



June 29, 2026

Submitted via www.Regulations.gov.

Office of General Counsel, Rules Docket Clerk
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, D.C. 20410

Re: HUD Docket No. FR-6518-P-01, RIN 2501-AE12 Comments in Response to Proposed Rulemaking: Equal Access to Housing in HUD Programs Revisions

The National Homelessness Law Center (Law Center) submits this comment in response to the Department of Housing and Urban Development's (HUD) Notice of Proposed Rulemaking regarding Equal Access to Housing in HUD Programs Revisions.¹ The National Homelessness Law Center (the "Law Center") is a national legal 501(c)(3) organization dedicated to ending and preventing homelessness. The Law Center believes that the human rights to housing, food, and education lie at the heart of human dignity, and we envision a world where everyone's basic needs are met—regardless of race, gender identity, religion, or immigration status. No one should be going without these basic human needs in a country as wealthy as ours. The proposed rule directly contradicts these beliefs as it openly discriminates against people based on their gender identity and will discourage transgender homeless persons from seeking and obtaining the housing, shelter, and services they need.

The Law Center strongly opposes HUD's proposed changes to HUD's Equal Access Rule (EAR) because by facilitating—and in some cases requiring—discrimination against transgender people, the proposed rule released April 28, 2026 is contrary to HUD's mandate to serve the housing needs of all people without reference to gender identity, is not compelled by statute or supported by evidence, and does not justify the extraordinary costs it would impose. The proposed rule would impede access to shelter for all homeless persons by imposing vague and unrestricted sex-checks on individuals and families seeking shelter, producing the absurd result of HUD's homelessness programs increasing unsheltered homelessness and interfering with family unification at shelters. Shelter providers would also be burdened by being required to perform the sex-checks, imposing compliance costs on shelters and disrupting their reliance on the existing regulations which facilitate the provision of shelter based on gender identity. The proposal would thereby impose increased risks and harms on homeless transgender people as well as society at large through the steep costs of unsheltered homelessness, including hospitalizations and public health impacts. Additionally, while HUD generally may only promulgate rules to effectuate Congressional mandates, the rule is not supported by HUD's statutory authority, including the authority to serve the housing needs of all people which it utilized to promulgate the current regulations, and creates

¹ National Homelessness Law Center appreciates the assistance of Democracy Forward Foundation in the preparation of this comment. Equal Access to Housing in HUD Program Revisions, 91 Fed. Reg. 22779 (proposed Apr. 28, 2026) (to be codified at 24 C.F.R. pts. 5, 60, 92, 93, 200, 202, 203, 206, 221, 236, 266, 291, 570, 574, 578, 582, 583, 700, 850, 880, 882, 884, 886, 891, 960, 970, 982, 984, 1005, and 1006), <https://perma.cc/3LTJ-FB4Y>.

unnecessary conflicts with other federal laws. Finally, HUD’s own purported justifications for the rule do not support the costs of the major restructuring it proposes, particularly when it will create mass confusion by preempting state laws and when there are less disruptive alternatives that HUD does not consider.

In sum, the rule is unnecessary, discriminatory, contrary to congressional command, and is not supported by evidence. HUD should withdraw the proposed rule and meet with shelter providers, advocates, and individuals with lived experience of discrimination based on their transgender identity to better understand the issues.

I. Background

HUD’s current Equal Access Rule ensures that all core housing and homelessness programs funded by HUD are open to eligible individuals and families regardless of family composition or self-expressed gender identity. Today, HUD is proposing to remove references to “gender” and “gender identity” across nearly 50 agency regulations, replacing them with biological “sex.” This radical change would apply across HUD’s massive footprint, including Section 8 Housing Choice Vouchers, public housing developments, Continuum of Care, and Community Development Block Grants, among others. While this comment is centered on HUD’s proposed revisions to its homelessness programs specifically, the broader rule would allow discrimination against transgender people across its housing programs—programs that are intended to increase access to housing by reducing barriers to homeownership, making housing more affordable, and prohibiting discrimination in renting a home. By removing those protections, transgender people would be more likely to be discriminated against, resulting in less access to housing options, increasing the risk of losing their home and needing shelter services, further compounding the deep impact of removing equal access to homeless shelters.

a. Regulatory History of HUD’s Equal Access Rules

In 2011 HUD proposed and subsequently finalized a rule that guaranteed equal access to HUD’s rental housing and homeownership programs to all people regardless of sexual orientation or gender identity.² However, while the 2012 Final Rule broadly prohibited inquiries into an individual’s sexual orientation or gender identity in HUD programs, it provided a limited exception that permitted inquiries into an individual’s sex for determining placement in temporary emergency shelters with shared bathrooms or sleeping arrangements, including single-sex shelters and shelters segregated by sex.³ In doing so, HUD noted that while it was aware of the significant challenges transgender people faced in accessing shelters, HUD was not addressing the placement of transgender people in shelters at that time because it needed additional time to review the issue and determine if a national policy was appropriate—and, further, that it would issue guidance as

² Equal Access to Housing in HUD Programs—Regardless of Sexual Orientation or Gender Identity, 76 Fed. Reg. 4194 (proposed Jan. 24, 2011) (to be codified at 24 C.F.R. pts. 5, 200, 203, 236, 570, 574, and 982), <https://perma.cc/TZ37-D7L6>; Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662 (finalized Feb. 3, 2012) (codified at 24 C.F.R. pts. 5, 200, 203, 236, 400, 570, 574, 882, 891, and 982), <https://perma.cc/Q9S6-NBX5>.

³ 77 Fed. Reg. at 5674; *see also id.* at 5667–5669. The inquiry into sex was also relevant to the number of bedrooms a household may be entitled to under HUD programs.

necessary.⁴ HUD justified its rulemaking in part based on HUD’s mandate, stating in its own words that “HUD’s mission is to create strong, sustainable, inclusive communities and quality affordable homes for all.”⁵

HUD subsequently updated its 2012 iteration of the EAR by proposing in 2015 and finalizing in 2016 a second EAR, which further expanded its regulations to guarantee equal access for transgender people in emergency shelters by requiring access to be based on an individual’s gender identity.⁶ The rule included various provisions to ensure that access was granted based on the gender with which a person identifies regardless of sex assigned at birth or others’ perceived gender identity of the person, and, therefore, regardless of what appears on identity documents. These included defining “gender identity” and a provision requiring that shelters’ policies and procedures ensure that individuals are not subjected to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence of the individual’s gender identity.⁷ HUD again looked to Congress’s mandate, stating that “Congress has repeatedly charged HUD with serving the existing housing needs of all Americans.”⁸

Then in 2020, HUD proposed but never finalized a rule to repeal the 2016 Final Rule while leaving the 2012 Final Rule in place. That rule would have permitted but not required shelters to establish policies to accommodate people based on sex, thereby allowing transgender people to be excluded from shelters based on their sex.⁹ Even still, the rule explicitly noted it would permit shelters to continue to admit people based on gender identity if they wished to.¹⁰ It also would have required any inquiries into sex by shelters that did *not* wish to admit transgender people based on gender identity to not be unduly intrusive, barring shelters from requiring physical anatomical evidence, and would have allowed government identification to be requested but made clear that a lack of identification would not be a sufficient basis alone to deny admittance.¹¹

⁴ 77 Fed. Reg. at 5666, 5669. In 2015 HUD issued that guidance, explaining that it expected HUD grant recipients to make placement decisions based on the gender with which a person identifies, and not another person’s stereotype-based complaints, while also taking into consideration the safety and health concerns of all those involved. Off. of Cmty. Plan. & Dev., HUD, *Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities*, CPD-15-02 (Feb. 20, 2015), <https://perma.cc/E48W-4NPV>. Throughout this comment, the word “shelters” is used to refer to emergency shelters and other buildings and facilities used for shelter under the proposal.

⁵ 77 Fed. Reg. at 5672–73.

⁶ Equal Access in Accordance With An Individual’s Gender Identity in Community Planning and Development Programs, 80 Fed. Reg. 72642 (proposed Nov. 20, 2015) (to be codified at 24 C.F.R. pt. 5), <https://perma.cc/A84C-7NRK>; Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs, 81 Fed. Reg. 64763 (finalized Sept. 21, 2016) (codified at 24 C.F.R. pt. 5), <https://perma.cc/LEC9-ZAKJ>.

⁷ 81 Fed. Reg. at 64766, 64767, 64782.

⁸ *Id.* at 64769 & n.10 (citing section 2 of the Housing Act of 1949 (42 U.S.C. § 1441), section 2 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701t), sections 101 and 102 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§ 12701–702), and section 2(b) of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 note)).

⁹ Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs, 85 Fed. Reg. 44811 (proposed July 24, 2020) (to be codified at 24 C.F.R. pts. 5 and 576, but never finalized or codified), <https://perma.cc/UN89-8SBY>.

¹⁰ *Id.* at 44815.

¹¹ *Id.* at 44816, 44818.

b. HUD's Current Proposed Rule

HUD today takes an entirely different approach and one that is contrary to its mandate. It starts by proposing to rescind the 2012 Final Rule. It would remove “gender” and “gender identity” from across its regulations and replace them with “sex” as defined by HUD.¹² As HUD notes, this applies across its programs, touching Section 8 housing and other housing programs, fair housing enforcement and administration, mortgage programs, programs to help homeless persons and domestic violence survivors, and community development programs.¹³ If finalized, transgender people would no longer have equal access to housing programs, services, and protections. The rule then proposes to amend the regulations put in place by the 2016 Final Rule, altering them to mandate that shelters admit people solely based on the individual’s sex and to permit, without any clear restriction, shelters to require “reasonable assurances or evidence” of sex.¹⁴ Finally, the rule would expressly preempt any state and local law that conflicts with the rule by, for example, permitting or requiring transgender people to be admitted to shelters based on some standard other than HUD’s definition of sex.¹⁵

II. The Proposal Could Leave Thousands of Transgender People Without Meaningful Access to Shelter

If finalized, the proposed rule would prohibit shelters from admitting transgender people based on their gender identity and would prohibit cohabitated shelters from assigning accommodations similarly. This means that a homeless transgender woman seeking access to a women-only shelter would be barred from it and directed, instead, to a men’s shelter; and a transgender woman seeking to access the women’s facilities in a cohabitated shelter would be, instead, assigned to the men’s facilities. The proposal would therefore not permit transgender people to access a shelter that is aligned with their gender identity and that is safest for them.

HUD itself acknowledges this absurd result. It states that the proposal would result in “individuals who claim a different gender identity than their sex [as defined by HUD] being denied access to their preferred single-sex shelters or their preferred accommodations in other shelters.”¹⁶

HUD’s passing reference to the main effect of its proposal seeks to minimize the proposal’s impact on transgender people by suggesting the proposal would merely lead to the loss of a “preferred” option. HUD ignores, however, that forbidding transgender people to access the shelter that aligns with their gender identity will subject transgender people to a substantially greater risk of mistreatment, which would lead many to avoid shelters. This risk of mistreatment and ultimate avoidance of shelters would fall on people who are already disproportionately likely to experience homelessness. Thirty percent of transgender people report experiencing homelessness at some point in their lives and they are eight times more likely to have a recent experience of homelessness

¹² 91 Fed. Reg. at 22780.

¹³ *Id.*

¹⁴ *Id.* at 22784.

¹⁵ *Id.*

¹⁶ *Id.* at 22782.

than their straight, cisgender counterparts.¹⁷ Additionally, LBGTQI+ youth make up 40 percent of all homeless youth and 65 percent of all chronically homeless youth despite being less than 10 percent of the population, and are 120 percent more likely to experience homelessness than straight, cisgender individuals.¹⁸ Further, transgender individuals are disproportionately more likely to be unsheltered (living on the street or in places not meant for human habitation) than cisgender individuals.¹⁹ HUD's proposal would therefore leave thousands of transgender people without meaningful access to shelter and impose an extraordinary human cost on a group that HUD has otherwise recognized as particularly vulnerable and that is disparately impacted by homelessness.

