and ostracism will not be tolerated in HUD-assisted housing and shelters. Moreover, as noted in response to prior comments, in dwellings covered by the Fair Housing Act, exclusion or unequal treatment based on an individual's gender identity or nonconformance with gender stereotypes is discrimination because of sex and violates the Act. HUD would not tolerate denial of access, isolation, or ostracism on the basis of race, color, national origin, or disability relating to one shelter resident in order to accommodate the religious views of another shelter resident. The same is true with respect to the treatment of transgender and other gender nonconforming persons.

Faith-based organizations have long been involved in HUD's programs and provide many valuable services to low-income populations served by HUD. It is HUD's hope that faith-based organizations will continue to actively participate in HUD's CPD programs and provide services to transgender persons in accordance with the requirements set in this rule.

Comment: A commenter stated that the rule does not reflect the reality of providing shelter to people in challenging environments and with limited resources. Commenters stated that HUD should consider the following: (1) Providing additional resources to shelters to help them meet the privacy, health, and safety needs of clients; (2) examining what scope of client interview is permissible to enable staff to identify an attempted misuse of the proposed mandate without fear of legal challenge; (3) determining whether staff would be placed in an untenable position of pressure to accede to a request or demand contrary to their situational awareness and the reasonable concerns of other (often traumatized) shelter clients; (4)

examining how a provider would gather timely and appropriate information that it believes is relevant to the actual situation but not necessarily a matter of health or safety; (5) determining whether the privacy concerns of other clients are legitimate criteria for placement; (6) examining how single-sex women shelter providers will reconcile differences between the Violence Against Women Act's (VAWA) "due consideration" approach for single-sex housing and the mandate in this rule, and how shelter providers will be expected to reconcile differences between the mandate of this regulation and the often conflicting regulations and guidance provided by other Federal, State and local housing agencies. A commenter said that the proposed rule will increase guesswork and the paperwork burden surrounding client placement and expressed concern about the legal repercussions to a provider for denying placement where there is a question as to "valid" gender identity.

HUD Response: HUD appreciates the items for consideration raised by the commenters and these were the very issues that HUD did, in fact, take into consideration before issuing this CPD Equal Access Rule, more than 4 years after the 2012 Equal Access Rule. In addition, before commencing this rulemaking, on February 20, 2015, CPD released Notice CPD-015-02, "Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities," applicable to CPD's HOPWA, ESG, and CoC programs. This notice provides that HUD expects recipients, subrecipients, and providers to accommodate individuals in accordance with the individual's gender identity.²² HUD has had over 1 year of experience with this guidance in place and such experience further informed HUD in development of the final rule. There is no reason to assume that transgender persons pose risks to health or safety. Indeed, experience under this guidance has shown that transgender and other gender nonconforming persons can be and have been safely accommodated in accordance with their gender identity in single-sex facilities without the types of disruptions feared by the commenter.

In response to the commenter's concern about the extent of questioning and investigation that shelter staff may perform prior to determining appropriate accommodations for

²² See notice at <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf>.

transgender and other gender nonconforming persons, HUD has made modifications to the proposed rule at this final rule stage. Specifically, in § 5.106(b) of this final rule, HUD makes clear that it is inappropriate to subject individuals seeking accommodations to unnecessary, intrusive questioning about their gender identity or to ask them to provide anatomical information or documentary, physical, or medical evidence of their gender identity. Examples of unnecessary, intrusive questioning would be asking about surgeries, anatomy, and any other topics that are not necessary for placing and serving a client in the facility. Consistent with the approach taken by other Federal agencies, HUD has determined that the most appropriate way for shelter staff to determine an individual's gender identity for purposes of a placement decision is to rely on the individual's self-identification of gender identity. As for the comment about how to "reconcile differences between the VAWA's 'due consideration' approach to single-sex housing," HUD reviewed DOJ's guidance regarding the VAWA's nondiscrimination provision and does not see a conflict that needs to be reconciled.

HUD recognizes that emergency shelters are not the ideal placement for anyone, and that is why HUD is encouraging communities to move individuals and families into permanent housing as quickly as possible. In the meantime, HUD recognizes that there are security risks in operating shelters, but the obligation to provide for safety and security is not new, and the denial of equal access cannot be justified based on unfounded concerns about safety or security. Under this final rule, policies and procedures for CPD programs covered by this rule will have to include, if appropriate, provisions on nondiscriminatory measures to ensure the health, safety, security, and privacy of all occupants and staff in accordance with applicable Federal laws and regulations. Further, under this rule, recipients, subrecipients, owners, operators, managers, and providers of shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities must take nondiscriminatory steps that may be necessary and appropriate to address privacy concerns raised by residents or occupants, and, as needed, update their admissions, occupancy, and operating policies and procedures. It would be appropriate for a recipient,

subrecipient, owner, operator, manager, or provider to update its operating policies and procedures to reflect nondiscriminatory steps to address privacy concerns if providers repeatedly receive the same request from occupants that can be accommodated in the same manner. However, an update to their policies and procedures in order to address rare case-specific situations may not be necessary, although an exception to policies and procedures may be appropriate in such circumstances to avoid infringement on an individual's privacy concern. HUD believes that this final rule clarifies compliance and greatly reduces responsibility of the staff to determine gender identity for the purposes of placement.

Comment: A commenter stated that the proposed paperwork and record retention requirements of the proposed rule distract from the prime objective of shelters, disincentivizes participation in HUD programs, and make meeting the overarching objective of ensuring access to shelter for all more costly and burdensome.

HUD Response: This final rule eliminates most of the provisions of the proposed rule that required recordkeeping requirements, and as a result HUD has removed most of the recordkeeping requirements in this final rule. The only recordkeeping requirement that remains is the requirement to maintain records of policies and procedures to ensure that equal access is provided, and individuals are accommodated, in accordance with their gender identity. This requirement will aid HUD in monitoring compliance with this rule and taking enforcement action where needed.

Comment: Commenters expressed support for the rule's definitions of gender identity and perceived gender identity. A commenter said the original definition of gender identity encouraged discrimination by implying or directly giving providers the ability to determine gender through discriminatory perceptions based on gender stereotypes. A commenter stated that "transgender women are women and transgender men are men." Commenters stated that the rule's separation of definitions of actual and perceived gender identity will help to ensure that LGBT individuals receive equal access to shelter, for example, by clarifying concepts that may be unfamiliar to grant recipients.

HUD Response: HUD appreciates the commenter's support for the revised definition and agrees that it is important to differentiate between actual gender identity and perceived gender identity.

As discussed earlier, the definition of "perceived gender identity" in this final rule includes a perception based on documents, to make clear that the identification of gender or sex on an individual's identity document may be different than a person's actual gender identity, and that the perceived gender identity of an individual based on information on the documents may not be the basis of discrimination against that individual.

Comment: Commenters stated that HUD's rule should allow persons to determine gender identity and expression free from harassment and violence, whether actual or perceived gender. Commenters stated that they appreciated that the definition of "perceived gender identity" covers discrimination based on gender expression, and they urged HUD to include consistent clarifying language to this effect in both the preamble to the final rule and in training and technical assistance for grantees.

HUD Response: As HUD noted in a prior response, by incorporating gender expression into the definition of perceived gender identity, the final rule requires recipients, subrecipients, and providers to make shelter available without regard to gender expression. HUD will take the commenter's recommendations into account when developing training and technical assistance materials.

Comment: Commenters stated their belief that self-reported gender identity should be afforded a lesser status than binary biological sex, because gender is subjective, mutable, and theoretical, whereas biological sex is objective, immutable, and demonstrable. Commenters stated that research demonstrates a lack of scientific consensus as to transgender status or that gender fluidity is a mental illness. Commenters stated that the rule contravenes the Constitution's recognition of a "fundamental, irreducible reproductive asymmetry" between women and men. Commenters stated that the rule should require the use of verifiable criteria, e.g., medical history, to establish the authenticity of a self-identified transgender individual. A commenter stated that the rule puts "staff in the position of adjudicating who is a (transgender) woman and who is not," and that this is unfair to such staff and the populations they serve. A commenter stated that biological sex is relevant to decisions about single-sex housing and shared sleeping and bathing areas. Another commenter said HUD conflates the definitions of "sex," and "gender," and suggested that HUD define "sex" as the actual biological

maleness or femaleness of a person and “gender” as the cultural sex-role, although the commenter stated that even this revision is still problematic because there are no universally agreed upon attributes for what constitutes particular roles.

Other commenters stated that sex is not “assigned” at birth, but is presented, observed, and recorded, and commenters recommended that the rule refer to the sex “presented” at birth rather than the sex “assigned” at birth. This commenter also supported the view that “perceived” gender identity is problematic, as perception varies from individual to individual, and asked how a provider is expected to perceive somebody else’s identity. The commenter suggested that the rule state that perceived gender identity means the social sex-role the person is assumed to have an affinity for based on exhibited stereotyped behaviors commonly acknowledged to be associated with being either male or female and/or the actual biological sex of the person, but stated that there still needs to be some objective criteria for the definition to be of any real use, but using stereotyped behaviors in place of biological sex is problematic. A commenter said that the rule also does not define “transgender” or explain how a provider could distinguish between those who are sincere in their sex-role identity and those who are not. Further, the commenter said that because this rule enshrines expressions and characteristics as a legal sex category, it will negatively affect other laws concerning women’s rights, and the definition of “woman” should be based on biological sex.

HUD Response: HUD appreciates and has considered the suggested revisions to the definition of “gender identity” offered by commenters. However, HUD declines to make the suggested changes at this final rule stage. As HUD observed in the 2012 Equal Access Rule, the number of suggested revisions to the definition of “gender identity” highlights a range of differing views among commenters regarding the meaning of this term. Consequently, HUD was required to determine which definition makes the most sense in this context. As noted earlier in this preamble, in the 2012 Equal Access Rule, HUD based its definition on the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, on the basis that both this statute and HUD’s policy sought to protect LGBT individuals. Subsequently, however, HUD evaluated its program recipient practices, reviewed research on

discrimination of transgender individuals in shelter settings, solicited input on the experiences and concerns of both clients and providers, and reviewed its own guidance, as well as several other Federal agencies’ gender-identity nondiscrimination policies. HUD found helpful, for instance, that the DOJ’s guidance states that a program recipient “should ask a transgender beneficiary which group or service the beneficiary wishes to join,” but may not “ask questions about the beneficiary’s anatomy or medical history or make burdensome demands for identity documents.” As noted in the proposed rule, HUD determined, in light of its review, that it would be more effective for the specific purpose of ensuring equal access to HUD programs to separate the definitions of actual and perceived gender identity and to require that any gender identity determinations in the context of CPD programs be based on an individual’s self-identification. That does not mean that staff workers conducting intake procedures must account for perceived gender identity in determining placement. In fact, it means that staff workers must not use perceived gender identity and must only place an individual based on the individual’s actual gender identity, without additional questions about anatomy, medical history, or identification documents. Transgender and gender nonconforming persons must not be placed based on perceived gender identity when it is in conflict with an individual’s self-identified gender identity. This approach is consistent with current research, with HUD’s existing guidance, and with other Federal agency policy. This approach does not require the provider to make any determination as to an individual’s sincerity with respect to their gender.

