

June 29, 2026

Andrew Hughes, Chief of Staff
Office of the General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410

Re: HUD Docket No. FR-6518-P-01; RIN 2501-AE12; Equal Access to Housing in HUD Programs Revisions

Dear Mr. Hughes:

On behalf of the National Women’s Law Center and 24 additional gender justice and civil rights organizations, we write in strong opposition to the U.S. Department of Housing and Urban Development’s (HUD) proposed rule revising the Equal Access Rule, published in the Federal Register on April 28, 2016. Access to affordable housing and safe shelter is vital to the well-being of all women and families, and HUD’s unlawful attempt to roll back protections based on sexual orientation and gender identity would have far-reaching impacts on housing stability and disparities for LGBTQIA+ people. Alarming, HUD’s proposed exclusions impacting transgender people—rooted in inaccurate and deeply harmful mischaracterizations—would undermine community responses to gender-based violence by depriving people in crisis from life-saving shelter and leaving all women at risk of being turned away based on arbitrary sex stereotypes. We therefore collectively urge HUD to withdraw this misguided proposal and instead ensure full implementation of an LGBTQIA-inclusive Equal Access Rule.

I. HUD does not provide a reasoned explanation for its proposed rule, in violation of the Administrative Procedure Act.

Under the Administrative Procedure Act (APA), actions taken by a federal agency may be unlawful if they are “arbitrary, capricious ... or otherwise not in accordance with law.”¹ Courts interpreting the APA have required that a federal agency “examine the relevant data and articulate a satisfactory explanation for its action, including a ‘rational connection between the facts found and the choice made.’”² An agency may not take action that “rests upon a factual premise that is unsupported by substantial evidence.”³ Here, HUD acts in an arbitrary and capricious manner by failing to provide a reasonable explanation, offering only baseless assertions while ignoring a decade-long record of LGBTQIA-inclusive housing practices.

¹ 5 U.S.C. § 706(a)(2)(A).

² *Motor Vehicle Manufacturers’ Ass’n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

³ *Genuine Parts Co. v. EPA*, 890 F.3d 304, 346 (D.C. Cir. 2018).

A. HUD’s baseless safety assertions are inconsistent with the actual experience of shelters and housing providers over the past decade.

Trans people existing and accessing facilities consistent with their gender identity is not a new phenomenon. Emergency shelters are already well versed in serving trans people in crisis, as trans people disproportionately experience homelessness⁴ and gender-based violence.⁵ Decades of data and inclusive practices make clear that cisgender women and girls have been no less safe in the presence of trans people than they would have been otherwise. Still, HUD does not consider this information while making broad and baseless assertions to justify its proposed rule. In discarding the lived experience of trans people and shelter operators alike, HUD ultimately provides no reasoned explanation for its proposed revisions to the Equal Access Rule and thus violates the APA.⁶

The APA’s “reasoned explanation requirement ... is meant to ensure that agencies offer genuine justifications for important decisions. Accepting contrived reasons would defeat the purpose of the enterprise.”⁷ HUD’s proposed rule relies on unsubstantiated, false, and harmful public safety assertions that are not borne out in the actual reality of serving survivors of gender-based violence—providing only a singular statistic that is unrelated to emergency shelters, housing, or public accommodations.⁸ HUD even goes as far to say, without evidence, that equal housing access for trans people, which has been in place nationally for over a decade, would lead “many homeless women [to] choose to remain homeless.”⁹

Federal courts have seen through such contrived rhetoric before, characterizing past unsupported assertions that trans-inclusive policies will enable predators in sex-separated spaces as “no less odious, no less unfounded, and no less harmful than ... race-based or sexual-orientation-based scare tactics.”¹⁰ Indeed, federal courts have rejected claims for over two decades that are predicated entirely on concern with a

⁴ Bianca D.M. Wilson, et al. Homelessness Among LGBT Adults in the U.S., Williams Institute (May 2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Homelessness-May-2020.pdf>.

