



June 26, 2026

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
Room 10276
451 7th Street SW
Washington, DC 20410-0500

RE: Docket No. FR-6518-P-01, Equal Access to Housing in HUD Programs Revisions

Dear Office of General Counsel:

This comment letter is submitted on behalf of the National Housing Law Project (“NHLP”). NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for groups protected by civil rights statutes. Our organization provides technical assistance and policy support on a range of housing issues to legal services, housing advocates, and stakeholders nationwide. We facilitate the Housing Justice Network, a vast field network of over 2,600 community-level housing advocates and resident leaders, including legal aid attorneys who help defend low-income families against eviction, homelessness and housing instability.

NHLP strongly opposes the proposed rule titled “Equal Access to Housing in HUD Programs Revisions,” Docket No. FR-6518-P-01 (“EAR Revision” or “proposed rule”),¹ which is a baseless attack on low-income LGBTQ+ families that rely on HUD-assisted housing and shelter. The U.S. Department of Housing and Urban Development (“HUD”) should immediately withdraw this Proposed Rule and preserve the Equal Access Rule, including both the 2012 rulemaking and the 2016 amendments applicable to Community Planning and Development (“CPD”) programs.

Contents

I. History, Background, and Current Law 3
II. The 2012 EAR and its 2016 revisions remain necessary and must be preserved..... 4
 a. LGBTQ+ families continue to face discrimination across the housing market..... 4
 b. Transgender individuals face barriers to accessing safe shelter. 4
III. HUD has presented insufficient justification for changing course and rescinding the 2012 EAR or its 2016 amendments. 5

¹ Equal Access to Housing in HUD Programs Revisions, 91 Fed. Reg. 22,779 (proposed Apr. 28, 2026).

a.	Trump’s “Gender Ideology” executive order does not provide legal authority for rulemaking.	6
b.	HUD had authority to issue the EAR in 2012 and to amend it in 2016.....	6
c.	HUD’s concern about the religious freedom of faith-based shelters is unfounded, and is already addressed by existing remedies.....	7
d.	HUD’s stated concern about the safety of cisgender women in shelter is based on harmful stereotypes and controverted by evidence from the field.	8
e.	HUD offers no explanation for the removal of protections based on gender, gender identity, and sexual orientation outside of the shelter context.....	10
f.	Discriminatory animus is insufficient to justify a regulatory sea-change with wide-ranging harmful impacts.	11
IV.	The proposed rule exceeds HUD’s statutory authority and conflicts with existing federal law and the Constitution.	12
a.	The EAR Revision conflicts with Congress’s mandate to make federally funded housing and accommodations available to all.	12
b.	The proposed rule violates the authorizing statutes for various HUD CPD programs.	13
i.	Community Development Block Grant Program	13
ii.	Emergency Solutions Grant Program	13
c.	The proposed rule violates the Cranston-Gonzalez National Affordable Housing Act....	14
d.	The proposed rule violates the authorizing statutes for the Section 202 and 811 programs.	14
e.	The proposed rule violates the Fair Housing Amendments Act.	15
i.	Bostock v. Clayton County, GA	15
ii.	HUD’s duty to affirmatively further fair housing.....	16
f.	The Proposed Rule Violates the Violence Against Women Act (“VAWA”).....	16
g.	The Proposed Rule Violates the Equal Protection clause of the United States Constitution.....	18
V.	The Proposed Rule Will Create Widespread harm and costs for individuals and communities.....	19
a.	The proposed rule will harm LGBTQ+ families, especially unhoused transgender people.	19
i.	Unhoused people seeking CPD-funded shelter or services	19
ii.	Seniors and people with disabilities residing in housing funded by Section 202 or 811	20
iii.	Applicants and participants to other HUD programs.....	21
b.	The proposed rule will create an unworkable burden on all HUD housing providers.	21
c.	The proposed rule conflicts with state and local laws and will create confusion in the field.	23

d. The proposed rule will increase unsheltered homelessness, which will create costs and other burdens for state and local governments. 24

VI. HUD’s definition of “sex” is not based in science and does not account for the existence of intersex people..... 25

VII. HUD fails to consider reliance interests or consider alternatives to wholesale removal of protections for gay and transgender people in HUD housing..... 26

I. History, Background, and Current Law

In 2012, HUD published its final rule entitled “Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity” (“2012 EAR”).² The 2012 EAR was promulgated to ensure that HUD’s housing programs would be open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. In 2016, HUD published a follow-up rule titled “Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs” (“2016 EAR”).³ The 2016 EAR ensures equal access to HUD’s CPD programs, specifically shelters, in accordance with a shelter seeker’s self-identified gender identity. HUD’s 2016 EAR amendments constitute a crucial policy to improve the treatment of transgender⁴ and gender nonconforming individuals in securing emergency shelter.

In 2020, the Trump administration issued a proposed rule that would have changed the 2016 EAR to allow CPD-funded facilities to discriminate against transgender people seeking shelter, deny admission to transgender people seeking shelter in sex-segregated facilities, and make invasive inquiries about their physiology for the purpose of determining admissions decisions.⁵ A record number of comments were submitted- 66,000- mostly in opposition to the proposed rule.⁶ HUD never finalized the rule under the previous Trump administration, and it was withdrawn by the incoming Biden administration.⁷

As a result of the 2012 and 2016 rulemaking, existing regulations state that HUD-assisted and insured housing “shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.”⁸ Housing providers may not consider “actual or perceived sexual orientation, gender identity, or marital status” in determining whether a group of people constitutes a “family” or “household” in public and multifamily housing, the voucher

² Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662 (Feb. 3, 2012). This followed a proposed rule published for public comment on January 24, 2011 at 76 Fed. Reg. 4194.

³ Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs , 81 Fed. Reg. 64,763 (Sep. 21, 2016). This followed a proposed rule published for public comment on November 20, 2015 at 80 Fed. Reg. 72,642.

⁴ The term “transgender” is used in this document as an umbrella term that refers broadly to transgender, nonbinary, and gender expansive individuals.

⁵ Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs, 85 Fed. Reg. 44,811 (proposed July 24, 2020).

⁶ *Id.*

⁷ Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs; Withdrawal; Regulatory Review, 86 FR 22,125 (Apr. 27, 2021).

⁸ 24 C.F.R. § 5.105(a)(2).

program, FHA programs, and certain CPD programs.⁹ Admission, placement, and accommodation in temporary, emergency shelters or other CPD-funded facilities with shared sleeping or bathing facilities must be made in accordance with the individual's gender identity.¹⁰ Individuals may not be subjected to intrusive questioning or asked to provide anatomical information or medical evidence of gender identity.¹¹ This part of the rule ensures that transgender people facing homelessness have access to shelters and services, and that they are assigned to accommodations that match their gender identity.

II. The 2012 EAR and its 2016 revisions remain necessary and must be preserved.

a. LGBTQ+ families continue to face discrimination across the housing market.

Housing discrimination against LGBTQ+ families and individuals remains a significant problem. A 2024 Zillow survey of LGBTQ+ individuals showed that 79% report experiences of discrimination in the housing market.¹² An earlier survey of transgender respondents found that nearly one quarter experienced housing discrimination within the past year.¹³ HUD's own 2013 study found that one in six landlords responded less favorably to same sex couples than heterosexual couples seeking rental housing.¹⁴ And more recent studies from the last ten years affirm that gay and transgender people experience discrimination when renting a home¹⁵ and when applying for a mortgage to purchase a home.¹⁶ Thus, housing discrimination remains a very real problem for LGBTQ+ people. The 2012 EAR and its 2016 revisions remain a necessary and important protection for LGBTQ+ families living in HUD-assisted housing.

b. Transgender individuals face barriers to accessing safe shelter.

HUD promulgated the 2016 EAR to build upon protections within the 2012 EAR. The 2016 amendments met a desperate need that remains critical. Nearly one-third of transgender individuals have experienced homelessness- eight times the rate in the general population.¹⁷ Many transgender individuals are forced into homelessness after being rejected by their families

⁹ 24 C.F.R. §§ 5.403; 200.3; 570.3; 574.3; 891.105; 982.4(b).

¹⁰ 24 C.F.R. § 5.106(c).

¹¹ 24 C.F.R. § 5.106(b).

¹² Zillow, *Survey: Most LGBTQ+ individuals experience discrimination in housing* (June 11, 2024), <https://www.zillow.com/news/most-lgbtq-experience-discrimination-in-housing/>.

¹³ National Center for Transgender Equality, *The Report of the 2015 U.S. Trans Survey*, 13 (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹⁴ Samantha Friedman et al., *An Estimate of Housing Discrimination Against Same Sex Couples*, DEP'T HOUS. & URB. DEV'T, 20 (2013), <http://perma.cc/5KXM-T6YZ>.

¹⁵ Diane K. Levy et al., *A Paired-Testing Pilot Study of Housing Discrimination Against Same-Sex Couples and Transgender Individuals*, URB. INST. (2017), <https://www.urban.org/research/publication/paired-testing-pilot-study-housing-discrimination-against-same-sex-couples-and-transgender-individuals>.

¹⁶ J. Shahar Dillbary and Griffin Edwards, *An Empirical Analysis of Sexual Orientation Discrimination*, 86 U. CHI. L. REV. 1, 4–5 (2019), https://lawreview.uchicago.edu/sites/default/files/01_Dillbary_ART_Post-SA%28KT%29.pdf.

¹⁷ Daniel Soucy, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters*, *National Alliance to End Homelessness*, 1 (2026), https://endhomelessness.org/wp-content/uploads/2026/05/US-Trans-Survey-Brief-V4_Working-File.pdf.

and losing their support systems, and remain at high risk of homelessness because of housing and employment discrimination.¹⁸ A survey of 92,000 transgender people in 2022 found that 58% of those attempting to access shelter had been turned away due to gender, and 22% were assigned to accommodations that did not match their gender.¹⁹ Twenty-seven percent left shelters because of poor treatment.²⁰ The survey also found that 97% reported verbal harassment or sexual or physical assault while homeless, including when accessing shelter.²¹ Due to this mistreatment, it is no wonder that over one quarter of transgender people experiencing homelessness avoid shelter altogether.²² Clearly, discrimination against transgender people in shelters remains a serious problem and there is a need to strengthen the 2016 EAR protections, not weaken or dismantle them.

