

# Ensuring Equal Access of LGBT People to HUD Programs: The New LGBT Rule

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# ***HUD LGBT Rule:***

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



# What is LGBT?

- “LGBT” refers to people who are **Lesbian, Gay, Bisexual, or Transgender**.
- Sexual orientation, gender identity, and transgender are distinct terms.



# Before we begin...a short quiz...

## Question 1:

According to the 2010 Census, there are \_\_\_\_\_ number of same sex couples for Every 1000 households in the US.

- a) 2.5
- b) 3.5
- c) 5.5
- d) 7.5

Source:  
*[williamsinstitute.law.ucla.edu](http://williamsinstitute.law.ucla.edu)*



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# Question 2

**New Jersey and New York rank in the top 25 states for same sex couples per 1,000 households.**

- a) True
- b) False

Source:  
*[williamsinstitute.law.ucla.edu](http://williamsinstitute.law.ucla.edu)*



## Question 2

New Jersey ranks 21<sup>st</sup> and New York ranks 13<sup>th</sup> in the nation for same sex couples per 1,000 households.

- a) True
- b) False

Source:  
*[williamsinstitute.law.ucla.edu](http://williamsinstitute.law.ucla.edu)*



# Question 3

What percentage of homeless youth are LGBT?

- a) 5-10 %
- b) 10-15%
- c) 20-40%

*Sources: National Coalition for the Homeless,  
National Alliance to End Homelessness, and the  
National Gay and Lesbian Task Force*



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# HUD's Fair Housing Role

- Enforces & administers the federal Fair Housing Act.
- Receives about 10,000 complaints of housing discrimination per year.
- Investigates, attempts resolution, & litigates complaints OR refers complaints to substantially equivalent state or local agencies for processing.



# LGBT Housing Instability and Discrimination

-**Michigan study:** disparate treatment based on sexual orientation in 32 out of 120 fair housing tests

([www.fhcmichigan.org/images/Arcus\\_web1.pdf](http://www.fhcmichigan.org/images/Arcus_web1.pdf))

-**Injustice at Every Turn** (survey of 6,450 transgender persons): 19% refused housing because of gender identity and 19% homeless at some point because of gender identity  
([www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf))



# Overview of LGBT Rule

- Definition of sexual orientation and gender identity.
- Addition of general equal access provision.
- Clarification of HUD “family” definition.
- Prohibition on inquiries in certain contexts.
- Addition of sexual orientation and gender identity to existing FHA equal access provision.



# Legal Authority

- Section 2 of the Housing Act of 1949
- Section 7(d) of the HUD Act
- Section 3 of the U.S. Housing Act of 1937



# LGBT Rule Definitions

- *Sexual orientation* – homosexuality, heterosexuality, or bisexuality.
- *Gender identity* – actual or perceived gender-related characteristics.



# 1) General Equal Access Provision:

Housing assisted by HUD or insured by FHA shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. **24 CFR Section 5.105 (a)(2).**



# Example 1

A gay man applies for an apartment in a building that was recently renovated with HUD HOME funds. The applicant lists his same sex partner as his spouse and co-tenant. Both men are income-eligible and have no criminal history. The building manager denies the application and says gay men are not welcome there since there are families with children in the building.



## Example 2

A single woman lives alone in a one-bedroom apartment in public housing. The building manager runs into her at the corner store and sees that she is holding hands with another woman. The next day, the building manager tells the tenant that she will be evicted for immoral behavior.



## 2) Clarifies definition of “family” (*Section 5.403*) and “household” (*Section 570.3*) with LGBT inclusive language.

- Family includes persons regardless of actual or perceived sexual orientation, gender identity, or marital status.

- Section 8, public housing, FHA, Community Development Block Grants, 202/811, HOPWA



- Clarification of family is key because family identifies who is eligible to participate in a HUD program.
- Clarification has no impact on other program eligibility requirements (e.g., income qualification, annual certification, family members named on lease).



