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Part IV

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24 CFR Parts 5, 200, 203, et al.

Equal Access to Housing in HUD Programs—Regardless of Sexual
Orientation or Gender Identity; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 200, 203, 236, 570, 574, and 982

[Docket No. FR 5359-P-01]

RIN 2501-AD49

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

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: As the Nation's housing agency, HUD administers programs designed to meet the goal of ensuring decent housing and suitable living environment for all. In pursuit of this goal, it is HUD's responsibility to ensure that all who are otherwise eligible to participate in HUD's programs have equal access to these programs and have the opportunity to compete fairly for HUD funds without being subject to arbitrary exclusion.

There is evidence, however, that lesbian, gay, bisexual, and transgender (LGBT) individuals and families are being arbitrarily excluded from some housing opportunities in the private sector. Through this proposed rule, HUD strives to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation or gender identity.

DATES: *Comment Due Date:* March 25, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. There are two methods for submitting public comments. All submissions and other communications must refer to the above docket number and title.

1. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public.

Commenters should follow the instructions provided on that site to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Kenneth J. Carroll, Director, Fair Housing Assistance Program Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5206, Washington, DC 20410-8000; telephone number 202-708-2333 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Like all Federal agencies, HUD is charged with ensuring equal access to Federal programs that it administers. HUD also has a unique charge, as the Nation's housing agency, to promote the Federal goal of providing decent housing and a suitable living environment for all.¹ Accordingly, HUD has a responsibility to ensure equal access to its core rental assistance and homeownership programs for all eligible

individuals and families. HUD fulfills this responsibility by taking such actions as necessary so that all who are otherwise eligible to participate in HUD programs will not be excluded based on criteria that are irrelevant to the purpose of HUD's programs, such as sexual orientation or gender identity.

There is evidence suggesting that LGBT individuals and families do not have equal access to housing. For example, a 2007 study of housing discrimination based on sexual orientation conducted by Michigan fair housing centers found disparate treatment in 32 out of 120 fair housing tests it conducted. Testers posing as gay or lesbian home seekers received unfavorable treatment on issues such as whether housing was available, the amount of rent, application fees, and levels of encouragement as compared to testers posing as heterosexual home seekers. The gay and lesbian testers also were subjected to offensive comments. See Michigan Fair Housing Center's Report on "Sexual Orientation and Housing Discrimination in Michigan" January 2007 at http://www.fhcmichigan.org/images/Arcus_web1.pdf.

A recent survey of more than 6,000 transgender persons conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force (Task Force) indicated significant levels of housing instability for transgender people. Twenty-six percent of respondents reported having to find different places to sleep for short periods of time due to bias. Eleven percent of respondents reported having been evicted due to bias, and 19 percent reported becoming homeless due to bias. See November 2009, "Preliminary Findings, National Transgender Discrimination Survey," at http://www.thetaskforce.org/reports_and_research/trans_survey_preliminary_findings.

In light of the increasing awareness of housing discrimination against LGBT persons, a growing number of States, counties, and cities are enacting laws that prohibit discrimination in housing on the basis of sexual orientation or gender identity. Twenty States, the District of Columbia, and over 200 localities have enacted such laws.² The legislative records of some of these enactments are a source of further evidence of housing discrimination

¹ This goal is rooted in section 2 of the Housing Act of 1949, 42 U.S.C. 1441.

² See, e.g., Laws Prohibiting Discrimination Based on Sexual Orientation and Gender Identity (Institute of Real Estate Management (IREM) Legislative Staff July 2007, which is available at <http://www.irem.org/pdfs/publicpolicy/Anti-discrimination.pdf>); see also <http://www.hrc.org/issues/5499.htm>.

based on sexual orientation or gender identity. For example, in a State legislative hearing on a proposed amendment to the North Dakota fair housing law that would add sexual orientation to the list of protected characteristics, a woman recounted how she and her partner were evicted once the landlord learned her partner was not a man. See "Gay-rights Advocates Press for Change in N.D. Law," February 4, 2009, Bismarck Tribune, at http://www.bismarcktribune.com/news/state-and-regional/article_fb795f86-fc42-5184-b6d6-ad424e3243ce.html.

