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## OFFICE OF HOUSING MANAGEMENT MEMORANDUM #2015-B-02

**To:** All Federally Assisted Housing Companies  
Owners, Managing Agents and Site Managers

**From:** Linda Kedzierski, Federal Programs Coordinator

**Date:** February 27, 2015

**Subject:** **New Final Rule Ensuring Equal Access to Housing  
Regardless of Sexual Orientation, Gender Identity  
or Marital Status**

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HUD recently posted HSG Notice 2015-01 **Notice of Program Eligibility for HUD Assisted and Insured Housing Programs for All People Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD's Equal Access Rule.** The rule revises HUD's general program requirements by adding new provisions at 24 CFR 5.105 (a) (2).

The rule revises HUD's general program requirements by adding the following provisions at 24 CFR 5.105 (a) (2):

- a. *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 programs by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or married status, and*
- b. *No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, or any other recipient or sub-recipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD assisted or HUD insured housing for purposes of determining eligibility or otherwise making such housing available.*

*However, inquiries into sex are permissible for temporary, emergency shelter with shared sleeping areas or bathrooms, or to determine the number of bedrooms to which a household may be entitled.*

**This means that you cannot ask about gender identity for eligibility purposes.** Owners/agents may want to review forms to determine if inquiries about gender, sexual orientation or marital status are required. Since these criteria are not considered when determining eligibility, owner/agents may want to remove such inquiries. At the very least, you should consider making such responses optional.

Please note that the forms under OMB approval posted on the HUDClips web site may not be edited without HUD approval. In regards to TRACS forms, please note that HUD Form 50059 and 50059A include fields asking owner/agents to identify the sex (gender) of household members. With the release of TRACS version 202D, response is optional and the field may be left blank.

You should review any owner/agent created forms including, but not limited to the Application, Live-in Aide Questionnaire and Interim Certification Questionnaires that may ask applicants/tenants to disclose gender or marital status. You may also want to modify certain sample forms provided by HUD including the Citizenship Declaration (HH 4350.3 R1, C4, Exhibit 3-5), the Family Summary (HH 4350.3 R1, C4, Exhibit 3-4) and the Owner Summary (HH 4350.3 R1, C4, Exhibit 3-7). Since these are not OMB forms, they can be modified.

Please note that the rule does not create any additional protected classes under the Fair Housing Act or any other civil rights law. Although the Fair Housing Act does not expressly include sexual orientation, gender identity and marital status as protected classes, a lesbian, gay, bisexual, or transgender person's experience with housing discrimination may still be covered by the Fair Housing Act's prohibition of discrimination based on sex.

If you have any questions regarding this memorandum, please contact Linda Kedzierski at [Linda.Kedzierski@nyshcr.org](mailto:Linda.Kedzierski@nyshcr.org).



Linda Kedzierski