

June 29, 2026

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

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

To Whom It May Concern:

We write to strongly oppose the *Equal Access to Housing in HUD Programs Revisions*, 91 Fed. Reg. 22779 (proposed April 28, 2026) (to be codified at 24 CFR Parts 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, 9705, 982, 984, 1005, and 1006) (“**Proposed Rule**”). The Proposed Rule is a cruel attack on our communities based solely on harmful stereotypes. It would violate federal law by mandating and promoting discrimination against LGBTQ+ individuals who depend on Department of Housing and Urban Development (“**HUD**”) assisted housing and shelters, and it purports to preempt state and local law to do so.

Current federal regulations require that HUD-assisted housing and shelters “shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.”¹ This principle protects our communities by ensuring that federally funded landlords and housing providers cannot discriminate against LGBTQ+ individuals by denying them rental assistance, evicting them, or otherwise treating them differently solely because of their gender identity or sexual orientation. Instead, the Proposed Rule would require and promote discrimination by:

1. defining “sex” as “an individual’s immutable biological classification as either male or female;”²
2. requiring HUD-funded shelter providers with shared sleeping or bathing facilities to admit and accommodate individuals based on their “sex,” rather than their gender identity;³
3. allowing HUD-funded shelter providers to require “reasonable assurances or evidence to establish a person’s sex;”⁴

¹ 24 C.F.R. § 5.105(a)(2). *See also* 24 C.F.R. §§ 5.403; 200.3; 570.3; 574.3; 891.105; 982.4(b). Gender identity is currently defined as: “the gender with which a person identifies, regardless of the sex assigned to that person at birth and regardless of the person’s perceived gender identity. Perceived gender identity means the gender with which a person is perceived to identify based on that person’s appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents.” 24 C.F.R. § 5.100. Sexual orientation is currently defined as: “one’s emotional or physical attraction to the same and/or opposite sex (e.g., homosexuality, heterosexuality, or bisexuality).” 24 C.F.R. § 5.100.

² Proposed Rule at p. 22780. HUD then proposes to define “male” as “a person of the sex characterized by a reproductive system with the biological function of (at maturity, absent disruption or congenital anomaly) producing sperm” and “female as “a person of the sex characterized by a reproductive system with the biological function of (at maturity, absent disruption or congenital anomaly) producing eggs (ova).” Proposed Rule at p. 22784.

³ Proposed Rule at p. 22780.

⁴ Proposed Rule at p. 22780.

4. permitting HUD to withhold or revoke federal funding for HUD-funded shelters that do not engage in this discrimination, even if state or local laws prohibit such discrimination;⁵
5. allowing discrimination based on actual or perceived sexual orientation or gender identity in HUD subsidized and insured housing;⁶ and
6. otherwise removing the word “gender” everywhere it appears in HUD regulations and replacing it with “sex,” as defined above.⁷

As described below, the Proposed Rule is fundamentally flawed for two main reasons. First, the Proposed Rule targets an already vulnerable community. Second, the Proposed Rule is illegal. Therefore, we urge HUD to withdraw the Proposed Rule in its entirety.

I. THE PROPOSED RULE TARGETS AN ALREADY VULNERABLE COMMUNITY

LGBTQ+ people experience homelessness at a disproportionately high rate. Most notably, LGBTQ+ youth make up 40% of the homeless youth population, but less than 10% of the population overall.⁸ LGBTQ+ people, especially transgender youth, are more likely to experience homelessness and housing instability for a number of reasons, including family rejection, employment discrimination, economic instability, and discrimination in housing and shelter access.⁹

Transgender individuals are particularly at risk of homelessness or housing instability. A 2015 nationwide study reported that 70% of transgender people who stayed in a shelter in the previous year were harassed, sexually or physically assaulted, or denied services.¹⁰ This mistreatment pushes transgender people out of shelter and housing services and into unsafe unsheltered situations. In California, 24% of transgender people who experienced homelessness in a one-year period avoided staying in a shelter because they feared mistreatment.¹¹ One in three transgender individuals experience homelessness at some point in their lives,¹² and 63% of transgender people experiencing homelessness are unsheltered (compared with 49% of cisgender people experiencing homelessness).¹³

LGBTQ+ people also face higher rates of housing discrimination and harassment. A 2024 Zillow survey showed that 79% of LGBTQ+ individuals report experiences of discrimination in

⁵ Proposed Rule at p. 22780.