Further, this rule does not exist in isolation from other harmful proposed policies of this administration, and the impacts detailed here would only be further compounded by the combined effect of those policies. For example, HUD has recently proposed expelling all families with mixed immigration status from publicly funded housing.²⁰ These families, by definition, will include both U.S. citizen and non-citizen transgender members, including children, who will not be able to access shelter facilities aligned with their gender identities and will likely go unsheltered as a result. Similarly, the proposed Public Charge rule will cause non-citizens to forego an expanded range of public benefits, potentially causing them and their families, which may include U.S. citizens and transgender members, to experience homelessness, and specifically unsheltered homelessness because they will be discriminated against at shelters.²¹ HUD is also seeking to force more people into homelessness with bureaucratic work requirements and term limits, which again will affect transgender individuals and their families who will then be more likely to experience unsheltered homelessness as a result.²² Further compounding this, HUD recently issued its Continuum of Care Notice of Funding Opportunity for homeless service providers, promoting faith-based service providers in applying and stating those organizations can apply for religious accommodations to any program requirements and "HUD will not deny the organization unless it determines that doing so is necessary to further a compelling governmental interest and is the least restrictive means of achieving that interest, consistent with applicable law."²³ This approach will likely promote further discriminatory behaviors from faith-based service providers toward transgender persons seeking services. And as explained further below, the administration is

¹⁷ See Kathryn K. O'Neill et al., *Homeless Shelter Access Among Transgender Adults*, Williams Inst., UCLA Sch. of L. (Nov. 2020), <https://perma.cc/BV5V-RTFL>; Bianca D.M. Wilson et al., *Homelessness Among LGBT Adults in the U.S.*, Williams Inst., UCLA Sch. of L. (2020), <https://perma.cc/59KF-9KPQ> (collecting statistics); Brodie Fraser et al., *LGBTIQ+ Homelessness: A Review of the Literature*, 16 Int'l J. of Env't Rsch. & Pub. Health 2677 (July 2019), <https://perma.cc/ACT3-8LCV>; Nat'l Network for Youth, *LGBTQ+ Youth Homelessness*, <https://perma.cc/BAH5-5A6B> (archived June 24, 2026).

¹⁸ Br. for Ctr. for Const. Rts. et al. as *Amici Curiae* Supporting Respondents 7, *City of Grants Pass v. Gloria Johnson*, No. 23-175 (U.S. Apr. 3, 2024), available at <https://perma.cc/432F-E6B4>.

¹⁹ Nat'l All. to End Homelessness & Homelessness Rsch. Inst., *Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tell Us* 1 (July 2020), <https://perma.cc/273N-WDUB>.

²⁰ Housing and Community Development Act of 1980: Verification of Eligible Status, 91 Fed. Reg. 8151 (proposed Feb. 20, 2026) (to be codified at 24 C.F.R. pt. 5), <https://perma.cc/CD8A-RJU4>.

²¹ Public Charge Ground of Inadmissibility, 90 Fed. Reg. 52168, 52186 (proposed Nov. 19, 2025) (to be codified at 8 C.F.R. pts. 103 and 212), <https://perma.cc/5M8E-5NCL>.

²² Establishing Flexibility for Implementation of Work Requirements and Term Limits, 91 Fed. Reg. 10016 (proposed Mar. 2, 2026) (to be codified at 24 C.F.R. pts. 5, 960, 982, and 983), <https://perma.cc/JPY2-3SDE>.

²³ HUD, *FY 2026 Continuum of Care Competition and Youth Homelessness Demonstration Program Grants NOFO*, No. CPD-2600-DC-0025, at 9–10 (June 1, 2026), <https://perma.cc/RUD8-XHJB>.

encouraging the criminalization of unsheltered homelessness, making the predictable result of this policy that transgender persons will end up in jails or prisons, where they will likely face even further discrimination, harassment, violence, and other harm.²⁴

a. By denying transgender people the ability to use the shelter aligned with their gender identity, HUD would subject transgender people to a range of harms

The practical effect of the proposed language is that transgender people would be forced to avoid shelters. In 2015, a year before HUD’s 2016 Final Rule provided transgender people with equal access to shelters, transgender people who were homeless because of their transgender status experienced high rates of mistreatment at shelters. Seventy percent of transgender people in shelters reported “at least one negative experience” due to being transgender, with 52 percent being verbally harassed, physically attacked, or sexually assaulted.²⁵ Nine percent were kicked out because of being transgender and another 44 percent decided to leave because of poor treatment or unsafe conditions despite not having another place to go.²⁶ Knowing this fate awaited them at shelters, 26 percent avoided shelters entirely because of fears of being mistreated as a transgender person.²⁷

Transgender people at the time stated: “When I go to shelters, I am admonished and told that I should return to ‘being a woman’ in order to use the shelter system” and, as a transgender man, “when I turned to the women’s shelters, I was too masculine to make the women comfortable.”²⁸ Organizations that work with homeless people know from experience that “rather than be subjected to these shelter conditions, many unhoused people will choose to live on the street or remain in an abusive home.”²⁹

According to HUD’s data, in 2024 there were nearly 8,000 homeless people either in shelters or unsheltered who identified as a gender other than simply a cisgender man or woman—with nearly 3,000 in shelters and nearly 5,000 unsheltered.³⁰ The survey data above shows that for transgender people who were homeless because of their transgender status in 2015, significant portions either left shelters due to poor treatment or unsafe conditions (44%), were thrown out once their

²⁴ See *infra* Sec. II.a.1.

²⁵ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey* 181–82, Nat’l Ctr. for Transgender Equal. (Dec. 2016), <https://perma.cc/D6TC-WD7E>.

²⁶ *Id.* at 176.

²⁷ *Id.*

²⁸ *Id.* at 179.

²⁹ Nat’l Hous. L. Project, *Equal Access to Housing in HUD Programs Revisions: Legal Analysis* 11 (May 26, 2026), <https://perma.cc/64QV-RS6P>. While the statistics from years prior to the 2016 Final Rule are particularly salient, a wealth of research shows the depth of mistreatment transgender people face while homeless. See, e.g., Fraser, *supra* note 17, § 3.4.3 (“... LGBTIQ+ people going into shelters are fearful due to the danger resulting from discrimination that they are likely to face When transgender and gender-diverse people are admitted into shelters and assigned placement based on their anatomic sex, they are vulnerable to aggression and sexual assault.”).

³⁰ See HUD, *HUD 2024 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations* 2 (Dec. 9, 2024), <https://perma.cc/X2YJ-JPKK>. This number includes those listed by HUD as: Culturally Specific Identity (e.g., Two-Spirit), Non-Binary, Transgender, Different Identity, and More Than One Gender. Those identified as “Questioning” were excluded from the estimate for the purposes of this comment. To be exact, for sheltered the count was 2,793, with 1,050 who specifically identified as transgender; for unsheltered the count was 4,995, with 1,060 who specifically identified as transgender.

transgender status was learned of (9%), or avoided shelters entirely out of fear of mistreatment due to being transgender (26%). In other words, even just rescinding the 2016 rule would likely mean that a significant percentage of the nearly 8,000 homeless people reported by HUD in 2024 as beyond the binary of being strictly cisgender men or women would again be forced to leave, choose to leave, or never seek shelter at all. However, the current proposal does not merely rescind the 2016 Final Rule but goes further to mandate discrimination against transgender people even in jurisdictions that would otherwise afford them protection. In so doing, the percentage of people unsheltered would naturally be driven higher.

The rule would also diminish shelter options for homeless transgender people who wish to either escape abusive family or remain with loving family, though HUD does not recognize either. The rule would reduce shelter options for transgender people who are survivors of domestic violence by seemingly forcing shelters to forgo HUD homelessness funding in order to operate single-sex domestic violence shelters that admit people based on their gender identity.³¹ This would be particularly harmful to transgender people, as they are 1.7 times more likely to experience intimate partner violence than cisgender people.³² Conversely, the rule seems to allow for the cruel result of family separations if families contain transgender people. HUD does not state it is doing so in the preamble, but in the regulatory revisions themselves HUD amends the equal access provisions for family in such a way as to seemingly only require family unification at a single-sex or sex-segregated shelter if that access conforms with the rule's new sex definition.³³ HUD's language seems to presume that family unification is only permissible if it can be done in accord with its sex-segregation requirement. This tends to suggest that a family comprised of a cisgender woman parent, a transgender woman parent, and a cisgender girl daughter would not be able to stay together in any shelter: the transgender woman would not be allowed at a women's shelter and the cisgender woman and cisgender girl would not be allowed at a men's shelter.

Additionally, the exclusion from a shelter or departure due to mistreatment is not easily remedied by finding another shelter. This is reflected in a survey of LGBTQ people that captured their difficulty in finding alternative shelter if they are refused access to a shelter that was nearest to them. Nearly two-thirds said it would be at least somewhat difficult, with 14 percent saying it would not be possible.³⁴ These figures went *up* for transgender people specifically, with over 20 percent saying it would not be possible.³⁵ Additionally, people in rural areas or small towns were more likely than those in metropolitan areas to state that they would have difficulty, with almost 30 percent saying finding an alternative would not be possible.³⁶ And the unsheltered rate in

³¹ Discussed in greater detail *infra* Secs. II.b.2.A. & III.b.1.

³² Sarah M. Peitzmeier et al., *Intimate Partner Violence in Transgender Populations: Systemic Review and Meta-analysis of Prevalence and Correlates*, 110 Am. J. Pub. Health, no. 9 (Sep. 2020), <https://perma.cc/QY3L-89JR>.

³³ Compare 91 Fed. Reg. at 22784 (proposed 24 C.F.R. § 5.106(b)(1)): "(1) Equal access to CPD programs, shelters, other buildings and facilities, benefits, services, and accommodations is provided to an individual in accordance with the individual's sex, and in a manner that affords equal access to the individual's family, provided that such equal access is subject to paragraph (c) of this section"), with 24 C.F.R. § 5.106(b)(1) ("Equal access to CPD programs, shelters, other buildings and facilities, benefits, services, and accommodations is provided to an individual in accordance with the individual's gender identity, and in a manner that affords equal access to the individual's family.").

³⁴ Sarah Kellman et al., *The Dire Consequences of the Trump Administration's Attack on Transgender People's Access to Shelters*, Ctr. for Am. Progress (July 31, 2019), <https://perma.cc/LX8Q-WDWB>.

³⁵ *Id.*

³⁶ *Id.*

suburban and rural regions that lack emergency transitional housing is often already elevated in the first place.³⁷

1. *The human costs of HUD's reduction in shelter access are staggering*

HUD's proposal would have deeply negative implications for transgender people, including increased harm in shelters, increased living in unsafe places, increased vulnerability to violence and exploitation, increased risk of criminalization, and, as noted above, reduced shelter options for survivors of domestic violence and possible family separations.

For those transgender people who were to decide to comply with HUD's policy and stay at a shelter not aligned with their gender identity, they would be at increased risk for verbal harassment, physical violence, and sexual assault. As noted above, in one survey 52 percent of transgender people reported having experienced harassment, violence, or sexual assault at shelters.³⁸ More granularly, almost half were verbally harassed for being transgender, nearly 20 percent were physically attacked, and 17 percent were sexually assaulted because they were transgender.³⁹ HUD is well aware of these concerns: HUD noted in the 2015 Proposed Rule that a participant in a listening session reported that "in her community, transgender women are excluded from the women's shelter, and conditions for them are so dangerous at the men's shelter that the shelter forces them to try to disguise their gender identity."⁴⁰

While these figures are not solely drawn from single-sex or cohabitated shelters not aligned with people's gender identity, the occurrences are likely to only be *higher* in facilities that restrict transgender people from living in alignment with their gender identity, as that has often been transgender people's experience both in shelters and in other contexts. A study of school restroom and locker room access for transgender and gender nonbinary youth found that when access was restricted to disallow use based on gender identity—as HUD proposes here—they experienced sexual assault at a *higher rate* than those permitted to use bathrooms aligned with their gender identity, ranging from 26 percent higher to 150 percent higher.⁴¹ By forcing transgender people into a shelter misaligned with their gender identity, HUD would be increasing these risks as compared to the status quo under the 2016 Final Rule.

³⁷ Daniel Soucy et al., *State of Homelessness: 2025 Edition*, Nat'l All. to End Homelessness (Sep. 4, 2025), <https://perma.cc/PW5A-WM5Z>.

³⁸ James, *supra* note 25, at 176.

³⁹ *Id.* at 182.

⁴⁰ 80 Fed. Reg. at 72644.

⁴¹ Gabriel R. Murchison et al., *School Restroom and Locker Room Restrictions and Sexual Assault Risk Among Transgender Youth*, 143 *Pediatrics*, no. 6, June 2019, <https://perma.cc/4F3L-C6G4>. This is also reflected in the context of prisons. In one US prison system, transgender women in men's prisons were found to be 13 times more likely to have experienced sexual assault than the prison population generally, with almost 60 percent of transgender women reporting being sexually assaulted in prison. Valeria Jenness, *The Social Ecology of Sexual Victimization Against Transgender Women Who Are Incarcerated: A Call for (More) Research on Modalities of Housing and Prison Violence*, 20 *Criminology & Pub. Pol'y* 3, 6 (2019), <https://tinyurl.com/t22y5esc>. This was reflected nationally as well, with transgender prisoners being over eight times more likely to experience sexual assault than non-transgender prisoners. *See id.* Prisons are, of course, not comparable to homeless shelters and homeless persons are not to be equated with prisoners; these statistics are only worth mentioning due to HUD's own somewhat dubious citation of the United Kingdom's decisions on how to segregate its prison population as somehow supporting its proposal. *See* 91 Fed. Reg. at 22781.