⁵ Sarah M. Peitzmeier, et al. Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates. 110 Am. J. Public Health e1 (Sept. 2020), doi.org/10.2105/AJPH.2020.305774.

⁶ 5 U.S.C. §§ 551-559.

⁷ *Dep’t of Commerce v. New York*, 588 U.S. 752, 785 (2019).

⁸ Dep’t of Housing and Urban Dev., Proposed rule: Equal Access to Housing in HUD Programs Revisions, 91 Fed. Reg. 22779, 22781 (Apr. 28, 2026) (“HUD Proposed Rule”) (citing data from British prisons).

⁹ *Id.*

¹⁰ *Grimm v. Gloucester Cnty. Sch. Dist.*, 972 F.3d 586, 626 (4th Cir. 2020); *see also Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 533 (3d Cir. 2018) (“A case involving transgender students using facilities aligned with their gender identities after seeking and receiving approval from trained school counselors and administrators implicates different privacy concerns than, for example, a case involving an adult stranger sneaking into a locker room to watch a fourteen[-]year-old girl shower. The latter scenario ... is simply not analogous to the circumstances here.”).

trans person “merely being present” in sex-separated spaces,¹¹ with courts noting that “[t]here is simply no evidence that [a transgender person’s] use of [a sex-separated facility] would pose a safety risk to other women.”¹²

In peddling its false and malignant narratives, HUD overlooks its own success, as the 2016 rule expanded access to housing and ameliorated the impacts of gender-based violence. Whereas HUD offered no actual data to verify its harmful narrative about sex-separated spaces, research consistently shows that trans people are *more* likely to be harassed in or excluded from a sex-separated space if they are forced to use a facility that does not align with their gender identity.¹³ Before HUD implemented equal access policies, trans people were eight times more likely than the general population to be homeless but were either refused access to the shelter (29%) or forced into facilities inconsistent with their gender identity (42%).¹⁴ Trans people who stayed at shelters faced high rates of harassment, with 26% of trans women being sexually assaulted at shelters in 2010.¹⁵ By instead ensuring that trans survivors could access shelters consistent with their gender identity, HUD’s 2016 rule has had a marked impact on improving access, safety, and trust: between 2016 and 2024, there has been a 31% increase in the proportion of homeless trans people who are housed in either an emergency shelter or transitional housing.¹⁶

The specific success of the 2016 HUD rule comports with the experience of jurisdictions across the nation that have adopted nondiscrimination protections based on gender identity, including municipal ordinances starting as early as 1975¹⁷ and statewide laws going into effect as early as 1993.¹⁸ Today, at least twenty-two states, the District of Columbia, and over 375 municipalities have explicit

¹¹ *Cruzan v. Special Sch. Dist., No. 1.*, 294 F.3d 981, 984 (8th Cir. 2002); see also *Parents for Privacy v. Barr*, 949 F.3d 1210, 1228-29 (9th Cir. 2020).

¹² *Hobby Lobby Stores, Inc. v. Sommerville*, 186 N.E.3d 67, 84 (Ill. App. Ct. 2021).

¹³ Jody L. Herman, et al., *Safety and Privacy in Public Restrooms and Other Gendered Facilities*, Williams Institute (2025), <https://williamsinstitute.law.ucla.edu/publications/safety-in-restrooms-and-facilities/>.

¹⁴ See Jaime M. Grant, et al., *Injustice at Every Turn: A Report on the National Transgender Discrimination Survey*, Nat’l Ctr. for Transgender Equality & Nat’l Gay and Lesbian Task Force, at 106 (2010) (finding that 1.7% of trans or gender non-conforming people were currently homeless, compared to an estimated 0.2% of the U.S. population).

¹⁵ *Id.*

¹⁶ Compare U.S. Dep’t of Housing and Urban Dev., HUD 2016 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations (Mar. 15, 2017), https://files.hudexchange.info/reports/published/CoC_PopSub_NatlTerrDC_2016.pdf, with U.S. Dep’t of Housing and Urban Dev., HUD 2024 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations (Dec. 9, 2024), https://files.hudexchange.info/reports/published/CoC_PopSub_NatlTerrDC_2024.pdf.