The safety of shelter is of particular concern to survivors of domestic violence who are transgender. Transgender individuals, in particular those of color, are at higher risk of experiencing domestic violence and violent crime.²³ The lack of access to secure shelters is a significant issue facing survivors, especially transgender survivors.²⁴ Lack of access to safe shelter options results in domestic violence survivors staying in dangerous housing arrangements with their abusers, or living unsheltered on the street or in other places not fit for habitation, because they have nowhere else to go.

Shelter was not safe for transgender people before the EAR. The result of rescission of the rule will be that shelter is once again unsafe, and therefore more transgender individuals will experience unsheltered homelessness.

III. HUD has presented insufficient justification for changing course and rescinding the 2012 EAR or its 2016 amendments.

Now, HUD proposes a rule that exceeds its proposed 2020 rollback by not only removing discrimination protections across HUD programs, but also *mandating* that CPD-funded shelters discriminate against transgender people (“shelter discrimination mandate”).²⁵ HUD has

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 4.

²⁰ *Id.*

²¹ *Id.* at 4.

²² National Center for Transgender Equality, *The Report of the 2015 U.S. Trans Survey*, 13 (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

²³ Sarah Peitzmeier, et al., *Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates*, 110 AM. J. PUBLIC HEALTH e1, e1-e2 (Sept. 2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7427218/>; Andrew Flores et al., *Gender Identity Disparities in Criminal, Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017-2018*, 111 AM. J. PUBLIC HEALTH, 726, 727 (Apr. 2021), <https://pubmed.ncbi.nlm.nih.gov/33600251/>.

²⁴ See Rishita Apsani, *Are Women’s Spaces Transgender Spaces? Single-Sex Domestic Violence Shelters, Transgender Inclusion, and the Equal Protection Clause*, 106 CAL. L.R. 1689, 1705 n.86 (2018) <https://lawcat.berkeley.edu/record/1128589?ln=en&v=pdf>; National Network to End Domestic Violence, *20th Annual Domestic Violence Counts Report*, 4, 11 (2026), <https://nnedv.org/wp-content/uploads/2026/03/20th-Annual-DV-Counts-Report-Full-Report-FINAL.pdf> (on a single day in 2025, 2,402 adult domestic violence survivors were turned away from emergency shelters nationwide because of lack of resources despite the fact that “[a]ccess to safe place to stay is often a survivor’s most immediate need.”)

²⁵ See proposed changes to 24 C.F.R. § 5.106; 91 Fed. Reg. at 22,784.

provided no reasoned justification for its departure from the positions it took in its 2012 and 2016 rulemaking. In some cases, it provides no justification at all.

a. Trump’s “Gender Ideology” executive order does not provide legal authority for rulemaking.

HUD’s first justification for the proposed changes is Executive Order 14168, titled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” which specifically directed HUD to rescind the 2016 EAR and to amend agency regulations to substitute the word “sex” for “gender” or “gender identity.”²⁶ But an executive order does not provide rulemaking authority, and “the Constitution does not permit the President to seize for himself the ‘law-making power of Congress’ by issuing an order that, ‘like a statute, authorizes a government official to promulgate . . . rules and regulations.’”²⁷ Therefore, the Executive Order cannot function as the rulemaking authority for HUD.

b. HUD had authority to issue the EAR in 2012 and to amend it in 2016.

Second, HUD argues that it now believes the 2016 rulemaking exceeded its statutory authority.²⁸ For the 2012 and 2016 EAR rulemaking, HUD cited its general rulemaking authority granted by the Department of Housing and Urban Development Act. HUD properly used its plenary authority to “make such rules and regulations as may be necessary to carry out [its] functions, powers, and duties.”²⁹ Indeed, the 2012 EAR and 2016 amendments were in furtherance of HUD’s mission to provide a “suitable living environment for every American family”³⁰ and to “ensure that every resident of the United States has access to decent shelter or assistance in avoiding homelessness.”³¹ These Congressionally-mandated commitments extend to all Americans, not just those who are cisgender and heterosexual. In 2012 and 2016, HUD also properly cited its specific rulemaking authority under the statutes that establish the various HUD programs it oversees.³²

²⁶ 91 Fed. Reg. at 22,782.

²⁷ *Marin Audubon Soc’y v. Fed. Aviation Admin.*, 121 F.4th 902, 908 (D.C. Cir. 2024) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588, 72 S.Ct. 863, 96 L.Ed. 1153 (1952)).

²⁸ 91 Fed. Reg. at 22,781.

²⁹ 77 Fed. Reg. at 5672-5673; 81 Fed. Reg. at 64,769-64,770 (both citing 42 U.S.C. § 3535(d)).

³⁰ 42 U.S.C. § 1441; 12 U.S.C. § 1701t; 42 U.S.C. § 12701; 42 U.S.C. § 5301(c).

³¹ 42 U.S.C. § 12702.

³² 77 Fed. Reg. at 5673; 81 Fed. Reg. at 64,769 (both citing 42 U.S.C. § 3531 (HUD was established “to provide for full and appropriate consideration, at the national level, of the needs and interests of the Nation’s communities and of the people who live and work in them.”); 42 U.S.C. § 1441 (citing “the goal of a decent home and a suitable living environment for every American family”); 12 U.S.C. § 1701t (reaffirming same goal); 42 U.S.C. § 12701-702 (“[t]he objective of national housing policy shall be to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American”); 42 U.S.C. § 5301 note (“The purpose of this Act, therefore, is—(1) to reaffirm the principle that decent and affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require the addition of new housing units to remedy a serious shortage of housing for all Americans.”))

In addition, HUD has rulemaking authority under the federal Fair Housing Amendments Act (“FHAA”) to promulgate regulations that prohibit discrimination in HUD programs.³³ As described in Section IV(d)(i), *infra*, discrimination on the basis of sexual orientation or gender identity is a form of discrimination based on sex, and therefore protected by the FHAA.³⁴ Contrary to HUD’s assertion that the 2016 EAR could not have been promulgated under the authority of the FHAA,³⁵ courts have ruled that in many instances temporary shelters are covered by the FHAA.³⁶

HUD had rulemaking authority in 2012 and 2016, and continues to have rulemaking authority today, to promulgate protections for LGBTQ+ families in HUD programs, including CPD-funded shelters.

c. HUD’s concern about the religious freedom of faith-based shelters is unfounded, and is already addressed by existing remedies.

Third, HUD justifies the rule’s shelter discrimination mandate by explaining that the 2012 and 2016 EARs interfere with the right of faith-based homeless shelters and providers to “conduct their ministries in ways that are consistent with [their] fundamental belief” that “sex is an immutable characteristic.”³⁷ HUD cites one faith-based homeless shelter in Alaska that sued the local government of Anchorage over the city’s anti-discrimination ordinance.³⁸ It is not clear if this shelter receives any federal funding from HUD,³⁹ or if any HUD-funded shelter has ever voiced this issue. Indeed, HUD rules already protect religious organizations from discrimination in HUD programs and activities,⁴⁰ and the Secretary may waive rules for “good cause.”⁴¹ HUD noted in the preamble to its 2020 proposed rule that shelters can seek waivers from the 2016 Rule under the Religious Freedom Restoration Act.⁴² But when the Center for American Progress submitted a Freedom of Information Act request to HUD to gain information regarding the number of religious waivers requested due to the Equal Access Rule, the Agency was unable

³³ HUD’s rulemaking authority under the Fair Housing Act can be found at 42 U.S.C. §§ 3608(a) and 3614a.

³⁴ *Bostock v. Clayton Cnty.*, Georgia, 590 U.S. 644, 662, 140 S. Ct. 1731, 1743, 207 L. Ed. 2d 218 (2020). Courts frequently apply Title VII jurisprudence to Title VIII, which contains identical language regarding discrimination “because of” sex. *Gamble v. City of Escondido*, 104 F.3d 300, 304 (9th Cir. 1997); *Larkin v. Michigan Dep’t of Social Servs.*, 89 F.3d 285, 289 (6th Cir.1996).

³⁵ 91 Fed. Reg. at 22,781 (incorrectly stating, without citation, that the Fair Housing Act “does not apply to emergency shelters.”)

³⁶ Renee Williams, *Shelters and the Definition of “Dwelling” Under the Fair Housing Act*, 43 HOUS. L. BULL. 225, 230-233 (Nov. Dec. 2013), available at <https://www.nhlp.org/wp-content/uploads/Shelters-and-the-Definition-of-Dwelling-43-Hous.-L.-Bull.-225-230-31-Nov-Dec-2013.pdf> (collecting and analyzing cases); see also Hunter on behalf of A.H. v. D.C., 64 F. Supp. 3d 158, 175 (D.D.C. 2014); *Defiore v. City Rescue Mission of New Castle*, 995 F. Supp. 2d 413, 419 (W.D. Pa. 2013); *Step By Step, Inc. v. City of Ogdensburg*, 176 F. Supp. 3d 112, 126 (N.D.N.Y. 2016).

³⁷ 91 Fed. Reg. at 22,781.

³⁸ *Id.*

³⁹ The fact that the shelter sued the local government, and not HUD, suggests it was subject only to the local anti-discrimination ordinance and not the 2016 EAR. See *The Downtown Soup Kitchen d/b/a Downtown Hope Center v. Municipality of Anchorage, et al*, 3:18-cv-00190-SLG (Filed 08/16/2018), available at <https://storage.courtlistener.com/recap/gov.uscourts.akd.60575/gov.uscourts.akd.60575.1.0.pdf>.

⁴⁰ 24 C.F.R. § 5.109.

⁴¹ 24 C.F.R. § 5.110.