⁶ Proposed Rule at p. 22780.

⁷ Proposed Rule at p. 22780.

⁸ *National Network for Youth, LGBTQ+ Youth Homelessness*, <https://nn4youth.org/learn/lgbtq-homeless-youth/>.

⁹ *National Network for Youth, LGBTQ+ Youth Homelessness*, <https://nn4youth.org/learn/lgbtq-homeless-youth/>.

¹⁰ Sandy E. James et al., Nat’l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender Survey*, at 13 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

¹¹ Nat’l Ctr. for Transgender Equal., *2015 U.S. Transgender Survey: California State Report*, at 2 (2017), <https://www.transequality.org/sites/default/files/docs/usts/USTSCAStateReport%281017%29.pdf>.

¹² National Center for Transgender Equality, *2022 U.S. Trans Survey Early Insights*, <https://tr.ce/SWpBxr>.

¹³ Nat’l All. to End Homelessness, *Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tell Us, at 1* (2020), <https://endhomelessness.org/wp-content/uploads/2020/07/Trans-Homelessness-Brief-July-2020.pdf>.

the housing market.¹⁴ A 2013 HUD study found that 1 in 6 landlords responded less favorably to same-sex couples as heterosexual couples seeking rental housing.¹⁵

Experiencing discrimination in the provision of housing and homeless services also leads to worse physical and mental health outcomes.¹⁶ For example, unsheltered transgender people are more likely than sheltered transgender people to suffer from a variety of negative health outcomes, including chronic health issues (38% versus 3%), mental health issues (50% versus 16%), substance use issues (69% versus 4%), and physical disabilities (30% versus 4%), and causing harm themselves or others (43% versus 11%).¹⁷

At a time when so many LGBTQ+ people already struggle to find safe shelter and affordable housing, it is unconscionable that HUD would abandon its mission to create strong, sustainable, inclusive communities, and instead require and promote discrimination against the LGBTQ+ community that will undoubtedly lead to increased homelessness.

II. THE PROPOSED RULE IS ILLEGAL

The Proposed Rule is illegal. In particular, it violates the Administrative Procedure Act, 5 U.S.C. §§ 551, *et seq.* (1946) (“APA”) because: (1) it directly conflicts with the Fair Housing Act and HUD’s governing laws; and (2) it is arbitrary and capricious because HUD’s reasoning is inadequate, HUD fails to provide a reasoned explanation for departing from longstanding federal law and HUD policies, and HUD fails to adequately consider all of the Proposed Rule’s impacts.

A. The Proposed Rule Conflicts with the Fair Housing Act

First, the Proposed Rule conflicts with laws and policies mandating that HUD affirmatively promote fair housing and prevent homelessness. In particular, the Fair Housing Act requires HUD to “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of [fair housing].”¹⁸ But by requiring providers to discriminate on the basis of sexual orientation and gender identity, the Proposed Rule is antithetical to the statutory policy of promoting fair housing.

The Proposed Rule is also contrary to the Fair Housing Act’s prohibition on sex discrimination. Discrimination based on sexual orientation or gender identity necessarily involves sex discrimination under Title VII because “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based

¹⁴ Zillow, *Survey: Most LGBTQ+ Individuals Experience Discrimination In Housing*, <https://www.zillow.com/news/most-lgbtq-experience-discrimination-in-housing/?msockid=3da6a9569fab6fc83aa1be209edd6ebe> (June 11, 2024).