3) Prohibits **inquiries** of an applicant or occupant's sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available. *24 CFR Section 5.105.*

**-Broad coverage:** Owners or administrators of HUD-assisted or insured housing, approved lenders in an FHA mortgage insurance program, and any (or any other) recipient or sub-recipient of HUD funds.



- ***does not*** prohibit any individual from voluntarily self-identifying 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 is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms.
- ***does not*** prohibit lawful inquiries of an applicant or occupant's sex made for the purpose of determining the number of bedrooms to which the household may be entitled.



Finally, ***the rule does not*** prohibit voluntary and anonymous reporting of sexual orientation or gender identity pursuant to state, local, or federal data collection requirements.



## Example 3

A petite woman walks into a rental office at a HUD-assisted apartment building. She is wearing traditionally masculine clothing. The rental agent asks “Are you a lesbian or a transgender or something?” The agent then says that she is worried that other tenants may harass or harm the woman based on her choice of dress and “lifestyle.”



# Example 4

- A woman comes into a HUD-funded shelter seeking services and discloses that she is transgender. The intake coordinator at the shelter informs her that the shelter does not serve transgender individuals and turns her away.



4) Prohibit FHA-approved lenders from basing eligibility determinations for FHA-insured loans on actual or perceived sexual orientation or gender identity. *24 CFR Section 203.33.*

*-Prior regulation listed only race, color, religion, sex, national origin, familial status, handicap, marital status, and source of income as prohibited characteristics to consider.*



## Example 5

A loan applicant applies in person for an FHA-insured loan with a private bank. She brings another woman with her. Her companion puts her arm around the loan applicant during the process of filling out the application forms. The loan officer believes that the women are a lesbian couple. The loan is denied because of the bank employee's perception of the applicant as a lesbian.



# The Rule and the Fair Housing Act

The Fair Housing Act does not specifically include sexual orientation and gender identity as prohibited bases. However, if the rule is violated, a LGBT person's experience with sexual orientation or gender identity housing discrimination may still be covered by the Fair Housing Act.



# Rule violation, or Fair Housing Act violation?

An apartment building provides housing to tenants with HIV/AIDS who require special medical care. The apartment building receives HOPWA funding from HUD. An applicant applies for an apartment. When she enters the rental office, the applicant is wearing a pair of women's shoes and a skirt. The leasing agent believes that the applicant is biologically male and denies the applicant an apartment because he believes she is transgender.



# Rule Enforcement

- Contact local HUD program office to allege violation of rule requirement ([www.hud.gov/localoffices](http://www.hud.gov/localoffices)) or 26 Federal Plaza, NYC
- Also, call HUD's housing discrimination hotline at **800-669-9777** to inquire about filing a Fair Housing Act complaint.
- Call the New Jersey Division on Civil Rights at **(973) 648-6262** to file a complaint of discrimination under the NJ Law Against Discrimination.



# LGBT Website



[www.hud.gov/lgbthousingdiscrimination](http://www.hud.gov/lgbthousingdiscrimination)



# HUD LGBT “Live Free” Fair Housing Posters



SHOULD GENDER  
STEREOTYPES  
INFLUENCE WHERE  
YOU LIVE?

LEARN MORE ABOUT

THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT  
OFFICE OF FAIR HOUSING & EQUAL OPPORTUNITY'S

LGBT INITIATIVES

@

[WWW.HUD.GOV/FAIRHOUSING](http://WWW.HUD.GOV/FAIRHOUSING)



EQUAL HOUSING  
OPPORTUNITY

**LIVE FREE**

A close-up portrait of a young man with dark hair and light skin, looking directly at the camera with a serious expression.

# HUD Secretary Shaun Donovan

“The story of HUD is a story of expanding civil rights – a story that begins with a painful history, but leaves a proud legacy: one of opening the doors of America’s homes to all Americans.”

*Address by HUD Secretary Shaun Donovan,  
National Center for Transgender Equality  
November 15, 2011*



# More Information

[www.hud.gov/lgbthousingdiscrimination](http://www.hud.gov/lgbthousingdiscrimination)

[LGBTFairhousing@hud.gov](mailto:LGBTFairhousing@hud.gov)



# Additional Information

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# Thank You