⁴² 85 Fed. Reg. at 44,814.

to provide evidence of any instance where a waiver was requested from a service provider.⁴³ And HUD has failed to respond to a more recent request.⁴⁴

HUD also does not explain why it issued a mandatory rather than discretionary rule if the issue is a small number of faith-based shelters' religious objections. Nor does it explain why the existing remedy of waiver is not adequate to protect the interests of faith-based entities. This justification lacks merit.

d. HUD's stated concern about the safety of cisgender women in shelter is based on harmful stereotypes and controverted by evidence from the field.

Finally, HUD suggests, without evidence, that transgender women present a threat to the safety and privacy of cisgender women in shelters. HUD posits, outrageously and without a shred of evidence, that "biological men may exploit the process of self-identification under the current rule to gain access to women's shelters."⁴⁵ HUD cites the United Kingdom's recent decision to stop housing transgender women with cisgender women in prisons and presents a response to a question from Parliament by the United Kingdom's Minister for Prisons stating that "62 percent of males identifying as females in UK prisons had committed at least one sexual offense."⁴⁶ The statement contains no underlying data or detail regarding what crimes are included.⁴⁷ Nor does HUD explain how conviction rates in prison populations in the UK have any relevance or application to populations of unhoused or unstably housed individuals seeking shelter in the United States.

HUD's proposal also *conflates* data from real trauma experienced by homeless women with an unsupported and discriminatory fear of transgender individuals – and then uses this conflation to jump to conclusions about the need for changes to existing regulations. The agency cites a 2006 paper for the premise that "[h]omeless women are at increased risk of sexual assault by biological males compared to other women."⁴⁸ However, the cited research paper, published a decade before shelters were required to accept and accommodate transgender women by the 2016 EAR, does not mention "biological males" (or even "males") at all.⁴⁹ Nor does it include any research or conclusions about transgender women.

⁴³ Center for American Progress, *The Dire Consequences of the Trump Administration's Attack on Transgender People's Access to Shelters* (July 31, 2019), <https://www.americanprogress.org/issues/lgbtq-rights/news/2019/07/31/472988/dire-consequences-trump-administrations-attack-transgender-peoples-access-shelters/>.

⁴⁴ HUD has failed to respond to an National Alliance to End Homelessness FOIA request (No. 25-FI-HQ-02481) received on May 2, 2025 seeking information on requested exemptions from the Equal Access Rule from faith-based and other HUD-funded organizations.

⁴⁵ 91 Fed. Reg. at 22,781.

⁴⁶ *Id.*; Sir Nicholas Dakin, Minister for Prisons, Written Answer to Question 20298, Prisoners: Transgender People (Dec. 23, 2024), <https://questions-statements.parliament.uk/written-questions/detail/2024-12-16/20298>.

⁴⁷ Importantly, transgender women are disproportionately targeted and profiled by law enforcement for "offenses tied to suspicions of prostitution" which may be considered sex offenses in some jurisdictions. See Leonore F. Carpenter and R. Barrett Marshall, *Walking While Trans: Profiling of Transgender Women by Law Enforcement, and the Problem of Proof*, 24 WM. & MARY J. WOMEN & L. 5, 6 (2017), <https://scholarship.law.wm.edu/wmjowl/vol24/iss1/3>.

⁴⁸ 91 Fed. Reg. at 22,781.

⁴⁹ Lisa Goodman, Katya Fels, and Catherine Glenn, *No Safe Place: Sexual Assault in the Lives of Homeless Women*, APPLIED RESEARCH FORUM (Sept. 2006), https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SAHomelessness.pdf.

In fact, HUD presents no data showing that cisgender women experience assault by transgender women in shelters or anywhere else. HUD admitted in 2020 when it proposed a similar rule that “HUD *is not aware of data* suggesting that transgender individuals pose an inherent risk to biological women”⁵⁰ Nor does HUD cite any statistical evidence or studies that show that there is widespread distrust of transgender or gender non-conforming individuals by shelter residents. In fact, there is evidence to suggest that concerns about safety and privacy reflect more fear than reality. Researchers at the Williams Institute at UCLA Law School published a study indicating that the passage of gender identity non-discrimination laws covering places such as public restrooms or locker rooms “is not related to the number or frequency of criminal incidents in such public spaces.”⁵¹ The study also states in its conclusion that “the results show that reports of privacy and safety violations in public restrooms, locker rooms, and changing rooms were exceedingly rare and much lower than statewide rates of reporting violent crimes more generally,” and that the study “provides evidence that fears of increased safety and privacy violations as a result of nondiscrimination laws are *not empirically grounded*.”⁵²

HUD’s stance regarding the safety of survivors of domestic and sexual violence is also at direct odds with the National Taskforce to End Domestic and Sexual Violence’s July 2020 statement which notes, “The continued false messaging that invokes fear for women’s safety as justification for discrimination against transgender individuals is unacceptable and harmful. We resoundingly reject it.”⁵³ The Taskforce calls upon HUD to maintain the Equal Access Rule, adding, “We cannot allow practices of inclusivity, developed by the [domestic violence/sexual assault] field and mandated by VAWA and the Equal Access Rule, to be eroded by discriminatory regulations, nor have violence against women used as a reason for replacing inclusive policies with discriminatory ones.”⁵⁴ In 2024, the Taskforce released a National Statement in Support of Full and Equal Access for the Transgender Community from Anti-Sexual Assault and Domestic Violence Organizations signed by over 160 anti-sexual assault and domestic violence organizations opposing policies that discriminate against transgender people, and stating unequivocally that “Claims that allowing transgender people to access sex-separated spaces aligning with their gender identity threatens the safety or privacy of women and girls are false.”⁵⁵ Thus, HUD’s justification based on the alleged threat posed by transgender women is based solely on damaging stereotypes that lack any evidentiary foundation.

Not only is there no evidence that transgender people present a risk of violence to others, but in reality it is transgender individuals themselves who experience high rates of assault. The proposed rule does not adequately consider the documented violence faced by transgender individuals within and outside of shelters. Multiple studies show that transgender individuals

⁵⁰ 85 Fed. Reg. at 44,815 (proposed July 24, 2020) (emphasis added).

⁵¹ Amira Hasenbush et al., *Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms, Sexuality Research and Social Policy*, 80 (Jul. 23, 2018), <https://escholarship.org/uc/item/4rs4n6h0>.

⁵² *Id.* (emphasis added).

⁵³ National Taskforce to End Sexual and Domestic Violence, *Statement on Housing and Urban Development (HUD) Rollback on Equal Access Rule Protections* (Jul. 2, 2020), <http://www.4vawa.org/ntf-action-alerts-and-news/2020/7/2/wa1koo9jrmb2jeuruffjfp9j5y6q6p>.

⁵⁴ *Id.*

⁵⁵ Letter from the National Task Force to End Sexual & Domestic Violence, *National Statement in Support of Full and Equal Access for the Transgender Community from Anti-Sexual Assault and Domestic Violence Organizations 1* (Oct. 30, 2024), <https://endsexualviolence.org/wp-content/uploads/2025/09/NTF-Statement-in-Support-of-Transgender-Community-Anti-SV-and-DV-Orgs.pdf>.

experience high rates of sexual assault.⁵⁶ According to a 2011 report, 22% of transgender persons have reported being sexually assaulted by a resident or staff person at a shelter.⁵⁷ And a 2022 survey confirmed that 97% of transgender people surveyed had experienced verbal harassment, or sexual assault, or physical attack while homeless.⁵⁸ All of the available evidence shows that transgender people are *at risk of* harassment and assault in shelters, not that they present any risk to others.

Moreover, HUD's 2016 Rule, specifically 24 C.F.R. § 5.106(c)(2), addressed privacy concerns by stating that CPD-funded shelters 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 [equal access requirements]." Though the current proposed rule does not address this provision of the 2016 rule, the 2020 proposed rule stated summarily that such post-admission accommodations had "proven unworkable" without providing clear examples of where such accommodations have been attempted and failed. Where HUD-funded shelters are experiencing difficulties in implementing particular regulations, the response should be the provision of targeted technical assistance from HUD regarding best practices – not rolling back nondiscrimination regulations intended to broaden access to critical shelter. HUD's vague and unsupported assertion of privacy concerns, without evidence that the current regulatory provisions addressing such concerns are insufficient, does not justify the proposed sea change.

e. HUD offers no explanation for the removal of protections based on gender, gender identity, and sexual orientation outside of the shelter context.

HUD focuses most of its explanation on the rollback of 2016 protections for transgender people seeking CPD-funded shelter, and entirely fails to explain why it is reversing course when it comes to general protections for LGBTQ+ families. HUD removes all references to "gender" in HUD regulations, including protections against discrimination based on gender, because the agency "believes it is beneficial . . . to clarify that many of its existing regulations which protect 'gender' (as opposed to 'gender identity') prohibit discrimination based on sex, not gender identity."⁵⁹ But HUD does not explain anywhere why, or to whom, this change is beneficial.

HUD also removes all references to "gender identity" in HUD regulations, including protections against discrimination based on gender identity, explaining only that the removal is "in accordance with the [Executive] Order."⁶⁰ But as previously discussed, in the absence of other authority, EO 14168 does not provide legal justification for HUD's proposed change.

⁵⁶ Janice Du Mont et al., *Toward Affirming Care: An Initial Evaluation of a Sexual Violence Treatment Network's Capacity for Addressing the Needs of Trans Sexual Assault Survivors*, J. INTERPERS. VIOLENCE NP12438 (Dec. 2, 2019), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8581708/>.

⁵⁷ Jaime Grant et al., *Injustice at Every Turn, A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality, 4 (2011) https://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf.

⁵⁸ Daniel Soucy, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters*, National Alliance to End Homelessness, 4 (2026), https://endhomelessness.org/wp-content/uploads/2026/05/US-Trans-Survey-Brief-V4_Working-File.pdf.

⁵⁹ 91 Fed. Reg. at 22,782.

