



# EQUAL ACCESS POLICY IN ACCORDANCE WITH GENDER IDENTITY UPDATED SEPTEMBER 2017

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## PURPOSE

The purpose of this policy is to define equal access to housing in CoC-funded programs regardless of gender identity. This policy is pursuant to the final rule (Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs: FR 5863-F-02) which requires that HUD's housing programs be made available to individuals and families without regard to actual or perceived sexual orientation, gender identity, or marital status. The rule further defines "gender identity" to mean "actual or self-perceived gender-related characteristics." The final rule 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.

This policy also provides guidance on appropriate and inappropriate inquiries related to a potential or current client's gender identity for the purposes of placing transgender or gender non-conforming persons in temporary, emergency shelters or other facilities with shared sleeping areas or bathrooms.

## APPLICABILITY

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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.

## SCOPE

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The policy establishes the requirement that all Mississippi Balance of State CoC, hereto referred to as "BoS" contracted programs, shelters, other buildings and facilities, benefits, services and accommodations ensure equal access to an individual in accordance with gender identity. **It specifically sets guidelines pertaining to each of the following service areas for ESG, SSVF, HOPWA, and CoC-funded programs:**

1. Access to sex-segregated services and facilities
2. Access to family programs and facilities
3. Access to bathrooms
4. Ensuring safety and privacy
5. Use of names and personal gender pronouns
6. Homeless Management Information System (HMIS) data collection and intake forms

## 1. Access to sex-segregated services and facilities

Policy: All persons who are eligible to receive services through BOS-contracted programs have the right to receive services at a facility that serves the gender with which they identify. This right is absolute, regardless of sex assigned at birth, and regardless of whether they have undergone medical treatment to align their physical bodies with their gender identity. Persons who do not identify as male or female have the right to be served wherever they feel safest. Facilities that are legally permitted to segregate clients by sex (e.g. emergency shelters, projects funded by the Violence Against Women Act) must serve all clients who identify with that gender. Service providers may not ask for proof of gender, nor may they require that a person's gender match the sex listed on legal documentation (e.g. driver's license, ID card, or birth certificate). In addition, providers may not deny services to clients because their appearance or behavior does not conform to assumed gender stereotypes.

## 2. Access to family programs and facilities

Policy: All families who are eligible to receive services through BOS-contracted programs have the right to receive services regardless of the gender identities within the family. In both congregant and sex-segregated facilities, providers may not deny services or separate families based on the gender identity or gender expression of one or more family members.

## 3. Access to bathrooms

Policy: All persons receiving services through BOS-contracted programs must have access to bathrooms consistent with their gender identity, regardless of appearance, biological or physical characteristics, or legally documented sex. Service providers may not ask for documented proof of gender as a requisite for bathroom access, nor may they institute different bathroom rules for cisgender and transgender clients. The provider must, at a minimum, permit any clients expressing concern to use bathrooms and dressing areas at a separate time from others in the facility. The provider should, to the extent feasible, work with the layout of the facility to provide for privacy in bathrooms and dressing areas for all clients. For example, toilet stalls should have operable doors and locks and there should be separate shower stalls with curtains and/or locking doors to allow for privacy.

## 4. Ensuring accommodations for safety and privacy

Policy: All persons receiving services through BOS-contracted programs have the right to safety and privacy. If a transgender or gender non-conforming client expresses safety or privacy concerns, or if the provider otherwise becomes aware of privacy or safety concerns; the provider must take reasonable steps to address those concerns. This may include, for example: responding to the requests of the client expressing concern through the addition of a privacy partition or curtain; provision to use a private restroom or office; or a separate changing schedule. It is not the responsibility of a transgender or gender nonconforming client to accommodate facilities and/or programs. Moreover, another client's discomfort is not a reason to deny equal access or equal treatment to a transgender or gender nonconforming client. The provider should ensure that its policies do not isolate or segregate transgender or gender non-conforming clients based upon

gender identity. Clients may, however, ask to be isolated or segregated and reasonable steps should be taken to accommodate the client as facility space allows.

#### **5. Use of names and personal gender pronouns**

Policy: All persons receiving services through BOS-contracted programs have the right to be known and referred to by their name and/or the gender pronouns that match their gender identity.