In response to the comment with regard to this rule’s impact on a “legal sex category,” this rule does not provide a definition of “woman” or “sex.” In this rule, HUD notes that gender identity—and whether a person identifies with their sex assigned at birth or not—is a component of sex. As such, HUD believes it was important to recognize the role of gender identity in its 2012 Equal Access Rule and to provide further guidance on how individuals are treated based on gender identity in this rule. In view of its role in ensuring access to housing for all Americans, HUD could not countenance denying equal access to shelter on the basis of gender identity, just as it could not countenance such treatment for characteristics such as race, color, national origin, or disability. As previously noted, HUD does not believe

it is appropriate to isolate, ostracize, or treat people differently because of the way others, such as other shelter residents or shelter employees, view them.

Given the comments requesting guidance on the efforts a provider may use to identify an individual’s gender identity, HUD revised the proposed rule, in this final rule, to provide clarity on this point. Specifically, HUD has included a provision in § 5.106(b) that makes clear that individuals may not be asked to answer intrusive questions, provide anatomical information, or provide documentary, physical, or medical evidence of the individual’s gender identity. HUD notes that documents such as identification documents may list an individual’s sex assigned at birth and not an individual’s gender identity. Thus, an identification card or other document is not dispositive of an individual’s gender identity. By including language that prohibits intrusive questioning or requests for anatomical information, documentation, or physical or medical evidence, HUD makes clear to providers, owners, operators, and managers that an individual’s self-identification of gender identity is sufficient evidence of the individual’s gender identity for purposes of making a decision regarding admission, placement, accommodation, placement, or services under this final rule. While documentation of gender identity may not be required for purposes of establishing an individual’s gender identity or determining eligibility for a program, HUD recognizes that an individual may need to provide documentation of identity in order to apply for certain types of assistance, such as healthcare, Social Security benefits, or employment. In instances where the provider receives documentation and that documentation states a different gender marker than was identified by the individual as their gender identity, the provider must continue to serve the individual in accordance with their self-identified gender identity.

As previously stated, it is not uncommon for transgender persons to have identification documents that indicate the individual’s sex assigned at birth instead of the individual’s gender identity, so identity documents should not be viewed as evidence contesting an individual’s self-identification of gender identity.

Comment: A commenter stated that the rule recognizes that some people do not identify as either male or female and that such persons must be permitted to choose which option is most consistent

with their gender when accessing single-sex shelters or other buildings or facilities or services. Commenters asked HUD to clarify how the rule applies to people who identify in nonbinary, gender-fluid, intersex, or gender nonconforming terms. Commenters stated that nonbinary individuals constitute a vulnerable subgroup within the transgender population, particularly because their identity may be less familiar to program staff, but they are nevertheless entitled to the same acceptance and respect for their gender identities as are others. A commenter said the medical community has widely recognized the importance of recognizing gender identities other than male or female, or nonbinary genders, and providing those with nonbinary genders equal access to services. Commenters stated that an individual whose gender identity is neither male nor female should have the right to state which program or facility is most consistent with their identity and asked HUD to include language to this effect in the preamble to the final rule. The commenters also asked HUD to discuss in its training and technical assistance for grantees the rule's application to persons who are gender nonconforming or who do not identify as male or female, in training and technical assistance for grantees. Commenters stated that the rule should expressly state that refusing service or access to individuals who are gender nonconforming or who do not identify as either male or female violates the proposed rule. Commenters stated that when only male or female accommodations are available, equal access requires that persons who do not identify as either male or female must be permitted to determine which option is most consistent with their gender identity. A commenter stated that HUD should amend its forms and databases to permit individuals to identify as something other than male or female and to instruct program staff that individuals must be permitted to self-identify their own gender. Another commenter said that the rule does not mention intersex persons or persons with a difference of sexual development (DSD) and, consistent with current trends in case law, coverage of the rule should be expanded to include persons with intersex conditions and DSD.

Another commenter said that while it understands that the proposed regulations are requiring nonbinary users to choose between facilities for the two majority genders, the commenter believes that, over the long term, single-sex systems are going to have to become

integrated if they are to cost-effectively serve an expanding variety of gender identities. This commenter asked HUD to start conceptualizing a new system that can comfortably accommodate nonbinary users. A commenter said HUD should encourage recipients to undertake the following: The development and creation of all-gender spaces; the creation of policies, practices, and staffing structures that would allow programs and facilities to be safely designated as all-gender; and the creation of practices and facility upgrades that afford all residents increased personal privacy.

HUD Response: HUD appreciates the comments regarding individuals who do not identify as either male or female and individuals who are nonbinary, gender-fluid, intersex, or gender nonconforming. While HUD did not reference each of these groups in its proposed rule or the regulatory text of this final rule, HUD's use of terminology is not intended to exclude people because of the words they use to describe themselves. HUD recognizes that there is more work to do in this area to ensure that, to the greatest extent possible, all individuals are treated equally and appropriately accommodated in HUD-funded programs, shelters, services, and other facilities. In circumstances where an individual does not identify as male or female and such information is relevant to placement and accommodation, the individual should be asked the gender with which the individual most closely identifies. In these circumstances, the individual is in the best position to specify the more appropriate gender-based placement as well as the placement that is most likely to be the safest for the individual—either placement with males or placement with females.

While HUD appreciates the suggestions about future actions it may take to better accommodate everyone in shelters, HUD declines to address these comments in detail as these issues are beyond the scope of this rulemaking. HUD will consider these issues for future rulemaking. As the commenters suggest, HUD will also consider training and guidance for shelter providers, operators, and managers on best practices for dealing with individuals who do not identify as male or female and individuals who are nonbinary, intersex, or gender nonconforming. HUD agrees that individuals in these groups may be particularly vulnerable, and that training and technical assistance may be helpful in addressing the needs of these populations of shelter residents.

Comment: A commenter stated that HUD should not follow the approach taken by DOJ in implementation of the Prison Rape Elimination Act because DOJ regulations included provisions allowing correctional agencies broad discretion to make "case-by-case" decisions regarding whether placement in a male or female facility would ensure the individual's health and safety. The commenter stated that while DOJ explained in its rule's preamble that "an agency may not simply assign the inmate to a facility based on genital status," few, if any, State agencies are complying with this provision, with the result that agencies are maintaining their prior practices of automatically placing individuals exclusively based on their genital anatomy, even when nominally adopting policy language that mirrors the Federal rule. The commenter stated that such discretion is not appropriate or permissible under regulations implementing Federal nondiscrimination requirements. Another commenter stated that the most essential element of a successful nondiscrimination policy is the basic rule that housing must be based on a person's self-identified gender, not on their sex assigned at birth. A commenter stated that placement should not be conditioned on whether a transgender person has undergone any medical treatment or been able to change the gender markers on their identification documents, or have to look a certain way. Another commenter stated, citing several examples in the United States and elsewhere, that shelters that have adopted a rule basing gender on self-identification, as opposed to sex assigned at birth, report uniform success in being able to serve and integrate transgender people into their programs and services.

HUD Response: HUD has never intended to give broad discretion to recipients and providers to make case-by-case decisions. The proposed rule required providers of temporary, emergency shelter and services to document the specific facts, circumstances, and reasoning relied upon in any case-by-case determination that results in an alternative admission, accommodation, benefit, or service to an individual or their family.

To clarify that placement is to be made on the basis of an individual's self-identification of gender, § 5.106(b) of this final rule includes a provision stating that individuals may not be subjected to intrusive questioning relating to their gender identity or asked to provide anatomical information, documentation, or physical or medical evidence of gender identity. Therefore,

this final rule makes clear that placement in accordance with an individual's gender identity cannot be conditioned on whether a transgender person has undergone medical treatment, has been able to change identification documents to reflect their gender identity, or has a certain appearance or gender expression.

Additionally, as discussed earlier in this preamble, in § 5.106(c) of this final rule, which addresses placement and accommodation in temporary, emergency shelters and other facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities, HUD removes the proposed rule language 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. In its place, HUD provides that placement and accommodation of individuals in shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities shall be made in accordance with an individual's gender identity. Further, this revised paragraph (c) provides for post-admission accommodations, where, after an individual has been admitted to a shelter or other building and facilities, providers must take nondiscriminatory steps that may be necessary and appropriate to address privacy concerns raised by residents or occupants. This provision for post-admission accommodations applies to all individuals, regardless of gender identity.

Comment: In contrast to the preceding comment, commenters stated that the requirements that an accommodation be permitted only in "narrow" or "rare" circumstances, and then only when "necessary" to ensure two specified interests—health and safety—is too circumscribed to adequately protect the interests of all residents. The commenter stated that an accommodation that furthers the interests in protecting the health and safety of residents should be allowed, for example, even if not, strictly speaking, "necessary," and not only at the request of the person "claiming" to be transgender. Commenters stated that, even as to housing facilities that admit both men and women, residents should not be required to share with persons of the opposite sex those areas, such as sleeping and bathing areas, properly

reserved to persons of one sex, for reasons of privacy.

HUD Response: As discussed above, this final rule notes that providers need to take nondiscriminatory steps that may be necessary and appropriate to address privacy concerns raised by residents or occupants. HUD stresses the use of the term "nondiscriminatory" in this provision. An example of a nondiscriminatory step to address privacy concerns would be accommodating a request of a domestic violence victim who has specific privacy concerns to bathe at specific, separate times from other shelter or facility occupants.

As HUD has noted, it has studied the issue for 4 years and determined, following the lead of other Federal agencies, that to ensure equal access, the general rule must be that individuals are accommodated in accordance with their gender identity. If HUD were to provide broader discretion, placement decisions would rely on more subjective factors that might differ from provider to provider based on the views, beliefs, and unsubstantiated fears of individual shelter staff.

Comment: A commenter said the rule prohibits a determination from being based on complaints of other shelter residents when those complaints are based on actual or perceived gender identity, but HUD should provide guidelines to help providers distinguish complaints that are based on recognition of threat because of a client's biological sex, as opposed to "gender identity."

HUD Response: HUD agrees that the language referenced by the commenter could cause confusion. HUD, therefore, has removed the language and makes clear that in temporary, emergency shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities, placements and accommodations shall be made in accordance with an individual's gender identity. Once an individual is accommodated, providers shall take appropriate steps to address privacy concerns raised by all residents and occupants. By considering complaints, and taking appropriate action in response, a provider will minimize the risk of harassment occurring among occupants and between staff and occupants.²³ Such

actions must, however, be nondiscriminatory.

Comment: Commenters stated that the rule should clarify that shelters may give transgender people case-by-case alternative or modified accommodations only when they request them and not at the mandate of shelter staff and/or to accommodate the wishes, fears, or discomfort of others—and that such alternatives or modifications shall not be based on a person's actual or perceived gender identity. Commenters also stated that the rule should clarify that shelters shall provide accommodations requested by a transgender shelter-seeker, and only when those accommodations are reasonable and appropriate to protect the health, safety or privacy of that individual. Commenters stated that a person's ability to request an alternative or modified placement should not be limited to "shared sleeping quarters or shared bathing facilities" and recommended that the provision for such accommodations be incorporated into paragraph (b) of § 5.106 (which is titled Equal Access in accordance with gender identity) rather than in separate paragraph (d) of § 5.106 (which is titled Referrals). A commenter said that many shelters find that, where possible, providing increased privacy for all residents is ideal; for example, private rooms and bathrooms and showers with locks. A commenter stated that the rule should mandate that shelters provide unisex bathrooms with individual showers.