The U.S. Congress has acted to protect the rights of LGBT individuals to be free from bias-motivated crime. In October 2009, Federal legislation was enacted adding certain crimes motivated by a victim's actual or perceived sexual orientation or gender identity to the list of hate crimes covered by existing Federal law. See Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Division E of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84, approved October 28, 2009). In support of this enactment, Congress found that violence motivated by the actual or perceived sexual orientation or gender identity of the victim "poses a serious national problem" because, among other things, it "devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected." (See Pub. L. 111–84, Division E, Sec. 4702(1), (5).)

In considering the mounting evidence of violence and discrimination against LGBT persons, the Department is concerned that its own programs may not be fully open to LGBT individuals and families. Accordingly, consistent with steps being taken at all levels of government to protect LGBT persons from discrimination, HUD is initiating this rulemaking in an effort to ensure that its rental housing and homeownership programs remain open to all eligible persons regardless of sexual orientation or gender identity.

II. This Proposed Rule

A. Defining Sexual Orientation and Gender Identity

The proposed rule would amend 24 CFR 5.100, which contains definitions generally applicable to HUD programs, to include definitions of "sexual orientation" and "gender identity." Section 5.100 would define "sexual orientation" as "homosexuality, heterosexuality, or bisexuality." This is the definition that the Office of Personnel Management (OPM) uses in

the context of the Federal workforce in its publication "Addressing Sexual Orientation in Federal Civilian Employment: A Guide to Employee Rights." (See <http://www.opm.gov/er/address.pdf> at page 4.) The rule would define "gender identity," consistent with the definition of "gender identity" in the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Public Law 111–84, Division E, Section 4707(c)(4) (18 U.S.C. 249(c)(4)), as "actual or perceived gender-related characteristics."

B. Prohibiting Inquiries Regarding Sexual Orientation or Gender Identity

To further ensure equal access to HUD's housing and housing-related service programs without regard to sexual orientation or gender identity, HUD is proposing to prohibit inquiries regarding sexual orientation or gender identity. This prohibition would preclude owners and operators of HUD-assisted housing or housing whose financing is insured by HUD from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, the dwelling, whether renter- or owner-occupied. While the rule prohibits inquiries regarding sexual orientation or gender identity, nothing in the rule prohibits any individual from voluntarily self-identifying his or her sexual orientation or gender identity. Additionally, this rule is not intended to prohibit otherwise lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual involves the sharing of sleeping areas or bathrooms.

Through this rulemaking, HUD is proposing to institute this policy in its rental assistance and homeownership programs, which include HUD's Federal Housing Administration (FHA) mortgage insurance programs, community development programs, and public and assisted housing programs.³ This prohibition on inquiries regarding sexual orientation or gender identity would be provided in a new paragraph (a)(2) added to 24 CFR 5.105. Section 5.105 of HUD's regulations is entitled "Other Federal Requirements." The proposed rule would divide the existing paragraph (a) into two new subparagraphs. The text in the current paragraph (a) would become subparagraph (a)(1), but retain the heading and content as currently found in § 5.105(a). A new subparagraph (a)(2) would be added, entitled "Prohibition on inquiries regarding sexual

orientation or gender identity." The regulations for the HUD programs to which the prohibition on such inquiries apply already include cross-reference to § 5.105, and with the amendment to this section, the cross-reference would now include the prohibition in § 5.105(a).

This policy prohibiting inquiries regarding sexual orientation or gender identity is undertaken pursuant to HUD's general rulemaking authority granted by section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)) and HUD's specific rulemaking authority to establish eligibility criteria for participation in HUD programs granted by the statutes that establish the various HUD programs.