⁶⁰ *Id.*

Finally, HUD offers no explanation for why it is removing protections from discrimination based on sexual orientation across HUD programs other than to state in a footnote that the change is to “avoid the confusion of prohibiting discrimination based both on ‘sex’ and ‘sexual orientation,’ since the latter is often considered a subset of the former.”⁶¹ It is unclear how sexual orientation, which HUD currently defines as “one’s emotional or physical attraction to the same and/or opposite sex,”⁶² is a subset of sex, which HUD proposes to define in terms of the presence of certain reproductive physiology.⁶³ Since, by its own definition, sex and sexual orientation are wholly distinct categories, it is unclear why the inclusion of both terms would be confusing. HUD offers no examples of confusion that has been or might be caused by the presence of protections against discrimination based on sex and sexual orientation. HUD also does not suggest that protecting gay, lesbian, and bisexual people, and same-sex couples from discrimination in HUD housing, has been harmful, burdensome, or otherwise not beneficial. So the reason for this proposed change is completely unclear.

In sum, HUD offers no cogent explanation for its removal of the terms “gender,” “gender identity,” and “sexual orientation,” and associated protections, from HUD regulations. NHP cannot have a meaningful opportunity to comment on changes that are unexplained by the agency.

f. Discriminatory animus is insufficient to justify a regulatory sea-change with wide-ranging harmful impacts.

In the absence of reasoned justification, the policy change seems to be primarily motivated by the Trump administration’s demonstrated animus toward transgender people.⁶⁴ Indeed, the removal of protections for transgender Americans seems to come straight out of the playbook of Project 2025, which directed the incoming Trump administration to direct agencies to “delete[] the terms sexual orientation and gender identity (“SOGI”) . . . out of every federal rule”⁶⁵ and describing, without evidence, the purveyors of “transgender ideology” as “child predators and misogynistic exploiters of women.”⁶⁶ Animus toward transgender people is an insufficient, and impermissible justification for HUD’s decision to reverse course on the Equal Access Rule.

⁶¹ See 91 Fed. Reg. at 22,782, fn. 22.

⁶² 24 C.F.R. § 5.100.

⁶³ 91 Fed. Reg. at 22,784.

⁶⁴ See *Talbott v. United States*, 176 F.4th 720, 734 (D.C. Cir. June 1, 2026) (describing how President Trump’s executive orders and Secretary of Defense Hegseth’s subsequent policy banning transgender individuals from serving “labeled transgender persons as dishonorable, undisciplined, arrogant, selfish liars.”); *Orr v. Trump*, No. 1:25-CV-10313-JEK, 2025 WL 1145271, at *13 (D. Mass. Apr. 18, 2025) (describing how Executive Order 14168, titled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” “is candid in its rejection of the identity of an entire group—transgender Americans—who have always existed and have long been recognized in, among other fields, law and the medical profession” and “imposes a ‘broad and undifferentiated disability’ on a discrete group of people” by declaring that it is the policy of the United States that there are only two sexes) (preliminary injunction vacated by agreement of both parties as described in *Orr v. Trump*, No. 25-1579, 2026 WL 1642666 (1st Cir. June 5, 2026)).

⁶⁵ The Heritage Foundation, *Mandate for Leadership: The Conservative Promise*, 4-5, <https://www.documentcloud.org/documents/24088042-project-2025s-mandate-for-leadership-the-conservative-promise/>.

⁶⁶ *Id.* at 5.

IV. The proposed rule exceeds HUD’s statutory authority and conflicts with existing federal law and the Constitution.

a. The EAR Revision conflicts with Congress’s mandate to make federally funded housing and accommodations available to all.

Congress has repeatedly affirmed the national goal of providing decent, safe, and affordable housing and shelter for *all* Americans, not just heterosexual and cisgender ones. Specifically:

- The United States Housing Act of 1937 which established the public housing and Section 8 programs declared that “our Nation should promote the goal of **providing decent and affordable housing for all citizens** through the efforts and encouragement of Federal, State, and local governments, and by the independent and collective actions of private citizens, organizations, and the private sector.”⁶⁷
- The Housing Act of 1949 which expanded public housing and FHA mortgage insurance, and created rural housing programs, established the national housing goal of “a decent home and a **suitable living environment for every American family**.”⁶⁸
- The Department of Housing and Urban Development Act of 1968, which established HUD, states that the agency was established “to provide for full and appropriate consideration, at the national level, of the **needs and interests of the Nation’s communities and of the people who live and work in them**.”⁶⁹
- The Housing and Community Development Act of 1974, which among other things established the Community Development Block Grant program, states “[t]he purpose of this Act, therefore, is—(1) to reaffirm the principle that **decent and affordable shelter is a basic necessity**, and the general welfare of the Nation and the health and living standards of its people require the addition of new housing units to remedy a serious shortage of housing for all Americans.”⁷⁰
- The McKinney-Vento Homeless Assistance Act of 1987, which established among other things the Continuum of Care program, found that “the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families” and that “the Federal Government has a clear responsibility and an existing capacity to fulfill a more effective and responsible role to meet the basic human needs and to **engender respect for the human dignity of the homeless**.”⁷¹
- The Cranston-Gonzales National Affordable Housing Act of 1990, which among other things established the HOME program, reiterated “[t]he objective of national housing policy shall be to reaffirm the long-established national commitment to **decent, safe, and sanitary housing for every American . . .**”⁷²

⁶⁷ 42 U.S.C. 1437(a)(4) (emphasis added).

⁶⁸ 42 U.S.C. §§ 1441; 1441a (reaffirmed in the National Housing Act at 12 U.S.C. § 1701t).

⁶⁹ 42 U.S.C. § 3531.

⁷⁰ 42 U.S.C. § 5301 note.

⁷¹ 42 U.S.C. § 11301(a).

⁷² 42 U.S.C. § 12701-702.

HUD’s proposed rule, which allows federally assisted housing providers to deny access to housing or otherwise discriminate against gay and transgender people, directly conflicts with Congress’s goals in creating HUD and its funded programs.

b. The proposed rule violates the authorizing statutes for various HUD CPD programs.

In its proposed changes to 24 C.F.R. § 5.106, HUD threatens to withdraw funding from CPD-funded shelters and other homeless services providers that do not comply with its mandate to discriminate against transgender people seeking services, even if doing so conflicts with state or local law. This provision exceeds HUD’s statutory authority and runs counter to the authorizing statutes for certain impacted CPD programs.

i. Community Development Block Grant Program

Many jurisdictions use CDBG funds to pay for development and operation of shelters and other facilities that serve unhoused populations. Congress expressly provided that HUD can only terminate, reduce, or limit payments to a recipient “after reasonable notice and opportunity for hearing” where the recipient “has failed to comply substantially *with any provision of this chapter . . .*”⁷³ Thus Congress was clear that CDBG funds can only be revoked or withheld for noncompliance with the *statutory requirements of the program*. Congress explicitly did not permit HUD to revoke funds due to noncompliance with new regulatory requirements that have no statutory basis. Here, the proposed requirements in § 5.106 have no basis in statute.

On the contrary, the CDBG authorizing statute expressly prohibits discrimination “on the ground of . . . sex”.⁷⁴ As discussed further in § IV(d)(i), *infra*, the U.S. Supreme Court has held that discrimination against an individual because they are gay or transgender is discrimination, at least in part, “because of sex” in violation of Title VII.⁷⁵ “On the ground of sex” is indistinguishable from “because of sex,” and therefore the *Bostock* analysis applies to the CDBG statutory anti-discrimination provision. As such, HUD’s proposed requirement that certain CDBG recipients make admissions and accommodation decisions in a manner that excludes and discriminates against transgender people is discrimination “on the ground of sex” in violation of the CDBG authorizing statute. The proposed § 5.106 exceeds HUD’s statutory authority and is contrary to law as applied to the CDBG program.

ii. Emergency Solutions Grant Program

The Emergency Solutions Grant (“ESG”) program is another common source of funding for emergency shelters that will be subject to the shelter discrimination mandate under the proposed changes to 24 C.F.R. § 5.106. Requiring that these facilities discriminate against transgender applicants by excluding them or denying them access to facilities that match their gender identity directly violates statutory program requirements. To be eligible for ESG funding, a jurisdiction must submit a “housing affordability strategy” to HUD that includes, among other

⁷³ 42 U.S.C. § 5311(a) (emphasis added).

⁷⁴ 42 U.S.C. § 5309(a).

⁷⁵ *Bostock*, 590 U.S. at 644.

things, a certification that the jurisdiction will affirmatively further fair housing.⁷⁶ As described in § IV(d)(ii), *infra*, the shelter discrimination mandate is incompatible with the obligation to affirmatively further fair housing under the Fair Housing Amendments Act.

The housing affordability strategy must also include a description of the “special needs of various categories of persons who are homeless or threatened with homelessness,” and “identify any obstacles to addressing underserved needs.”⁷⁷ Jurisdictions cannot comply with these requirements unless they consider and address the unmet needs of transgender unhoused people, who experience homelessness at disproportionately high rates. The shelter discrimination mandate in the proposed rule runs counter to this Congressional mandate.

c. The proposed rule violates the Cranston-Gonzalez National Affordable Housing Act.

The proposed new language in § 5.106(e) have the effect of penalizing homeless service providers in jurisdictions with state or local anti-discrimination protections. If these providers comply with state or local law, they will be deemed noncompliant by HUD and risk losing their CPD-funding. But the Cranston-Gonzalez National Affordable Housing Act prohibits this, stating in a section titled “Protection of State and Local Authority”:

. . . the Secretary shall not establish any criteria for allocating or denying funds made available under programs administered by the Secretary based on the adoption, continuation, or discontinuation by a jurisdiction of any public policy, regulation, or law that is (1) adopted, continued, or discontinued in accordance with the jurisdiction's duly established authority, and (2) not in violation of any Federal law.

42 U.S.C. §12711. Thus, defunding facilities that violate HUD’s proposed shelter discrimination mandate in order to comply with state or local anti-discrimination laws clearly violates the will of Congress.⁷⁸

d. The proposed rule violates the authorizing statutes for the Section 202 and 811 programs.