Commenters stated that the rule should clarify that any alternative or modified placements must provide access to the same or substantially equivalent services, or a "comparable alternative program." Commenters stated that HUD should clarify that shelters will be in noncompliance with the rule if they provide some services (e.g., hotel vouchers) but otherwise deny equivalent services, such as the same length of stay, other supportive services offered by the shelter, or services provided at the primary program site due to a lack of transportation. A commenter stated that a provider that refers an individual to another program should be required to confirm that the individual received shelter or services at that alternative program.

HUD Response: As previously discussed, this final rule removes the case-by-case determination language in the proposed rule and establishes that individuals in HUD-funded shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared

²³ Unlawful harassment in shelters that qualify as dwellings violates the Fair Housing Act. See *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act*, proposed rule, 80 FR 63720 (Oct. 21, 2015).

bathing facilities must be accommodated in accordance with their gender identity. This final rule makes clear that providers do not have the discretion to suggest that individuals may not be accommodated in shelters that match their gender identity because their gender identity differs from their sex assigned at birth. As a result, HUD has eliminated the referral provision that was in § 5.106 (d) of the proposed rule. Section 5.106(b) of this final rule broadly discusses how policies and procedures must ensure equal access to CPD programs based on gender identity.

As discussed earlier in this preamble, the revisions to this final rule do not preclude the existing possibility that any occupant may request a referral to an alternate project or that, in such cases, staff may provide a referral to another project or, where none is available and funding permits, offer clients a hotel or motel voucher. HUD appreciates the commenters' concerns that a transgender individual who is provided an alternative accommodation at the individual's request should be provided an accommodation that is comparable to the shelter within which the individual originally sought accommodation and agrees that when providers make referrals they should ensure that an opportunity to access equivalent alternative accommodations, benefits, and services is provided, or the requestor should receive a referral to a comparable alternative program with availability and equivalent accommodations, benefits, and services.

HUD is encouraged that many shelters are providing increased privacy for all residents, such as private rooms and bathrooms and showers with locks, and as discussed earlier in this preamble, HUD encourages this where feasible. This rule, however, does not mandate this configuration. Mandatory configuration of shelters is beyond the scope of this rulemaking.

Comment: Other commenters stated that they oppose any exception to the requirement that shelter be provided based on gender identity to protect the health and safety of shelter employees or other people staying in the shelter, because such an exception is not necessary and will be used as pretext to deny shelter to transgender individuals. Commenters stated that under the proposed rule language, it is not clear whose health and safety the exception is intended to protect. A commenter stated that the very allowance of an exception reinforces the attitude that a person is a threat to others based solely on her or his status as a transgender individual. The commenter stated that if a shelter provider is concerned that a transgender

individual's behavior or conduct poses a threat to others' health or safety, then the provider can and should address that in the same way that it addresses the problematic conduct of any other person staying in the shelter.

Another commenter stated that the exception, which is ambiguous, should be removed, because it is unclear from the preamble what kind of "health and safety" circumstances would (or should) ever justify denying shelter to a transgender individual in accordance with their gender identity. A commenter stated that the exception should apply only to the health and safety of the shelter seeker, meaning that only shelter seekers could make these requests for other accommodations for themselves. Other commenters stated that HUD should take special care to ensure that providers are not choosing these alternatives in order to circumvent the general prohibition on discrimination. A commenter stated that it would be very helpful for HUD to provide guidance in the form of specific examples of effective policy adjustments, as well as other ways shelter and housing providers can mitigate actual or perceived threats to health or safety, in a less burdensome way. A commenter stated that guidance is needed to address what covered providers should do in scenarios where they lack financial resources to provide alternative accommodations or referrals, so as not to violate the rule.

HUD Response: HUD appreciates these comments and, as discussed previously, HUD has revised the rule to clarify that placement and accommodation must be made in accordance with an individual's gender identity.

Comment: A commenter stated that the goals of this rule could conflict with the goals of "Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs," a rule that seeks to offer expanded protections to victims of domestic violence, dating violence, sexual assault, and stalking within HUD-assisted and HUD-insured housing. The commenter suggested that HUD provide additional guidance to operating facilities with shared sleeping quarters on how to offer alternative accommodations to transgender individuals when there are residents that are sensitive to sharing facilities with the opposite sex due to their experiences with domestic violence.

HUD Response: HUD's proposed rule implementing the housing protections of VAWA, which as the commenter noted would expand protections to victims of domestic violence, dating

violence, sexual assault, and stalking in HUD-assisted and HUD-insured housing, does not conflict with this final rule. HUD's proposed rule on VAWA would implement statutory requirements that: (1) Prohibit housing providers under certain HUD programs (covered housing providers) from denying or terminating assistance or occupancy rights to individuals because they are or have been victims of domestic violence, dating violence, sexual assault, or stalking; (2) require covered housing providers to notify tenants and applicants of their rights under VAWA, and detail what documentation covered housing providers may ask for; (3) require covered housing providers to create emergency transfer plans; and (4) provide for lease bifurcations. Nothing in HUD's rule proposing to implement VAWA contradicts this rulemaking requiring that individuals be housed and receive services in accordance with their gender identity.

Further, as HUD explained in the CPD Equal Access proposed rule, VAWA imposed a new grant condition that prohibits discrimination by recipients of grants administered by DOJ, including grants to provide housing assistance for survivors of domestic violence. Although this provision relates to DOJ, and not to HUD, HUD noted that on April 9, 2014, DOJ's published guidance entitled "Frequently Asked Questions: Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013," which 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 that recipients that operate sex-segregated or sex-specific programs should assign a beneficiary to the group or service that corresponds to the gender with which the beneficiary identifies, and may consider on a case-by-case basis whether a particular housing assignment would ensure the victim's health and safety, but recipients 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. The guidance further states that, 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, but the recipient may not ask questions about the beneficiary's anatomy or medical history or make burdensome demands for identity documents.

HUD's rule requires that individuals be accommodated in accordance with their gender identity. It is beyond the scope of this rule to detail methods for best serving victims of domestic violence, dating violence, sexual assault, or stalking. However, as discussed earlier, this final rule requires that providers must take nondiscriminatory steps that may be necessary and appropriate to address privacy concerns raised by all residents or occupants. HUD notes that both victims and perpetrators of domestic violence and other VAWA crimes include persons who are transgender or gender nonconforming individuals and persons who are not.

Comment: Commenters asked that HUD include other CPD programs that will be active in the near future, including the Housing Trust Fund and the Rural Housing Stability Assistance program, or provide an indicator that the list is nonexhaustive so the Secretary can add more CPD programs.

HUD Response: HUD's intent was to cover all CPD programs, as noted in the preamble to the proposed rule. Therefore, HUD makes clear in § 5.106(a) that additional CPD programs, such as the Housing Trust Fund and Rural Housing Stability Assistance programs, are included.

Comment: Commenters stated that the rule should clarify that transgender persons have a right to housing and treatment consistent with their gender identity in all circumstances—in the preamble and training and technical assistance. Other commenters said it is essential that the rule address more directly the problem of violence, including the high rates of sexual assault, against LGBT and gender nonconforming persons in federally funded shelters.

HUD Response: HUD's 2012 Equal Access Rule and this CPD Equal Access Rule explicitly acknowledge the higher rate of discrimination and acts of violence experienced by transgender persons and both rules address the issue that transgender individuals and other gender nonconforming persons must be able to participate in HUD programs on an equal basis as all other program participants. HUD guidance and training on its Equal Access rules cover these subjects.

Comment: The rule must address public and staff perceptions.

HUD Response: The final rule makes clear that transgender and other gender nonconforming individuals are to be admitted, placed, accommodated, and provided with services in accordance with their gender identity. Public and staff perceptions are not an appropriate

basis for denial or limitation of access. Any additional rulemaking to address public and staff perceptions of transgender and gender nonconforming persons is beyond the scope of this rulemaking. HUD acknowledges, however, that such topics may be appropriate for training and technical assistance materials for shelter providers.

Comment: Commenters stated that HUD-funded programs should be required to create and implement written policies specifying how they will combat harassment, violence, and sexual assault and, in particular, how they will protect the health and safety of LGBT and gender nonconforming persons and others who are at increased risk of sexual violence. A commenter recommended that HUD require its recipients and subrecipients to create written policy and guidelines combating violence against persons marginalized due to their sexual orientation or gender identity and to require data collection to help monitor accountability.

Commenters stated that HUD should provide guidance detailing necessary provisions of such policies and recommended best practices, for example, guidance or best practices pertaining to the shelter-seeker's own individualized safety assessment, through training and technical assistance for grantees. Commenters also stated that HUD should specify that the failure to create and implement such policies could result in noncompliance with the regulations and, thereby, jeopardize Federal funding and/or result in HUD taking action under its regulations. Another commenter stated that it is unclear who has the responsibility to establish and amend policies and procedures under the rule, so HUD should clarify that the covered recipients, subrecipients, owners, operators, managers, and providers must create, implement, and revise these policies and procedures as necessary. The commenter stated that HUD should identify in a subsequent notice the specific types of individuals and entities that have these duties within each housing program. The commenter also stated that HUD should provide sample policies and procedures, especially regarding privacy and security, so that covered individuals or entities that are unfamiliar with gender identity issues can have access to models in devising their own policies and procedures.

Commenters stated that the rule should mandate training for shelter staff as a prerequisite to receiving HUD funding. Another commenter stated that guidance from advocacy organizations suggests that ongoing resident training

should be implemented in addition to current HUD-required staff training. A commenter stated that HUD should ensure that community organizations are made aware of the rule, once the rule is implemented, in order to better support their outreach work to transgender and gender nonconforming people in poverty.

Other commenters asked HUD to provide training on the requirement that recipients and subrecipients must treat transgender individuals respectfully by using an individual's self-identified name and pronouns, regardless of whether they have been able to legally change it.

HUD Response: HUD agrees with the commenters that successful implementation of this rule depends in no small part on guidance and training. HUD undertook intensive training efforts following publication of its 2012 Equal Access Rule and 2015 Notice CPD-15-02, and HUD intends to do the same for this CPD Equal Access Rule. With respect to commenters' questions about the establishment of policies, § 5.106(b) of this final rule (and of the proposed rule) requires that the admissions, occupancy, and operating policies and procedures of recipients, subrecipients, owners, operators, managers, and providers (covered by this rule), including policies and procedures to protect privacy, health, safety, and security, shall be established or amended, as necessary, and administered in a nondiscriminatory manner so: (1) Equal access to programs, shelters and other buildings and facilities, benefits, services, and accommodations is provided to an individual in accordance with the individual's gender identity, and in a manner that affords equal access to the individual's family; (2) an individual is placed, served, and accommodated in accordance with the individual's gender identity; (3) an individual is not subjected to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence of the individual's gender identity; and (4) consistent with § 5.105(a)(2), eligibility determinations are made and assisted housing is made available in CPD programs without regard to actual or perceived gender identity.