C. Prohibiting Sexual Orientation and Gender Identity as Grounds for Decisionmaking in Federal Housing Administration (FHA) Programs

Section 203.33(b) of HUD's FHA regulations (24 CFR 203.33(b)) provides that a mortgagee's determination of the adequacy of a single-family mortgagor's income "shall be made in a uniform manner without regard to" specified prohibited grounds. The proposed rule would add actual or perceived sexual orientation and gender identity to the prohibited grounds enumerated in 24 CFR 203.33(b) to ensure FHA-insured lenders do not deny or otherwise alter the terms of mortgages on the basis of criteria that are irrelevant to the purpose of obtaining FHA-mortgage insurance.

D. Eligible Families in HUD Programs

For the following HUD regulations specified below, this proposed rule clarifies that all otherwise eligible families, regardless of marital status, sexual orientation, or gender identity, have the opportunity to participate in HUD programs. The majority of HUD's rental housing and homeownership programs already interpret "family" broadly. Family includes a single person and families with or without children, just to cite two examples. This proposed rule clarifies that families who are otherwise eligible for HUD programs may not be excluded because one or more members of the family may be an LGBT individual or have an LGBT relationship or be perceived to be such an individual or in such relationship.

This section lists the HUD programs for which this proposed rule clarifies and confirms the broad meaning of family.

1. *Section 8 Tenant-Based Assistance (Housing Choice Voucher Program) and Public Housing Programs (24 CFR part 5 and 24 CFR part 982).* The proposed rule would amend the regulations in 24

³ Institution of this policy in HUD's Native American programs will be undertaken by separate rulemaking.

CFR 5.403, which contains the definitions applicable to HUD's Housing Choice Voucher (HCV) and public housing programs. The term "family," provided in part 5 for these HUD programs, is based on section 3 of the U.S. Housing Act of 1937 (42 U.S. 1437a) (1937 Act). Section 3(b)(3)(B) of the 1937 Act provides as follows:

Families.—The term "families" includes families with children and, in the cases of elderly families, near-elderly families, and disabled families, means families whose heads (or their spouses), or whose sole members, are elderly, near-elderly, or persons with disabilities, respectively. The term includes, in the cases of elderly families, near-elderly families, and disabled families, 2 or more elderly persons, near-elderly persons, or persons with disabilities living together, and 1 or more such persons living with 1 or more persons determined under the public housing agency plan to be essential to their care or well-being.

Section 3(b)(3)(A) of the 1937 Act provides that the term "single person" includes a family that consists of a single person. (See Section 3(b)(3)(C) of the 1937 Act.) Section 3(b)(3)(C) provides that the temporary absence of a child from a home due to placement in foster care shall not be considered in determining family composition and family size, meaning that a child, although absent from the home, is still considered a family member. Sections 3(b)(3)(D), (E), (F), and (G) also specify the meaning of the following terms: elderly person, person with disabilities, displaced person, and near-elderly person. All of these statutory terms are currently captured in the term "family" in § 5.403.

These statutory terms result in an expansive view of what can constitute a family, and the 1937 Act provides examples of what the term "families" includes but does not limit the composition of families to the statutory examples. Consistent with the broad meaning given to the term family by the 1937 Act, this proposed rule, clarifies that a family, however composed, is a family regardless of marital status, sexual orientation, or gender. The term "family" in § 5.403 is similar in substance to the term "family composition" in § 982.201, but HUD finds that the statutory terms are more coherently reflected in § 982.201. Therefore, in addressing the term "family" in § 5.403, HUD has structured the organization of this term as found in § 982.201.

This proposed rule also would amend the terms "disabled family," "elderly family," and "near-elderly family" in § 5.403. Each of these terms is stated as a family whose head, spouse, or sole

member is, respectively, for each of these terms, a person with disabilities, a person at least 62 years of age, or a person who is at least 50 years of age but below the age of 62. To each of these terms, the proposed rule adds the term "co-head."