¹⁵ HUD, *An Estimate of Housing Discrimination Against Same-Sex Couples*, <https://perma.cc/5KXM-T6YZ>.

¹⁶ See, e.g., Elizabeth A. Pascoe & Laura Smart Richman, *Perceived Discrimination and Health: A Meta-Analytic Review*, 153 *Psychol Bull.* 135(4): 531–554 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2747726/pdf/nihms134591.pdf>.

¹⁷ Nat’l All. to End Homelessness, *Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tell Us*, *supra* note 6, at 1; see also Janey Rountree et al., Cal. Policy Lab, *Health Conditions Among Unsheltered Adults in the U.S. (2019)*, <https://www.capolicylab.org/wp-content/uploads/2019/10/Health-Conditions-Among-Unsheltered-Adults-in-the-U.S.pdf>.

¹⁸ 42 U.S.C. §§ 3608(e)(5).

on sex.”¹⁹ In *Bostock v. Clayton Cnty., Georgia*, the U.S. Supreme Court held that discrimination against an individual on the basis of sexual orientation or gender identity is discrimination, at least in part, “because of sex” in violation of Title VII of the Civil Rights Act of 1964.²⁰ *Bostock* addressed Title VII employment discrimination, but its logic applies with equal force to the FHA’s prohibition of discrimination based on identical language regarding discrimination “because of sex.”²¹ Accordingly, courts have applied *Bostock* to cases under the Fair Housing Act.²² The Fair Housing Act prohibition of sex discrimination encompasses discrimination based on actual or perceived sexual orientation or gender identity.

HUD does not grapple with this black-letter law. Instead, HUD’s main justification for the Proposed Rule is 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.”²³ However, contrary to HUD’s assertion, many courts have found that the Fair Housing Act *does* apply to homeless shelters when certain factors have been met, such as (1) whether the facility is intended to house occupants for a substantial period of time, and (2) whether occupants view the facility as a place to which they can return.²⁴ So, requiring HUD-

¹⁹ *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 660 (2020).

²⁰ *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 662 (2020).

²¹ *Gamble v. City of Escondido*, 104 F.3d 300, 304 (9th Cir. 1997); *Larkin v. Michigan Dep’t of Social Servs.*, 89 F.3d 285, 289 (6th Cir.1996).

²² See *Walsh v. Friendship Vill. of S. Cnty.*, No. 19-1395, 2020 WL 5361010, at *1 (8th Cir. July 2, 2020) (where lesbian couple sued senior living community claiming discrimination on the basis of sex, and district court ruled in favor of landlord claiming sexual orientation was not protected under the Fair Housing Act; Court of Appeals vacated and remanded on the basis of *Bostock*; case then settled); *Larocque v. Spring Green Corp.*, No. 22-CV-00249-MSM-PAS, 2024 WL 4198607, at *4 (D.R.I. Sept. 16, 2024) (finding “*Bostock*’s reasoning about Title VII compels the same result for the FHA” but granting summary judgment for the landlord on other grounds); *Petricca v. Saxony Condo. Ass’n, Inc.*, No. 23-CV-81581, 2024 WL 5683535, at *2 (S.D. Fla. Sept. 25, 2024) (assuming “[f]or purposes of this statute, the term ‘sex’ includes sexual orientation” based on *Bostock*, but nonetheless dismissing claim on other grounds); *Petricca v. Saxony Condo. Ass’n, Inc.*, No. 23-CV-81581, 2024 WL 3345516, at *2 n.2 (S.D. Fla. Apr. 15, 2024), report and recommendation adopted, No. 23-81581-CIV, 2024 WL 3338808 (S.D. Fla. July 8, 2024) (same); *Birdo v. Duluky*, No. 20-CV-1108 (SRN/HB), 2020 WL 5549115, at *3 (D. Minn. Aug. 27, 2020), report and recommendation adopted, No. 20-CV-1108 (SRN/HB), 2020 WL 5545271 (D. Minn. Sept. 16, 2020) (assuming without deciding that sexual orientation discrimination is covered under the Fair Housing Act based on *Bostock*); *Levy v. Lawrence Gardens Apartments Del, LLC*, No. 21CV1415FBSJB, 2023 WL 2667045, at *5 n.1 (E.D.N.Y. Mar. 28, 2023) (applying *Bostock* but finding the alleged conduct did not rise to the level of illegal harassment based on sexual orientation under the Fair Housing Act); *Kummerow v. Ohawcha.org*, No. 21-CV-635-WMC, 2022 WL 873599, at *4 (W.D. Wis. Mar. 24, 2022) (noting that “plaintiff identifies as LGBT, which the court will presume falls within the FHA’s sex discrimination provisions” citing *Bostock*, but ruling against Plaintiff on other grounds); *Johnson v. Connecticut Coal. Against Domestic Violence*, No. 3:23-CV-1133 (SVN), 2024 WL 1000730, at *6 (D. Conn. Mar. 8, 2024) (unpublished decision applying the Fair Housing Act to discrimination on the basis of transgender status though not citing *Bostock* directly); *United States v. SSM Props., LLC*, 619 F. Supp. 3d 602, 606 (S.D. Miss. 2022) (stating without analysis that sex discrimination under the Fair Housing Act includes sexual orientation and gender identity); *Scutt v. Dorris*, No. CV 20-00333 JMS-WRP, 2021 WL 206356, at *5 (D. Haw. Jan. 20, 2021) (assuming without analysis that the Fair Housing Act applies to discrimination based on transgender status).