Comment: A commenter stated that the rule's case-by-case analysis, training, and referral requirements will involve more time and resources than HUD estimates. The commenter stated that HUD should provide additional resources and tools to program grantees so that proper training can be

conducted, particularly for small grantees with limited resources.

HUD Response: As discussed earlier, this final rule eliminates the provision regarding a case-by-case analysis. As HUD noted in response to the preceding comment, HUD will undertake training and provide training and guidance to assist recipients and subrecipients under the CPD programs covered by this rule.

Comment: Commenters stated that they support the elimination of the inquiries prohibition provision for the following reasons: (1) The prohibition would likely cause confusion in the context of applying § 5.106, as it may be construed to prohibit any discussion of gender identity and (2) it appears to prohibit the routine and voluntary collection of demographic data regarding sexual orientation and gender identity for purposes of program evaluation—and, while an inquiry regarding sexual orientation or gender identity may constitute discrimination or be evidence of discrimination under the rule, inquiries for legitimate and nondiscriminatory purposes should be permitted. Commenters stated that they supported the removal of the prohibition to the extent that the final rule is clear that shelter and housing providers can only inquire about an applicant's or resident's sexual orientation and gender identity for lawful purposes; for example, to determine unit size and as part of the routine and voluntary collection of demographic data concerning sexual orientation and gender identity for program evaluation, so long as the data is collected and used for nondiscriminatory purposes in a nondiscriminatory fashion. A commenter stated, in support of removing the prohibition, and providing suggested language, that they urged HUD to require that specific protocols be put in place to protect the confidentiality of information about sexual orientation or transgender status.

HUD Response: HUD is committed to ensuring the safety and privacy of all individuals, including transgender and gender nonconforming individuals, in CPD programs. In the proposed rule, HUD expressed its intent in proposing the removal of the inquiries prohibition. HUD emphasized that it would only permit recipients or subrecipients to inquire about a person's sexual orientation or gender identity for lawful, nondiscriminatory purposes. In the final rule, to prohibit inappropriate inquiries related to gender identity, HUD included language in § 5.106(b) stating that it would be inappropriate to subject individuals to intrusive questioning or

ask them to provide anatomical information or documentary, physical, or medical evidence of the individual's gender identity. In addition, as noted previously in this preamble, CPD previously issued guidance, "Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities" (Notice CPD-15-02, Feb. 20, 2015), which outlines best practices for appropriate and inappropriate inquiries related to sex and provides guidance, and recommends staff training, on addressing safety or privacy concerns. HUD intends to issue further guidance in connection with the issuance of this final rule.

Comment: A commenter stated, citing recommended guidance and model policies, that Massachusetts prohibits gender-based inquiries only in cases where shelter guests are perceived as transgender, suggesting that implementation of the proposed rule would be possible without removing the prohibition.

HUD Response: As noted in HUD's proposed rule, removal of the inquiries prohibition would allow temporary, emergency shelters and other facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities to ask the individual's gender identity, and it would permit inquiries of the individual's gender identity and sexual orientation to determine the number of bedrooms to which a household is entitled. This is an inquiry that could be asked of all individuals, and not solely of those who are perceived to be transgender. Further, as HUD has stated, removal of the inquiries prohibition also reaffirms that HUD permits mechanisms for voluntary and anonymous reporting of sexual orientation or gender identity for compliance with data collection requirements of State and local governments or Federal assistance programs.

Comment: Commenters stated that the rule should expressly prohibit program staff from asking individuals questions about their anatomy, medical procedures, or medical history or making requests for identity documents or other documentation of gender as a precondition for being housed consistent with their gender identity,

HUD Response: Although the final rule removes the provision of § 5.105 that prohibited inquiries into an individual's sexual orientation or gender identity for purposes of facilitating providers' compliance with the requirement of § 5.106 that an individual is to be admitted, placed,

accommodated, and provided services in accordance with the individual's gender identity, HUD agrees with commenters that transgender and gender nonconforming individuals should not be required to answer invasive questions about their anatomy or medical history in order to be accommodated and provided services in CPD programs. To address this concern, HUD has revised § 5.106(b) to prohibit intrusive questions related to gender identity and prohibit requests for anatomical information and requests for documentary, physical, or medical evidence.

Comment: Commenters recommend that HUD emphasize in the preamble, and in training and technical assistance, the importance of protecting the privacy of information related to a shelter seeker's sexual orientation and gender identity. A commenter stated that transgender people in particular face serious risks of danger, including verbal harassment and physical assault, when their transgender status or gender identity is revealed without their consent. The commenter said that steps to keep a shelter seeker's sexual orientation and/or gender identity confidential include, without limitation: (1) Safeguarding all documents and electronic files, (2) containing this information and having conversations about these topics in private to prevent disclosure, (3) establishing explicit nondiscrimination provisions, (4) ensuring safe environments in programs and shelters, (5) implementing rigorous confidentiality safeguards, and (6) ensuring that shelter staff members receive appropriate training. The commenter said that successful implementation of these important requirements will facilitate the collection of much needed data, allowing HUD to better determine the populations its programs serve, their needs and consumer experiences, and their use of programs and facilities.

HUD Response: Many of CPD's programs that govern temporary, emergency shelters and other buildings and facilities impose strict confidentiality requirements to ensure the privacy of individuals that are housed in these facilities. (See §§ 574.440, 576.500(x), 578.103(b) and (d)(2), and 578.23(c)(4)(i).) This final rule requires that privacy be considered in adopting admissions, occupancy, and operating policies and procedures in § 5.106(b) and provides that shelters and other buildings and facilities take nondiscriminatory steps that may be necessary and appropriate to address privacy concerns raised by residents or occupants in § 5.106(c). Further

guidance will address privacy and confidentiality in data collection.

Comment: Commenters stated that HUD should clarify in the preamble to the final rule, and in training and technical assistance to its field staff, that inquiries that are used to limit the provision of shelters or housing, to harass an individual, or to further any other discriminatory purpose fall under the prohibition on discrimination. Commenters stated that, by contrast, HUD should state clearly in those areas that the routine and voluntary collection of demographic information from all clients or program participants is permissible, so long as it is collected and used in a nondiscriminatory fashion.

HUD Response: HUD appreciates the commenters raising this issue and will address this issue in guidance. HUD reiterates that conduct that violates the rule may also violate the Fair Housing Act if the facility is subject to the Fair Housing Act's nondiscrimination requirements and the conduct is because of race, color, religion, national origin, familial status, sex, or disability.

IV. Findings and Certifications

Regulatory Review—Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made on whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A determination was made that this final rule is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 (although not economically significant, as provided in section 3(f)(1) of that order).

This final rule is consistent with Administration policy in its direction that providers in all CPD programs must ensure that their policies and procedures to protect privacy, health, safety, and security are administered so that equal access is provided to HUD programs in accordance with an

individual's gender identity. This final rule also clarifies how temporary, emergency shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities comply with the requirement that equal access be provided to programs, buildings, facilities, services, benefits, and accommodations in accordance with an individual's gender identity. This clarification will benefit clients accessing CPD-funded programs, including those with temporary, emergency shelters and other buildings and facilities, by assuring that all clients receive equal access and will benefit the CPD-funded facilities by making compliance with HUD's equal access requirements easier.

These requirements benefit all occupants by ensuring that providers understand that they need to be responsive to individual health, safety, security, and privacy concerns, while ensuring that they do not take any discriminatory steps to address these concerns. This final rule also amends the definition of gender identity and sexual orientation in § 5.100 to clarify the difference between actual and perceived gender identity, which is necessary to the adoption of § 5.106, and to reflect recent changes in the definition of sexual orientation that uses updated terminology but does not expand the coverage of the term. This final rule eliminates the prohibition on inquiries relating to sexual orientation or gender identity in § 5.105(a)(2)(ii). Both of these changes make it easier for recipients and subrecipients of CPD funding, as well as owners, operators, and managers of shelters, buildings, and other facilities, and providers of services funded by CPD programs to comply with the requirements of both §§ 5.105(a)(2)(i) and 5.106.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Approximately 4,000 providers participating in the CPD programs covered by this rule are small organizations, but the rules requirement that organizations maintain records will be limited. Organizations are already required to maintain up-to-date policies and procedures in accordance with HUD guidance and regulations. The only change is that all CPD programs

must now maintain records of prior policies and procedures for up to 5 years from when they make changes to comply with these requirements. HUD believes that these limited recordkeeping requirements on small organizations are reasonable to ensure equal access to CPD programs, facilities, services, benefits, and accommodations in accordance with an individual's gender identity. Accordingly, for the foregoing reasons, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The information collection requirements for the CPD programs impacted by this rule—HOME, CDBG (State and entitlement), HOPWA, ESG, and CoC—have been approved by OMB and assigned OMB control numbers 2506–0171, 2506–0085, 2506–0077, 2506–0133, 2506–0089, and 2506–0199. The information collection requirements for CPD's Housing Trust Fund and Rural Housing Stability Assistance programs will be included when those programs are implemented.

Environmental Impact

This rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects

of their regulatory actions on State, local, and tribal governments and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, and in accordance with HUD’s authority in 42 U.S.C. 3535(d), HUD amends 24 CFR part 5 as follows.

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

- 1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

- 2. In § 5.100, revise the definitions for “Gender identity” and “Sexual orientation” to read as follows:

§ 5.100 Definitions.

* * * * *

Gender identity means the gender with which a person identifies, regardless of the sex assigned to that person at birth and regardless of the person’s perceived gender identity. Perceived gender identity means the gender with which a person is perceived to identify based on that person’s appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents.

* * * * *

Sexual orientation means one’s emotional or physical attraction to the same and/or opposite sex (e.g., homosexuality, heterosexuality, or bisexuality).

* * * * *

§ 5.105 [Amended]

- 3. In § 5.105, remove paragraph (a)(2)(ii) and the paragraph (a)(2)(i) heading and redesignate paragraph (a)(2)(i) as (a)(2).

- 4. Add § 5.106 to read as follows:

§ 5.106 Equal access in accordance with the individual’s gender identity in community planning and development programs.

(a) Applicability. This section applies to assistance provided under Community Planning and Development (CPD) programs, including assistance under the following CPD programs: HOME Investment Partnerships program (24 CFR part 92), Housing Trust Fund program (24 CFR part 93), Community Development Block Grant program (24 CFR part 570), Housing Opportunities for Persons With AIDS program (24 CFR part 574), Emergency Solutions Grants program (24 CFR part 576), Continuum of Care program (24 CFR part 578), or Rural Housing Stability Assistance Program (24 CFR part 579). The requirements of this section apply to recipients and subrecipients, as well as to owners, operators, and managers of shelters and other buildings and facilities and providers of services funded in whole or in part by any CPD program.