"Co-head" is a term that has long been used in supplementary documents to HUD's rental assistance programs. Form HUD-50058 pertaining to the Multifamily Tenant Characteristics System (MTCS) and its accompanying Instruction Booklet use the term "co-head" and provides that "co-head" is an individual in the household who is equally responsible for the lease with the head of household. HUD's Web page devoted to frequently asked questions about general income and rent determination for HUD's rental housing programs provides in the answer to question 38 an example of co-head as follows: "An example of this [co-head] would be an unmarried couple or two persons living together and listed as head and co-head on the lease agreement." (See http://www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm).

The inclusion in the proposed amendment to § 5.403 of "co-head," again a familiar term to housing providers of HUD assistance, would not change the meaning of the statutory term "heads" of household, which is not currently defined in statute or regulation. The inclusion would merely codify HUD's existing interpretation of "heads," which, as noted above, recognizes that some families living in HUD-assisted rental housing have more than one family head. Nor would including the term "co-head" in "disabled family," "elderly family," and "near-elderly family" alter or expand the meaning of "spouse." Consistent with longstanding HUD interpretation, a head and co-head of the family may be a married couple, an unmarried couple, or two adults living together who are listed as head and co-head on the lease agreement.

The proposed rule would add "family," as provided in 24 CFR 5.403, to the list of general definitions in § 5.100, and clarify that the term is applicable to all HUD programs unless otherwise provided in the regulations for a specific HUD program.

The proposed rule also would add to 24 CFR 982.4 and § 982.201 a cross-reference to the term "family" in 24 CFR 5.403.

2. *Federal Housing Administration (FHA) Programs (24 CFR Parts 200, 203, 236, and 291)*. Basic definitions that are generally applicable to all FHA multifamily programs are found in 24

CFR 200.3. This regulatory section would be amended to cross-reference to "family" in 24 CFR 5.403.

In addition to the proposed amendment to 24 CFR 200.3, HUD proposes to amend 24 CFR 236.1. Section 236.1(a) contains the savings clause of applicable regulations for the mortgages insured under the Rental and Cooperative Housing for Lower Income Families Program, for which new mortgages have not been insured since 1983. Although no new mortgages are insured under this program, authority remains to refinance mortgages insured under section 236 of the National Housing Act (NHA) or to finance, pursuant to section 236(j)(3) of the NHA, the purchase by a cooperative or nonprofit corporation or association of a project assisted under section 236. The proposed amendment would provide that the term "family" in 24 CFR 200.3(a) applies to any refinancing of a mortgage insured under section 236 of the NHA, or to financing, pursuant to section 236(j)(3) of the NHA, of the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under section 236.

3. *Community Development Block Grants (CDBG) Programs (24 CFR Part 570)*. Section 570.3 of the CDBG regulations (24 CFR part 570, subpart A) provides basic definitions that are applicable to all CDBG programs. The proposed rule would amend 24 CFR 570.3 to cross-reference to the term "family" in 24 CFR 5.403. The proposed rule would revise the term "household" in § 570.3, another term used in CDBG programs, to ensure there is no exclusion of an eligible household on the basis of sexual orientation or gender identity. The revisions to "household" would also remove some redundancy in terminology. The current term "household" provides that occupants of a household may be a single family or one person living alone, but the term "family," as discussed earlier in this preamble, includes a single person. Accordingly, the revisions to "household" are designed to eliminate any conflict between the terms "household" and "family."

4. *Housing Opportunities for Persons With AIDS (HOPWA) (24 CFR Part 574)*. The proposed rule would amend 24 CFR 574.3 to cross-reference to "family" in 24 CFR 5.403, and to remove obsolete language that states that for a person to be eligible to live with another person, the other person must be determined to be important to the person's care or well-being.