²³ Proposed Rule at 22781.

²⁴ See, e.g., *Lakeside Resort Enterprises, LP v. Board of Sup’rs of Palmyra Twp.*, 455 F.3d 154, 158 (3d Cir. 2006) (finding facility where individuals stayed for slightly more than two weeks on average and treated as a home was a dwelling). See also *Woods v. Foster*, 884 F. Supp. 1169, 1173-74 (N.D. Ill. 1995) (finding that domestic violence shelter with a 120-day limit on accommodations was a dwelling subject to the Fair Housing Act); Hunter on behalf

funded shelters with shared sleeping or bathing facilities that are considered dwellings under the Fair Housing Act to admit and accommodate individuals based on their “sex,” rather than their gender identity, likely violates the Fair Housing Act. In addition, HUD fails to address other types of HUD-assisted and HUD-insured housing covered by the Proposed Rule that certainly meet the definition of “dwelling” under the Fair Housing Act—and are subject to the Act’s prohibition against discrimination on the basis of gender identity and sexual orientation.²⁵

B. The Proposed Rule Is Arbitrary and Capricious

Second, the Proposed Rule is arbitrary and capricious because its reasoning is inadequate, HUD fails to provide a reasoned explanation for departing from longstanding federal law and HUD policies, and HUD fails to adequately consider all the impacts of the Proposed Rule. In fact, HUD relies almost exclusively upon Executive Order 14168, entitled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” and the administration’s belief that sex is an immutable biological characteristic. A presidential executive order, however, is not a substitute for reasoned decision-making. And the administration’s belief, without support, is insufficient legal reasoning.

HUD also states that current federal regulations violate “the religious liberty of many faith-based service providers.”²⁶ It then cites one faith-based homeless shelter in Alaska, the Hope Center, as an example.²⁷ But HUD fails to mention that faith-based providers are already permitted to seek a waiver under the Religious Freedom Restoration Act or the HUD Secretary’s general waiver authority.²⁸ Further, Hope Center’s challenge was related to a local ordinance, not a federal regulation, and it is unclear whether the Hope Center receives federal funding and would even be impacted by this Proposed Rule. If existing federal regulations do not burden faith-based service providers, including the Hope Center, then they cannot be used as justification for the Proposed Rule.