Between being excluded by the shelters themselves and being faced with the increased risk of harassment and violence at shelters not aligned with their gender identity, many transgender people would be left without shelter. With nowhere else to go, this would result in an increase in people living in places that are unsafe, exposed to the elements, or otherwise unfit for habitation. HUD is already well-aware of this, as it was reflected in feedback to HUD during its promulgation of the 2016 Final Rule, where it noted that at a listening session conducted with the U.S. Interagency Council on Homelessness, some commenters reported that “if given the choice between a shelter designated for assigned birth sex or sleeping on the streets, many transgender shelter-seekers would choose the streets.”⁴² This is particularly detrimental when people belonging to gender-expansive groups already have higher rates of unsheltered homelessness than cisgender people and declines in unsheltered homelessness amongst gender-expansive people is lower than that of cisgender people.⁴³

The harms of being denied shelter are myriad. As an initial matter, denial of access to the shelter aligned with their gender identity would likely negatively impact the psychological wellbeing of homeless transgender people and lead to increased risk of suicide. Discrimination, prejudice, and stigma have been shown to lead to higher rates of depression and anxiety as well as increased risk for physical health problems.⁴⁴ In the context of colleges, it has been found that denial of access to places in conformance with one’s gender identity increases the risk of suicide amongst transgender people.⁴⁵

Additionally, homeless transgender people experience vulnerability at higher rates when they are unsheltered.⁴⁶ Broadly, transgender people are over four times more likely than cisgender people to experience violent victimization, including rape, sexual assault, and physical assault.⁴⁷ And homeless transgender people are more likely than homeless cisgender people to experience physical or sexual violence.⁴⁸ Furthermore, homeless transgender people who are unsheltered are “considerably more ill” than sheltered transgender people.⁴⁹ The disparity between the two groups is stark: co-occurring physical, mental, and substance use disorders of 60 percent for unsheltered versus three percent for sheltered; chronic health issues of 38 percent versus 3 percent; and mental health issues of 50 percent versus 16 percent.⁵⁰

⁴² 81 Fed. Reg. at 64764.

⁴³ Daniel Soucy et al., *7 Takeaways from 2024 Point-in-Time Count Data on Homelessness*, Nat’l All. to End Homelessness (Jan. 7, 2025), <https://perma.cc/3JU7-NRKV>.

⁴⁴ Caitlin Rooney et al., *The Harms of Refusing Service to LGBTQ People and Other Marginalized Communities*, Ctr. for Am. Progress (Nov. 29, 2017), <https://perma.cc/7DUC-RSVY>.

⁴⁵ Kristie L. Seelman, *Transgender Adults’ Access to College Bathrooms and Housing and the Relationship to Suicidality*, Soc. Work Fac. Pubs., Paper 64 (2016), <https://perma.cc/8YH7-GRU9>.

⁴⁶ See generally Nat’l All. to End Homelessness & Homelessness Rsch. Inst., *supra* note 19, at 1.

⁴⁷ Press Release, Williams Inst., UCLA Sch. of L., *Transgender People Over Four Times More Likely Than Cisgender People to be Victims of Violent Crime* (Mar. 23, 2021), <https://perma.cc/GTY7-KAJS>; see also Andrew R. Flores et al., *Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017–2018*, § Abstract, 111 Am. J. Pub. Health 726 (Feb. 18, 2021), <https://perma.cc/QDS8-5R48>.

⁴⁸ Anita S. Hargrave et al., *Experience of Violence During Homelessness*, 184 JAMA Internal Med. 1474, Table 1 (Oct. 14, 2024), <https://tinyurl.com/5n7yh3w2> (45.8 percent for transgender men and women versus 37.5 and 38.5 percent for cisgender men and women).

⁴⁹ Nat’l All. to End Homelessness & Homelessness Rsch. Inst., *supra* note 19, at 2.

⁵⁰ *Id.*

Being unsheltered also exposes transgender people to greater risk of interaction with law enforcement and criminalization for sleeping, resting, or other activities related to survival. In general, being unhoused increases proximity to the criminal justice system and makes the likelihood of being arrested 11 times higher than for those who are housed.⁵¹ This is due to the criminalization of many behaviors associated with being unhoused, including sleeping in public, loitering, sidewalk sitting, and panhandling.⁵² Further, unsheltered homeless transgender people are nearly eight times more likely to have contact with law enforcement than sheltered transgender people and are 10 times more likely to spend time in jail or prison.⁵³ The transgender community is so familiar with the regularity with which law enforcement officers stop transgender women, command them to disperse, and arrest them for low-level offenses tied to suspicion of prostitution, that they colloquially refer to it as “walking while trans.”⁵⁴ What’s worse, six percent of all transgender people—housed and unhoused—who interacted with law enforcement officers who thought or knew the individual was transgender were physically attacked, sexually assaulted, or forced to engage in sexual activity to avoid arrest.⁵⁵

These trends are particularly concerning in light of the ongoing criminalization of unsheltered homelessness, in which unsheltered homeless persons are penalized for sleeping in public.⁵⁶ Moreover, this proposed rule does not exist in isolation from this administration’s other policies, which include an executive order and subsequent funding specifically mandating or incentivizing the heavy enforcement of anti-camping and similar laws against unhoused persons.⁵⁷ The combination of higher rates of interaction with law enforcement when unsheltered, the likelihood of being stopped by law enforcement as a transgender person, and the increased criminalization of homelessness specifically encouraged by this administration would have the predictable result of HUD’s rule sending more transgender people to jails or prisons where they would likely face further discrimination, harassment, violence, or other harm.⁵⁸

2. *This is illogical when HUD has previously recognized the housing vulnerability of transgender people*

⁵¹ Housing Up, *The Undeniable Link Between Incarceration & Homelessness* (Aug. 23, 2022), <https://perma.cc/8J3M-F45W>.

⁵² *Id.*

⁵³ Nat’l All. to End Homelessness & Homelessness Rsch. Inst., *supra* note 19, at 2.

⁵⁴ Leonore F. Carpenter et al., *Walking While Trans: Profiling of Transgender Women by Law Enforcement, and the Problem of Proof*, 24 William J. of Race, Gender, & Soc. Just., no. 1, Nov. 2017, at 5, 6, <https://perma.cc/D2C9-TSLK>.

⁵⁵ James, *supra* note 25, at 187.

⁵⁶ Housing Not Handcuffs, *Tracking the Criminalization of Homelessness*, <https://perma.cc/RTU2-JHT3> (archived June 25, 2026).

⁵⁷ Exec. Order No. 14321, Ending Crime and Disorder on America’s Streets, 90 Fed. Reg. 35817 (Jul. 29, 2025), <https://perma.cc/RWX2-T8CT>; see, e.g., HUD, *FY 2025 Continuum of Care Competition and Youth Homeless Demonstration Program Grants NOFO*, No. FR-6900-N-25, at 59, 86, 87, <https://perma.cc/7MSQ-5FHQ> (rescinded following court order); HUD, *FY 2025 Continuum of Care Competition and Youth Homeless Demonstration Program Grants NOFO*, No. FR-6901-N-25, at 67, 94, 96, <https://perma.cc/Z9A6-S6JQ> (HUD’s second attempt with similar goals); Substance Abuse & Mental Health Servs. Admin., *SAMHSA Strategic Priorities 6* (Sep. 10, 2025), <https://perma.cc/6ZDL-XRGC>.

⁵⁸ See, e.g. Valerio Baćak, PhD, *Looking Back: Victimization of Transgender Persons and the Criminal Legal System*, 113 Am. J. Pub. Health 1033, 1043–1045 (July 10, 2023), <https://perma.cc/6MRE-YB4V>.

Proposing a change that results in these harms is illogical and capricious when HUD is already aware of the significant harm the change will cause. In 2015, HUD noted the “significant violence, harassment, and discrimination faced by transgender individuals and other persons who do not identify with the sex they were assigned at birth in attempting to access programs, benefits, services, and accommodations.”⁵⁹ And as recently as 2020, HUD stated that it was “aware that transgender individuals experience poverty, housing instability, mental health issues, domestic violence, and homelessness at high rates. Given the rates of violence and mistreatment that homeless transgender persons experience, HUD recognizes that shelter access for transgender persons is critical.”⁶⁰ During the 2016 rulemaking, commentors noted to HUD that “transgender persons are some of the most vulnerable members of society,” that “transgender individuals are disproportionately represented in the homeless population because of the frequent discrimination they face at home, in school, and on the job,” and that “transgender individuals were at greater overall risk of violence, murder, and homelessness-related death than people who are not transgender.”⁶¹ With this institutional knowledge and expertise in hand, it is difficult to see reason in HUD willfully creating the harm it now proposes.

b. The Proposal Will Burden Shelter Access for *Everyone*

1. Invasive Sex-Checks Will Deter People Who Need Services

The proposed rule requires shelters to admit and assign services to people based on sex alone, as defined by HUD; provides that shelters “may require reasonable assurances or evidence” of sex; and if shelters do not place, serve, and accommodate people on the basis of their sex assigned at birth, they can lose HUD funding. While the preamble claims that HUD will provide “maximum deference” to shelters in “their policies ... for providing evidence of a person’s sex”—the sex-discrimination policy itself is mandatory.⁶² As shelters would be forced to inquire into sex in order to establish sex, and as they must establish sex in order to be in compliance with the rule, and as they must be in compliance to not risk potentially losing federal funding, shelters would appear to have no choice but to actively verify the sex of their inhabitants. Further, while HUD is targeting the sex inquisition at transgender people, nowhere in the rule does HUD restrict inquiries into solely the sex of *transgender* people. Indeed, it would seem to be impossible for HUD to do so, because to ensure the sex of everyone entering its doors, a shelter would necessarily *have to* inquire into the sex of each person to some extent. The rule would therefore require inquiries into the sex of transgender and cisgender individuals alike.

Nothing in the proposal describes what type of evidence of a person’s sex would satisfy HUD. The vagueness and lack of clarity would itself create uneven application and confusion, thereby acting as a barrier to obtaining shelter: with no clear standard being applied, shelters will seemingly be free to all have their own approach and to each choose to change their approach on a whim, leaving homeless people uncertain of what approach they will encounter at a given shelter and which shelter will admit them without a particular sex-check they may wish to avoid. Any such inquiry will be particularly complicated by the fact that homeless people of all genders have difficulty

⁵⁹ 80 Fed. Reg. at 72645.

⁶⁰ 85 Fed. Reg. at 44815.

⁶¹ 81 Fed. Reg. at 64768.

⁶² See 91 Fed. Reg. at 22780, 22784, 22780 n.10.

maintaining identification, as HUD recognized in 2016.⁶³ The Government Accountability Office has similarly noted the difficulty homeless people experience not only in retaining government identification documents but also in *obtaining* them once lost.⁶⁴ This includes: lacking “a permanent and secure location to store [them], making them subject to loss, destruction by the elements, or theft,” experiencing them being “discarded when officials remove people and their belongings from an area,” and losing them during an eviction.⁶⁵ The additional limitations on re-obtaining identity documents include the cost of obtaining them, the common requirement to have proof of identity in order to obtain documentation, and the requirement to demonstrate a “principal residence” for some documentation.⁶⁶ Facing a lack of government identification, it is unclear *how* people would be required to demonstrate sex.

Moreover, the rule does not contain any clear restriction on what shelters can ask for beyond that the assurances or evidence be “reasonable.” This is made worse, not better, by HUD’s stated intent to provide “maximum deference” to shelters in deciding how to go about determining sex, explicitly recognizing that some shelters may choose to be more “stringent in their policies than others for providing evidence of a person’s sex.”⁶⁷ Taken together, this would ultimately mean that HUD would authorize, or even encourage, potentially invasive questioning of homeless people seeking shelter—and even possibly physical examinations of people, for HUD does not disclaim the possibility. Homeless individuals who simply do not wish to provide whatever “assurances or evidence” a given shelter thinks “reasonable” would experience a conflict between accessing shelter and making the disclosure. The likely result is that many people will be deterred from obtaining the shelter they need.

