



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

September 22, 2020

Submitted via Regulations.gov

The Honorable Benjamin S. Carson, Sr.
Secretary
U.S. Department of Housing and Urban Development
451 7th St SW
Washington, DC 20410

Re: Making Admissions or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs [Docket No. FR-6152-P-01; RIN: 2506-AC53]

Dear Secretary Carson:

Please accept this letter as the comments of the Co-Chairs of the Consortium for Citizens with Disabilities (CCD) Housing and Rights Task Forces. CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. We urge you to withdraw the proposed rule.

Discrimination Based on Gender Identity and Expression

The Equal Access Rule of 2016, building on the earlier 2012 rule from the U.S. Department of Housing and Urban Development (HUD), “Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity,” clarified the obligation for shelter providers to grant equal access in accordance to an individual’s self-expressed gender identity. HUD’s proposed rule could, instead, empower shelter providers to discriminate against people who are transgender and nonbinary people (or people who shelter staff characterize as such).

Research has consistently shown a relatively high prevalence of disability among transgender people.¹ Thirty-nine percent of transgender individuals have one or multiple disabilities, as compared with 15% of the general population.² Research also suggests a large overlap between transgender and autistic communities. People with disabilities are disproportionately represented

¹ <https://dredf.org/wp-content/uploads/2018/07/Health-Disparities-at-the-Intersection-of-Disability-and-Gender-Identity.pdf>

² <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

among all people experiencing homelessness.³ One in five transgender individuals has experienced homelessness at some point in their life.⁴ Transgender people are more likely to be unsheltered, and those who are unsheltered have considerably more health and safety challenges.⁵ Transgender individuals disproportionately experience homelessness, poverty, disability and discrimination when compared to their cisgender counterparts in the US.⁶ Rather than creating additional barriers to accessing safe shelter, HUD should be working to ensure that transgender and gender non-conforming individuals receive equal protection under the law.

Transgender people already have difficulty accessing shelter, at least in part because of their gender identities.⁷ For transgender and nonbinary people who are experiencing homelessness or other crises that may require access to emergency shelter, the lack of protections against discrimination is likely to result in people feeling forced to remain on the street or in unsafe circumstances, with limited or no other options, and where they may be at further risk of physical violence, abuse, and other physical and mental harm. The NPRM raises the specter of “harm [to] individuals in need of shelter by chilling their participation in HUD programs” to justify the rule, while it creates that exact circumstance for gender non-conforming people.

Lack of Available Alternatives

The proposed rule requires that if a shelter denies access to a person based on a determination of sex, the shelter must utilize the Continuums of Care’s (CoCs) centralized or coordinated assessment system (CAS) to provide a transfer recommendation to an alternative shelter or accommodation. This is impractical for a variety of reasons including that many CoCs still do not have a viable CAS, especially for emergency shelter, and that in many CoCs, there may only be a single emergency shelter.

CoCs have generally enacted local protections equivalent to or exceeding the 2016 HUD Equal Access Final Rule. However, as stated in the NPRM, as many as 30 states have no statewide legal protections for gender identity in relation to housing or public accommodations.⁸ Shelters in states with explicit gender identity nondiscrimination protections are twice as likely to accommodate a transgender client with appropriate shelter.⁹ Eliminating the 2016 rule would diminish national protections that prevent transgender individuals from being refused service, denied entry, or otherwise discriminated against on the basis of their gender. It would make emergency shelter considerably less safe and less accessible to transgender people, including many people with disabilities. A transfer recommendation may not guarantee a safe alternative.

³ https://www.usich.gov/resources/uploads/asset_library/Homelessness-in-America-Focus-on-chronic.pdf

⁴ <https://transequality.org/issues/housing-homelessness>

⁵ <https://endhomelessness.org/wp-content/uploads/2020/07/Trans-Homelessness-Brief-July-2020.pdf>

⁶ <https://www.transequality.org/sites/default/files/docs/usts/Executive%20Summary%20-%20FINAL%201.6.17.pdf>

⁷ <https://endhomelessness.org/wp-content/uploads/2020/07/Trans-Homelessness-Brief-July-2020.pdf>

⁸ 85 F.R. 44813, <https://www.federalregister.gov/documents/2020/07/24/2020-14718/making-admission-or-placement-determinations-based-on-sex-in-facilities-under-community-planning-and>

⁹ <https://www.americanprogress.org/issues/lgbtq-rights/news/2019/07/31/472988/dire-consequences-trump-administrations-attack-transgender-peoples-access-shelters/>

Faith-based organizations serve as the backbone of the emergency shelter system, operating nearly 30 percent of emergency shelter beds for families and single adults nationally.¹⁰ Additionally, faith-based organizations are the primary - and sometimes only - service providers in many rural communities.¹¹ The rule states that a prescriptive approach to admission and accommodation on the basis of gender identity raises concerns about burdens on faith-based shelter providers. Instead, the proposed rule would strip protections for transgender and gender non-conforming people seeking HUD-funded shelter from faith-based and other providers, again making emergency shelter less safe and less accessible to transgender individuals and likely creating an increase in unsheltered homelessness.

Privacy Concerns

HUD's proposal cites the "mental health and privacy concerns of at-risk clients," as a justification to allow temporary, emergency single-sex shelters to ask someone to provide evidence of their sex. This approach puts the burden on the person in crisis, and invites sex stereotyping and invasive questioning by program staff, which is, in itself, an invasion of privacy. The rule suggests an evaluation of a person's gender as identified by shelter staff scrutinizing a person's "Adam's apple," facial hair, etc. While conceding that "HUD is not aware of data suggesting that transgender individuals pose an inherent risk...", it introduces "anecdotal evidence" to justify permitting inviting scrutiny of a person's perceived gender and exclusion from emergency shelters based on stigma and prejudice.

The rule also suggests a shelter can consider "evidence," such as "a birth certificate, other identification, or medical records." Even if this was an appropriate inquiry, a person in crisis may not have official identification, and documentation requirements have historically presented a barrier for people with disabilities. A significant share of people with disabilities may not have these types of documents, including people who have experienced homelessness and people moving out of institutions. People with disabilities often face additional obstacles to accessing proof of identity, including challenges with transportation to identification-issuing offices and other accessibility barriers.

Conclusion

We oppose the "Making Admissions or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs" proposed rule in its entirety, and instead urge HUD to resume full implementation of the 2016 Rule "Equal Access in Accordance with an Individuals' Gender Identity in Community Planning and Development Programs."

The rule change is particularly concerning in the midst of an economic and health crisis, and in the midst of natural disasters causing large-scale evacuations, as unsheltered homeless people and people with disabilities are disproportionately impacted by all of these situations. We urge

¹⁰ http://endhomelessness.org/wp-content/uploads/2017/06/05-04-2017_Faith-Based.pdf

¹¹ [Strengthening Systems for Ending Rural Homelessness: Promising Practices and Considerations](#)

HUD to withdraw its current rule change proposal and dedicate its efforts to mitigating the effects that COVID-19 has had on housing stability for all.

CCD urges HUD to withdraw the proposed rule. Thank you for the opportunity to comment.

Sincerely,

CCD Housing Task Force Co-Chairs

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