Fair Housing: Familial Status and Equal Access

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Agenda

• HUD’s Equal Access Rule
• HUD’s Gender Identity Rule
• Executive Order 13988
• Federal, state, and local fair housing protections for sexual orientation and gender identity
• Fair Housing rights of families with children under the age of 18
In February 2012 HUD published a final rule entitled *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity*. This rule prohibits discrimination on the basis of sexual orientation, gender identity, or marital status in all HUD programs. Housing providers that receive HUD funding and/or have loans insured by the Federal Housing Administration (FHA), must comply with this rule.

This rule does not apply to private housing providers who do not receive HUD funding.
Equal Access

Applies to all HUD-funded programs:
• Housing Choice Voucher Program (Section 8)
• Public Housing
• Community Development Block Grants and subrecipients
• Housing Opportunities for Persons with AIDS (HOPWA)
• Supportive Housing for the Elderly and Persons with a Disability
• Federal Housing Administration (FHA) insured loans
• Does not apply to private housing providers who do not receive HUD funding
In 2016, HUD published a rule entitled *Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs*
Gender Identity Rule

- Equal access is to be provided in all HUD assisted programs
- Individuals are to be placed in accordance with gender identity
- No requirement for individuals to “prove” gender identity (no invasive questions or medical verification)
- Providers must update policies and procedures to reflect requirements
- Non-discriminatory steps must be taken to address safety/privacy concerns of transgender participants, however participants must not be required to accept accommodations
Why are LGBT Protections Necessary?

• Among homeless LGBT youth (up to age 24), the average age of being homeless the first time is 15 years old.

• Nearly two thirds of homeless shelters in a recent study failed to enroll a person properly once the identified as transgender.

• Nearly a quarter of homeless transgender residents report being assaulted by other residents of staff at homeless shelters.
Examples of Discrimination

- A shelter employee hanging up immediately after caller reveals she is transgender
- A shelter employee making references to genitalia or surgery as requirements for appropriate housing.
- A shelter employee refusing to enroll a participant “because they would make other participants feel uncomfortable or unsafe.”
Examples of Discrimination

- Management of housing projects of facilities failing to address complaints from LGBT individuals regarding harassment by other residents.

- Project staff revealing an individual's status as transgender or requiring special procedures for households with a transgender person.

- Project staff excluding individuals based on family composition.
“What pronouns would you like us to use?”
“How would you like me to address you?”
“Is this the name you would like to use throughout your time here?”
“Are there any times and places that you would like me not to use this name or pronoun?”

Provide space on intake forms for preferred names and pronouns for the consumer to self-identify.
Gender Identity: Best Practices

• Let transgender clients know if and when you are required to use their legal name. “I wanted to let you know that we will need to use your legal name for this paperwork, but we will continue to use the name that is most affirming to you in all of our other interactions.

• Remember that being “outed” as transgender can be a major safety risk for that individual. Let the consumer know who will have access to that information and under what circumstances and why. Create a safety plan as needed.

• Maintain confidentiality. Avoid referring to a consumer as “the transgender client” or having conversations in spaces where others might overhear.
Equal Access Rule
Best Practices

• Does your agency have an anti-discrimination policy?

• Does it include gender identity, gender expression, and sexual orientation in the list of protected attributes?

• Is it posted publicly?

• Are your staff, volunteers, and contractors trained on this policy?
Equal Access Rule
Best Practices

Remember:

• We are here to serve the people who show up, not just the people who we think will show up.

• The Golden Rule: Not only treat people the way we would want to be treated but treat people the way THEY want to be treated.
Federal Fair Housing Act

Title VIII of the Civil Rights Act of 1968, as amended in 1988, known as the Fair Housing Act (FHA), makes it unlawful to discriminate against individuals in housing transactions based on:

- Race
- Color
- Religion
- National Origin
- Sex
- Disability
- Familial Status*

*Familial status means the presence of children under 18 in a household, pregnant women or anyone adopting or securing legal custody of a child.
An Executive Order 13988 issued on January 20, 2021 states: “Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love…All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.”

Executive Order 13988 directed the heads of all federal agencies to develop agency actions to fully implement existing statutes that prohibit sex discrimination. HUD’s Office of Fair Housing and Equal Opportunity responded by stating on February 11, 2021 that will begin enforcing the Fair Housing Act to prohibit housing discrimination based on sex to include Sexual Orientation and Gender Identity.
2021 – HUD Memo on Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation
Federal Fair Housing Act

Covered Transactions:
• Rental
• Sales
• Lending
• Homeowners insurance
• Appraisals
• Zoning and land use
• Housing programs offering rental assistance, housing counseling, etc.