2. The Rule Imposes Substantial Costs on Shelters by Forcing Them to Admit and Segregate People on the Basis of Sex Assigned at Birth

The rule would force shelters to radically change how they have been serving transgender people for a decade. Shelters have been serving people based on their gender identity, are clearly capable of doing so, and have become accustomed to doing so in compliance with federal law. HUD’s changes would instead impose financial and logistical burdens on shelters and would burden their free exercise of religion.

A. Financial and logistical burdens on shelters

The proposal would result in increased logistical and financial costs to shelters, which are already operating with limited resources, thereby decreasing homelessness services generally. The inquiries HUD demands would require shelters to expend time and resources on training staff, conducting the sex inquisitions, and documenting compliance sufficient to demonstrate such to HUD. HUD has been told before and has recognized in the past that shelters struggle with limited

⁶³ 81 Fed. Reg. at 64767.

⁶⁴ See generally U.S. Gov’t Accountability Off., GAO-24-105435, *Homelessness: Barriers to Obtaining ID and Assistance Provided to Help Gain Access* 8–11 (Feb. 2024), <https://perma.cc/AKT7-G9BQ>.

⁶⁵ *Id.* at 8.

⁶⁶ *Id.* at 8–9.

⁶⁷ 91 Fed. Reg. at 22780 n.10.

resources.⁶⁸ Requiring shelters to take on these new obligations would demand more of those limited resources, draining them for HUD's new purpose. This would only serve to further reduce the time and resources available to a shelter and, therefore, the total number of people a shelter could serve, thereby increasing unsheltered homelessness. Shelters would also be forced to alienate and demean vulnerable clients at entry, fraying their relationships with their clients and harming the overall shelter environment, as providers operate within a relationship of trust with the people coming to them for life-saving support.⁶⁹ While HUD concedes "this rulemaking would require some organizations to follow rules inconsistent with their beliefs regarding gender and sex, if they continue to use federal funds,"⁷⁰ HUD entirely ignores the costs of this mandate on shelters that are already struggling.

Further, shelters would seemingly have to forgo funding under the Violence Against Women Act (VAWA) in order to comply. VAWA contains nondiscrimination requirements that statutorily include sexual orientation and gender identity.⁷¹ These antidiscrimination requirements allow for sex segregation, but only if the grantee provides comparable service to individuals so segregated.⁷² If a shelter were to comply with HUD's rule and exclude transgender people, then they would not be in compliance with VAWA and could not accept VAWA dollars. Take for instance, a women's domestic violence shelter that admits transgender women who have experienced domestic violence and accepts both HUD homelessness funding and Department of Justice VAWA funding. If the proposal is finalized, it would be impossible for the shelter to comply with the requirements for both programs. If it excludes transgender women to comply with HUD's rule, it would run afoul of VAWA's statutory text. And if it continues to serve transgender women to comply with VAWA, the shelter would be subject to the loss of HUD funding.

B. Burdens on shelters' free exercise of religion

⁶⁸ 81 Fed. Reg. at 64773, 64779–80; 85 Fed. Reg. at 44815–16. Moreover, the National Alliance for Safe Housing explained in response to the 2020 Proposed Rule that a shelter program that discriminated against transgender people (as this proposal would require) would be "at risk of losing their funding from non-federal grants/sources, which would jeopardize their existence." That is because "shelter and housing programs are often funded through a mix of sources, including private foundations, as well as state and local funds. To receive these funds, there might be requirements connected to equitable policies and practice, which includes gender identity." And if organizations "decide not to seek other sources of funding," they would be "limiting their capacity to serve the community and increasing the need for HUD to increase shelter funding to meet this increased demand." Nat'l All. for Safe Hous., *Comment Letter on Proposed Rule Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs*, HUD-2020-0047-15971, at 3 (Sep. 16, 2020), <https://perma.cc/PC49-TE3B>.

⁶⁹ See generally M.H. Morton et al., *Missed Opportunities: LGBTW Youth Homelessness in America*, Chapin Hall, Univ. of Chi. (2018), <https://perma.cc/478W-43QR> (finding that safe and affirming services are important to LGBTQ youth use of services, e.g., "Safe, affirming responses and services are important for engaging LGBTQ youth" (12); "LGBTQ youth are often hesitant to take added risks by engaging services that are not demonstrably safe and affirming for young people like them" (12–13); and "Leaders in homelessness systems and services also need to act on the importance of earning reputations as safe and affirming spaces—for all young people but especially for LGBTQ youth, who have shown they will avoid service agencies they don't trust." (14)). HUD is already aware of this, as a comment to the 2020 Proposed Rule asserted it and cited to the relevant research. See Casey Fam. Programs, *Comment Letter on Proposed Rule Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs*, HUD-2020-0047-20260, at 2 (July 24, 2020), <https://perma.cc/JG5K-XGLC>.

⁷⁰ 91 Fed. Reg. at 22782.

⁷¹ 34 U.S.C. § 12291(b)(13)(A) (discussed in greater detail *infra* Sec. III.b.1).

⁷² *Id.* § 12291(b)(13)(B).

HUD's proposal would prohibit shelters from providing services according to people's gender identity. This would mean that any shelter would be unable to provide services in accordance with a sincerely held religious belief that transgender people are equal to cisgender people and should be served alongside them in accordance with their gender identity. While HUD claims to be acting to defend religious liberty, its own cited sources make clear that its proposed rule will place heavy burdens on the religious liberty of those whose faiths lead them to serve transgender people.⁷³

For instance, HUD cites to information compiled by the Pew Research Center, which documents the varied views of religious groups toward transgender people.⁷⁴ Pew notes that inclusion and equality of transgender people has been articulated as an article of faith of multiple religious groups, including: the Union for Reform Judaism, which affirmed its "commitment to the full equality, inclusion, and acceptance of people of all gender identities and gender expressions" and the United Church of Christ, the Unitarian Universalist, and Episcopal churches, which have publicized statements expressing that transgender people are welcome and can be ordained as ministers.⁷⁵ These are not isolated views. Surveys have found that majorities of nearly *all* major religious groups support laws protecting LGBT people from housing discrimination.⁷⁶

HUD knows this. Multiple religious groups that submitted comments on the 2020 Proposed Rule explained that their faiths compelled them to respect transgender people's gender identity and equal access to shelter. The Union for Reform Judaism commented in opposition to the rule, challenging in detail the "false binary" that it stated the rule created between LGBTQ+ equality and religious liberty. They stated: "many faith communities – including the Reform Jewish Movement – proudly support the rights of transgender and gender nonconforming people" and "Judaism compels us to protect transgender and gender nonconforming people and ensure that everyone can access safe housing."⁷⁷ Similarly, the Muslim Alliance for Sexual and Gender Diversity stated that "the Qur'an specifically commands us never to repel or shame a person asking for help (93:10) without exception" and that the rule "assumes that religious people will not be willing to provide shelter to homeless people if they have to provide it equally to all who need it. As people of faith, we find this assumption offensive."⁷⁸ Faithful America also opposed the proposed rule, stating that shelters "should be available to all people, regardless of what gender they are assigned at birth. Legalizing discrimination against transgender Americans who are

⁷³ See 91 Fed. Reg. at 22781 & n.18.

⁷⁴ Aleksandra Sandstrom, *Religious Groups' Policies on Transgender Members Vary Widely*, Pew Rsch. Ctr. (Dec. 2, 2015), <https://perma.cc/4XBN-8ZRE>.

⁷⁵ *Id.*

⁷⁶ Pub. Religion Rsch. Inst., *Mapping Support for LGBTQ Rights Across the 50 States: Insights from PRRI's 2025 American Values Atlas* (Mar. 19, 2026), <https://perma.cc/VG3W-43Y4> ("Except for Christian nationalism Adherents (40%), solid majorities across all religious groups, Christian nationalism groups, age, gender, race, and education levels agree that transgender people deserve the same rights as other Americans.").

⁷⁷ Religious Action Ctr. of Reform Judaism, *Comment Letter on Proposed Rule Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs*, HUD-2020-0047-20234 (Sep. 17, 2020), <https://perma.cc/4NK5-RTXF>.

⁷⁸ Muslim All. for Sexual & Gender Diversity et al., *Comment Letter on Proposed Rule Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs*, HUD-2020-0047-19733 (Sep. 22, 2020), <https://perma.cc/KTY6-H8MH>.

simply seeking safe shelter denies the basic God-given dignity of all persons and assaults our religious values of justice, compassion, and life.”⁷⁹

This sincerely held religious belief exists not just broadly across America, but at homeless shelters specifically. The Lutheran Metropolitan Ministry (LMM) submitted a comment in opposition to HUD’s 2020 proposal.⁸⁰ LMM identified itself at the time as operating three emergency shelters, including a men’s shelter that was Ohio’s largest emergency shelter serving an average of 500 men per night.⁸¹ LMM noted that it served “those of any gender who wish to be served at a single sex facility for men.”⁸² LMM specifically noted that “as a faith-based organization, we are guided on this issue by the central biblical value of hospitality to and care for the stranger and the outcast, and we reject the idea that [HUD’s 2020] policy would somehow better accommodate ‘religious beliefs of shelter providers.’”⁸³ It then discussed how even the 2020 proposal, which merely *permitted* discrimination, would burden shelters and individuals, including: (1) that the rule would “add unnecessary barriers to shelter access for those in need while also adding bureaucracy to the management of emergency shelters;” (2) that sex identification at entry would both burden shelters and likely increase unsheltered homelessness; and (3) that one shelter not accepting transgender individuals would place a capacity burden on other shelter providers.⁸⁴

The above point that HUD’s current funding application for faith-based homeless service providers notes that they can request religious accommodations and indicates that “HUD will not deny the organization unless it determines doing so is necessary to further a compelling governmental interest” does not provide an adequate mechanism for addressing these concerns.⁸⁵ Given that the Trump Administration issued its Executive Order on Gender Identity in the second week of its term explicitly directing the rescission of the 2016 Rule and HUD has indicated it agrees with the order, there is every reason to believe HUD believes eliminating transgender protections to be a compelling interest.⁸⁶ Therefore while HUD would likely grant accommodations in favor of discrimination against transgender persons, it would likely deny them to religious providers asserting this proposed rule burdens their practice of their faith.

Additionally, several individuals have already submitted comments on HUD’s current proposal reflecting that the proposal is an affront to their faiths.

Several religious leaders and members of clergy have submitted comments, including:

⁷⁹ Faithful Am., *Comment Letter on Proposed Rule Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs*, HUD-2020-0047-20246 (Sep. 22, 2020), <https://perma.cc/6HPQ-CUND>.

⁸⁰ Lutheran Metro. Ministry, *Comment Letter on Proposed Rule Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs*, HUD-2020-0047-18551 (Sep. 15, 2020), <https://perma.cc/7WHV-YQQM>.

⁸¹ *Id.* at 1.

⁸² *Id.*

⁸³ *Id.* at 2.

⁸⁴ *Id.* at 1–2.

⁸⁵ *See supra* Sec. II.

⁸⁶ Exec. Order No. 14168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8615 (Jan. 30, 2025), <https://perma.cc/C2BD-VJ2S>; 91 Fed. Reg. at 22782; *see also infra* Sec. IV, a.4; *FY2026 NOFO*, *supra* note 23, at 10.

- “As a religious leader, I believe that all people have inherent worth and dignity and deserve equal treatment under the law. The proposed changes to HUD policies ... goes against my core beliefs and religious values as a Unitarian Universalist.”⁸⁷
- “I am writing to you as a person of faith who believes that all humans are beautiful manifestations of the Divine. Who believes that everyone deserves to live in safer environments because of their God-given rights to exist as they are, in the bodies they have.”⁸⁸
- “As an ordained Unitarian Universalist minister, I am commenting today to oppose this rule because my faith proclaims every person is inherently worthy and should be treated equitably ... Unhoused trans, intersex, and gender non-binary Americans have immutable dignity, and this rule would allow for discrimination and harm ...”⁸⁹
- “Any policy that diminishes trans and intersex people’s ability to access shelter, social services, safety and dignity is an affront to all of us – and to God. This proposed rule does just that, and cannot be allowed to progress.”⁹⁰
- “As a Christian clergyperson, I am opposed to the proposed rule ... Federally funded shelters exist to serve people in crisis, and no one should be turned away because of who they are ... My faith tradition leaves no option for categorical exclusion from help for people who need help.”⁹¹
- Finally, a reverend and the President of The Alaska Christian Conference wrote to oppose the rule, noting it would “remove critical protections that ensure fair and equal access to housing and services, particularly for transgender, nonbinary, and intersex people” and noted that as a Christian Pastor for several decades “[i]n my capacity as pastor, I have seen many examples of persons denied entry to homeless shelters and service because of either marital status or sexual orientation or gender identity.”⁹²

Other individuals have also spoken of the rule as being adverse to their religion or otherwise opposed the rule on religious grounds. Such statements include:

- “My religion ... has publicly affirmed ... that living one’s identity, in terms of gender identity/expression ... is part of our free exercise of religion ... [and that] discrimination against transgender people is incompatible with our religious values and principles, and that our principles and values unequivocally commit our faith to honor and celebrate the full spectrum of gender identity and expression ... This proposed rule, thus, is against the free exercise of my religion;”
- “My faith calls me to protect all of God’s children. The proposed [rule] is specifically anti-Christian, as it targets those people with different sexual orientations and gender identities

⁸⁷ Rev. Lydia Ferrante-Roseberry, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1540 (June 11, 2026), <https://perma.cc/GRB8-2DJV>.