HUD also states that it “is considering preempting local laws that may conflict with these requirements for state or local entities receiving [HUD Community Planning and Development] funds.”²⁹ In particular, HUD threatens to withhold federal funding from HUD-funded homeless shelters that do not discriminate against LGBTQ+ individuals, even if state and/or local law prohibits that discrimination.³⁰ HUD fails to acknowledge that federal regulations can only preempt state or local law if, among other things, Congress explicitly intended for the federal

of *A.H. v. D.C.*, 64 F. Supp. 3d 158, 175 (D.D.C. 2014) (finding that a D.C. shelter without a time limit on accommodations, where families are provided with their own rooms where they can store belongings and remain during the day, is a dwelling under the Fair Housing Act); *Defiore v. City Rescue Mission of New Castle*, 995 F. Supp. 2d 413, 418 (W.D. Pa. 2013) (finding that an emergency shelter where participants are required to attend group meetings, do not have their own rooms, and are not permitted to personalize their sleeping space, was a dwelling under the Fair Housing Act); *Step By Step, Inc. v. City of Ogdensburg*, 176 F. Supp. 3d 112, 126 (N.D.N.Y. 2016) (finding that planned facility for patients with mental illness that would provide supportive housing, rental office space, and mental health support services, was a dwelling under the Fair Housing Act).

²⁵ *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644 (2020).

²⁶ Proposed Rule at p. 22781.

²⁷ Proposed Rule at p. 22781.

²⁸ 42 U.S.C. §§ 2000bb, *et seq.*; 42 U.S.C. 3535(q).

²⁹ Proposed Rule at 22781.

³⁰ Proposed Rule at 22780-22781.

regulations to supersede such state and/or local law.³¹ HUD relies upon Section 7(d) of the Department of Housing and Urban Development Act of 1965 (“**Section 7(d)**”) to issue the Proposed Rule, yet Section 7(d) does not explicitly allow for preemption of state or local law.³² And despite threatening to preempt state and local law, HUD asserts that the Proposed Rule “would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of [Executive Order 13132].”³³ This statement cannot be reconciled with HUD’s express statement that it is considering preempting state and local laws that prohibit discrimination on the basis of sexual orientation and gender identity.³⁴ Under Executive Order 13132, HUD must perform a federalism impact analysis that involves the weighing of and deference to state interests, as well as intergovernmental consultation. HUD fails to perform the required analysis or consultation, and instead simply claims that “HUD believes this would advance the important policy objectives of this proposed rule by ensuring maximum uniformity and compliance.”³⁵

In addition, HUD arbitrarily and capriciously fails to address numerous other aspects of the Proposed Rule and its impacts on individuals and families accessing shelter and federal housing assistance and the providers that serve these families. These include, but are not limited to, the following:

- **No justification for discrimination based on sexual orientation.** HUD provides no explanation or justification for why it would allow discrimination based on sexual orientation.
- **No evidence of safety risks for cisgender women.** HUD claims that the presence of transgender women in shelters threatens the safety of cisgender women. In particular, HUD states that doing so puts homeless cisgender women “at risk of sexual harassment and assault and exacerbates prior traumas for many homeless women. This is especially true because biological men may exploit the process of self-identification under the current rule to gain access to women’s shelters.”³⁶ But HUD does not cite any evidence that transgender people present any threat of harassment or violence to cisgender women in homeless shelters. This merely perpetuates harmful and untrue stereotypes that transgender people are sexual predators. In addition, there are already increasing reports of cisgender women being harassed because of transphobia.³⁷ The Proposed Rule claims to protect women. But by putting transgender women at risk to address a nonexistent danger to cisgender women, it does just the opposite. The Proposed Rule exacerbates a real problem in order to fix an imaginary one.
- **No justification for changes to other HUD-assisted and HUD-insured housing.** HUD provides no clear explanation for removal of the words “gender,” “gender identity,” and

³¹ See, e.g., Section 4 of Executive Order 13132 (1999).

³² 42 U.S.C. 3535(d).

³³ Proposed Rule at 22782.

³⁴ Proposed Rule at 22781.