#### **6. Homeless Management Information System (HMIS) data collection and intake forms**

Policy: All persons receiving services through BOS-contracted programs should be documented in HMIS, on intake forms, and all other data collection tools and repositories according to the gender with which they identify.

## **ADDITIONAL GUIDANCE FOR FACILITIES THAT RECEIVE ESG, SSVF, HOPWA, OR COC FUNDING**

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### **Assignments**

The Mississippi Balance of State Continuum of Care, hereto referred to as "BoS" assumes that 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 will place a potential client (or current client seeking a new assignment) in a shelter or facility that corresponds to the gender with which the person identifies and/or presents themselves as, while taking the client's health and safety concerns into consideration. A client or potential client's own views with respect to personal health and safety should be given serious consideration in making the placement. For instance, if the potential client requests to be placed based on his or her sex assigned at birth, as opposed to their gender presentation, the BoS assumes that the provider will place the individual in accordance with that request, consistent with health, safety, and privacy concerns. Policies and procedures to protect health and safety, as well as privacy and security noted in the final rule, must be established, maintained, or amended, as necessary, and all policies must be administered in a nondiscriminatory manner.

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 Act and which is legally permitted to operate as a single-sex facility, the individual's own self-identified gender identity will govern.

The BoS assumes that a provider will not make an assignment or re-assignment based on complaints of another sheltered person or shelter staff member, if/when the sole stated basis of the complaint is a client or potential client's gender identity, gender presentation, and/or non-conformance with gender stereotypes, gender roles, and/or expectations around sex and/or gender.

## Appropriate and Inappropriate Inquiries Related to Sex

For temporary, emergency shelters with shared sleeping areas or bathrooms, the Equal Access Rule permits shelter providers to ask potential clients and current clients seeking a new assignment their sex. Best practices suggest that where the provider is uncertain of the client's sex or gender identity, the provider simply informs the client or potential client that the agency provides shelter based on the gender with which the individual identifies and/or presents themselves as. 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.

## Training & Monitoring

The BoS is responsible to ensure that subrecipients comply with the Equal Access Rule. Subrecipients are encouraged provide and explain this policy to staff members at orientation, regular staff meetings, and to provide ongoing trainings to ensure that employees and contractors who interact directly with clients are aware of it and report/address noncompliance. If the BoS finds a recipient or subrecipient has failed to meet the program requirements, the BoS may place the provider on corrective action to ensure the provider receives adequate training and compliance with this policy.

## PROCEDURES

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Service providers must update intake, admissions, and operational policies and procedures to reflect the policies above. Providers must ensure that all staff, volunteers, and contractors are provided copies of these policies and procedures, and that discussion of these policies and procedures forms a part of any introductory training for staff, volunteers, and contractors. Service providers should make their revised policies and procedures pertaining to equal access for transgender and gender nonconforming individuals available for all participants.

## POLICY IMPLEMENTATION GUIDANCE

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The following documents will support service providers in their evaluation and revision of policies and procedures.

### **Self-Assessment Tool – Excel**

**Overview:** The agency self-assessment is an Excel spreadsheet that outlines attributes of an agency that is compliant with the HUD's Equal Access Rule and the recommended steps to achieve compliance. The policy expectations considered in this HUD document are consistent with those articulated in the above BoS policy, and so the priority steps it outlines will guide providers toward compliance with the regional policy.

**Source:** U.S. Department of Housing and Urban Development (HUD)

**Link:** <https://www.hudexchange.info/resources/documents/Equal-Access-Self-Assessment-for-Shelters-and-Projects.xlsm>

### **Equal Access for Transgender People: Supporting Inclusive Housing and Shelters - PDF (21 pages)**

**Overview:** This 21-page report is a great resource for providers, covering a glossary of terms, inclusive policy standards, and a list of sample best practices in the implementation of policies including access to sex-segregated facilities, access to bathrooms, ensuring accommodations for safety and privacy, and intake forms.

**Source:** U.S. Department of Housing and Urban Development (HUD)

**Link:** <https://msBoScoc.files.wordpress.com/2017/09/equal-access-for-transgender-people-supporting-inclusive-housing-and-shelters.pdf>

### **Transitioning Our Shelters - PDF (59 pages)**

**Overview** This 59-page report provides context for the struggle that transgender people have in finding safe shelter before recommending the “first and most critical step” that shelters can take, implementing a policy of respect. Pages 25 – 38 deal specifically with putting policy into practice and provide recommendations for topics including intake forms, access to bathrooms (e.g. best practices in bathroom design), ensuring accommodations for safety and privacy (e.g. confidentiality practices, privacy standards), and other service areas.