Certain group homes for seniors and people with disabilities funded under Section 202 of the Housing Act of 1959 (“Section 202”) and Section 811 of the National Affordable Housing Act of 1990 (“Section 811”) are permitted to have shared sleeping and bathroom facilities, which could be sex-segregated at some facilities.⁷⁹ To the extent that the proposed rule and its new definition of “sex” compels such group home facilities to discriminate against transgender seniors and people with disabilities by excluding them, assigning them to facilities that do not

⁷⁶ 42 U.S.C. §§ 11361; 12705(b)(15).

⁷⁷ 42 U.S.C. §§ 11361; 12705(b)(2); (8).

⁷⁸ *See* *Martin Luther King, Jr. Cnty. v. Turner*, 798 F. Supp. 3d 1224, 1250 (W.D. Wash. 2025) (finding that HUD’s attempt to condition HUD funds on aligning local policies with the Administration’s political agenda was impermissible).

⁷⁹ *See* 24 C.F.R. § 891.310(a) (permitting two residents to share a bedroom, and up to four residents to share a bathroom).

match their gender identity, or conducting invasive inquiries into their “sex,” it violates the authorizing statutes for these programs.

Both the authorizing statute for Section 811, 42 U.S.C. § 8013, and the authorizing statute for Section 202, 12 U.S.C. § 1701q, require that assistance made available under that program be administered in conformity with “[f]ederal, State, and local laws prohibiting discrimination and promoting equal opportunity.”⁸⁰ As described in the next section, excluding or otherwise discriminating against transgender applicants and participants likely violates the Fair Housing Amendments Act, which applies to group homes.⁸¹ In addition, as described in § V(c) of this comment, many state and local laws prohibit discrimination in housing based on gender identity. Compliance with the proposed regulation would therefore require noncompliance with federal, state, or local civil rights laws, in violation of the authorizing statutes.

e. The proposed rule violates the Fair Housing Amendments Act.

i. *Bostock v. Clayton County, GA*

The proposed changes to the Equal Access Rule violate the Fair Housing Amendments Act’s (“FHAA”) prohibition on making a dwelling unavailable “because of . . . sex.”⁸² The HUD rental housing and homeownership programs covered by the 2012 Equal Access Rule are indisputably covered by the FHAA. And many CPD-funded shelters and other facilities covered by the 2016 amendments also meet the definition of “dwelling” under the law, and are therefore subject to its anti-discrimination mandate.⁸³ In *Bostock v. Clayton Cnty., Georgia*, the U.S. Supreme Court held that discrimination against an individual because they are gay or transgender is discrimination, at least in part, “because of sex” in violation of Title VII.⁸⁴ Courts frequently apply Title VII jurisprudence to Title VIII, which contains identical language regarding discrimination “because of” sex.⁸⁵ Accordingly, courts have begun to apply *Bostock* to cases under the FHAA.⁸⁶ Because the proposed rule requires that CPD-funded facilities exclude or

⁸⁰ 42 U.S.C. § 8013(j)(2); 12 U.S.C. § 1701q(j)(2).

⁸¹ See *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 115 S. Ct. 1776, 1777, 131 L. Ed. 2d 801 (1995).

⁸² 42 U.S.C. § 3604(a).

⁸³ *Hunter on behalf of A.H. v. D.C.*, 64 F. Supp. 3d 158, 173–74 (D.D.C. 2014) (finding that various D.C. shelters for unhoused individuals qualified as dwellings and were therefore subject to the FHAA, collecting cases, and citing HUD’s definition of “dwelling unit” under 24 C.F.R. 100.201).

⁸⁴ 590 U.S. at 644.

⁸⁵ *Gamble v. City of Escondido*, 104 F.3d 300, 304 (9th Cir. 1997); *Larkin v. Michigan Dep’t of Social Servs.*, 89 F.3d 285, 289 (6th Cir.1996).

⁸⁶ See *Walsh v. Friendship Vill. of S. Cnty.*, No. 19-1395, 2020 WL 5361010, at *1 (8th Cir. July 2, 2020) (where lesbian couple sued senior living community claiming discrimination on the basis of sex, and district court ruled in favor of landlord claiming sexual orientation was not protected under the FHAA, Court of Appeals vacated and remanded on the basis of *Bostock*; case then settled); *Larocque v. Spring Green Corp.*, No. 22-CV-00249-MSM-PAS, 2024 WL 4198607, at *4 (D.R.I. Sept. 16, 2024) (finding “*Bostock*’s reasoning about Title VII compels the same result for the FHA” but granting summary judgment for the landlord on other grounds); *Petricca v. Saxony Condo. Ass’n, Inc.*, No. 23-CV-81581, 2024 WL 5683535, at *2 (S.D. Fla. Sept. 25, 2024) (assuming “[f]or purposes of this statute, the term “sex” includes sexual orientation” based on *Bostock*, but nonetheless dismissing claim on other grounds); *Petricca v. Saxony Condo. Ass’n, Inc.*, No. 23-CV-81581, 2024 WL 3345516, at *2 n.2 (S.D. Fla. Apr. 15, 2024), *report and recommendation adopted*, No. 23-81581-CIV, 2024 WL 3338808 (S.D. Fla. July 8, 2024) (same); *Birdo v. Duluky*, No. 20-CV-1108 (SRN/HB), 2020 WL 5549115, at *3 (D. Minn. Aug. 27,

otherwise discriminate against transgender people, a court is likely to find that the rule violates the FHAA based on the Supreme Court’s analysis in *Bostock*.

ii. HUD’s duty to affirmatively further fair housing

In addition, since the passage of the 1968 Fair Housing Act, HUD has had a statutory obligation to “administer the programs and activities relating to housing and urban development in a manner” that affirmatively furthers fair housing.⁸⁷ Accordingly, HUD has a statutory duty to promote the policies of the Fair Housing Act in its administration of its programs, including CPD programs. The AFFH obligation has been described as requiring “something more of HUD than simply to refrain from discriminating itself or purposely aiding the discrimination of others.”⁸⁸ Rather, HUD must “use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.”⁸⁹ While these quotes are speaking of residential segregation in the context of race, the statutory text does not limit the AFFH duty to the protections in the FHAA that address racial discrimination. Sex is a protected class that is also included in the FHAA, and discrimination on the basis of gender identity constitutes sex discrimination.⁹⁰ This proposed regulation would permit HUD-funded shelters to discriminate on the basis of gender identity, resulting in the perpetuation of sex discrimination against transgender and gender non-conforming individuals. HUD’s proposal is inconsistent with the agency’s statutory obligation to affirmatively further fair housing and should therefore be withdrawn.⁹¹

f. The Proposed Rule Violates the Violence Against Women Act (“VAWA”).

The Violence Against Women Reauthorization Act of 2022 (VAWA) provides protections for survivors of domestic violence, dating violence, sexual assault, and stalking who seek to access or maintain federally-assisted housing.⁹² VAWA covers HUD subsidized housing, shelters and other facilities.⁹³

2020), *report and recommendation adopted*, No. 20-CV-1108 (SRN/HB), 2020 WL 5545271 (D. Minn. Sept. 16, 2020) (assuming without deciding that sexual orientation discrimination is covered under the FHAA based on *Bostock*); *Levy v. Lawrence Gardens Apartments Del, LLC*, No. 21CV1415FBSJB, 2023 WL 2667045, at *5 n.1 (E.D.N.Y. Mar. 28, 2023) (applying *Bostock* but finding the alleged conduct did not rise to the level of illegal harassment based on sexual orientation under the FHAA); *Kummerow v. Ohawcha.org*, No. 21-CV-635-WMC, 2022 WL 873599, at *4 (W.D. Wis. Mar. 24, 2022) (noting that “plaintiff identifies as LGBT, which the court will presume falls within the FHA’s sex discrimination provisions” citing *Bostock*, but ruling against Plaintiff on other grounds).

⁸⁷ 42 U.S.C. § 3608(e)(5).

⁸⁸ *N.A.A.C.P. v. HUD*, 817 F.2d 149, 154 (1st Cir. 1987).

⁸⁹ *Id.* at 155.

⁹⁰ *See e.g.*, *Bostock*, 590 U.S. at 644; *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act*, 81 Fed. Reg. 63,054, 63,058 (Sept. 14, 2016) (“HUD agrees with the commenters’ view that the Fair Housing Act’s prohibition on sex discrimination prohibits discrimination because of gender identity.”) (referencing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989)).

⁹¹ HUD’s Interim Final Rule Affirmatively Furthering Fair Housing Revisions, published March 3, 2025 at 90 Fed. Reg. 11020, does not impact HUD’s obligations under a federal statute. Courts are no longer required to defer to HUD’s interpretation of federal statutory language. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

⁹² Consolidated Appropriations Act of 2022, Pub. L. 117-103, 136 Stat. 49 (March 15, 2022), codified at 34 U.S.C. § 12491, et seq.

⁹³ 34 U.S.C. § 12491(a)(3).

In addition to enforcing VAWA's broad protections for survivors, the Department of Justice's Office on Violence Against Women ("OVW") administers grants to organizations, local government entities, and tribes to fund supportive services for survivors. Shelters and services for survivors who are unhoused may, in some cases, receive OVW funding. Since 2013, VAWA has included a statutory provision prohibiting discrimination by grantees on the basis of gender identity or sexual orientation.⁹⁴

The proposed EAR Revision runs afoul of VAWA in two respects. First, the EAR Revision proposes to change the VAWA rule promulgated to implement Congress's antidiscrimination requirements. Currently, the regulation, which has not yet been revised to reflect changes made in 2022, clarifies that "[n]otwithstanding the title of the statute, protections are not limited to women but cover victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation."⁹⁵ However, the proposed revision would remove gender identity and sexual orientation from the list of examples of protected classes of survivors. As applied to CPD-funded shelters and facilities that receive OVW funding, the proposed change runs directly counter to statutory language prohibiting VAWA grantees from discriminating on these bases.