¹⁷ Kate Sosin, 50 years ago, Minneapolis redefined LGBTQ+ rights, *The19th* (Dec. 15, 2025), <https://19thnews.org/2025/12/minneapolis-redefined-lgbtq-history-1975/>.

¹⁸ Minn. Stat. § 363A.09, HF 585 (1993).

nondiscrimination protections for housing¹⁹—covering 63% of the national population and constituting over 214 million people.²⁰

Widespread adoption of gender identity-related protections has not increased risk or harm to cis women and girls. Multiple reports found that criminal incidents in public accommodations, including public restrooms, are “exceedingly rare” and that “fears of increased safety and privacy violations as a result of nondiscrimination laws are not empirically grounded.”²¹ Indeed, law enforcement officials have repeatedly clarified that they “could not identify a single case in which a transgender person has been charged with assaulting or harassing women in a public bathroom.”²² Furthermore, local laws continue to proscribe and deter harmful conduct, including assault, sex crimes, and voyeurism.²³

HUD’s proposal not only purports to solve a problem that simply doesn’t exist, but also abandons its own measured approach when promulgating the 2016 rule. HUD recognized that “denial of equal access cannot be justified based on unfounded concerns about safety or security,” the entire basis of the present rulemaking. Even still, in 2016, HUD specifically advised that providers could take “nondiscriminatory steps to address privacy concerns” while also “encouraging communities to move individuals and families into permanent housing as quickly as possible.”²⁴ Shelter operators and providers have demonstrated over the past decade that they can expand affirming placements for trans survivors without disrupting community trust or broader access.

¹⁹ See Movement Advancement Project, “Local Nondiscrimination Ordinances,” <https://mapresearch.org/equality-map/local-nondiscrimination-ordinances/#city-and-county-listing> (last updated May 2026).

²⁰ *Compare id.*, with U.S. Census Bureau, State Population Totals and Components of Change: 2020-2025, Annual Estimates of the Resident Population for the United States: April 1, 2020 to July 1, 2025, <https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html>.

²¹ 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, 16 *Sexuality Rsch. & Soc. Pol’y* 70, 79-81 (2019); see also Ryan Thoreson, Human Rights Watch, *Shut Out: Restrictions on Bathroom and Locker Room Access for Transgender Youth in US Schools* (2016); Jody L. Herman, et al., Safety and Privacy in Public Restrooms and Other Gendered Facilities, Williams Institute (2025), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Bathroom-Access-Feb-2025.pdf>.

²² Lou Chibbaro Jr., Predictions of Trans Bathroom Harassment Unfounded, *Washington Blade* (Mar. 31, 2016), <https://www.washingtonblade.com/2016/03/31/predictions-of-trans-bathroom-harassment-unfounded/>.

²³ Jody L. Herman, et al., *supra* n.14.

²⁴ Dep’t of Housing and Urban Dev., Final rule: Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs, 81 Fed. Reg. 64763, 64774 (Sept. 21, 2016) (“2016 Equal Access Rule”).

B. HUD’s sweeping claim that shelters’ free exercise rights are burdened is not reasonably explained and contrary to law.

Faith-based providers play a critical role in addressing homelessness and ensuring safe shelter for survivors of gender-based violence. HUD data from 2016 indicates that faith-based providers had capacity to house more than 74,000 people on any given night in emergency shelters, constituting 40% of all emergency shelter beds available to individuals.²⁵ Faith-based providers have continued to serve people in crisis and need for the past decade while complying with the 2016’s rules nondiscrimination provisions, consistent with longstanding U.S. Supreme Court precedent that held the Free Exercise Clause does not “excuse ... from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate.”²⁶ In its attempt to rescind those protections, HUD once again makes broad assertions not based in fact, claiming that “many” faith-based providers are burdened while only providing a single example.²⁷ Accordingly, HUD has failed to provide a reasoned explanation in violation of the APA.