E. HUD Programs for Which Eligible Family Does Not Require Amendment

The proposed rule does not revise the term “family” in the regulations for the Home Investment Partnership Program, which are codified at 24 CFR part 92. “Family” in § 92.2 already cross-references to the term family in § 5.403. The proposed rule would not amend the part 891 definitions of “household” (§ 891.105), “elderly person” (§ 891.205), or “disabled household” (§ 891.305) governing programs that provide Supportive Housing for the Elderly and Persons with Disabilities. These programs already provide meanings for the term family.

Additionally, the rule does not propose to amend the term “family” in the Project-Based Voucher (PBV) Program regulations, codified at 24 CFR part 983. The PBV regulations, in § 983.4, already cross-reference to the definitions in 24 CFR part 5, subpart D, which includes the § 5.403.

F. Changes to HUD Forms

This rule, as proposed, does not impose any new information collection requirements on participants in the covered HUD programs. Rather than requiring collection of information, the rule prohibits inquiries regarding sexual orientation or gender identity of any individual or family receiving housing assistance or benefitting from mortgage insurance under the covered HUD programs. At the final rule stage, if HUD identifies any forms for which the regulatory citation to the term “family” must be included as a result of promulgation of this rule, HUD will work with the Office of Management and Budget (OMB) to include such term. As noted earlier in this preamble, such inquiry is irrelevant to an individual’s or family’s eligibility to participate in a HUD-covered program.

III. Solicitation of Comments

The Department welcomes comment on the amendments proposed in this rule, including identification of any program area which may have been inadvertently overlooked and should reference “family” in 24 CFR 5.403. The Department also welcomes any information regarding exclusion or discrimination on the basis of sexual orientation or gender identity in HUD programs. Such information will help the Department in its effort to craft regulations that will effectively ensure access to HUD programs by all eligible persons regardless of sexual orientation or gender identity.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this proposed rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). A determination was made that this proposed rule is a “significant regulatory action,” as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would not impose any new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the proposed rule is to ensure open access to HUD’s core programs, regardless of sexual orientation or gender identity. In this rule, HUD affirms the broad meaning of “family” that is already provided for in HUD programs by statute. The only clarification that HUD makes is that a family is a family as currently provided in statute and regulation, regardless of marital status, sexual orientation, or gender identity. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD’s determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives as described in the preamble to this rule.

Environmental Impact

This proposed rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 236

Grant programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 574

Community facilities, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR parts 5, 200, 203, 236, 570, 574, and 982 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. The heading of subpart A is revised to read as follows:

Subpart A—Generally Applicable Definitions and Requirements; Waivers

3. In § 5.100, definitions for “family,” “gender identity,” and “sexual orientation” are added to read as follows:

§ 5.100 Definitions.

* * * * *

Family has the meaning provided this term in § 5.403, and applies to all HUD programs unless otherwise provided in the regulations for a specific HUD program.

* * * * *

Gender identity means actual or perceived gender-related characteristics.

* * * * *

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

* * * * *

4. In § 5.105, the introductory text is revised, paragraph (a) is redesignated as paragraph (a)(1), and a new paragraph (a)(2) is added to read as follows:

§ 5.105 Other Federal requirements.

The requirements set forth in this section apply to all HUD programs, except as may be otherwise noted in the respective program regulations in title 24 of the CFR, or unless inconsistent with statutes authorizing certain HUD programs:

(a)(1) *Nondiscrimination and equal opportunity.* * * *

(2) *Prohibition on inquiries regarding sexual orientation or gender identity.* No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation, or gender identity of an applicant for, or occupant of, a HUD-assisted dwelling or a dwelling whose financing is insured by HUD, whether renter- or owner-occupied. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying his or her sexual orientation or gender identity. This prohibition on inquiries regarding 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 to the individual involves the sharing of sleeping areas or bathrooms.