Second, the EAR Revision's shelter discrimination mandate violates VAWA as applied to CPD-funded shelters that also receive OVW funds. While VAWA expressly protects individuals from discrimination based on sexual orientation and gender identity, it contains an exception stating that a covered program or activity may consider an individual's "sex" in the case of "sex segregation or sex-specific programming . . . necessary to the essential operation of the program."⁹⁶ However, permitting consideration of sex is a far cry from mandating discrimination based on transgender status. In VAWA, Congress did not authorize HUD to require that shelters exclude transgender survivors from services and accommodations. Moreover, in legislating the aforementioned exception, Congress also required that individuals who are denied access to sex segregated facilities or sex-specific programming must be provided with "comparable services" in order for the grantee to maintain compliance with VAWA's nondiscrimination mandate.⁹⁷ The EAR Revision contains no such language.

Notably, prior to the EAR being finalized in 2016, the Department of Justice issued an FAQ in 2014 that provides additional guidance on how VAWA grantees can operate sex-specific or sex-segregated programming without engaging in prohibited discrimination. The 2014 FAQ is consistent with the 2016 EAR in that program beneficiaries should be assigned consistent with their gender identity, with considerations made for that individual beneficiary's health and safety.⁹⁸ The DOJ FAQ also cautions that grantees should not "ask questions about the beneficiary's anatomy or medical history or make burdensome demands for identity documents."⁹⁹

To the extent that the EAR Revision requires discrimination against survivors in OVW-funded shelters based on their actual or perceived sexual orientation or gender identity, it violates VAWA.

⁹⁴ 34 U.S.C. § 12291(b)(13)(A).

⁹⁵ 24 C.F.R. § 5.2001(a).

⁹⁶ 34 U.S.C. § 12291(b)(13)(B).

⁹⁷ *Id.*

⁹⁸ U.S. Department of Justice, Frequently Asked Questions, Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013, at Question 14 (Apr. 9, 2014), <https://www.justice.gov/archive/ovw/docs/faqs-ngc-vawa.pdf>.

⁹⁹ *Id.*

g. The Proposed Rule Violates the Equal Protection clause of the United States Constitution.

To date, the Supreme Court has avoided the question of whether its analysis in *Bostock* applies to the Equal Protection Clause to the Fifth Amendment of the United States Constitution, thus requiring that classifications based on sexual orientation and gender identity receive intermediate scrutiny because they are a type of discrimination based on sex.¹⁰⁰ But whether the proposed rule is analyzed under intermediate scrutiny or rational basis review, it fails. This is because where an amendment “seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests.”¹⁰¹

Less than a month ago, the District of Columbia Circuit held that the Trump Administration’s proposal to exclude transgender people from the military was not rationally related to any legitimate government interest because it “appears to be driven by the bare desire to harm a politically unpopular group”¹⁰² The new military policy was based on President Trump’s Executive Order 14168, which “denounce[ed] transgender people and the whole concept of transgender identity as inconsistent with ‘biological truth’” and accused transgender people of therefore “perpetrat[ing] a lie.”¹⁰³ In turn, Secretary of Defense Hegseth, without any evidentiary basis, moved to exclude transgender people from the military for failure to meet standards of “honesty” and “integrity.”¹⁰⁴ Under these circumstances, the court concluded that the military policy was based on a “non-legitimate state interest to harm the politically unpopular group of transgender persons” in violation of the Equal Protection Clause.¹⁰⁵

Based on the same Executive Order, HUD now proposes to exclude transgender people from CPD-funded shelters and facilities based on the outrageous and baseless accusation that transgender women are dishonest pretenders intent on taking advantage of cisgender women.¹⁰⁶ Here, like in the case of the military ban, HUD “has not attempted to defend or provide any factual basis for these disparaging characterizations of American citizens.”¹⁰⁷ HUD’s policy is motivated by animus toward transgender people and therefore fails even rational basis review.

¹⁰⁰ *United States v. Skrametti*, 605 U.S. 495, 498, 145 S. Ct. 1816, 1820, 222 L. Ed. 2d 136 (2025) (declining to address whether *Bostock*’s reasoning reaches beyond the Title VII context).

¹⁰¹ *Romer v. Evans*, 517 U.S. 620, 632, 116 S. Ct. 1620, 1627, 134 L. Ed. 2d 855 (1996); *see also* *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 447, 105 S. Ct. 3249, 3258, 87 L. Ed. 2d 313 (1985) (finding a town’s denial of permits for housing that served persons with mental health disabilities was unconstitutional, as that denial arose out of a generalized fear and animus expressed by local residents, and a bare desire to harm a politically unpopular group is not a legitimate state interest).

¹⁰² *Talbott*, 176 F.4th at 726 .

¹⁰³ *Id.* at 734.

¹⁰⁴ *Id.* at 735.

¹⁰⁵ *Id.* at 746.

¹⁰⁶ 91 Fed. Reg. at 22,781.

¹⁰⁷ *Talbott*, 176 F.4th at 726.

V. The Proposed Rule Will Create Widespread harm and costs for individuals and communities.

a. The proposed rule will harm LGBTQ+ families, especially unhoused transgender people.

i. Unhoused people seeking CPD-funded shelter or services

HUD openly acknowledges that “this rulemaking would result in denying individuals who claim a different gender identity than their sex being denied access to their preferred single-sex shelters or their preferred accommodations in other shelters.”¹⁰⁸ By using the term “preferred,” the rule suggests that a transgender person’s desire to be housed in accommodations that match their gender is a mere “preference,” rather than something that is necessary for their physical safety and mental health. Research shows that misgendering causes transgender people to experience stigma and psychological distress.¹⁰⁹ HUD does not account for these impacts.

In addition, assigning a transgender person to a facility that does not match their gender puts the person at risk of harassment and physical harm. More than a quarter of unhoused transgender people already avoid shelter because of experiences of mistreatment.¹¹⁰ These experiences include verbal harassment, and assault.¹¹¹ HUD also does not acknowledge the physical safety risk posed to transgender people by the proposed rule.

Nor does HUD acknowledge or address the humiliation, violation of personal dignity and privacy, and trauma that people seeking shelter will experience if shelter providers are required to “verify” their HUD-defined sex. This will impact not only transgender people, but also cisgender people who may not conform to physical gender stereotypes in the opinion of the shelter-provider.

If enacted, the proposed rule will only aggravate and increase the psychological distress, mistreatment, and physical violence experienced by transgender and gender non-conforming people attempting to access shelter. This, in turn, will cause even more people to avoid shelter, resulting in an increase in unsheltered homelessness. Black and indigenous transgender people will be disproportionately impacted because they have an even higher chance of experiencing

¹⁰⁸ 91 Fed. Reg. at 22,782.

¹⁰⁹ Kevin A. McLemore, *A minority stress perspective on transgender individuals’ experiences with misgendering*, *Stigma and Health*, 53, 57-58 (2018), <https://psycnet.apa.org/doiLanding?doi=10.1037%2Fsah0000070>; Hamish A. Gunn et al, *The Experience of Misgendering Among Transgender and Gender Diverse People*, *American Journal of Orthopsychiatry*, 11 (2025), <https://doi.org/10.1037/ort0000879>.

¹¹⁰ National Center for Transgender Equality, *The Report of the 2015 U.S. Trans Survey*, 13 (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹¹¹ Daniel Soucy, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters*, *National Alliance to End Homelessness*, 4 (2026), https://endhomelessness.org/wp-content/uploads/2026/05/US-Trans-Survey-Brief-V4_Working-File.pdf. Assuming relative compliance with the 2016 EAR among CPD-funded facilities, the 2022 data likely represents experiences in non-CPD funded facilities that are not subject to the EAR, and preview the poor treatment and exclusion trans people will experience should the proposed rule be finalized.

homelessness at 39% and 50% of respondents, respectively.¹¹² The health impacts of unsheltered homelessness are well documented: 60% of unsheltered transgender people experience trimorbidities (co-occurring physical, mental, and substance use disorders), compared to only 3% of sheltered transgender people.¹¹³

In its 2020 attempt to roll back the 2016 EAR, the prior Trump administration at least acknowledged that transgender individuals experience poverty, housing instability, mental health issues, domestic violence, and homelessness at high rates” and that “shelter access for transgender persons is critical.”¹¹⁴ But in the current proposed rule, HUD fails to acknowledge the need for shelter access for transgender people, or explain its departure from its prior position that such access is important. HUD’s failure to acknowledge that transgender people need and deserve safe shelter, and will experience harm if assigned to shelter facilities that do not match their gender, only underscores the harmful false premises upon which the proposed rule is based.

ii. Seniors and people with disabilities residing in housing funded by Section 202 or 811

Section 202 of the Housing Act of 1959 (“Section 202”) and Section 811 of the National Affordable Housing Act of 1990 (“Section 811”) were designed to provide safe, secure, affordable housing to low-income seniors and people with disabilities, respectively. Certain group homes funded under Sections 202 and 811 have shared sleeping and bathroom facilities.¹¹⁵ To the extent that these shared sleeping and bathroom facilities are sex-segregated, HUD’s proposed new definition of “sex” will result in exclusion, harassment, and invasive questioning of transgender applicants and residents. This is because providers will no longer be able to rely on a person’s self-identified gender when making decisions about admissions and accommodation. Instead, providers will be required to use HUD’s new definition of “sex,” and make decisions based on an individual’s reproductive physiology. To determine a person’s reproductive physiology, a provider may need to review medical documents and/or conduct a physical inspection of the person’s anatomy. Such a process would be invasive, humiliating, and traumatic for the applicant or resident. And the result would be outright denial of admission, or assignment to a facility that does not match their gender identity and is therefore unsafe or uncomfortable for them.

Many seniors and people with disabilities will choose to forgo living in group homes altogether rather than subjecting themselves to violation of privacy and unsafe accommodations. This will increase homelessness among transgender seniors and people with disabilities, who are even more vulnerable than others to the health risks of homelessness.

¹¹² Daniel Soucy, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters*, National Alliance to End Homelessness, 5 (2026), https://endhomelessness.org/wp-content/uploads/2026/05/US-Trans-Survey-Brief-V4_Working-File.pdf.

¹¹³ National Alliance to End Homelessness, *Transgender Adults & Unsheltered Homelessness: What the Data Tell Us* (Jul. 24, 2020), <https://endhomelessness.org/resources/research-and-analysis/transgender-homeless-adults-unsheltered-homelessness-what-the-data-tell-us/>.