Indeed, the Supreme Court cautioned in *Employment Division v. Smith* that “system[s] could not function if denominations were allowed to challenge [routine administrative processes] because [they were conducted] in a manner that violates their religious belief.”²⁸ For these reasons, the Court has long distinguished between laws that target specific religious beliefs or opinions and laws that target religiously motivated actions, finding that the Free Exercise Clause does not excuse compliance with “a neutral, generally applicable law” that is applied to the latter.²⁹ The Court has long held that nondiscrimination laws may be enforced, even when a religious entity objects to following these laws.³⁰

HUD now attempts to evade *Smith*’s well-established reasoning by citing *Espinoza v. Mont. Dep’t of Revenue*, a recent Court decision that concerned “status-based discrimination”³¹ against religious schools or nonprofits.³² However, in *Espinoza*, state funding was specifically denied to religious institutions because of their religious nature. That is not the case here. Several courts—including the Fourth,

²⁵ Nat’l Alliance to End Homelessness, Faith Based Organizations: Fundamental Partners in Ending Homelessness (May 2017), <https://endhomelessness.org/wp-content/uploads/2017/06/05-04-2017-Faith-Based.pdf>.

²⁶ *Employment Div., Dep’t of Human Resources of Ore. v. Smith*, 494 U.S. 872, 878-79 (1990).

²⁷ HUD Proposed Rule, *supra* n.9, at 22781.

²⁸ *Smith*, 494 U.S. at 880 (citing *United States v. Lee*, 455 U.S. 252, 260 (1982)).

²⁹ *Id.* at 879 -81 (quoting *Reynolds v. United States*, 98 U.S. 145, 166-67 (1878)) (“Laws ... cannot interfere with mere religious belief and opinions, they may with practices.”).

³⁰ See *Bob Jones Univ. v. United States*, 461 U.S. 574, 579 (1983); *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968).

³¹ *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 478 (2020) (“Status-based discrimination remains status based even if one of its goals or effects is preventing religious organizations from putting aid to religious uses.”).

³² HUD Proposed Rule, *supra* n.9, at 22781 n.17.

Ninth, and Tenth Circuits—have recently refused to undermine *Smith* and declined to apply *Espinoza*'s reasoning in broader contexts, including where a religious nonprofit objected to general nondiscrimination protections.³³

Here, HUD's adoption of a neutral and generally applicable nondiscrimination standard for all recipients of federal housing funding is not status-based discrimination and instead comports with *Smith*'s more relevant reasoning. In 2016, HUD did not exclude faith-based providers from receiving funding or otherwise distinguish based on religious status—indeed, HUD encouraged faith-based providers to “continue to actively participate” in HUD programs” and specifically noted that such providers have long been involved in HUD's programs and provide many valuable services to low-income populations served by HUD.”³⁴ This continues to be the case today, where faith-based providers have largely operated without incident to deliver shelter and services for homelessness and survivors of gender-based violence for a decade.

HUD's current proposal ignores the neutral and generally applicable purpose that informed HUD's 2016 rule, which was to “ensure decent housing and a suitable living environment for all [...] and] ensure that the regulations governing its housing programs make clear that [] arbitrary exclusion, isolation, and ostracism will not be tolerated in HUD-assisted housing and shelters.”³⁵ This broad nondiscrimination purpose, similar to the nondiscrimination provisions considered in the Ninth and Tenth Circuits, falls more squarely under *Smith*'s reasoning than the “status-based discrimination” cases cited by HUD. And, even if higher scrutiny was applied, courts have repeatedly found that the government has a compelling interest in eradicating discrimination, including sex-based discrimination.³⁶ HUD, therefore, fails to provide a reasoned explanation for its proposed revisions.