* * * * *

Subpart D—Definitions for Section 8 and Public Housing Assistance Under the United States Housing Act of 1937

5. In § 5.403, the definitions of “Disabled family,” “Elderly family,” “family,” and “Near-elderly family” are revised to read as follows:

§ 5.403 Definitions.

* * * * *

Disabled family means a family whose head (including co-head), spouse, or sole member is a person with a

disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

* * * * *

Elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

Family includes but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, the following:

(1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);

(ii) An elderly family;

(iii) A near-elderly family;

(iv) A disabled family;

(v) A displaced family; and

(vi) The remaining member of a tenant family.

* * * * *

Near-elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

6. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

7. Section 200.3(a) is revised to read as follows:

§ 200.3 Definitions.

(a) The definitions “Department,” “Elderly person,” “Family,” “HUD,” and “Secretary,” as used in this subpart A, shall have the meanings given these definitions in 24 CFR part 5.

* * * * *

8. Section 200.300 is revised to read as follows:

§ 200.300 Nondiscrimination and fair housing policy.

Federal Housing Administration programs shall be administered in accordance with:

(a) The nondiscrimination and fair housing requirements set forth in 24 CFR part 5, including the prohibition on inquiries regarding sexual orientation or gender identity set forth in 24 CFR 5.105(a)(2); and

(b) The affirmative fair housing marketing requirements in 24 CFR part 200, subpart M and 24 CFR part 108.

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

9. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

10. In § 203.33, paragraph (b) is revised to read as follows:

§ 203.33 Relationship of income to mortgage payments.

* * * * *

(b) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, actual or perceived sexual orientation, gender identity, source of income of the mortgagor, or location of the property.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

11. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

12. Section 236.1 is amended to add a sentence at the end of paragraph (a) to read as follows:

§ 236.1 Applicability, cross-reference, and savings clause.

(a) *Applicability.* * * * The definition of family in 24 CFR 200.3(a) applies to any refinancing of a mortgage insured

under section 236, or to financing pursuant to section 236(j)(3) of the purchase, by a cooperative or nonprofit corporation or association of a project assisted under section 236.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

13. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d), and 5301–5320.

Subpart A—General Provisions

14. In § 570.3, the definitions of “family” and “household” are revised to read as follows:

§ 570.3 Definitions.

* * * * *

Family refers to the definition of “family” set out in 24 CFR 5.403.

Household means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403, two or more families living together, or any other group of related or unrelated persons who share living arrangements, regardless of marital status, actual or perceived sexual orientation, or gender identity.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

15. The authority citation for 24 CFR part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

16. In § 574.3, the definition of “family” is revised to read as follows:

§ 574.3 Definitions.

* * * * *

Family is defined as set forth in 24 CFR 5.403 and includes one or more eligible persons living with another person or persons, regardless of marital status, or actual or perceived sexual orientation or gender identity, and the surviving member or members of any

family described in this definition who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death.

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

17. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

18. In § 982.4, paragraphs (a)(1) is revised, paragraph (a)(2) is removed, paragraph (a)(3) is redesignated as new paragraph (a)(2), and the definition of “family” in paragraph (b) is revised to read as follows:

§ 982.4 Definitions.

(a) *Definitions found elsewhere.* (1) *General definitions.* The following terms are defined in part 5, subpart A of this title: 1937 Act, covered person, drug, drug-related criminal activity, Federally assisted housing, guest, household, HUD, MSA, other person under the tenant’s control, public housing, Section 8, and violent criminal activity.

* * * * *

(b) * * *

Family. A person or group of persons, as determined by the PHA consistent with 24 CFR 5.403, approved to reside in a unit with assistance under the program. *See* discussion of family composition at § 982.201(c).

* * * * *

19. In § 982.201, paragraph (c) is revised to read as follows:

§ 982.201 Eligibility and targeting.

* * * * *

(c) *Family composition.* *See* definition of “family” in 24 CFR 5.403.

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Dated: December 1, 2010.

Shaun Donovan,

Secretary.

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