¹¹⁴ 85 Fed. Reg. at 44,815.

¹¹⁵ See 24 C.F.R. § 891.310(a) (permitting two residents to share a bedroom, and up to four residents to share a bathroom).

iii. Applicants and participants to other HUD programs

The proposed rule's removal of protections for LGBTQ+ people will also have broad impacts across HUD programs outside of the CPD context. The proposed rule removes the language in 24 C.F.R. § 5.105 that expressly protects residents in HUD-subsidized and insured housing from discrimination based on gender identity and sexual orientation. It also removes the language in 24 C.F.R. § 5.403 that protects LGBTQ+ families from discrimination based on gender identity or sexual orientation. The proposed rule even removes protections for LGBTQ+ individuals seeking to buy a home, obtain a low-cost mortgage, or secure a reverse mortgage.¹¹⁶ These changes could create confusion about people's rights, reduce families' avenues for asserting their rights, and signal that discrimination is permissible or will be tolerated. The following are examples of potential implications:

- A PHA or HUD-assisted owner could refuse to allow a transgender, lesbian, gay, or bisexual person to rent an apartment or receive a housing voucher;
- A PHA or owner could refuse to allow a same-sex couple to live together in a one-bedroom unit;
- A PHA or owner that permits children of different genders to have separate bedrooms could now mandate that a transgender boy share a room with a cisgender girl, meaning the family would have to move to a smaller unit; similarly, the PHA or owner could refuse to allow a transgender girl to share a room with a cisgender girl, which would force the family to find a larger unit which is difficult in many markets;¹¹⁷
- A PHA or owner could require an applicant to provide proof of identity that conflicts with their gender identity before approving an application for assistance;
- A PHA or owner could justify its refusal to use the correct name or pronouns when referring to a program participant;
- A PHA or owner could evict a family after learning that a family member is transgender or gay; or
- An FHA lender could discriminate against a same-sex couple or transgender individual applying for a mortgage, or an LGBTQ+ senior applying for a reverse mortgage.

Thus the harmful impacts of the proposed rule go far beyond unhoused transgender people, but impact all HUD program participants and their families. HUD does not acknowledge any of these impacts outside of the CPD programs, or explain why the impacts are justified.

b. The proposed rule will create an unworkable burden on all HUD housing providers.

The proposed rule adds to the compliance burdens HUD housing providers already face by requiring that they verify that an applicant or participant's gender identity matches their "sex"

¹¹⁶ See proposed changes to C.F.R. part 200, 203, and 206.

¹¹⁷ Though under NSPIRE PHAs and owners are no longer required to enforce a separate bedroom policy for children of different genders, many PHAs and owners still maintain such policies. See Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE), 88 Fed. Reg. 30,442, 30,444 (May 11, 2023).

as defined by HUD. HUD offers no guidance for how providers are supposed to do this. While the burden may be most acute for CPD-funded shelter providers who will need to verify an individual's "sex" before admission and accommodation in order to avoid risks to their HUD funding, the verification burden will impact all HUD housing providers. This is because all HUD housing providers must report accurate information to HUD about assisted households, including the "sex" of all household members.

For example, HUD requires that public housing authorities keep records for at least three years of all Housing Choice Voucher Program applicants and participants, including their income, race, ethnicity, gender, and disability status.¹¹⁸ HUD proposes to replace the word "gender" with "sex," which HUD defines in terms of reproductive physiology. Whereas the PHA could previously rely on the applicant or tenant's self-identified gender, the PHA will now presumably be obligated to keep records of each applicant and participant's "sex" as defined by HUD.

But how will PHA staff determine what reproductive physiology a particular applicant or participant has? A PHA may not be able to rely on a person's birth certificate, state-issued ID, or other identity documents, because in many states people can legally change the gender marker on their birth certificate and other identity documents. Will the PHA need to do an extensive medical record review for each applicant or participant in order to comply with the new regulation? In the alternative, will PHA staff need to conduct a strip search or medical procedure to determine an applicant or participant's reproductive physiology? And how will staff determine whose "sex" needs to be verified? Are there particular physical qualities that put an individual's "sex" in doubt? If an applicant or participant who identifies as a woman is particularly tall, has a deep voice, wears her hair short, or does not conform with gender stereotypes in her dress or presentation, does that trigger further review? Some conditions, like hirsutism, which can cause women to grow facial hair, may be caused by medical diagnoses that meet the definition of disability under the Americans with Disabilities Amendments Act, FHAA, or Section 504 of the Rehabilitation Act of 1973. How will providers verify "sex" in these cases without running afoul of the laws that protect people with disabilities from discrimination, differential treatment, or invasive medical inquiries? Who will train PHA staff on how to fill this new role of gender police?

Not only is such a verification procedure difficult to imagine because it is deeply inhumane, outrageous, and questionable in its legality, but it places an enormous burden on PHAs and other HUD housing providers with no guidance or training. Each time HUD proposes to change "gender" to "sex" in regulations related to documentation, recordkeeping, or reporting, providers will be forced to verify "sex" in accordance with HUD's definition. It would also open up PHAs and their agents to potential liability for abusive or inappropriate behavior, in addition to potential liability for violation of civil rights laws.

And these concerns extend beyond just the regulations undergoing proposed amendment. HUD forms also require that a PHA or owner list each assisted household member's "sex" at each recertification.¹¹⁹ "Sex" is currently undefined in HUD regulations, leaving PHAs to rely on identity documents and tenant self-identification. Now, housing providers will be required to grapple with the new definition of "sex" and how to verify the "sex" of household members each time they recertify. This is an impossible task.

¹¹⁸ 24 C.F.R. § 982.158(f)(1).

¹¹⁹ See, e.g. form HUD-50058 (Family Report for public housing, housing choice voucher, and Section 8 Moderate Rehabilitation).

The proposed rule will also result in certain assisted households being overhoused or underhoused, which would create great logistical and administrative burden for providers. For example, if a PHA or owner’s policy is to provide children of different genders separate bedrooms after the age of 5, a family of three with an adult caregiver, a 10-year-old cisgender daughter and a 12-year-old transgender daughter would be housed in a 2-bedroom apartment. If the proposed rule goes into effect, the family would now have to move to a 3 bedroom because the PHA must rely on HUD's definition of “sex.” The opposite could also occur. For example, for a family of three with an adult caregiver, a 10-year-old cisgender daughter and a 12-year-old transgender son that is currently housed in a 3-bedroom apartment. If the proposed rule goes into effect, the family would be required to move to a 2 bedroom.¹²⁰ HUD provides no guidance as to how to handle these changes or even acknowledge the administrative burden they will cause.

c. The proposed rule conflicts with state and local laws and will create confusion in the field.

State fair housing statutes expressly cover sexual orientation, gender identity, or both, in 26 states or territories, including the District of Columbia. Regulators in eight other states have interpreted their state fair housing statutes to prevent discrimination based on sexual orientation or gender identity in some circumstances. In addition, tenants and/or unhoused LGBTQ+ people seeking shelter may be protected from discrimination by local law.

The proposed changes to 24 C.F.R. § 5.106, concerning the obligations of CPD-funded shelters and homeless services providers, state that, “non-compliance with these regulations by state and local entities due to conflicting local laws or policies may be considered a violation of federal requirements, subject to appropriate enforcement actions, including but not limited to withholding or revocation of federal funds” This provision puts CPD-funded facilities in jurisdictions with protections in an untenable position- in order to preserve their federal funding they will be required to violate state or local law. This, in turn, could result in loss of desperately needed state or local funding. This will create massive confusion in the field, as shelter and homeless services providers navigate compliance with new federal rules and state and local protections.

The EAR Revision is internally inconsistent as to its intent to preempt state or local law. Though it does not explicitly add the word “preemption” to 24 C.F.R. § 5.106, in its preamble it explains that the intent of § 5.106(e) is to preempt conflicting state and local law.¹²¹ Confusingly, HUD then states that it has no consultation obligations under Executive Order 13132 because the rule “would not have federalism implications and would not . . . preempt state law”¹²² Executive Order 13132 requires that agencies restrict preemption of state law “to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated” and requires that the agency consult with state and local officials.¹²³ Thus the EAR Revision is internally inconsistent as to whether HUD’s intent is to preempt state law, and if so, the proposed rule may violate the requirements in Executive Order 13132. Even if HUD did

¹²⁰ Though under NSPIRE PHAs and owners are no longer required to enforce a separate bedroom policy for children of different genders, many PHAs and owners still maintain such policies.

¹²¹ 91 Fed. Reg. 22,780 (“these requirements preempt any conflicting state or local laws”).

¹²² *Id.* at 22,782.

¹²³ Federalism, 64 Fed. Reg. 43,255, 43,257 (Aug. 10, 1999).

intend to preempt state and local law, Congress never granted HUD the authority to do so through rulemaking.¹²⁴

One example of the conflict between state law and this proposal can be illustrated by California, which released a fact sheet updated December, 2022 outlining how state fair housing and public accommodation laws protect individuals in shelters – including a statement that:

PROTECTIONS BASED ON SEXUAL ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION: It is unlawful to discriminate against or harass individuals in shelters based on their sexual orientation, gender identity, or gender expression. This includes individuals who identify as transgender and those who identify as non-binary. Shelters must determine your eligibility for housing regardless of your sexual orientation or gender identity. They must grant you and your family equal access to programs and facilities consistent with your gender identity. Shelters may not ask you for information about your anatomy (your body), or for physical or medical evidence of your gender identity. Shelters should take non-discriminatory steps to address the privacy and safety concerns of all residents.¹²⁵

By contrast, the proposed rule requires that CPD-funded shelters turn away individuals from accommodations that do not align with their “sex” as defined by HUD. As a practical matter, this requires discrimination against transgender individuals whose “sex” as defined by HUD does not align with their gender identity.