³³ *St. Mary's Catholic Parish v. Roy*, 154 F.4th 752, 765 (10th Cir. 2025), *cert granted* 2026 WL 1052111 (Apr. 20, 2026) (“But when a particular religious practice is alleged to be infringed incidentally, rather than religious status or use being specifically targeted, the Supreme Court requires that the law at issue be neutral and generally applicable.”); *Youth 71Five Ministries v. Williams*, 160 F.4th 964, 980 (9th Cir. 2025) (finding that a religious organization that was deemed ineligible for a grant because it required all employees to sign a Christian statement of faith could not assert a Free Exercise claim; the state's nondiscrimination rule “does not discriminate based on religious status or exercise; it merely disqualifies a class of potential grantees—those who discriminate based on religion—that includes both secular and religious organizations.”); *see also Kim v. Bd. of Educ. of Howard Cnty.*, 93 F.4th 733, 748 (4th Cir. 2024) (finding that *Espinoza* and similar cases “stand only for the point that religious schools cannot be excluded from grant programs solely because of their religious character.”).

³⁴ 2016 Equal Access Rule, *supra* n.25, at 64773.

³⁵ *Id.*

³⁶ *Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 549 (1987) (finding compelling interest in eliminating discrimination against women); *Romer v. Evans*, 517 U.S. 620, 631 (1996) (“[T]hese are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.”); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 625 (1984).

C. HUD’s reliance on Executive Order 14168 to erode gender identity and sexual orientation protections across HUD programs is not reasonably explained and is contrary to law.

Since 2012, HUD’s regulations have provided clear protection against discrimination based on sexual orientation and gender identity.³⁷ With little to no discussion, HUD now seeks to strip those protections out of regulation and leave LGBTQIA+ people vulnerable to housing discrimination, not only in shelters, but also in HUD-assisted housing, mortgage lending, and other programs.³⁸ The proposed rule’s throwaway references to Executive Order 14168,³⁹ a directive steeped in animus, do not provide a reasonable enough explanation for this broad reversal of nondiscrimination protections to withstand APA scrutiny.

Executive Order 14168 attempts to narrowly interpret sex in a manner that limits legal recognition of trans identity.⁴⁰ HUD attributes the executive order when removing language that protects based on “actual or perceived sexual orientation [and] gender identity.”⁴¹ But an agency’s adherence to executive orders cannot be enforced when “the President takes measures incompatible with the expressed or implied will of Congress.”⁴² Here, Executive Order 14168 is inconsistent with binding U.S. Supreme Court precedent and other federal jurisprudence that interprets sex discrimination provisions to be inclusive of sexual orientation and gender identity.

In *Bostock v. Clayton County*, the Supreme Court clarified that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex” since “homosexuality and transgender status are inextricably bound up with sex.”⁴³ Federal appeals courts have applied similar reasoning when evaluating discrimination claims related to sex-separated spaces, with the Seventh Circuit ruling that “[a] policy that requires an individual to use a bathroom that does not conform with his or her gender identity

³⁷ Dep’t of Housing and Urban Dev., Final Rule: Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662, 5662 (Feb. 3, 2012) (“2012 Equal Access Rule”).

³⁸ HUD Proposed Rule, *supra* n.9, at 22784-87.

³⁹ *Id.* at 22782.

⁴⁰ See Executive Order 14168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

⁴¹ HUD Proposed Rule, *supra* n.9, at 22782. HUD bizarrely proposes removing references to “actual or perceived sexual orientation” to “avoid the confusion of prohibiting discrimination based both on ‘sex’ and ‘sexual orientation,’ since the latter is often considered a subset of the former.” *Id.* at n.22. HUD’s reasoning is logically inconsistent, conveniently ignoring the fact that courts have long considered both sexual orientation and gender identity similarly encompassed within sex-discrimination protections. See *Bostock v. Clayton Cnty.*, 590 U.S. 644, 660-61 (2020). To arbitrarily distinguish between the two now is entirely untethered to more than a decade of legal jurisprudence.

⁴² *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637-38 (1952)).