³⁵ Proposed Rule at 22780-22781.

³⁶ Proposed Rule at 22781.

³⁷ *Minnesota Teen Says Server Forced Her To Prove Her Gender In Restaurant Bathroom*, NBC News, <https://www.nbcnews.com/nbc-out/out-news/minnesota-teen-says-server-forced-prove-gender-restaurant-bathroom-rca224562> (August 12, 2025).

“sexual orientation” through HUD regulations outside of the HUD-funded shelter context.

- **Conflict with Violence Against Women Act.** HUD also fails to mention or consider the Violence Against Women Act (“VAWA”) and the DOJ Office on Violence Against Women grants that are sometimes also provided to fund homeless shelters for survivors of domestic violence. For those grantees, the federal VAWA statute explicitly prohibits discrimination by grantees on the basis of gender identity or sexual orientation.³⁸ Although an individual’s “sex” may be considered in the case of sex-segregated programming, discrimination is not mandated, and anyone denied access must be provided with comparable services.³⁹ So, requiring HUD-funded shelter providers that also receive VAWA grants to admit and accommodate individuals based on their “sex,” rather than their gender identity, also violates VAWA.
- **Requiring proof of sex is a gross invasion of privacy.** The Proposed Rule would allow HUD-funded shelter providers to seek information to confirm the sex of an individual seeking services, and would allow HUD-funded shelter providers to require “reasonable assurances or evidence to establish a person’s sex.”⁴⁰ But HUD provides no guidance on what such “reasonable assurances or evidence to establish a person’s sex” could include, or how shelter providers should apply such requirements. This will almost certainly lead to harassment, invasion of privacy, and even physical violence, against shelter residents, especially those who do not conform to gender stereotypes and expectations or those who are perceived to be members of the LGBTQ+ community. It also puts shelter staff in an untenable position by making them choose between making invasive inquiries, risk violating state and/or local law, or losing critical federal funding.
- **Increased homelessness and reliance on locally funded safety net services.** As a result of the Proposed Rule, many individuals in our communities are almost certain to face increased homelessness and housing instability. Local jurisdictions fund critical social safety net services for their most vulnerable residents, including services to prevent families from losing their housing and to provide shelter to people experiencing homelessness. These locally funded programs are likely to face substantially heightened costs to meet the needs of individuals and families displaced as a result of the Proposed Rule.
- **Failure to consider alternatives.** HUD fails to identify any regulatory alternatives. Instead, it simply mentions that “HUD acknowledges that this rulemaking would result in denying individuals who claim a different gender identity than their sex being denied access to their preferred single-sex shelters or their preferred accommodations in other shelters. These individuals would need to find other shelter options that are not limited to a single sex or seek admission to a single-sex shelter consistent with their sex. Additionally, this rulemaking would require some organizations to follow rules inconsistent with their beliefs regarding gender and sex, if they continue to use federal funds. 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.”⁴¹ For the reasons discussed above, HUD’s reasoning is insufficient.

³⁸ 34 U.S.C. § 12291(b)(13)(A).

³⁹ 34 U.S.C. § 12291(b)(13)(B).

⁴⁰ Proposed Rule at 22780.

⁴¹ Proposed Rule at 22782.

The Proposed Rule would require and promote discrimination against the LGBTQ+ community and force more people into unsheltered homelessness, solely based on harmful and offensive stereotypes. The Proposed Rule targets an already vulnerable community and is illegal. For these reasons, we oppose the Proposed Rule and submit that it must be retracted in its entirety.

Very truly yours,

The City & County of San Francisco, California

The City of Baltimore, Maryland

The City of Boston, Massachusetts

The City of Chicago, Illinois

The City of Cincinnati, Ohio

The County of Hennepin, Minnesota

King County, Washington

The City of Minneapolis, Minnesota

The City of New York, New York

The County of San Mateo, California

The County of Santa Clara, California

The City of Seattle, Washington

The County of Sonoma, California