

§ 5.106

Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

(2) *Equal access to HUD-assisted or -insured housing.* A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by HUD 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.

(b) *Disclosure requirements.* The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 *et seq.*).

(c) Debarred, suspended, or ineligible contractors and participants. The prohibitions at 2 CFR part 2424 on the use of debarred, suspended, or ineligible contractors and participants.

(d) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations at 2 CFR part 2429.

[61 FR 5202, Feb. 9, 1996, as amended at 65 FR 16715, Mar. 29, 2000; 72 FR 73491, Dec. 27, 2007; 76 FR 45167, July 28, 2011; 77 FR 5674, Feb. 3, 2012; 81 FR 64782, Sept. 21, 2016; 81 FR 80993, Nov. 17, 2016; 85 FR 61562, Sept. 29, 2020]

§ 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

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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.* 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.

[81 FR 64782, Sept. 21, 2016]

§ 5.107 Audit requirements for non-profit organizations.

Non-profit organizations subject to regulations in the part 200 and part 800 series of title 24 of the CFR shall comply with the audit requirements of 2 CFR part 200, subpart F. For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

[62 FR 61617, Nov. 18, 1997, as amended at 80 FR 75934, Dec. 7, 2015]

§ 5.109 Equal participation of faith-based organizations in HUD programs and activities.

(a) *Purpose.* Consistent with Executive Order 13279, entitled “Equal Protection of the Laws for Faith-Based and Community Organizations,” as amended by Executive Order 13559, entitled “Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations,” and as amended by Executive Order 13831, entitled “Establishment of a White House Faith and Opportunity Initiative,” this section describes requirements for ensuring the equal participation of faith-based organizations in HUD programs and activities. These requirements apply to all HUD programs and activities, including all of HUD’s Native American Programs, except as may be otherwise noted in the respective program regulations in title 24 of the Code of Federal Regulations (CFR), or unless inconsistent with certain HUD program authorizing statutes.

(b) *Definitions.* The following definitions apply to this section:

Direct Federal financial assistance means Federal financial assistance provided when a Federal Government agency or an intermediary, as defined in this section, selects the provider and either purchases services from that provider (*i.e.*, via a contract) or awards

funds to that provider to carry out an activity (*e.g.*, via grant, sub-grant, sub-award, or cooperative agreement). The recipients of sub-grants or sub-awards that receive Federal financial assistance through State-administered programs (*e.g.*, flow-through programs) are considered recipients of direct Federal financial assistance. In general, Federal financial assistance shall be treated as direct, unless it meets the definition of indirect Federal financial assistance.

Federal financial assistance means assistance that non-Federal entities receive or administer in the forms of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

Indirect Federal financial assistance means Federal financial assistance provided when the choice of the provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment. Federal financial assistance provided to an organization is considered indirect when the Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion meaning that it is available to providers without regard to the religious or non-religious nature of the institution and there are no program incentives that deliberately skew for or against religious or secular providers; and the organization receives the assistance as a result of a genuine, independent choice of the beneficiary.

Intermediary means an entity, including a nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State, tribal or local government that accepts Federal financial assistance and distributes that assistance to other entities that, in turn, carry out activities under HUD programs.

Religious exercise has the meaning given to the term in 42 U.S.C. 2000cc-5(7)(A).