⁴³ *Bostock v. Clayton Cnty.*, 590 U.S. 644, 660-61 (2020).

punishes that individual for his or her gender non-conformance, which in turn violates” statutory prohibitions on sex-based discrimination.⁴⁴

The Fair Housing Act (FHA) similarly proscribes sex-based discrimination, declaring that it is unlawful “to refuse to sell or rent ... or otherwise make available or deny ... a dwelling to any person because of ... sex.”⁴⁵ Even though *Bostock* was evaluating claims under Title VII, federal courts have consistently looked to Title VII when interpreting the FHA’s nondiscrimination provisions.⁴⁶ And, even before *Bostock* was decided, multiple courts had already found that the FHA’s prohibition on sex discrimination encompassed claims related to discrimination based on sexual orientation and gender identity,⁴⁷ including when a housing provider refuses to rent to a family based on stereotypes of “whom a woman (or man) should be attracted, should marry, or should have a family.”⁴⁸

II. HUD’s proposed rule is arbitrary and capricious by failing to consider the harms posed when shelters and housing providers are encouraged to sex-screen women.

HUD’s proposed revisions suggest that shelters and housing providers should be able to “require reasonable assurances or evidence to establish a person’s sex” without any clarification or limitation.⁴⁹ This vague provision, especially when coupled with the threat of withholding or revoking federal funds, opens the door to aggressive sex-screening procedures that infringe on privacy and bodily autonomy, ranging from intrusive questioning to physical inspection. As seen in other settings, gender policing of appearance does not end with trans women, but also impacts cisgender women who do not conform to specific expectations of femininity—including women who are taller, more muscular, or have short hair. Encouraging sex-screening as a condition of access to emergency shelters and other HUD-supported housing is wrong and dangerous, and will result in denial of services to women in crisis—trans and cis alike.

This is not an abstract concern. Indeed, with the recent increase in gender policing stemming from anti-trans policies adopted at the state level since 2020 and now amplified by this administration, cis women have been repeatedly harassed, confronted, and asked to leave public spaces for failing to conform to specific sex stereotypes. For example, an 18-year-old biracial high school student was reportedly

⁴⁴ *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1049 (7th Cir. 2017).

⁴⁵ 42 U.S.C. § 3604(a).

⁴⁶ See *Tex. Dep’t of Housing and Comm. Aff. v. Inclusive Comms. Project, Inc.*, 576 U.S. 519, 529-33 (2015) (referencing Title VII to interpret the FHA); *Wetzel v. Glen St. Andrew Living Community, LLC*, 904 F.3d 856, 862 (7th Cir. 2018) (finding that the reasoning in an earlier Title VII case “applies with equal force under the FHA”); *Gamble v. City of Escondido*, 104 F.3d 300, 304 (9th Cir. 1997) (“Most courts applying the FHA ... have analogized it to Title VII of the Civil Rights Act of 1964”).

⁴⁷ *Wetzel*, 904 F.3d at 862; *Smith v. Avanti*, 249 F. Supp. 3d 1194, 1201 (D. Colo. 2017).

⁴⁸ *Smith*, 249 F. Supp. 3d at 1201-02.

⁴⁹ HUD Proposed Rule, *supra* n.9, at 22784.

forced to unzip her sweatshirt and show a restaurant server her clothed breasts to end a restroom confrontation.⁵⁰ Similarly, a 6'4" cis woman in Florida was reportedly trapped in a bathroom stall as a man followed her into the bathroom and shouted anti-trans slurs at her.⁵¹ In Boston, a cis woman with short hair was confronted by a hotel security guard and then escorted out of the bathroom in front of other patrons, who then verbally harassed and misgendered her.⁵²