⁸⁸ Rev. Theresa Mandeville, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1528 (June 11, 2026), <https://perma.cc/7DUH-4QPF>.

⁸⁹ Rev. Catie Scudera, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-2378 (June 14, 2026), <https://perma.cc/8HGG-T8SC>.

⁹⁰ Rev. Ashley Horan, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1458 (June 9, 2026), <https://perma.cc/9H2F-ZHNN>.

⁹¹ Rev. Paula Jackson, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1368 (June 5, 2026), <https://perma.cc/P3PT-6L7C>.

⁹² Rev. Michael Burke, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-0037 (Apr. 29, 2026), <https://perma.cc/E595-WLYS>.

... To allow providers to demand ‘evidence’ to confirm the sex of anyone seeking shelter is an abomination, and a rejection of Christ’s love;”

- “Implementing such a rule infringes upon my religion’s view towards identity;”
- “As a person of faith, I believe we are called to serve all others ... I challenge you that you are violating my religious teaching to house the homeless and aid those in need;”
- “I am a person of Christian Faith and I believe that all people are children of God. As such, all people need access to emergency shelters regardless of ... gender identity ... Discrimination in housing is against my faith;”
- “I find the revisions proposed in opposition to my faith. My faith calls me to honor and protect the dignity of all people;”
- “As a person of Christian faith, I am writing to express my strong opposition ... My faith teaches me that every individual is treated with inherent dignity ... this proposed rule ... leaves already marginalized people exposed to homelessness, violence, and hardship. Denying vulnerable individuals safe shelter is fundamentally contrary to Christian values of mercy, justice, and charity;”
- “I am called by my faith to feed the poor, cloth [sic] the needy and house those that need shelter. I am to give to others in need without exception or restriction;”
- “The proposed rule ... goes against my faith’s declaration that all human beings have inherent worth and dignity. Anyone needing and seeking shelter/housing should be safely admitted and housed, regardless of their gender identity;”
- “As a person of faith, I believe that housing is a human right for all of God’s children, not just some;”
- “I’m writing as a voting, practicing Christian ... Please reject this proposal and preserve the equal access to housing our faith calls us to protect;”
- “I write to you as a person of faith (Presbyterian Church USA) ... Please reject this proposal and preserve equal access to housing;” and
- “This proposed rule, thus, is against the free exercise of my religion.”⁹³

⁹³ Anonymous, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-0858 (May 18, 2026), <https://perma.cc/UF5L-CGHS>; Ruth Rhinehart, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-2794 (June 13, 2026), <https://perma.cc/V2YX-F4DL>; Ryan Corp, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1367 (June 5, 2026), <https://perma.cc/G4Z2-S66M>; Nancy Paricio, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1348 (June 5, 2026), <https://perma.cc/W6NZ-A9ET>; Marian Coger, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1362 (June 7, 2026), <https://perma.cc/V75X-ACTV>; Judy Stettner, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1492 (June 10, 2026), <https://perma.cc/NPB6-99VN>; Christine Modey, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1398 (June 7, 2026), <https://perma.cc/74C4-9VPM>; Jo Roberts, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1351 (June 5, 2026), <https://perma.cc/2YJQ-3KCU>; Rebecca Studer, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1400 (June 8, 2026), <https://perma.cc/TX94-YPJ5>; Anonymous, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-1866 (June 14, 2026), <https://perma.cc/P7YE-LEUZ>; Christopher Buckley, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-2516 (June 14, 2026), <https://perma.cc/C6J9-2DPW>; Howard Henry, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-2311 (June 14, 2026), <https://perma.cc/6W9N-PYD4>; Anonymous, *Comment Letter on Proposed Rule Equal Access to Housing in HUD Programs Revisions*, HUD-2026-0529-0858 (May 18, 2026), <https://perma.cc/7FNR-RQ6E>.

c. The proposal would increase costs to the public by increasing unsheltered homelessness and long-term homelessness

By decreasing access to shelter, increasing burdens on all shelter-seekers and shelter providers, and thereby increasing unsheltered homelessness, HUD would also be increasing the costs a community bears due to unsheltered homelessness. As noted above, unsheltered homeless transgender people experience several health issues at higher rates than housed homeless transgender people.⁹⁴ Additionally, unsheltered homelessness imposes costs on communities, including state and local governments, hospitals, and taxpayers.⁹⁵

Hospitals experience costs in treating homeless persons, through increased emergency room visits and longer hospital stays.⁹⁶ Unsheltered homelessness has also been correlated with increased encampments, which are associated with significant costs to municipal governments.⁹⁷ Multiple different city departments are called on to respond to encampments, including fire departments when fires spread at encampments and sanitation departments when they are cleared by cities.⁹⁸ The response to encampments should be additional efforts to make housing and shelter *more* accessible, not less accessible as the proposal does. Nor should the response to encampments be increased law enforcement—cities that enforce laws that criminalize homelessness experience the additional costs of enforcement and incarceration and prolonging individuals’ homelessness.⁹⁹ Additionally, by deterring transgender people from accessing shelters, HUD would be increasing the risks of homelessness developing into long-term or chronic homelessness, which imposes very substantial costs on taxpayers.¹⁰⁰

This would also have a negative impact on public health broadly. As established above, the rule would increase unsheltered homelessness, which is associated with higher rates of illness and poor health.¹⁰¹ Additionally, transgender homeless people who are unsheltered are considerably more ill than sheltered transgender homeless people.¹⁰² Therefore, by increasing unsheltered homelessness the proposal would worsen public health, and by increasing unsheltered homelessness of this specific population the proposal would disproportionately worsen public health. Ultimately, this would mean a negative impact for everyone who shares in the national public health.

d. HUD’s proposal would increase the risk of transgender people experiencing homelessness in the first place by removing discrimination protections throughout its programs

⁹⁴ See generally Nat’l All. to End Homelessness & Homelessness Rsch. Inst., *supra* note 19.

⁹⁵ Nat’l Hous. L. Project, *supra* note 29, at 11; Nat’l Prevention Sci. Coal., *Fact Sheet: Cost of Homelessness* (Apr. 14, 2025), <https://perma.cc/YP7W-U9VT>.

⁹⁶ Hannah Chimowitz et al., *The Costs and Harms of Homelessness*, Cmty. Sols. (Sep. 25, 2023), <https://perma.cc/YX53-L49X>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* (discussing the high costs of laws that criminalize homelessness).

¹⁰⁰ Nat’l All. to End Homelessness, *Ending Chronic Homelessness Saves Taxpayers Money* (Feb. 17, 2017), <https://perma.cc/84JX-24CT> (estimating that a “chronically homeless person costs the tax payer an average of \$35,578 per year”).

¹⁰¹ Janey Rountree et al., *Health Conditions Among Unsheltered Adults in the U.S.* 4, Cal. Pol’y Lab (Oct. 2019), <https://perma.cc/VZB8-RFQU>.

¹⁰² See *infra* Sec. II.a.1.

While this comment is centered on HUD’s proposed revisions to its homelessness programs, the rule also removes sexual orientation and gender identity protections from across its regulations, replacing them with its restrictive definition of sex.¹⁰³ In so doing, HUD would be allowing discrimination against transgender people across its housing programs—programs that are intended to increase access to housing by reducing barriers to homeownership, making housing more affordable, and prohibiting discrimination in renting a home.¹⁰⁴ Because of the 2012 Final Rule, these programs broadly protect transgender people against discrimination in accessing housing in the United States. By removing those protections, transgender people would be more likely to be discriminated against, resulting in less access to housing options, increasing the risk of losing their home and needing shelter services. Therefore, HUD compounds the impact of removing the protections of the 2016 Final Rule by further removing the protections of the 2012 Final Rule, leading to confusion and even greater homelessness in contravention of HUD’s mission.

III. The Proposal Misreads HUD’s Statutory Authorities and Obligations

In its prior rulemakings, HUD recognized that Congress charged the agency with serving the housing needs of all Americans. This includes congressional commands that HUD ensure “a suitable living environment for *every American family*,” as well as “decent, safe, and sanitary housing for *every American*,” and that “*every resident of the United States* has access to decent shelter or assistance in avoiding homelessness.”¹⁰⁵ All of these mandates speak of serving all people and they do so without reference to gender identity.

The proposed rule acknowledges that HUD has asserted such a mandate previously and simply rejects that the mandate authorized the prior rules.¹⁰⁶ But HUD is mistaken in determining that discrimination that will increase unsheltered homelessness is better aligned with this mission.

¹⁰³ 91 Fed. Reg. at 22780.

¹⁰⁴ See generally *Helping Americans*, HUD, <https://perma.cc/E8CW-DZHP> (archived June 24, 2026).

¹⁰⁵ See 42 U.S.C. §§ 1441, 12701, 12702. In fact, HUD has otherwise recognized this congressional charge to serve all Americans to be quite repeated and consistent, citing not only the laws above, but also: Section 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701t (“The Congress affirms the national goal, as set forth in section 2 of the Housing Act of 1949, of ‘a decent home and a suitable living environment for every American family’”) and Section 2(b) of the Housing and Community Development Act of 1974, 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.”). 77 Fed. Reg. at 5672–73. Additionally, the McKinney-Vento Homeless Assistance Act is a foundational law that established HUD’s homelessness programs and has been amended and reauthorized over the years. It contains a broad nondiscrimination requirement of grantees under HUD’s shelter grants program. The statute defines “recipient” to include “government or private nonprofit entity” and defines “private nonprofit organization” to be “a secular or religious organization...that is exempt from taxation...has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance.” While HUD did not explicitly delineate transgender people as being protected by HUD’s antidiscrimination protections until a decade ago, this broad command evinces a congressional intent against discrimination generally. At a minimum, it would seem to be in direct conflict with HUD *mandating* discrimination at shelters on the basis of gender identity. See 42 U.S.C. § 11371(5); Libby Perl, Cong. Rsch. Serv., RL33764, *The HUD Homeless Assistance Grants: Programs Authorized by the HEARTH Act* 1 (Aug. 30, 2017), <https://perma.cc/528W-YNS9>.

¹⁰⁶ 91 Fed. Reg. at 22781.

a. HUD’s new position that it lacked the authority to issue the 2016 Final Rule does not support the proposal

While HUD tries to justify its proposal based on its newfound belief that it lacked authority to issue the 2016 Final Rule, the proposal goes far beyond merely rescinding the 2016 rule and returning the regulations to the status quo ante.¹⁰⁷ Instead, after claiming that it is “significant that the Fair Housing Act forbids sex discrimination as to covered dwellings, but not as to free, temporary, emergency shelters or other buildings or facilities,” HUD promulgates a *new* set of requirements on shelters, including a new definition of “sex.”¹⁰⁸ This is seemingly an effort to enforce the Trump Administration’s novel view that permitting transgender women to “access single-sex spaces designed for females” may constitute sex discrimination.¹⁰⁹

So, according to the proposal, the fact that HUD now believes that the FHA does not apply to emergency shelters leads HUD to conclude that it has the authority to require that shelters place and accommodate people on the basis of sex, but that it does not have the authority to require that shelters place and accommodate people on the basis of gender identity. This makes no sense.

In any event, HUD is wrong to suggest that it lacked sufficient statutory authorization to promulgate the 2016 Final Rule. In 2016 HUD relied on the Secretary’s plenary authority to “make such rules and regulations as may be necessary to carry out [their] functions, powers, and duties” and explicitly exercised this power in light of Congress’s mandate that HUD serve the housing needs of “all Americans.”¹¹⁰ The 2016 Final Rule was therefore a permissible exercise of HUD’s plenary authority because it was directly and explicitly tied to Congress’s mandate that HUD serve the housing needs of “all Americans.” The 2016 Final Rule could and did articulate how its approach furthered Congress’s mandate, explicitly linking its exercise of authority with the Congressional mandates to the agency, ultimately ensuring that the housing needs of “all Americans” would be better met.¹¹¹

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 22781, 22784.