Covered Properties:
• Apartments and condos
• Public housing
• Private housing
• Dormitories
• Nursing homes
• Homeless shelters
• Transitional housing
• Group homes
• Addiction recovery homes
Local Ordinances

- Local ordinances may prohibit discrimination based on sexual orientation and gender identity, source of income, and/or other additional protected classes – 50+ municipalities in PA have ordinances which include additional protected classes.
Fair Housing Act Exemptions

- Owner occupied buildings with four or fewer rental units (two or fewer units under PA state law)

- For Sale By Owner - single family housing sold or rented without the use of a broker if the private individual owner does not own more than three such single family homes at one time. **NOTE**: The PA Human Relations Act does not contain this exemption.

- Housing operated by religious organizations and private clubs may limit occupancy to members as long as they do not discriminate in their membership.

- Housing for Older Persons - must comply with the HOPA definition - either 80% of households with a resident age 55+ or 100% of residents age 62+. **Applies to Familial Status ONLY**.

- No exemption for discriminatory statements and/or advertising
Sex Discrimination

• Discrimination based on sex is prohibited by the Fair Housing Act.

• Sexual Orientation and Gender Identity are covered under Sex

• Providers and housing programs may not segregate residents by gender, with the exception of housing which contains shared sleeping areas, bathing areas, and/or bathrooms.

• Rules that prohibit boys and girls from sharing a sleeping area are not permissible.

• Sexual harassment in housing is recognized as discrimination under the Fair Housing Act.
Illegal discrimination against families with children includes:

- Denying housing to families with children—only senior housing (under HOPA) can restrict families with children
- Segregating housing so the families with children are only permitted in certain buildings or on certain floors
- Restricting children because of “unsafe conditions”
- Rules that prohibit parents and children or boys and girls from sharing a bedroom
Illegal discrimination against families with children includes:

• Charging a higher rent or security deposit to families with children

• Rules and regulations that treat children under 18 differently from adults in the use of housing facilities

• Per capita charges (per person fees) and occupancy restrictions can have a disparate impact on families with children
Best Practices

Review Policies, Procedures, and Training

• Review all rules, policies, procedures, and eligibility standards to ensure that they are not intentionally discriminatory and do not have a discriminatory effect on members of protected classes. Implement a nondiscrimination policy if one does not exist.

• Make sure all staff receive regular fair housing compliance training.

• Contact HECP for technical assistance as fair housing issues and questions arrive.
Best Practices

Nondiscriminatory Community and Program Rules

• Community rules should be standardized, written, and communicated to all residents.
• Rules should not single out or target protected class (for example, quiet times or curfews should apply to everyone, not just children).
• Rules should be enforced consistently. Avoid the appearance of discrimination by not showing favoritism among participants.
• Reasonable accommodation requests involving exceptions to rules and policies should be documented.
Founded in 1956, before state or federal fair housing legislation, the Housing Equality Center of Pennsylvania is America’s oldest fair housing council.

The Housing Equality Center serves the Pennsylvania counties of Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton and Philadelphia.
The Housing Equality Center provides:

• Counseling, testing investigations, and enforcement services to assist victims of housing discrimination.

• Education, training programs, and technical assistance for housing professionals, nonprofits, housing authorities and others to promote compliance with fair housing laws and to prevent discrimination.

• Publications, fact sheets and resources to educate the public and housing professionals about fair housing.
New manual to be published October 30, 2021:

Know Your Responsibilities as a Landlord or Property Manager in Pennsylvania

Covers Fair Housing and Pa Landlord Tenant Law
Limited quantities
Reserve copies now
Consumers, providers, and advocates should contact the Housing Equality Center of Pennsylvania to report discrimination. The Housing Equality Center accepts and investigates complaints from anonymous sources.

Fair housing complaints can be filed with HUD for up to one year from the incident, or with the Pennsylvania Human Relations Commission for up to 180 days from the incident. A lawsuit may be filed in Federal Court up to two years from the incident.
equalhousing.org

- Sign up for fair housing news
- Register for an upcoming fair housing event or meeting
- Learn about fair housing laws
- Download guides, resources, fact sheets and fair housing guidance
- Request fair housing training or publications for your clients, colleagues or offices
- Report discrimination online
Learn about fair housing laws
Learn about the rights of renters in PA
Download sample letters to landlord
Request assistance with requesting a reasonable accommodation or modification
Report discrimination online
Fair Housing Questions?  
Technical Assistance?

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