(b) Equal access in accordance with gender identity. The admissions, occupancy, and operating policies and procedures of recipients, subrecipients, owners, operators, managers, and providers identified in paragraph (a) of this section, including policies and procedures to protect privacy, health, safety, and security, shall be established or amended, as necessary, and administered in a nondiscriminatory manner to ensure that:

(1) Equal access to CPD programs, shelters, other buildings and facilities, benefits, services, and accommodations is provided to an individual in accordance with the individual’s gender identity, and in a manner that affords equal access to the individual’s family;

(2) An individual is placed, served, and accommodated in accordance with the gender identity of the individual;

(3) An individual is not subjected to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence of the individual’s gender identity; and

(4) Eligibility determinations are made and assisted housing is made available in CPD programs as required by § 5.105(a)(2).

(c) Placement and accommodation in temporary, emergency shelters and other buildings and facilities with shared sleeping quarters or shared bathing facilities—(1) Placement and accommodation of an individual in temporary, emergency shelters and other buildings and facilities with physical limitations or configurations

that require and are permitted to have shared sleeping quarters or shared bathing facilities shall be made in accordance with the individual’s gender identity.

(2) Post-admission accommodations. A recipient, subrecipient, owner, operator, manager, or provider must take nondiscriminatory steps that may be necessary and appropriate to address privacy concerns raised by residents or occupants and, as needed, update its admissions, occupancy, and operating policies and procedures in accordance with paragraph (b) of this section.

(d) Documentation and record retention. Providers shall document and maintain records of compliance with the requirements in paragraph (b) of this section for a period of 5 years.

Dated: September 14, 2016.

Julián Castro,

Secretary.

[FR Doc. 2016–22589 Filed 9–20–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XE880

Fisheries of the Exclusive Economic Zone Off Alaska; Exchange of Flatfish in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is exchanging unused flathead sole and rock sole Community Development Quota (CDQ) for yellowfin sole CDQ acceptable biological catch (ABC) reserves in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2016 total allowable catch of yellowfin sole in the Bering Sea and Aleutian Islands management area to be harvested.

DATES: Effective September 21, 2016 through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and

#	Attribute	Agency/Project Has a Written Policy	Staff, Volunteers, and Contractors Are Trained to Comply with the Written Policy	All Clients Are Aware of the Agency/Project Policy	Resources
Ensuring Access					
1	<p>Agency is committed, where applicable, to complying with the Fair Housing Act, which prohibits discrimination, including harassment, in housing and housing-related transactions and financing because of race, color, national origin, sex (including sexual orientation and gender identity), religion, familial status, and disability. Furthermore, the agency is committed to complying with HUD's Equal Access Rule (if your agency receives HUD funding for shelter or services, your agency is required to meet these standards) and state and municipal laws. The Equal Access Rule requires that HUD-assisted or insured housing 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. This includes providing equal access in accordance with an individual's gender identity, and in a manner that affords equal access to the individual's family, in the admissions, occupancy, and operating policies and procedures of such shelters or services.</p>	<p>Meet with the agency's Board and administrators to discuss the importance of the Fair Housing Act and Equal Access Rule, how to be compliant, and gaps or areas for improvement at your agency.</p>	<p>Train staff, volunteers, and contractors on the agency's commitment and intention to comply with the Fair Housing Act and Equal Access Rule.</p>	<p>Educate clients on the agency's commitment to complying with the Fair Housing Act and Equal Access Rule and the availability of the agency's Policies and Procedures.</p>	<p>Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities: Review the Purpose section.</p> <p>Anti-Discrimination Policies and Procedures: Review the Transgender and Gender Nonconforming Policy section.</p>

#	Attribute	Agency/Project Has a Written Policy	Staff, Volunteers, and Contractors Are Trained to Comply with the Written Policy	All Clients Are Aware of the Agency/Project Policy	Resources
2	For an agency or project legally permitted to segregate services based on gender, the agency serves all eligible clients who identify with that gender or whose gender identity aligns most closely with that gender.	For an agency or project legally permitted to segregate services based on gender, develop a policy statement and procedures to ensure that staff, volunteers, and contractors serve all eligible clients that identify with that gender or whose gender identity aligns most closely with that gender.	For an agency or project legally permitted to segregate services based on gender, train staff, volunteers, and contractors to serve all eligible clients who identify with that gender or whose gender identity aligns most closely with that gender.	For an agency or project legally permitted to segregate services based on gender, educate clients on the agency's policy to serve all eligible clients who identify with that gender or whose gender identity aligns most closely with that gender.	<p>Equal Access to Shelter Training: Review slides titled LGBTQIA+ People and Shelters.</p> <p>Nondiscrimination Policy: Review policy document.</p> <p>Policy on Serving Transgender and Gender Nonconforming Clients in the DC Homeless Services CoC: Review the Access to Sex-Segregated Facilities and Programs section.</p>
3	For an agency or project legally permitted to segregate services based on gender, the agency will not deny access because the client identification documents have a different gender marker than the client or potential client presenting for service.	For an agency legally permitted to segregate services based on gender, develop a policy statement and procedures to ensure that staff, volunteers, and contractors do not deny access because the agency possesses identity documents indicating a sex different than the gender with which the client or potential client identifies.	For an agency or project legally permitted to segregate services based on gender, train staff, volunteers, and contractors on the agency's policy that prohibits denying access because the agency possesses identity documents indicating a sex different than the gender with which the client or potential client identifies.	For an agency or project legally permitted to segregate services based on gender, educate clients on the agency's commitment to not deny access because the agency possesses identity documents indicating a sex different than the gender with which the client or potential client identifies.	<p>Nondiscrimination Policy: Review the Definitions of Prohibited Discrimination section.</p> <p>Anti-Discrimination Policies and Procedures: Review the Anti-Discrimination Procedures section.</p> <p>Policy on Serving Transgender and Gender Nonconforming Clients in the DC Homeless Services CoC: Review the Accommodations for Safety and/or Privacy.</p>

#	Attribute	Agency/Project Has a Written Policy	Staff, Volunteers, and Contractors Are Trained to Comply with the Written Policy	All Clients Are Aware of the Agency/Project Policy	Resources
4	Agency or project will not consider a client or potential client ineligible because their appearance or behavior does not conform to gender stereotypes.	For an agency or project legally permitted to segregate services based on gender, develop a policy statement and procedures to ensure that staff, volunteers, and contractors will not consider a client or potential client ineligible because their appearance or behavior does not conform to gender stereotypes.	For an agency or project legally permitted to segregate services based on gender, train staff, volunteers, and contractors to not consider a client or potential client ineligible because their appearance or behavior does not conform to gender stereotypes.	For an agency or project legally permitted to segregate services based on gender, educate clients on the agency's commitment to not consider a client or potential client ineligible because their appearance or behavior does not conform to gender stereotypes.	<p>Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities: Review the Appropriate and Inappropriate Inquiries Related to Sex section.</p> <p>Policy on Serving Transgender and Gender Nonconforming Clients in the DC Homeless Services CoC: Review the Access to Family Facilities and Programs section.</p>
5	Agency or project does not ask questions or seek information concerning a person's anatomy or medical history.	Develop a policy statement and procedures to ensure that staff, volunteers, and contractors do not ask questions or otherwise seek information or documentation concerning a person's anatomy or medical history.	Train staff, volunteers, and contractors on the agency's policy that prohibits asking questions or otherwise seeking information or documentation concerning a person's anatomy or medical history.	Ensure clients understand that staff will not ask questions or otherwise seek information or documentation concerning the client's anatomy or medical history.	<p>Equal Access Rule Training: Review the slides titled Equal Access: Policies and Procedures.</p> <p>Policy on Serving Transgender and Gender Nonconforming Clients in the DC Homeless Services CoC: Review the Access to Sex-Segregated Facilities and Programs section.</p>
6	For an agency or project legally permitted to segregate services based on gender, the agency will serve all individuals eligible for the project in accordance with their gender identity.	Develop a policy statement and procedures to ensure that staff, volunteers, and contractors serve all individuals who are eligible for the project.	Train staff, volunteers, and contractors on the agency's commitment to serving all individuals that are eligible for the project.	Publicize the agency's commitment to serve all individuals, regardless of gender, in project literature.	<p>Policy on Serving Transgender and Gender Nonconforming Clients in the DC Homeless Services CoC: Review the Access to Family Facilities and Programs section.</p>

#	Attribute	Agency/Project Has a Written Policy	Staff, Volunteers, and Contractors Are Trained to Comply with the Written Policy	All Clients Are Aware of the Agency/Project Policy	Resources
7	If the agency operates a family shelter, the agency does not expel or decline a client of any gender if they are otherwise eligible for services.	Develop a policy statement and procedures to ensure that staff, volunteers, and contractors do not expel or decline a client of any gender if they are otherwise eligible for services.	Train staff, volunteers, and contractors on the agency's commitment to not expel or decline a client of any gender if they are otherwise eligible for services.	Publicize the agency's commitment to serve all families, regardless of gender, in project literature.	Nondiscrimination Policy : Review policy document. Anti-Discrimination Policies and Procedures : Review the Anti-Discrimination Procedures section.
8	If the agency operates a family shelter, the agency does not expel or decline clients based on their male gender identity, regardless of age.	Develop a policy statement and procedures to ensure that staff, volunteers, and contractors do not expel or decline clients based on their male gender identity, regardless of age.	Train staff, volunteers, and contractors on the agency's commitment to not expel or decline clients based on their male gender identity, regardless of age.	Educate clients on the agency's commitment to not expel or decline clients based on their male gender identity, regardless of age.	Nondiscrimination Policy : Review policy document. Anti-Discrimination Policies and Procedures : Review the Anti-Discrimination Procedures section.
9	Agency uses appropriate, inclusive language in communications, publications, trainings, personnel handbooks, and other policy documents that affirms the agency's commitment to serving all eligible clients in adherence to the Fair Housing Act and Equal Access Rule.	Develop a policy statement and procedures for the addition of inclusive language in communications, publications, trainings, personnel handbooks, and other policy documents that affirms the agency's commitment to serving all eligible clients in adherence to the Fair Housing Act and Equal Access Rule.	Train staff, volunteers, and contractors on the agency's commitment to inclusive language in communications, publications, trainings, personnel handbooks, and other policy documents that affirms the agency's commitment to serving all eligible clients in adherence to the Fair Housing Act and Equal Access Rule.	Educate clients on the agency's commitment to inclusive language in communications, publications, trainings, personnel handbooks, and other policy documents that affirm the agency's commitment to serving all eligible clients in adherence to the Fair Housing Act and Equal Access Rule.	Equal Access to Shelter Training : Review the full example training. Anti-Discrimination Policies and Procedures : Review the Anti-Discrimination Procedures section.
10	Agency makes Fair Housing Act non-discrimination policies and Equal Access Rule policies and procedures publicly available on the agency's website and through other commonly used public notification processes.	Develop a policy statement and procedures on making Fair Housing Act non-discrimination policies and Equal Access Rule policies and procedures publicly available on the agency's website and through other commonly used public notification processes.	Train staff, volunteers, and contractors on availability of the Agency's Fair Housing Act non-discrimination policies and Equal Access Rule policies and procedures on the agency's website and through other commonly used public notification processes.	Educate clients on availability of the agency's Fair Housing Act non-discrimination policies and Equal Access Rule policies and procedures on the agency's website and through other commonly used public notification processes.	Anti-Discrimination Policy: Fair Housing and Equal Opportunity Affirmative Marketing and Outreach and Ensuring LGBT Equal Access : Review the Communicating and Training on Policy and Affirmative Outreach and Marketing Strategies sections.