¹⁰⁹ Mem. from Pam Bondi, Att’y Gen., to All Fed. Agencies, *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination*, at 6 (July 29, 2025), <https://perma.cc/YF5Q-WKGL>.

¹¹⁰ 81 Fed. Reg. at 64769–70.

¹¹¹ *See id.* (“The rule creates additional program requirements to ensure equal access for transgender and gender nonconforming persons, in accordance with their gender identity, in shelters, buildings, facilities, and programs funded in whole or in part by CPD. The creation of such program requirements is well within the scope of HUD’s authority. HUD’s mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. This mission encompasses providing shelter for transgender and gender nonconforming persons, who have faced significant difficulty in obtaining access to shelters, and buildings and facilities that provide shelter. Excluding any eligible person from HUD-funded temporary, emergency shelters, buildings, facilities, housing, or programs because of that person’s gender identity or nonconformance with gender stereotypes would contravene HUD’s responsibility under the Department of Housing and Urban Development Act to work to address ‘the needs and interests of the Nation’s communities and of the people who live and work in them.’ (See 42 U.S.C. § 3531.) Congress has repeatedly charged HUD with serving the existing housing needs of all Americans. [citing section 2 of the Housing Act of 1949 (42 U.S.C. § 1441); section 2 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701t), sections 101 and 102 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§ 12701–702), and section 2(b) of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 note)] Congress has not only given HUD this broad mission but also given HUD broad authority to fulfill this mission and implement its

Moreover, as discussed more fully below, while HUD now categorically declares that the Fair Housing Act “does not apply to emergency shelters,” that assertion is inconsistent with HUD’s longstanding position that the Act can, in fact, apply to emergency shelters (a position which HUD’s Assistant Secretary for Fair Housing and Equal Opportunity reiterated just one month ago).¹¹²

b. HUD’s proposal to require grantees to discriminate against transgender people is inconsistent with its statutory mandate to serve the housing needs of all Americans and other federal laws

HUD does not cite to any of its statutes as containing a prohibition on serving transgender people in accordance with their gender identity and doing so alongside cisgender people, nor any requirements to exclude transgender people from some services or facilities. Instead, several of HUD’s statutes command HUD to protect transgender people from discrimination in its programs, placing HUD’s proposed rule into conflict with federal laws. These commands can be found in: (1) the Violence Against Women Act (34 U.S.C. § 12991(b)(13)(A)), which HUD has previously recognized applies to its shelter programs and has codified, as it must, to protect transgender people from discrimination at shelters receiving VAWA dollars; and the Fair Housing Act (42 U.S.C §§ 3604, 3631), which prohibits discrimination based on sex in FHA-covered programs.

1. The Violence Against Women Act

As reauthorized in 2022, the Violence Against Women Act (VAWA) provides protections to survivors of domestic violence who seek federally-assisted housing, including shelters.¹¹³ Additionally, DOJ’s Office on Violence Against Women funds supportive services for survivors through grants to organizations, which may include shelters.¹¹⁴ VAWA provides that “[n]o person in the United States shall, on the basis of actual or perceived ... sex, gender identity (as defined in paragraph 249(c)(4) of title 18), [or] sexual orientation... be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under” VAWA.¹¹⁵ VAWA permits “consideration of an individual’s sex” if “sex segregation or sex-specific programming is necessary to the essential operation of a program,” but provides that in such circumstances, grantees may meet the requirements of the antidiscrimination provision “by providing comparable services to individuals who cannot be provided with the sex-segregated or sex-specific programming.”¹¹⁶

responsibilities through rulemaking. Section 7(d) of the Department of Housing and Urban Development Act specifically states that the Secretary ‘may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.’”).

¹¹² Letter from Craig Trainor, Assistant Sec’y, HUD, to Nathaniel VerGow, Dir., Multnomah Cnty. Homeless Servs. Dep’t, re: Secretary-Initiated Investigation of the Multnomah County Homeless Services Department, at 1 (May 29, 2026), <https://perma.cc/4W57-PWZL>.

¹¹³ 34 U.S.C. §§ 12472, 12491(a)(3).

¹¹⁴ Nat’l Hous. L. Project, *supra* note 29, at 9.

¹¹⁵ 34 U.S.C. § 12291(b)(13)(A).

¹¹⁶ *Id.* § 12291(b)(13)(B).

HUD does not and cannot explain how its proposed rule would be consistent with VAWA. While VAWA prohibits discrimination, exclusion from participation, and denial of benefits on the basis of gender identity, the proposal mandates that HUD grantees discriminate against transgender people, exclude them from participation, and deny them the benefit of shelter.

Even assuming that VAWA permits grantees to engage in sex segregation or to provide sex-specific programming in a way that discriminates, excludes, and denies benefits on the basis of gender identity, HUD would still need to demonstrate that its discrimination mandate is necessary to the essential operation of the entire program or activity. But grantees have been serving transgender people in the shelter aligned with their gender identity for the past decade and it has not ended, disrupted, or even undermined the program. What is more, even if serving transgender people *had* disrupted the program in some places or for some grantees HUD would need to articulate how that translated into *every shelter* needing to discriminate based on sex. HUD does not demonstrate that serving transgender people was disruptive for a single shelter nor does it articulate how any such disruption forecloses any option other than strict sex discrimination at all shelters.

Even if HUD were to establish that its rule were somehow necessary to the essential operation of shelter programs, its proposal would still run afoul of VAWA. That is because HUD does not include a requirement that grantees who sex discriminate based on its new definition then also provide comparable services to transgender people excluded by that discrimination. Further, HUD would find no refuge in a claim that transgender people already have access to a “comparable service” at a different shelter aligned with their sex as defined by HUD. Putting aside the fact, identified above, that loss of one shelter is not readily replaced with another shelter for homeless people, hypothetical access to services somewhere else is not what the statute requires. It states that “grantees may meet the requirements” of the antidiscrimination provision “by providing comparable services” to the excluded individuals. Each distinct grantee would need to do this, and HUD includes no provision requiring it.

2. *The Fair Housing Act*

The Fair Housing Act (FHA), administered by HUD, prohibits sex discrimination in housing generally.¹¹⁷ The FHA does so with reference to “dwellings” which it defines as being a building or portion of a building “occupied as, or designed or intended for occupancy as, a residence ...”¹¹⁸ Although the proposal categorically declares that the Fair Housing Act “does not apply to emergency shelters,” that is badly mistaken, as HUD has long recognized (including within the last month) that shelters can be dwellings. Similarly, the proposal claims that the 2016 rule created a “new class of individuals” protected by the FHA, but HUD already rejected that claim in 2016 and, further, that view does not comport with Supreme Court precedent created since 2016.

HUD claims that because the FHA’s sex discrimination protections do not apply to temporary shelters, Congress intended participants to have no sex nondiscrimination rights in shelters. HUD notes that the 2016 rule did not rely explicitly on the FHA for authority, and posits that the rule

¹¹⁷ 42 U.S.C. §§ 3604(a), 3605(a); *see also Housing Discrimination Under the Fair Housing Act*, HUD, <https://perma.cc/6ZLA-JV9Q> (archived June 25, 2026).

¹¹⁸ 42 U.S.C. § 3602(b).

avoided doing so specifically “because” the FHA “does not apply to emergency shelters.”¹¹⁹ HUD also states that it “finds it significant that the Fair Housing Act forbids sex discrimination as to covered dwellings, but not as to free, temporary, emergency shelters or other buildings or facilities, which therefore evinces the intent of Congress to permit single-sex housing in the latter case.”¹²⁰ The problem with HUD’s statements is that they are false.

It is true that the 2016 Final Rule covered shelters “regardless of whether the facility qualifies as a dwelling” under the FHA and that HUD did not at the time rely on FHA as its primary or sole source of authority.¹²¹ However, the 2016 Final Rule expressly rejected the notion that the FHA does not apply to emergency shelters. In response to comments, HUD stated that it “does not categorically exclude temporary, emergency shelters providing short-term housing accommodations” from the FHA’s coverage.¹²² Further, it responded that “shelters generally are covered within the definition of dwelling, and many courts have held shelters and other short-term accommodations to be dwellings,” citing to a range of court cases.¹²³ HUD even noted that various HUD regulations dating back to 1989 explicitly included homeless shelters as being dwellings in some circumstances.¹²⁴ HUD’s regulations expressly contemplate that shelters can be dwellings, identifying “sleeping accommodations in shelters intended for occupancy as a residence for homeless persons” as an example of a “dwelling unit.”¹²⁵ However, HUD did acknowledge that it is a fact-specific inquiry and walked through the factors it considers in making the determination.¹²⁶ HUD today is, therefore, wrong that the 2016 Final Rule did not rely on FHA for its authority “because” the FHA “does not apply to shelters.” Additionally, it is quite odd for HUD to state that in its proposal because as recently as May of this year HUD quite clearly stated that “homeless shelters and supportive housing can be dwellings covered by the [FHA].”¹²⁷

Much the same as HUD suggests today, commentors during the 2016 rulemaking claimed HUD was creating a new protected class.¹²⁸ HUD responded at the time that it was doing no such thing, that its 2012 Final Rule and a 2010 Memorandum had already recognized “that sex discrimination includes discrimination because of gender identity” and HUD further “reaffirm[ed] its view that discrimination based on gender identity is sex discrimination.”¹²⁹ Today, HUD states that it “agrees with commenters who noted that it is beyond HUD’s statutory authority to create a new class of individuals to be protected by federal non-discrimination law” and, in a separate footnote, that the 2016 rule “incorrectly state[d] that ‘[d]iscrimination because of gender identity is covered within the Fair Housing Act’s prohibition of sex discrimination.’”¹³⁰ But HUD does not truly grapple with its prior views, nor with the fact that in the intervening period between the 2016 Final Rule and today’s proposal the Supreme Court, in *Bostock v. Clayton County*, included gender identity

¹¹⁹ 91 Fed. Reg. at 22781.

¹²⁰ *Id.*

¹²¹ 81 Fed. Reg. at 64771.

¹²² *Id.* at 64770.

¹²³ *Id.* at 64771 & n.15.

¹²⁴ *Id.* at 64770–71 & n.13.

¹²⁵ 24 C.F.R. § 100.201.

¹²⁶ 81 Fed. Reg. at 64771.

¹²⁷ Trainor, *supra* note 112, at 1.

¹²⁸ 81 Fed. Reg. at 64769.

¹²⁹ *Id.* at 64770.

¹³⁰ 91 Fed. Reg. at 22781 & n.11.

discrimination within sex discrimination by applying Title VII of the Civil Rights Act of 1964 to prohibit employer discrimination based on gender identity as being discrimination because of sex.¹³¹

The proposal does not discuss *Bostock* anywhere despite citing Supreme Court precedents in other areas where it finds the jurisprudence more useful to HUD's pre-determined outcome.¹³² If it were to, it would need to grapple with the fact that, there, the Court found that Title VII of the Civil Rights Act of 1964 protected transgender employees from discrimination under the statute's prohibition on "sex" discrimination.¹³³ And, in so doing, stated that "discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second."¹³⁴ The logic of the Court's opinion was articulated in the sphere of Title VII and employment, but it obviously applies equally to "sex" discrimination wherever Congress writes the word. Additionally, the thrust of the opinion as well as its specific language does not comport with the view that protecting transgender people under sex is creating a "new class" of protected individuals. Instead, the opinion is a recognition that sex antidiscrimination protection extends to all forms of sex discrimination—which include discrimination against someone for being transgender.

HUD is unable to articulate how the FHA's protection against sex discrimination would be any different. Indeed, in 2021 HUD came to that conclusion and issued a memorandum stating the language of the FHA was comparable to that of Title VII and that HUD would enforce the FHA to prohibit sexual orientation and gender identity discrimination.¹³⁵

IV. HUD Cannot Justify the Extraordinary Costs the Proposed Rule Would Impose

a. HUD's claimed justifications do not support its proposal

HUD claims three justifications for its proposal beyond supposedly being compelled by the statute which has been dispensed with above: protecting cisgender women, respecting shelters' religion, and complying with the President's command.¹³⁶ None of the three supports amending the 2016 Final Rule in any fashion, let alone the radical restructuring that HUD proposes.

1. There is no evidence that the 2016 Final Rule decreased women's safety

¹³¹ *Bostock v. Clayton County*, 590 U.S. 644 (2020).

¹³² See 91 Fed. Reg. at 22781 nn.12, 17.

¹³³ *Bostock*, 590 U.S. 644.

¹³⁴ *Id.* at 669.