**Source:** National Gay and Lesbian Task Force Policy Institute, National Coalition for the Homeless

**Link:** <https://msBoScoc.files.wordpress.com/2017/09/transitioningourshelters.pdf>

## **Other Resources**

### **Equal Access Decision Tree - PDF (1 page)**

**Overview:** This one-page handout presents different stages of service provision (outreach, assessment, referral, enrollment, etc.) and highlights encouraging responses to issues surrounding gender identity that may come up at each stage.

**Source:** U.S. Department of Housing and Urban Development (HUD)

**Link:** <https://msBoScoc.files.wordpress.com/2017/09/equal-access-decision-tree-source-hud.pdf>

### **Signage for Your Facilities (Notice on Equal Access Rights for Posting in Your Project) – PDF (1 page)**

**Overview:** This one-page notice can be posted by facilities in order to notify clients and residents of the new Equal Access rule requirements.

**Source:** U.S. Department of Housing and Urban Development (HUD)

**Link:** <https://msBoScoc.files.wordpress.com/2017/09/notice-on-equal-access-rights.pdf>

## DEFINITION OF TERMS USED

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Below are common terms related to different aspects of a person's identity.

- **Gender:** A socially constructed system that ascribes qualities of masculinity and femininity. A spectrum, with male/female representing the two ends.
- **Sexual Orientation:** Physical or emotional attraction to the same and/or opposite sex. Different from gender identity or expression.
- **Gender Identity:** An individual's inner sense of being male, female, or any other non-binary gender.
- **Gender Expression:** External expression of gender identity (note that often people do not feel they can safely and openly express their gender identity). Can be exhibited through behavior, voice, clothing, hairstyle, and body language. May change over time, or even from day to day.
- **Sex Assigned/Designated at Birth:** Often a binary designation of "male" or "female," and based on internal or external anatomy at birth. May not necessarily correspond to an individual's gender identity.

Below are more specific terms that relate to sexual orientation (e.g. lesbian, gay, bisexual), gender identity (e.g. transgender, cisgender, gender nonconforming), or both (e.g. queer, questioning). The first five terms make up the common "LGBTQ" acronym (lesbian, gay, bisexual, transgender and queer or questioning).

- **Lesbian:** An individual whose gender identity is female who is emotionally, romantically, and/or sexually attracted to the same gender.
- **Gay:** An individual who is emotionally, romantically, and/or sexually attracted to the same gender.
- **Bisexual:** An individual who is emotionally, romantically, and/or sexually attracted to any gender.
- **Transgender:** An individual whose gender identity differs from their sex assigned at birth. Note that transgender is an adjective, and that it is incorrect and offensive to call someone "a transgender" or "transgendered."
- **Queer:** A label to explain a range of sexual behaviors and desires.
- **Questioning:** An individual who has questions about their sexual orientation and/or gender identity.
- **Cisgender:** An individual who is not transgender, whose gender identity and/or gender expression matches their sex assigned at birth.

- **Gender Nonconforming:** Someone who does not conform to traditional gender roles or stereotypes. Traditional roles and stereotypes vary based on different cultural and societal ideals. Individuals may be perceived as having a different gender than their outward appearances (behavior, clothing, hairstyle, body language, voice).
- **Non-Binary Person:** Someone who does not identify as male or female (the two ends of the gender spectrum).
- **Gender-Neutral:** Language that describes “all gender” or unisex spaces (i.e. “all gender” or unisex bathrooms), language about relationships (spouse or partner instead of wife/husband or girlfriend/boyfriend), etc.
- **Transitioning (Gender Transition):** A process that some (but not all) transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. Does not require any medical treatment (i.e. hormones or surgery).
- **Personal Gender Pronouns:** The pronouns that someone wishes others to use when referring to them, to accurately reflect the person’s gender identity. These pronouns need not correspond with sex assigned at birth, and can reflect a binary gender identity (i.e. she/her/hers or he/him/his) or can reflect a non-binary gender identity (i.e. they/them/their or ze/zem/zir).