#	Attribute	Agency/Project Has a Written Policy	Staff, Volunteers, and Contractors Are Trained to Comply with the Written Policy	All Clients Are Aware of the Agency/Project Policy	Resources
11	Agency ensures staff, volunteers, and contractors are provided a copy of the agency's policies and practices regarding Equal Access requirements and non-discrimination policies generally (including under the Fair Housing Act, where applicable).	Develop a policy statement and procedures on providing a copy of the agency's policies and practices regarding Equal Access requirements and general non-discrimination policies (including under the Fair Housing Act, where applicable) to staff, volunteers, and contractors.	Train staff, volunteers, and contractors that all staff, volunteers, and contractors are required to understand and follow the agency's Policies and Procedures.	Educate clients that all staff, volunteers, and contractors are required to understand and follow the agency's Policies and Procedures.	<p>Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities: Review the Training and Monitoring section.</p> <p>Anti-Discrimination Policies and Procedures: Review the Anti-Discrimination Procedures section.</p> <p>Anti-Discrimination Policy: Fair Housing and Equal Opportunity Affirmative Marketing and Outreach and Ensuring LGBT Equal Access: Review the Communicating and Training on Policy section.</p>
12	Agency includes "sexual orientation," "gender identity," and "gender expression" in the list of attributes that are protected from discrimination in the agency's Policies and Procedures.	In the list attributes that are protected from discrimination, include "sexual orientation," "gender identity," and "gender expression." If the agency's Policies and Procedures do not include a list of attributes, add them.	Train staff, volunteers, and contractors on the agency's inclusion of "sexual orientation," "gender identity," and "gender expression" to the list of attributes that are protected from discrimination in the agency's Policies and Procedures.	Educate clients on the agency's inclusion of "sexual orientation," "gender identity," and "gender expression" to the list of attributes that are protected from discrimination in the agency's Policies and Procedures.	<p>Nondiscrimination Policy: Review the Definitions of Prohibited Discrimination section.</p> <p>Equal Access Rule Training: Review the slides titled Equal Access: Policies and Procedures.</p>

#	Attribute	Agency/Project Has a Written Policy	Staff, Volunteers, and Contractors Are Trained to Comply with the Written Policy	All Clients Are Aware of the Agency/Project Policy	Resources
Harassment Policy					
13	Agency includes transgender, nonbinary, and LGBTQIA+ people in the list of groups vulnerable to harassment and/or list of protected groups.	In the list of protected groups within the agency's Policies and Procedures, add transgender, nonbinary, and LGBTQIA+ people. If your agency does not list protected groups, add a list and include these populations.	Train staff, volunteers, and contractors on the agency's inclusion of transgender, nonbinary, and LGBTQIA+ people in the list of groups vulnerable to harassment and/or list of protected groups.	Educate clients on the agency's inclusion of transgender, nonbinary, and LGBTQIA+ people in the list of groups vulnerable to harassment and/or list of protected groups.	<p>Anti-Discrimination Policy: Fair Housing and Equal Opportunity Affirmative Marketing and Outreach and Ensuring LGBT Equal Access: Review the Strategies to Implement the Equal Access to Housing Rule section.</p> <p>Nondiscrimination Policy: Review policy document.</p>
14	Agency identifies harassment as a range of behaviors that are experienced as offensive, aggressive, or intimidating regardless of physical location or proximity to the project. For LGBTQIA+ clients, this can include: consistently or maliciously not using the client's preferred name or affirmed gender pronoun, asking any questions about a client's body or appearance, disclosing that a client is transgender or gender non-conforming, or physical intimidation.	Develop a policy statement and procedures that identify harassment as a range of behaviors that are experienced as offensive, aggressive, or intimidating regardless of physical location or proximity to the project. For the LGBTQIA+ clients, this can include: consistently or maliciously not using the client's preferred name or affirmed gender pronoun, asking any questions about a client's body or appearance, disclosing that a client is transgender or non-binary, or physical intimidation.	Train staff, volunteers, and contractors to understand harassment as a range of behaviors that are experienced as offensive, aggressive, or intimidating regardless of physical location or proximity to the project. Train them to understand that for the LGBTQIA+ clients, this can include: consistently or maliciously not using the client's preferred name or affirmed gender pronoun, asking any questions about a client's body or appearance, disclosing that a client is transgender or non-binary, or physical intimidation.	Educate clients that harassment is a range of behaviors that are experienced as offensive, aggressive, or intimidating regardless of physical location or proximity to the project. Train them to understand that for the LGBTQIA+ clients, this can include: consistently or maliciously not using the client's preferred name or affirmed gender pronoun, asking any questions about a client's body or appearance, disclosing that a client is transgender or non-binary, or physical intimidation.	<p>Shelter for All Genders: Best Practices for Homeless Shelters, Services, and Programs in Massachusetts in Serving Transgender, Nonbinary, and Gender Non-Conforming Guests: Review the Harassment section.</p> <p>Nondiscrimination Policy: Review policy document.</p>

#	Attribute	Agency/Project Has a Written Policy	Staff, Volunteers, and Contractors Are Trained to Comply with the Written Policy	All Clients Are Aware of the Agency/Project Policy	Resources
15	Agency ensures the client understands their rights if they are experiencing harassment and discrimination and sets expectations for non-harassment and non-discrimination behaviors, respect for other clients, and the importance of maintaining confidentiality.	Develop a policy statement and procedures ensuring staff, volunteers, and contractors educate clients on their rights if they are experiencing harassment and discrimination and set expectations for non-harassment and non-discrimination behaviors, respect for other clients, and the importance of maintaining confidentiality.	Train staff, volunteers, and contractors on their responsibility to educate clients on their rights if they are experiencing harassment and discrimination and set expectations for non-harassment and non-discrimination behaviors, respect for other clients, and the importance of maintaining confidentiality.	Educate clients on their rights if they are experiencing harassment and discrimination and set expectations for non-harassment and non-discrimination behaviors, respect for other clients, and the importance of maintaining confidentiality.	Shelter for All Genders: Best Practices for Homeless Shelters, Services, and Programs in Massachusetts in Serving Transgender, Nonbinary, and Gender Non-Conforming Guests : Review the Harassment section. Nondiscrimination Policy : Review policy document.
16	Agency requires project staff, contractors, volunteers, and clients to use a client's preferred name, title (if preferred), gender, and pronoun.	Develop a policy statement and procedures on the requirement that staff, volunteers, vendors, and clients use a client's preferred name, title (if preferred), gender, and pronoun.	Train staff, volunteers, and contractors on the agency's policy that requires staff, volunteers, contractors and clients to use a client's preferred name, title (if preferred), gender, and pronoun. Staff, volunteers, and contractors are required or are encouraged to use pronouns on name tags, email signatures, and any other forms of identification.	Educate clients on the agency's policy that requires staff, volunteers, vendors, and clients to use a client's preferred name, title (if preferred), gender, and pronoun.	Shelter for All Genders: Best Practices for Homeless Shelters, Services, and Programs in Massachusetts in Serving Transgender, Nonbinary, and Gender Non-Conforming Guests : Review the Harassment section.

#	Attribute	Agency/Project Has a Written Policy	Staff, Volunteers, and Contractors Are Trained to Comply with the Written Policy	All Clients Are Aware of the Agency/Project Policy	Resources
Managing and Resolving Violations					
17	Agency has a formal grievance process that is prompt, transparent, and consistent. The grievance process will be resolved in ___ [timeframe].	Develop a policy statement and procedures on a grievance process that is prompt, transparent and consistent. Include the time it will take to resolve the issue.	Train staff, volunteers, and contractors on the agency's formal grievance process, ensuring that it is prompt, transparent, and consistent.	Educate clients on the agency's formal grievance process, ensuring that it is prompt, transparent, and consistent.	<p>Nondiscrimination Policy: Review the How to File a Nondiscrimination Violation Report section.</p> <p>Anti-Discrimination Policies and Procedures: Review the Grievance and Anti-Retaliation Policy section.</p>
18	Agency takes immediate action to resolve inappropriate behavior, harassment, or Equal Access issues by any person (staff, volunteers, contractors, or clients). Staff training includes roleplay on interventions (staff to staff, staff to resident, and resident to resident). Agency informs all stakeholders (staff, volunteers, contractors, clients) that Fair Housing Act and Equal Access complaints may be filed with HUD.	Develop a policy statement and procedures that the agency will take immediate action to resolve inappropriate behavior, harassment, or Equal Access issues by any person (staff, volunteers, contractors, or clients). Staff, volunteer, and contractor training includes roleplay on interventions (staff to staff, staff to resident, and resident to resident). Inform all staff, volunteers, and contractors that Fair Housing Act and Equal Access complaints may be filed with HUD.	Train staff, volunteers, and contractors on their responsibility to resolve inappropriate behavior, harassment, or Equal Access issues by any person (staff, volunteers, and contractors or clients). Staff, volunteer, and contractor training includes roleplay on interventions (staff to staff, staff to resident, and resident to resident). Inform all staff, volunteers, and contractors that Fair Housing Act and Equal Access complaints may be filed with HUD.	Educate clients on how inappropriate behavior, harassment, or Equal Access issues by any person (staff, volunteers, contractors, or clients) will be resolved. Inform all clients that Fair Housing Act and Equal Access complaints may be filed with HUD.	<p>Nondiscrimination Policy: Review policy document.</p> <p>Equal Access Rule Training: Review the slides titled Equal Access: Policies and Procedures.</p>

#	Attribute	Agency/Project Has a Written Policy	Staff, Volunteers, and Contractors Are Trained to Comply with the Written Policy	All Clients Are Aware of the Agency/Project Policy	Resources
19	Agency mediates and resolves conflicts between clients in a way that is respectful, fair, and equitable.	Develop a policy statement and procedures on mediating and resolving conflicts between clients in a way that is respectful, fair, and equitable.	Train staff, volunteers, and contractors on their responsibility to mediate and resolve conflicts between clients in a way that is respectful, fair, and equitable.	Educate clients that staff, volunteers, and contractors will mediate and resolve conflicts between clients in a way that is respectful, fair, and equitable.	<p>Anti-Discrimination Policy: Fair Housing and Equal Opportunity Affirmative Marketing and Outreach and Ensuring LGBT Equal Access: Review the Inclusive Policy Standards section.</p> <p>Equal Access Rule Training: Review the slides titled Equal Access: Policies and Procedures.</p>
20	Agency has a policy that if a client is experiencing harassment or safety concerns, the agency will impose corrective action on the harasser or aggressor who violates project rules, not on the person targeted by the harassment or unsafe conduct. This may include requiring the harasser to stay away from the target of the harassment and/or moving the harasser.	Develop a policy statement and procedures that ensure if a client is experiencing harassment or safety concerns, the agency will impose corrective action on the harasser or aggressor who violates project rules, not on the person targeted by the harassment or unsafe conduct. This may include requiring the harasser to stay away from the target of the harassment and/or moving the harasser.	Train staff, volunteers, and contractors on the agency's policy that if a client is experiencing harassment or safety concerns, the agency will impose corrective action on the harasser or aggressor who violates project rules, not on the person targeted by the harassment or unsafe conduct. This may include requiring the harasser to stay away from the target of the harassment and/or moving the harasser.	Educate clients on the agency's policy that if a client is experiencing harassment or safety concerns, the agency will impose corrective action on the harasser or aggressor who violates project rules, not on the person targeted by the harassment or unsafe conduct. This may include requiring the harasser to stay away from the target of the harassment and/or moving the harasser.	<p>Anti-Discrimination Policies and Procedures: Review the Transgender and Gender Nonconforming Procedures section.</p>