¹³⁵ Memorandum from Jeanine M. Worden, Acting Assistant Sec'y, HUD, re: Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act (Feb. 11, 2021), <https://perma.cc/SKB2-TPMD>.

¹³⁶ See 91 Fed. Reg. at 22781–82 ("HUD has considered these potential impacts and believes they are outweighed by the factors discussed above, especially that HUD must follow the clear meaning of the statute, ensure safe shelter environments for women, and respect the free exercise of religion"; "HUD believes this rule would advance the President's policy to 'defend women's rights and protect freedom of conscience' by ensuring that single-sex facilities are empowered to protect their clients, including those who are seeking shelter from domestic violence or sexual abuse.").

Regarding protecting specifically cisgender women in shelters, there is simply no evidence that the 2016 Final Rule *decreased* women’s safety or, in fact, has otherwise been problematic for shelter participants. HUD makes multiple claims in its proposal without any evidence or citations, including that the current policy places cisgender women at risk of sexual harassment and assault, that it “exacerbates prior traumas”, and that “many homeless women” are harmed by even the “perception” that the current policy could jeopardize their safety because they choose to remain unsheltered.¹³⁷ HUD does not cite to any research, surveys, or statistics, nor does it cite to any complaints it has received or issues it has had to address since the 2016 Final Rule.

HUD’s primary “evidence” is speculation built upon a single case in Alaska.¹³⁸ In that instance, a women’s shelter challenged a local law that required equal accommodation of transgender women in various situations.¹³⁹ HUD notes in a footnote that during the proceedings a woman testified that she “would rather sleep in the woods than sleep in the same area as a biological man.”¹⁴⁰ This single example is insufficient to justify the heavy weight of harms described above.

HUD only makes two other passing references to what it seems to consider to be supporting evidence. HUD cites to the United Kingdom’s decision regarding sex segregation in prisons and related figures used in the UK showing that 62 percent of male prisoners who identified as women had committed a sexual offense.¹⁴¹ The relevance of this is difficult to surmise as it is another country, a prison system, and a statistic devoid of any context, such as whether the sexual offense was against cisgender women or how the rates compared to those amongst cisgender male prisoners. However, if HUD would like to consider other contexts then there are more relevant ones where it has been shown that equal access for transgender women does not result in decreases to privacy or safety. For example, one study in Massachusetts found “no evidence that privacy and safety in public restrooms” change due to equal access for transgender people.¹⁴²

HUD also cites a single research paper as support for its statement that “Homeless women are at increased risk of sexual assault by biological males compared to other women.”¹⁴³ While sexual assault of homeless women is deserving of attention, this statement and the article tell us nothing about equal access for transgender women. It is also a particularly curious citation as the paper in question had to do with sexual assault experienced by homeless women broadly, did not analyze transgender issues specifically, and even referenced that sexual assault experienced by homeless women was *further compounded* by stigma and discrimination if those women were transgender.¹⁴⁴

¹³⁷ *Id.* at 22781.

¹³⁸ *Id.*

¹³⁹ *Id.* at 22781–82.

¹⁴⁰ *Id.* at 22781 n.15.

¹⁴¹ *Id.* at 22781.

¹⁴² 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* 10, Williams Inst., UCLA Sch. of L. (2018), <https://perma.cc/PKR6-ACZ7>.

¹⁴³ 91 Fed. Reg. at 22781.

¹⁴⁴ Lisa Goodman et al., *No Safe Place: Sexual Assault in the Lives of Homeless Women* 9, VAWnet Applied Rsch. Forum (Sep. 2006), <https://perma.cc/2HAA-NFAD> (“Survivors of sexual assault—homeless or housed, poor or wealthy—live with shame and fear. If they are homeless, they are further shamed by society for being poor and

Moreover, there is evidence that affirmatively demonstrates that housing transgender women with cisgender women does not pose any problem. HUD considered this issue as part of the 2016 rulemaking and responded to comments raising the issue of safety risks to cisgender women and their privacy concerns.¹⁴⁵ At the time, HUD stated:

HUD considered the issue not only from the perspective of transgender persons and other gender nonconforming persons, but also from the perspective of individuals whose sex assigned at birth and whose gender identity are the same. HUD has learned through its review that all individuals, including transgender persons and other gender nonconforming persons, can be safely accommodated in shelters and other buildings and facilities in accordance with their gender identity. Privacy concerns can be addressed through policy adjustments, such as the use of schedules that provide equal access to bathing facilities, and modifications to facilities, such as the use of privacy screens and, where feasible, the installation of single occupant restrooms and bathing facilities.¹⁴⁶

Additionally, HUD stated as recently as its 2020 proposal that “HUD is not aware of data suggesting that transgender individuals pose an inherent risk to biological women.”¹⁴⁷

This is further supported by hundreds of anti-sexual assault and domestic violence organizations, which stated that it was their view and experience 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.”¹⁴⁸ These same groups further stated that over 200 municipalities and 18 states had nondiscrimination laws covering transgender people and that “no jurisdiction has seen a rise in sexual violence or other public safety issues due to nondiscrimination laws that ... ensure [transgender people] access to sex-separated spaces consistent with their gender identity.”¹⁴⁹ Additionally, when the Lutheran Metropolitan Ministry, as a shelter provider itself, commented on HUD’s 2020 proposal, it told HUD that housing transgender people according to their gender identity did not pose a safety issue to others.¹⁵⁰

As HUD does not marshal any evidence of harm to women through decreases in their safety resulting from the 2016 Final Rule, HUD cannot assert its current proposal would *increase* their safety. But HUD also does not grapple with how its radical restructuring would *decrease* the safety of transgender people. Research has found that “When transgender and gender-diverse people are admitted into shelters and assigned placement based on their anatomic sex, they are vulnerable to

requiring help. If they are also women of color; immigrants; refugees; victims of sex trafficking; prostitutes; lesbian, bisexual, and transgender individuals; or women with disabilities, they face even greater stigma and discrimination.”).

¹⁴⁵ 81 Fed. Reg. at 64772.

¹⁴⁶ *Id.*

¹⁴⁷ 85 Fed. Reg. at 44815.

¹⁴⁸ Nat’l 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* (Oct. 30, 2024), <https://perma.cc/Q8XM-URND>.

¹⁴⁹ *Id.*

¹⁵⁰ Lutheran Metro. Ministry, *supra* note 80, at 1–2.

aggression and sexual assault.”¹⁵¹ Under HUD’s proposal transgender women would have the choice of either being unsheltered, which increases their risks of sexual and physical assault, or being housed with cisgender men, which similarly increases their risks of sexual and physical assault.¹⁵² Additionally, HUD does not seem to register the fact that its policy would also require cisgender women’s shelters to admit transgender men and HUD does not consider how cisgender women would feel about their privacy or security while being housed with an individual who, by all outward appearances, is a man.

Perversely, HUD’s proposal would also seemingly deprive transgender people of being able to obtain accommodations to address privacy concerns at a shelter not aligned with their gender identity.¹⁵³ This is something that cisgender women currently have access to under the 2016 Final Rule if they have any personal discomfort with transgender women being at the same shelter, as discussed further below. HUD strikes this regulation. Without an explicit regulatory requirement, shelters would seemingly not be obligated to provide modest accommodations to transgender people, such as access to a sleeping space near staff or use of single-occupant bathrooms.

2. *There is no evidence that the 2016 Final Rule unduly burdened shelters’ religion or was a broad problem for them otherwise*

HUD suggests that the 2016 Final Rule has been a problem for shelters by claiming that it “reduces the amount of help available to homeless individuals because it imposes an unacceptable and potentially illegal burden on the religious exercise of many faith-based facilities.”¹⁵⁴ Again HUD does not cite to any statistics or research showing that there has been a reduction in shelter nor even HUD’s own experience hearing concerns or complaints from shelters.

HUD’s sole source of support is the same Alaska shelter mentioned above. HUD sustains itself on an assertion that the court in the related legal case “held that ‘the public interest would be adversely affected’ if an Alaska homeless shelter for women were forced to admit biological men into its spaces” and also that the shelter in question believed that serving transgender women would violate their sincerely held religious belief.¹⁵⁵ There are multiple problems here. The first is that there are no indications that the shelter was a HUD grant recipient, as it was challenging a local law and not HUD’s regulations.¹⁵⁶ The second is that the court statement HUD cites was made in a preliminary injunction, not an ultimate ruling on the merits as HUD implies.¹⁵⁷ The third is that the preliminary injunction was granted on the specific basis that the local law likely *did not apply* to shelters in the first place.¹⁵⁸ The fourth is that the court *never* ruled on the merits, as the parties settled the case

¹⁵¹ Fraser, *supra* note 17, § 3.4.3.

¹⁵² *Id.*; *supra* Sec. II.a.1.

¹⁵³ Compare 24 C.F.R. § 5.106(c)(2) (“Post-admission accommodations”), with 91 Fed. Reg. at 22784.

¹⁵⁴ 91 Fed. Reg. at 22781.

¹⁵⁵ *Id.*

¹⁵⁶ *Downtown Soup Kitchen v. Anchorage*, 406 F. Supp. 3d 776, 799 (D. Alaska 2019). HUD also seems to suggest it was not a HUD recipient. See 91 Fed. Reg. at 22781–82 (“Hope Center *believes* that the application of laws *like* HUD’s 2016 Rule violate the First Amendment’s Free Exercise Clause.” (emphasis added)). HUD made a verbatim statement in the 2020 Proposed Rule. See 85 Fed. Reg. at 44814.

¹⁵⁷ *Downtown Soup Kitchen*, 406 F. Supp. 3d at 799.

¹⁵⁸ *Id.*

with a consent decree.¹⁵⁹ Relying on this case for anything more than how one shelter that was not a HUD recipient feels is unreasonable.

HUD's lack of evidence is particularly striking because HUD itself has access to every request to waive the 2016 Final Rule's requirements that it has ever received from shelters. One of HUD's relevant statutes includes a process for the Secretary to waive the application of its regulations and HUD has codified this waiver option in its regulations, which shelters could seek if they felt the 2016 Final Rule presented any problems for their operation.¹⁶⁰ HUD recognized this in 2020, though it does not mention the waiver option today.¹⁶¹ HUD should therefore have records of any and all waiver requests from shelters that would then provide evidence of shelters requesting to be released from the 2016 Final Rule. HUD may not cite to any because it is possible there have not been any waiver requests. In 2017, in response to a Freedom of Information Act request for information regarding waivers, HUD failed to locate any waiver request from a service provider nor any complaints from service providers regarding the 2016 or 2012 final rules.¹⁶²

Instead, as discussed above, there is evidence that affirmatively demonstrates there is *not* a problem for shelters. Some domestic violence shelters have stated unequivocally that they support laws granting transgender people access to domestic violence shelters in accordance with their gender identity.¹⁶³ They had sufficient confidence in their experience as shelters to say that transgender people do not pose a threat to survivors of domestic violence and that equal access protections “neither weaken public safety or undermine criminal laws [prohibiting assault], nor have they compromised their enforcement.”¹⁶⁴ And, in the context of the 2020 Proposed Rule, the Lutheran Metropolitan Ministry similarly told HUD that, as a shelter itself, it housed “those of any gender who wish to be served at a single sex facility for men” and that doing so did not pose a safety issue.¹⁶⁵

Additionally, as already discussed, for some people the free exercise of religion *includes* serving transgender people and, therefore, HUD's proposal would be impinging on their free exercise.¹⁶⁶ While HUD is not today willing to go so far as to identify the 2016 Final Rule as unlawful—stating instead that its burden on religion is “unacceptable and potentially illegal”—HUD does not grapple with its own rule imposing an unacceptable burden on religion.

3. *There are existing mechanisms to address any issues even if there was evidence that such issues existed*

If an issue or concern existed for either individuals or shelters, HUD maintains existing mechanisms to address them.

¹⁵⁹ *Downtown Soup Kitchen v. Anchorage*, 576 F. Supp. 3d 636, 641, 643 (D. Alaska 2021); see also Joint Consent Decree, *Downtown Soup Kitchen*, No. 3:18-cv-00190-SLG (D. Alaska Oct. 2, 2019), Dkt. No. 102.

¹⁶⁰ 42 U.S.C. § 3535(q); 24 C.F.R. § 5.110.

¹⁶¹ 85 Fed. Reg. at 44814.

¹⁶² Kellman, *supra* note 34.

¹⁶³ *Supra* Sec. IV.a.1; Nat'l Task Force to End Sexual & Domestic Violence, *supra* note 148.

¹⁶⁴ Nat'l Task Force to End Sexual & Domestic Violence, *supra* note 148.