If the proposed rule is finalized, California shelter providers will be left struggling to reconcile these state protections with the new restrictive federal rule and its associated funding threats. This will cause confusion and uncertainty on the part of providers and individuals seeking shelter, and further contribute to homelessness for gender non-conforming and transgender individuals.

d. The proposed rule will increase unsheltered homelessness, which will create costs and other burdens for state and local governments.

A 2022 national survey of transgender individuals found that 27% of the respondents left shelters due to poor treatment.¹²⁶ If HUD enacts the proposed rule, causing transgender people to be turned away from shelter and subjected to harassment, abuse, and humiliating, invasive questioning, these individuals will simply choose to go unsheltered. This will result in an increase in individuals experiencing unsheltered homelessness and living on the street or in

¹²⁴ Drake v. Lab’y Corp. of Am. Holdings, 458 F.3d 48, 56 (2d Cir. 2006) (quoting Fidelity Fed. Sav. & Loan Ass’n v. de la Cuesta, 458 U.S. 141, 154, 102 S.Ct. 3014, 73 L.Ed.2d 664 (1982)) (“[W]hether federal regulations preempt state law depends on whether the agency that prescribed the regulations ‘meant to pre-empt [state] law, and, if so, whether that action is within the scope of the [agency’s] delegated authority.’”)

¹²⁵ California Civil Rights Department, *California Law Prohibits Discrimination and Harassment in Shelters*, https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/12/Discrimination-and-Harassment-in-Shelters_ENG.pdf.

¹²⁶ Daniel Soucy, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters*, National Alliance to End Homelessness, 1 (2026), https://endhomelessness.org/wp-content/uploads/2026/05/US-Trans-Survey-Brief-V4_Working-File.pdf.

abandoned buildings at a time when such behavior is being increasingly criminalized¹²⁷ in accordance with this administration's own directive.¹²⁸

Any increase in unsheltered homelessness comes at a high cost for individuals and communities. People experiencing unsheltered homelessness tend to remain homeless for six times longer than those experiencing homelessness in sheltered locations.¹²⁹ In addition, people living unsheltered are more likely to experience physical assault than those in shelter, with 35% of men and 40% of women reporting experiencing a violent attack while living unsheltered.¹³⁰ For these reasons and others, the costs associated with people enduring unsheltered homelessness is higher than those in shelters. These costs are associated with the criminal legal system (including enforcement of anti-homelessness ordinances), as well as healthcare and emergency care systems.¹³¹ Municipal and state governments also incur significant costs related to sanitation for encampments where people experiencing unsheltered homelessness often reside.¹³² For example, the California Department of Transportation spent nearly \$30 million between 2012 and 2017 on cleanup costs associated with encampments.¹³³

In sum, unsheltered homelessness is associated with higher costs for city and state governments. The EAR Revision will result in an increase in unsheltered homelessness among transgender individuals who can no longer access shelter. HUD fails to consider this impact in the proposed rule.

VI. HUD's definition of "sex" is not based in science and does not account for the existence of intersex people.

Modern science and medicine now recognize that the idea of a biological sex binary is complicated by the many variations in chromosomes, external genitalia, gonads, hormone production, hormone responsiveness, and internal reproductive organs present in individuals.¹³⁴ Intersex individuals, whose biology does not neatly fit into the categories of "male" or "female," make up between 0.02 and 2% of the U.S. population (depending on whether conditions that do not result in ambiguous external genitalia are included).¹³⁵ Because of the diversity of how sex presents biologically in humans, researchers in the fields of toxicology and neuroendocrinology

¹²⁷ As of April 1, 2026, more than 20 states had introduced laws that would criminalize unsheltered homelessness as part of a coordinated effort by groups like the Cicero Institute. Sam Hozian, *20+ states have introduced anti-homeless laws*, Housing Not Handcuffs (Apr. 1, 2026), <https://housingnohandcuffs.org/2026/04/01/hnh04012026/>. Hundreds of local bills have been passed criminalizing unsheltered homelessness in cities around the country since 2024. ACLU, *One Year Since Grants Pass: Tracking the Criminalization of Homelessness* (updated Feb. 4, 2026), <https://www.aclu.org/one-year-since-grants-pass-tracking-the-criminalization-of-homelessness>.

¹²⁸ Exec. Order No. 14321, 90 FR 35817, Ending Crime and Disorder on America's Streets (Jul. 24, 2025).

¹²⁹ Samantha Batko et al., *Unsheltered Homelessness*, Metropolitan Housing and Communities Policy Center, 21 (Dec. 2020), <https://www.urban.org/sites/default/files/publication/103301/unsheltered-homelessness.pdf>.

¹³⁰ *Id.* at 22.

¹³¹ *Id.* at 25.

¹³² *Id.* at 26.

¹³³ *Id.*

¹³⁴ Dillon E. King, *The Inclusion of Sex and Gender Beyond the Binary in Toxicology*, FRONT TOXICOL. 1 (Jul. 22, 2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9355551/>.

¹³⁵ *Id.* at 2; see also Anne Fausto-Sterling et al., *How Sexually Dimorphic Are We? Review and Synthesis*, American Journal of Human Biology, 151 (2000), <https://pubmed.ncbi.nlm.nih.gov/11534012/>.

have recently recommended moving away from treating biological sex as a binary.¹³⁶ The sex binary is “at a minimum, biologically inaccurate.”¹³⁷ HUD provides no explanation or citations to scientific or medical literature to support its definition of “sex” as an “immutable biological classification as either male or female,” and its definition of “female” and “male” as having a reproductive system with the biological function of producing eggs or sperm, respectively.¹³⁸

HUD also fails to explain how providers should treat individuals who do not neatly fall into its definitions of “female” or “male,” including intersex individuals. For example, how is a provider to treat an individual with Ovotesticular Disorder of Sex Development (DSD) who has elements of reproductive systems that produce both eggs and sperm? Or an individual with Congenital Adrenal Hyperplasia, who may have a reproductive system that produces eggs, but external genitalia that appear male? HUD ignores the reality of biological diversity when it comes to sex, and in doing so, increases the unreasonable burden on providers to assign a sex to applicants and participants without a medical license or background in human biology.

VII. HUD fails to consider reliance interests or consider alternatives to wholesale removal of protections for gay and transgender people in HUD housing.

HUD fails to consider the reliance interests HUD program participants, service providers, and local governments have in the existing protections. Since 2016, transgender people may have made choices based on the reliance on the promise of safe shelter. For example, a transgender person might have chosen to leave an abusive relationship, knowing it would render them homeless, in reliance on the ability to access safe shelter accommodations that match their gender identity. Service providers and state and local governments have also relied on the availability of shelter beds for transgender unhoused people. Service providers charged with connecting unhoused people with shelter and resources cannot do so if shelter beds are unavailable to transgender people. Shelters have invested resources in changing their policies and training their staff to comply with the 2016 EAR in reliance on that rule’s ongoing applicability. These facilities will have to completely overhaul their existing policies and practices and retrain staff to comply with the proposed changes. And local governments charged with clearing homeless encampments cannot do so without the ability to place transgender individuals in shelters.

HUD fails to consider alternatives to wholesale removal of protections based on sexual orientation and gender identity from HUD regulations. For example, if HUD is so concerned about discrimination against people based on their reproductive physiology, HUD could easily add the word “sex” to the list of protected characteristics rather than removing the others. For example 24 C.F.R. § 5.105(a)(2) could be changed to read,

¹³⁶ Linda Arrighi, *The Spectrum of Sex and Gender*, ARCH SEX BEHAV. 3785(Oct. 18, 2025), <https://pmc.ncbi.nlm.nih.gov/articles/PMC12753565/#CR29>, citing Dillon E. King, *The Inclusion of Sex and Gender Beyond the Binary in Toxicology*, FRONT TOXICOL. (Jul. 22, 2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9355551/>; Kristina O Smiley et al, *Sex diversity in the 21st century: concepts, frameworks, and approaches for the future of neuroendocrinology*, HORM BEHAV. (Nov. 17, 2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10842816/>.

¹³⁷ Linda Arrighi, *The Spectrum of Sex and Gender*, ARCH SEX BEHAV. 3785, 3786 (Oct. 18, 2025), <https://pmc.ncbi.nlm.nih.gov/articles/PMC12753565/#CR29>.

¹³⁸ 91 Fed. Reg. at 22,784.

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 **sex**, sexual orientation, gender identity, or marital status.

Similarly, in the definition of “family,” HUD could propose the following language in 24 C.F.R. §5.403 to ensure that people are protected from discrimination based on their reproductive physiology:

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

At least one of the amended regulations already include the word “sex” in a list of protected characteristics that also includes gender identity and sexual orientation.¹³⁹ HUD could simply add the word “sex” to other references to “actual or perceived sexual orientation, gender identity” to clarify that people are also protected from discrimination on the basis of their sex as defined by HUD.

As previously discussed, HUD also fails to consider alternatives to mandating that CPD-funded facilities with shared sleeping or bathroom arrangements discriminate against transgender applicants by assigning them to accommodations that do not match their gender identity. HUD could, alternatively, continue to *allow* shelters with religious objections to obtain a religious waiver or exception. Notwithstanding NHLP’s objection to such a discretionary policy, HUD is obligated to consider less harmful and burdensome alternatives. It has not.

* * *

The proposed rule is a cruel attack on LGBTQ+ families that rely on HUD-funded housing and shelter, based on unfounded stereotypes about, and animus toward, transgender people. If enacted, the rule will result in severe costs for individuals, housing providers, and state and local government entities. For the foregoing reasons, HUD should immediately withdraw the proposed rule, maintain the 2012 EAR and 2016 EAR amendments, and resume implementation of the 2016 Rule. Should you have questions about NHLP’s comments, please do not hesitate to contact us.

Sincerely,



Hannah Adams, Senior Attorney
Natalie N. Maxwell, Chief Legal Officer

¹³⁹ The proposed amendment to 24 C.F.R. § 206.37 results in the following redundancy: “The Financial Assessment shall be conducted in a uniform manner that shall not discriminate because of race, color, religion, **sex**, national origin, familial status, disability, marital status, **sex**, source of income of the borrower, location of the property, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act”