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21	Agency has a sanction process for violations committed by staff, volunteers, or vendors (for example, formal documentation in employee's file, suspension, firing, or legal action based on the type and severity of harassment). Sanctions are enforced every time there is a violation and sanctions are consistently applied.	Develop a policy statement and procedures on the sanction process that addresses violations to the agency's anti-discrimination policy and Equal Access Rule. The sanction process should be applied consistently.	Train staff, volunteers, and contractors on the agency's sanction process for violations committed by staff, volunteers, and contractors (for example, formal documentation in employee's file, suspension, firing, or legal action based on the type and severity of harassment), including how they are enforced and applied.	Educate clients on the agency's sanction process for violations committed by staff, volunteers, contractors, or clients (for example, moving to a different area of the shelter, temporary ban from project based on the type and severity of harassment), including how they are enforced and applied.	Anti-Discrimination Policies and Procedures : Review the Grievance and Anti-Retaliation Policy section. Nondiscrimination Policy : Review the Monitoring and Enforcement section.
22	Agency develops partnerships with organizations that can provide expertise around the process of changing gender markers on identification and benefit applications or ensures subject matter expertise among staff.	Develop a policy statement and procedures ensuring staff, volunteers, and contractors can provide information to clients on changing gender markers on identification or benefit applications or can refer clients to experts with that knowledge.	Train staff, volunteers, and contractors to provide information to clients on changing gender markers on identification or benefit applications or to refer clients to experts with that knowledge.	Ensure clients understand that information is available if they want to learn about the process of changing their gender marker on identification or benefit applications.	Anti-Discrimination Policies and Procedures : Review the Transgender and Gender Nonconforming Policy section.
23	Agency ensures the clients without ID understand the resources available to obtain ID, including the process for obtaining IDs that list the clients' preferred name and affirmed gender, as IDs are required for obtaining employment, accessing benefits, and many other services important to self-sufficiency.	Develop a policy statement and procedures ensuring staff, volunteers, and contractors educate clients on the resources available to obtain ID if they do not have one.	Train staff, volunteers, and contractors on their responsibilities to educate clients on the resources available to obtain ID if they do not have one.	Inform clients of the resources available to obtain ID if they do not have one.	Anti-Discrimination Policies and Procedures : Review the Transgender and Gender Nonconforming Procedures section.

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24	Agency has policy to correct any misinformation or inaccurate conclusions that the presence of transgender clients threatens the health or safety of other clients solely based on their transgender status, non-conforming gender expression, or sexual orientation.	Develop a policy statement and procedures that ensure the correction of any misinformation or inaccurate conclusions that the presence of transgender and non-binary clients threaten the health or safety of other clients solely based on their transgender status, non-conforming gender expression, or sexual orientation.	Train staff, volunteers, and contractors on requirements to correct any misinformation or inaccurate conclusions that the presence of transgender and non-binary clients threaten the health or safety of other clients solely based on their transgender status, non-conforming gender expression, or sexual orientation.	Educate clients on any misinformation or inaccurate conclusions that the presence of transgender and non-binary clients threatens the health or safety of other clients solely based on their transgender status, non-conforming gender expression, or sexual orientation.	Anti-Discrimination Policies and Procedures : Review the Transgender and Gender Nonconforming Procedures section.
Confidentiality Practices					
25	Agency keeps information related to a client's gender identity confidential, unless the client gives permission to share this information.	Develop a policy statement and procedures that ensure information related to a client's gender identity is kept confidential unless the client gives permission to share this information.	Train staff, volunteers, and contractors on their responsibility to keep information related to a client's gender identity confidential, unless the client gives permission to share this information.	Ensure clients know that any information related to their gender identity will be kept confidential.	Equal Access to Shelter Training : Review the Commitment to Ensure Equal Access for Transgender and Gender Nonconforming Clients slide. Anti-Discrimination Policies and Procedures : Review the Transgender and Gender Nonconforming Procedures section.
26	Agency ensures that only essential staff, identified by administrators, are given information related to a client's gender identity to ensure Equal Access and safety.	Develop a policy statement and procedures that ensure that only essential staff, identified by administrators, are given information related to a client's gender identity to ensure Equal Access and safety.	Ensure staff, contractors, and volunteers know and understand the impact and consequences of breaching a client's confidentiality and releasing information related to their gender identity or transgender status.	Communicate to clients that there is a policy that information related to their gender identity will be shared only to ensure Equal Access and safety.	Anti-Discrimination Policies and Procedures : Review the Transgender and Gender Nonconforming Procedures section.

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27	Agency ensures that when a client's gender identity and sex assigned at birth differ, that difference is treated as confidential medical information and may not be disclosed without specific, time-limited written client consent.	Develop a policy statement and procedures that ensure that when a client's gender identity and sex assigned at birth differ, that difference is treated as confidential medical information and may not be disclosed without specific, time-limited written client consent.	Train staff, volunteers, and contractors on their responsibility to ensure that when a client's gender identity and sex assigned at birth differ, that difference is treated as confidential medical information and may not be disclosed without specific, time-limited written client consent.	Educate clients that staff, volunteers, and contractors are responsible to ensure that when a client's gender identity and sex assigned at birth differ, that difference is treated as confidential medical information and may not be disclosed without specific, time-limited written client consent.	Equal Access to Shelter Training : Review the Commitment to Ensure Equal Access for Transgender and Gender Nonconforming Clients slide.
28	Agency supports all clients in understanding their privacy rights, the way in which information in HMIS can be viewed by multiple agencies, and the implication of releasing information.	Develop a policy statement and procedures to ensure clients understand their privacy rights and the implication of releasing information. For example, staff understand the implication of selecting transgender or non-binary when entering information into HMIS.	Train staff, volunteers, and contractors on how to ensure clients understand their privacy rights and the implication of releasing information. For example, staff understand the implication of selecting transgender or non-binary when entering information into HMIS.	Ensure clients are informed of their privacy rights and the way in which information in HMIS is shared by multiple agencies and understand the implications for releasing information.	Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities : Review the Privacy section.
29	Agency ensures staff, volunteers, and contractors understand that a client's sex assigned at birth is confidential information and the potential impact that disclosure can have on a client's progress to self-sufficiency.	Develop a policy statement and procedures that maintain a client's sex assigned at birth as confidential information and describe the potential impact that disclosure can have on a client's progress to self-sufficiency.	Train staff, volunteers, and contractors to uphold a client's sex assigned at birth as confidential information and to understand the potential impact that disclosure can have on a client's progress to self-sufficiency.	Ensure clients are informed of the policy at intake and the process for filing a complaint if any breach should occur.	Anti-Discrimination Policies and Procedures : Review the Transgender and Gender Nonconforming Procedures section. Equal Access to Shelter Training : Review the Commitment to Ensure Equal Access for Transgender and Gender Nonconforming Clients slide.

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30	Agency is committed to and complies with federal, state, and local privacy laws.	Develop a policy statement and procedures ensuring staff, volunteers, and contractors understand their responsibilities to uphold federal, state, and local privacy laws.	Train staff, volunteers, and contractors on their responsibilities to uphold federal, state, and local privacy laws and the consequences of failing to meet those responsibilities.	Ensure clients are informed of their privacy rights and the measures the agency takes to uphold these rights.	<p>Equal Access to Shelter Training: Review the deck for training on the Equal Access Rule and adherence to federal, state, and local laws.</p> <p>Shelter for All Genders: Best Practices for Homeless Shelters, Services, and Programs in Massachusetts in Serving Transgender, Nonbinary, and Gender Non-Conforming Guests: Review the Laws Protecting the Rights of TNBGNC Guests section.</p>
31	Agency keeps the client's legal name and/or sex at birth confidential unless the client gives written permission otherwise. Written consent is different from verbal consent, as written consent involves a document that articulates the manner and extent to which the client's information will be shared that the client signs to confirm their permission. The staff should make sure the client understands the written permission they are giving. Verbal consent requires the staff and client to discuss the manner and extent to which the client's information will be shared in a way that is understood by the client and the client verbally affirms some level of sharing.	Develop a policy statement and procedures that keep the client's legal name and/or sex at birth confidential unless the client gives written permission otherwise and that staff should make sure the client understands the written permission they are giving. And further, verbal consent requires the staff and client to discuss the manner and extent to which the client's information will be shared in a way that is understood by the client and the client verbally affirms some level of sharing.	Train staff, volunteers, and contractors on their responsibility to keep the client's legal name and/or sex at birth confidential unless the client gives written permission otherwise and that staff should make sure the client understands the written permission they are giving. And further, verbal consent requires the staff and client to discuss the manner and extent to which the client's information will be shared in a way that is understood by the client and the client verbally affirms some level of sharing.	Educate clients that staff, volunteers, and contractors are responsible to keep the client's legal name and/or sex at birth confidential unless the client gives written permission otherwise and that staff should make sure the client understands the written permission they are giving. And further, verbal consent requires the staff and client to discuss the manner and extent to which the client's information will be shared in a way that is understood by the client and the client verbally affirms some level of sharing.	<p>Anti-Discrimination Policies and Procedures: Review the Transgender and Gender Nonconforming Procedures section.</p> <p>Fair Housing: Familial Status and Equal Access: Review the slides titled Gender Identity: Best Practices.</p>

#	Attribute	Agency/Project Has a Written Policy	Staff, Volunteers, and Contractors Are Trained to Comply with the Written Policy	All Clients Are Aware of the Agency/Project Policy	Resources
Data Collection					
32	Agency permits clients to request a private space to complete intake and data collection.	Develop a policy statement and procedures on the client's right to request a private space to complete intake and data collection.	Train staff, volunteers, and contractors to provide a private space to complete intake and data collection.	Educate clients that the agency permits them to request a private space to complete intake and data collection.	<p>Anti-Discrimination Policies and Procedures: Review the Transgender and Gender Nonconforming Procedures section.</p> <p>Anti-Discrimination Policy: Fair Housing and Equal Opportunity Affirmative Marketing and Outreach and Ensuring LGBT Equal Access: Review the Inclusive Policy Standards section.</p>
33	Agency ensures that gender identity is not required to match the gender listed on the ID or documents.	Develop a policy statement and procedures that ensure gender identity is not required to match the gender listed on the client's ID or documents.	Train staff, volunteers, and contractors on the agency's policy that gender identity is not required to match the gender listed on the client's ID or documents.	Educate clients on the agency's policy that gender identity is not required to match the gender listed on the clients ID or documents.	<p>Policy on Serving Transgender and Gender Nonconforming Clients in the DC Homeless Services CoC: Review the Access to Bathrooms and Accommodations for Safety and/or Privacy sections.</p>
34	Agency ensures staff, volunteers, and contractors understand that a client may not present the same way that they identify; staff, volunteers, and vendors will respect the client's identity.	Ensure this practice is incorporated into staff/volunteer/contractor training and orientation.	Train staff, volunteers, and contractors that a client may not present the way that they identify and that staff, volunteers, and contractors should respect the client's identity.	Ensure clients understand that staff, volunteers, and contractors will respect a client's identity.	<p>Shelter for All Genders: Best Practices for Homeless Shelters, Services, and Programs in Massachusetts in Serving Transgender, Nonbinary, and Gender Non-Conforming Guests: Review the Accommodations section.</p> <p>Policy on Serving Transgender and Gender Nonconforming Clients in the DC Homeless Services CoC: Review the Introduction section.</p>