¹⁶⁵ Lutheran Metro. Ministry, *supra* note 80, at 1–2.

¹⁶⁶ *Supra* Sec. II.b.2.B.

If individuals in a shelter have concerns with being housed with a transgender person, the 2016 Final Rule provided them with the express ability to request that the shelter take steps to address their privacy concerns.¹⁶⁷ HUD explained in 2016 that those accommodations could include things like being offered a room, floor, or bed that are close to staff workstations or that are set aside for residents with increased vulnerability; use of single-occupant bathrooms or to have exclusive times during the day to use a shared bathroom as a private bathing facility; and providing locking doors or curtains on toilet and shower stalls.¹⁶⁸ Additionally, HUD already has regulations requiring policies be in place to address “safeguards to meet the safety and shelter needs of special populations.”¹⁶⁹ HUD clarified in 2016 that if *any* resident faced a threat to their safety, HUD expected shelters to address such threats through mitigation strategies such as increasing security personnel, adjusting operating policies and schedules, and making modifications to create single occupant bathing facilities.¹⁷⁰ HUD noted not only that providers had expressly told HUD that adjusting schedules and policies was usually sufficient to address an issue and does not cost anything, but also noted that if modifications or security were required then HUD grant funding could be used for those purposes.¹⁷¹

If shelters themselves have concerns with accommodating a transgender person, they could seek a waiver either under the Secretary’s general waiver authority or under the Religious Freedom Restoration Act, as HUD acknowledged in 2020.¹⁷² While there is presently no evidence that such a waiver has been requested or is needed, HUD does not explain why that existing process would not be sufficient to address any shelters’ concerns.

If either of the policies to address individuals’ or shelters’ concerns were to fail in their real-world application for some reason, HUD maintains the ability to receive complaints and conduct investigations to remedy an issue.¹⁷³

4. *HUD’s sole remaining justification is President Trump’s Executive Order directing rescission of the 2016 Final Rule*

¹⁶⁷ 81 Fed. Reg. at 64768, 64782; 24 C.F.R. § 5.106(c).

¹⁶⁸ 81 Fed. Reg. at 64768. HUD also included this example separately: “An example of a nondiscriminatory step to address privacy concerns would be accommodating a request of a domestic violence victim who has specific privacy concerns to bathe at specific, separate times from other shelter or facility occupants.” *Id.* at 64777.

¹⁶⁹ 24 C.F.R. § 576.400(e)(3)(iii).

¹⁷⁰ 81 Fed. Reg. at 64772; *see also id.* at 64767 (“HUD’s regulations for the ESG program and the implementing guidance, make clear that temporary, emergency shelters, and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities have had, and continue to have, a responsibility to create a safe environment for all occupants, particularly those of special populations (see 24 C.F.R. § 576.400(e)(3)(iii) for more information).”).

¹⁷¹ *Id.* at 64772.

¹⁷² 85 Fed. Reg. at 44814. HUD does not describe its RFRA waiver process, but it is likely better understood as a petition for an exception perhaps similar to the Drug Enforcement Administration’s RFRA petition process. *See* Drug Enf’t Admin., *Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act (Revised)*, DEA-DC-5 (Nov. 20, 2020), <https://perma.cc/FD2M-EDUL>.

¹⁷³ *See Report Housing Discrimination*, HUD, <https://perma.cc/9V9Z-5UT3> (archived June 25, 2026); *see Office of Investigation*, Office of Inspector Gen., HUD, <https://perma.cc/TEX8-Z3JY> (archived June 25, 2026); *see, e.g.*, Trainor, *supra* note 112.

The above sections demonstrate that instead of gathering evidence and following it to a reasoned conclusion, HUD is acting without evidence and, in fact, acting *against* a great deal of evidence. The proposal's final justification is then President Trump's Executive Order (EO) regarding gender identity.¹⁷⁴ The EO provided a definition of sex expected to be used by agencies, rejected gender identity, and expressly directed HUD to "rescind" the 2016 Final Rule and "submit for public comment a policy protecting women seeking single-sex rape shelters."¹⁷⁵

As HUD knows, its ability to regulate in this area comes from the statutory authority granted to it by Congress. The President does not have any *additional* authority to bestow beyond what HUD already possesses to repeal or amend its regulations. The EO itself notes this, as executive orders generally do, stating that "Nothing in this order shall be construed to impair or otherwise affect the authority granted by law to an executive department or agency, or the head thereof" and that "this order shall be implemented consistent with applicable law."¹⁷⁶ Therefore, while HUD notes that the EO directed the rescission of the 2016 Final Rule, HUD also states that it is proposing its rule because it "agrees with Section 2(g) of the Order" which rejects gender identity.¹⁷⁷

This represents the true core of the rule: Secretary Turner agrees with President Trump's animus towards transgender people. The President's animus is well-established and can be seen in statements such as: multiple remarks made during an address to Congress, including referring to a school district allowing a transgender child to use their preferred pronouns at school as "child abuse";¹⁷⁸ referring to transgender equality efforts as "transgender insanity;"¹⁷⁹ in 2017, stating that he would not permit the military to be "burdened with the tremendous medical costs and disruption" of transgender people serving their country;¹⁸⁰ and stating as part of his 2024 election campaign that transgender people and gender dysphoria did not exist "until the radical left invented it just a few years ago," labelling gender-affirming care as "mutilation" and "mutation," and stating that "under my leadership, this madness will end."¹⁸¹

Secretary Turner affirmed his commitment to the President's views with his own discriminatory and religious-based views. In 2025, when Secretary Turner ordered the nonenforcement of the 2016 Final Rule, he stated:

¹⁷⁴ Exec. Order No. 14168, 90 Fed. Reg. 8615.

¹⁷⁵ *Id.* at §§ 1, 2(g), 2(a), 4(b). As an initial matter, it is worth noting that the rule does not do strictly what the EO commands. It does not simply rescind the 2016 final rule and return shelters to the status quo ante of 2015; nor does it then propose a rule that solely and specifically protects cisgender women seeking to have cisgender-women-only rape shelters. HUD amends the regulatory text from the 2016 Final Rule and alters it to require discrimination by all shelters based on its definition of sex. HUD's rule also rescinds the 2012 Final Rule, which the EO does not direct explicitly.

¹⁷⁶ *Id.* at §§ 8(a)(i), 8(b).

¹⁷⁷ 91 Fed. Reg. at 22782.

¹⁷⁸ Jo Yurcaba, *Fact-Checking Trump's Anti-Transgender Comments in His Address to Congress*, NBC News (Mar. 5, 2025), <https://perma.cc/M63K-LG4N>.

¹⁷⁹ GLAAD, *Fact Sheet: Donald Trump on LGBTQ Issues: Transgender Americans* (Aug. 20, 2024), <https://perma.cc/66GP-GS9D>.

¹⁸⁰ Laurel Wamsley, *Trump Says Transgender People Can't Serve in Military*, NPR (July 26, 2017), <https://perma.cc/59B7-CKA5>.

¹⁸¹ Samantha Riedel, *Donald Trump Plans to Gut Queer and Trans Rights in a Second Term*, Them (July 17, 2024), <https://perma.cc/CF9A-HFPE>.

Here, at this agency, we are carrying out the mission laid out by President Trump on January 20th when he signed an executive order to restore biological truth to the federal government. This means recognizing there are only two sexes: male and female. It's time to get rid of all the far-left gender ideology and get government out of the way of what the Lord established from the beginning when he created man in His own image: male and female.¹⁸²

When HUD subsequently issued its current proposal, Secretary Turner stated “God created two sexes: male and female. The Left’s war on biological reality through radical gender ideology will no longer take precedence over the safety and security of America’s most vulnerable women. This proposed rule will bring biological truth and sanity back to HUD’s policies.”¹⁸³ These views follow through into the language of the proposal itself, which defines sex to the exclusion of gender identity, does not refer to transgender people as “transgender people” a single time, and instead refers to transgender people repeatedly as “persons with gender dysphoria.”¹⁸⁴

With evidence that does not support the costs the rule would impose, this anti-transgender animus and religiously-motivated view of a binary, immutable, biological sex is the sole remaining animating force behind HUD’s proposal. It is obviously insufficient to support the rule.

b. HUD does not consider less burdensome alternatives

Due to a complete lack of supporting evidence, the need to address concerns of individuals and shelters is speculative and hypothetical on HUD’s part. Yet if HUD believes that changes are necessary to address the hypothetical situations of a shelter being unable to obtain a waiver or an individual being unable to obtain privacy or safety accommodations, HUD must consider alternatives to its proposed rule that would avoid the heavy costs and negative outcomes that are identified above.

Examples of such alternative solutions might include: (1) Improving the privacy accommodations process and security requirements, although as stated above HUD has not identified any issues with the existing accommodations process or security requirements; (2) Encouraging shelters to accommodate any concerns by participants *other than* transgender occupants by providing more private rooms, restrooms, and bathing areas for their use, though again HUD has not identified any need for such reforms; (3) Streamlining the waiver processes and clarifying the circumstances that qualify for the Secretary’s waiver and the RFRA waiver or, alternatively, expanding the Secretary’s waiver policy to expressly address the potential issues HUD raises, though HUD has not identified any issue with the current waivers. While none of these has been justified by HUD, each would seem to be less burdensome and costly on individuals, families, shelters, and society than HUD’s proposal.

¹⁸² HUDChannel, *Secretary Turner Halts Enforcement Actions of Gender Identity Rule* (YouTube, Feb. 11, 2025), <https://www.youtube.com/watch?v=VyTGFmDtyTI> (quoted as delivered; the remarks written in the related press release are slightly different; see Press Release, *Secretary Scott Turner Halts Enforcement Actions of HUD’s Gender Identity Rule*, HUD, <https://perma.cc/27SX-Y8R6> (archived June 25, 2026).)

¹⁸³ Press Release, *Secretary Scott Turner Moves to Restore Biological Truth and Sanity to HUD’s Policies*, HUD, <https://perma.cc/W2MH-YQFB> (archived June 25, 2026).

¹⁸⁴ 91 Fed. Reg. at 22780.

c. HUD preempts state and local law, creating legal conflicts and immense confusion

The proposal would add a new provision to HUD's regulations expressly preempting any conflicting state or local law and stating that non-compliance can be considered a violation of federal requirements and met with revocation of funds.

Confusingly, HUD uses different language each time it refers to this preemption. It first says "[t]he proposed rule also proposes to add § 5.106(e) stating that these requirements preempt any conflicting state or local laws non-compliance [sic] and that violations of said requirements will be subject to all applicable penalties, including loss of federal funding."¹⁸⁵ Then one line down says "HUD is considering preempting local laws that may conflict with these requirements for state or local entities receiving CPD funds."¹⁸⁶ And, finally, in the regulatory text itself says "(e) Non-compliance. Non-compliance with these regulations by state or local entities due to adherence to conflicting local laws or policies may be considered a violation of federal requirements, subject to appropriate enforcement actions, including but not limited to the withholding or revocation of federal funds provided through the CPD programs identified in paragraph (a) of this section."¹⁸⁷ None of these can quite be squared with the other to articulate a single clear rule except that HUD intends preemption of some manner of state or local laws and intends for non-compliance of the rule to be met with the potential revocation of funding.

As identified above, HUD has not presented evidence of a problem or how the rule solves it, has not articulated a coherent theory of its legal authority enabling it to make the proposed reforms and why those reforms do not conflict with other federal law, and has not justified the costs it would impose on individuals, families, shelters, and society. Despite all of those deficiencies, HUD proposes to make this policy change and do so with preemption of state and local laws. Under any standard, HUD has not met its burden of justifying these changes and preempting state and local laws across the country.

V. Conclusion

Homelessness is a serious issue and those who experience homelessness deserve to be supported by their government and treated with dignity and respect. HUD's proposed rule would instead impose unthinkable costs on our homeless neighbors, without an explanation of its authority, and to address nonexistent problems. For all of the reasons identified above, HUD should withdraw the rule.

This comment includes numerous citations to supporting research and relevant documents, including direct links for the benefit of HUD in reviewing our comments. We direct HUD to each of the studies or documents cited and made available to the agency through active hyperlinks, and we request that the full text of each of the items cited, along with the full text of our comment, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 22781.

¹⁸⁷ *Id.* at 22784.

Housing is a human right, dependent on humanity, not on sex or gender identity. Ensuring the universal human rights of all our residents, including economic and social rights, enables everyone to live dignified lives and develop to their fullest potential, benefiting us all.

Please contact Katie Meyer Scott (kmeyerscott@homelesslaw.org) or Eric Tars (ETars@homelesslaw.org) with any further questions.

Submitted by:

National Homelessness Law Center