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35	Agency intake materials allow clients to give the name they identify with. If a legal name is required by the funder, then both the preferred and legal names should be collected.	Regularly review intake material for compliance with the Equal Access Rule.	Train staff, contractors, and volunteers to use a client's preferred name rather than their legal name.	Ensure clients understand their right to list a preferred name at intake and have the staff use their preferred name.	<p>Shelter for All Genders: Best Practices for Homeless Shelters, Services, and Programs in Massachusetts in Serving Transgender, Nonbinary, and Gender Non-Conforming Guests: Review the Intake and Screening section.</p> <p>Fair Housing: Familial Status and Equal Access: Review the slides titled Gender Identity: Best Practices.</p>
36	If intake materials include gender identity, that gender identity is supported by the agency.	If intake materials include gender identity, develop a policy statement and procedures that gender identity is supported by the agency.	Train staff, volunteers, and contractors that if intake materials include gender identity, that gender identity is supported by the agency.	Educate clients that if intake materials include gender identity, that gender identity should be supported by the Agency.	<p>Policy on Serving Transgender and Gender Nonconforming Clients in the DC Homeless Services CoC: Review the Use of Preferred Names and Gendered-Pronouns section.</p>
Privacy and Safety Practices					
37	Agency ensures that clients with prescribed hormones or other medications as part of their gender-affirming healthcare regime have access to those medications.	Ensure that all medications, properly prescribed, are treated according to the project's policy.	Train staff to treat all prescribed medication consistent with project policy. Similarly, all undocumented medication should be treated consistent with project policy.	Educate clients on the medication policy of the project for prescription and non-prescription medications.	<p>Shelter for All Genders: Best Practices for Homeless Shelters, Services, and Programs in Massachusetts in Serving Transgender, Nonbinary, and Gender Non-Conforming Guests: Review the Health Issues section.</p> <p>Anti-Discrimination Policies and Procedures: Review the Transgender and Gender Nonconforming Procedures section.</p>

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38	<p>Agency will respect the client's evaluation of their own safety with regard to proposed housing options and accommodate reasonable client requests regarding safety. For example, a transgender man who does not feel safe in a men's congregate sleeping area could request assignment to the bed closest to staff. Staff, volunteers, and contractors should reasonably defer to the client's request.</p>	<p>Develop a policy statement and procedures to respect the client's evaluation of their own safety with regard to proposed housing options and accommodate reasonable client requests regarding safety. For example, a transgender man who does not feel safe in a men's congregate sleeping area could request assignment to the bed closest to staff. Staff, volunteers, and contractors should reasonably defer to the client's request.</p>	<p>Train staff, volunteers, and contractors to respect the client's evaluation of their own safety with regard to proposed housing options and accommodate reasonable client requests regarding safety. For example, a transgender man who does not feel safe in a men's congregate sleeping area could request assignment to the bed closest to staff. Staff, volunteers, and contractors should reasonably defer to the client's request.</p>	<p>Ensure clients understand that the agency will respect the client's evaluation of their own safety with regard to proposed housing options and accommodate reasonable requests regarding safety. For example, a transgender man who does not feel safe in a men's congregate sleeping area could request assignment to the bed closest to staff. Staff, volunteers, and contractors should reasonably defer to the client's request.</p>	<p>Equal Access to Shelter Training: Review slides titled LGBTQIA+ People and Shelters.</p> <p>Policy on Serving Transgender and Gender Nonconforming Clients in the DC Homeless Services CoC: Review the Access to Sex-Segregated Facilities and Programs section.</p>
39	<p>Agency ensures that the client has a right to request accommodations based on their personal safety and privacy concerns. Such safety and privacy accommodations should not be granted if the request is based on stereotypes and misinformation, e.g., about transgender, non-binary, gender non-conforming persons.</p>	<p>Develop a policy statement and procedures to require staff to evaluate and respond to reasonable client requests for safety- and privacy-based accommodations and document the outcomes. Such safety and privacy accommodations should not be granted if the request is based on stereotypes and misinformation, e.g., about transgender, non-binary, gender non-conforming persons.</p>	<p>Train staff, volunteers, and contractors that clients may request reasonable safety- and privacy-based accommodations and how to consistently evaluate those requests and document outcomes. Such safety and privacy accommodations should not be granted if the request is based on stereotypes and misinformation, e.g., about transgender, non-binary, gender non-conforming persons.</p>	<p>Educate clients in their right to request accommodations based on their personal safety and privacy concerns. Such safety and privacy accommodations should not be granted if the request is based on stereotypes and misinformation, e.g., about transgender, non-binary, gender non-conforming persons.</p>	<p>Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities: Review the Privacy section.</p> <p>Equal Access to Shelter Training: Review slides titled LGBTQIA+ People and Shelters.</p> <p>Policy on Serving Transgender and Gender Nonconforming Clients in the DC Homeless Services CoC: Review the Accommodations for Safety and/or Privacy section.</p>

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40	Agency will seek to accommodate persons by taking non-discriminatory steps that may be necessary and appropriate to address privacy or safety concerns raised by residents or occupants.	Develop a policy statement and procedures on staff, volunteer, and contractor, responsibility to accommodate persons by taking non-discriminatory steps that may be necessary and appropriate to address privacy or safety concerns raised by residents or occupants.	Train staff, volunteers, and contractors to accommodate persons by taking non-discriminatory steps that may be necessary and appropriate to address privacy or safety concerns raised by residents or occupants.	Educate clients that staff, volunteers, and contractors will accommodate persons by taking non-discriminatory steps that may be necessary and appropriate to address privacy or safety concerns raised by residents or occupants.	
41	Agency ensures that if a physical search or urine test is required for admission, the client can choose the gender of the staff person conducting the search. If someone of that gender is not available, the agency will select a staff person who understands the concerns of the client, will be respectful, and will uphold the agency's policies and procedures with regard to transgender clients.	Develop a policy statement and procedures on physical searches or urine tests if they apply. Indicate that the client can choose the gender of the staff person conducting the search. If someone of that gender is not available, the agency will select a staff person who understands the concerns of the client, will be respectful, and will uphold the agency's policies and procedures with regard to transgender clients.	Train staff, volunteers, and contractors to respectfully conduct physical searches or urine tests if required for admission and that the client can choose the gender of the staff person conducting the search. If someone of that gender is not available, the agency will select a staff person who understands the concerns of the client, will be respectful, and will uphold the agency's policies and procedures with regard to transgender clients.	Educate clients that the agency will ensure that if a physical search or urine test is required for admission, the client can choose the gender of the staff person conducting the search. If someone of that gender is not available, the agency will select a staff person who understands the concerns of the client, will be respectful, and will uphold the agency's policies and procedures with regard to transgender clients.	Shelter for All Genders: Best Practices for Homeless Shelters, Services, and Programs in Massachusetts in Serving Transgender, Nonbinary, and Gender Non-Conforming Guests : Review the Intake and Screening section.

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Facility Enhancements					
42	Agency will take measures to create a safe environment for transgender and non-binary clients. When possible, the agency will ensure construction or rehabilitation of the physical property, including sleeping area, bathrooms, and showers, to promote privacy and safety.	Develop a policy statement and procedures on creating a safe environment for transgender and non-binary clients, including, when possible, the construction or rehabilitation of the physical property such as sleeping areas, bathrooms, and showers to promote privacy and safety.	Train staff, volunteers, and contractors on measures to create a safe environment for transgender and non-binary clients.	Educate clients on the agency's commitment and measures to create a safe environment for transgender and non-binary clients.	Policy on Serving Transgender and Gender Nonconforming Clients in the DC Homeless Services CoC : Review the Accommodations for Safety and/or Privacy section. Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities : Review the Privacy section.
43	Agency has a single check-in area for all genders.	Develop a policy statement and procedures for a single check-in area for all genders.	Train staff, volunteers, and contractors to manage a single check-in area for all genders.	Educate clients on agency's expectations on the client's use of the single check-in area for all genders.	Shelter for All Genders: Best Practices for Homeless Shelters, Services, and Programs in Massachusetts in Serving Transgender, Nonbinary, and Gender Non-Conforming Guests : Review the Intake and Screening section.
44	If the agency only offers congregate bathrooms, all urinals/toilets are in individual stalls to support client privacy and safety.	Develop a policy statement and procedures on client privacy and safety related to congregate bathrooms including individual stalls for urinals/toilets.	Train staff, volunteers, and contractors on the use and management of congregate bathrooms to support client privacy and safety.	Educate clients on the agency's expectations on the client's use of congregate bathrooms and that all urinals/toilets are in individual stalls to support client privacy and safety.	Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities : Review the Privacy section. Anti-Discrimination Policies and Procedures : Review the Transgender and Gender Nonconforming Procedures section.

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45	If the agency only offers congregate showers, each shower head will have individual stalls to support client privacy and safety.	Develop a policy statement and procedures on congregate showers to support client privacy and safety including the provision of individual stalls for each shower head.	Train staff, volunteers, and contractors on the use and management of congregate showers to support client privacy and safety.	Educate clients on the agency's expectations on the client's use of congregate showers and that each shower head has individual stalls to support client privacy and safety.	Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities: Review the Privacy section. Anti-Discrimination Policies and Procedures: Review the Transgender and Gender Nonconforming Procedures section.
46	Agency offers at least one all-gender, individual-use bathroom for use by clients.	Develop a policy statement and procedures on offering at least one all-gender, individual-use bathroom for use by clients.	Train staff, volunteers, and contractors on the use and management of at least one all-gender, individual-use bathroom for clients.	Educate clients on agency's expectations that they will provide access to at least one all-gender, individual-use bathroom for clients.	Anti-Discrimination Policies and Procedures: Review the Transgender and Gender Nonconforming Procedures section. Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities: Review the Privacy section.
47	Agency offers at least one all-gender, individual-use shower for use by clients.	Develop a policy statement and procedures on offering access to at least one all-gender, individual use shower room for all clients.	Train staff, volunteers, and contractors on the use and management of at least one all-gender, individual-use shower room for all clients.	Educate clients on the agency's expectations that they will provide access to at least one all-gender, individual-use shower room for all clients.	Anti-Discrimination Policies and Procedures: Review the Transgender and Gender Nonconforming Procedures section. Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities: Review the Privacy section.