HUD's proposal not only invites the subjective scrutiny inherent in gender policing but also encourages providers to require some evidentiary burden of an individual's sex before providing shelter or housing. Similar policies that narrowly define sex have called for enforcement mechanisms that include invasive physical scrutiny or significant paperwork burdens. For example, Idaho has permitted schools to demand that "dispute[s] regarding a [child's] sex" be resolved through "physical examination relying ... [on] the [child's] reproductive anatomy."⁵³ In lieu of invasive physical inspections, HUD-funded providers may instead impose documentation requirements to ensure compliance—such as requiring those seeking shelter or housing to produce a birth certificate or driver's license. But providers know that imposing additional documentation requirements can be a significant barrier to anyone seeking to access emergency shelter. The overwhelming majority of survivors of domestic violence experience economic abuse and may not have control over their finances or important documentation.⁵⁴ Survivors—cis and trans alike—may not have identity documents with them when in crisis and in need of an emergency shelter.

Similarly, trans people's identity documents may or may not reflect their sex assigned at birth. Less than half of trans people are estimated to have an identity document with a sex marker that reflects their gender identity.⁵⁵ About 10 states lack processes for trans people to amend identity documents—including birth certificates and driver's licenses—to reflect their gender identity.⁵⁶ Documentation requirements put trans people at risk: 22% of trans people have been verbally harassed, assaulted,

⁵⁰ Ryan Adamczeski, "Lesbian teen cornered by server in bathroom and forced to prove gender files charges," *Advocate* (Aug. 13, 2025), <https://www.advocate.com/news/minnesota-cisgender-girl-restaurant-bathroom>.

⁵¹ Daniel Wu, "Walmart fires woman who reported anti-trans threats from man in bathroom," *The Washington Post* (Mar. 27, 2025), <https://www.washingtonpost.com/nation/2025/03/27/walmart-fires-woman-trans-hate-bathroom/>.

⁵² Brandon Truiett, "Woman says security guard at Liberty Hotel in Boston confronted her in bathroom, asked to prove gender," *CBS News* (May 7, 2025), <https://www.cbsnews.com/boston/news/women-boston-liberty-hotel-bathroom-gender/>.

⁵³ House Bill No. 500 § 33-6203 (Idaho 2020).

⁵⁴ A.E. Adams, et al., Development of the Scale of Economic Abuse, 14 *Violence Against Women* 563 (2008).

⁵⁵ *Id.*

⁵⁶ Movement Advancement Project, Identity Document Laws and Policies, <https://mapresearch.org/equality-map/identity-document-laws-and-policies/#birth-certificate> (2026).

asked to leave, or denied services when their identity documents do not match their presentation.⁵⁷

For these reasons, HUD wisely rejected an evidentiary burden in the 2016 rule, allowing for self-identification and making clear that trans people shall “not be asked intrusive questions or asked to provide documentary, physical, or medical evidence to prove their gender identity.”⁵⁸ But HUD’s current proposed revisions go further than emergency shelters and implicate a wide range of HUD-assisted and insured housing. In particular, HUD-assisted property owners may now require evidence of a tenant’s sex—including children’s—when determining unit size for a family. HUD’s proposed rule offers no clarifications or limitations on how sex-screening applies to children, leaving the door open to even further inappropriate scrutiny and abuses.

Sexual harassment and coercion are already ongoing issues in HUD-assisted housing, with most complaints detailing how owners attempt to obtain sex “in exchange for tenancy, breaks on rent, repairs, or other aspects of the rental relationship.”⁵⁹ In many cases, when a tenant refused sex, the owner/harasser ultimately threatens to evict or actually evicted them.⁶⁰ Broader support such as transitional housing is often not available to victims of sexual harassment.⁶¹ HUD’s careless demand that sex screening be put in place in shelters and HUD-assisted housing, without any guardrails, is a recipe for abuse that will ultimately harm both trans and cis women.

III. HUD’s proposed rule further violates the Administrative Procedure Act by conflicting with federal, state, and local laws.

A. HUD’s proposed rule is contrary to its responsibility of furthering fair housing and will exacerbate disparities faced by LGBTQIA+ people.

HUD has a statutory obligation to “administer the programs and activities related to housing and urban development in a manner affirmatively to further” fair housing.⁶² But in its proposed revisions, HUD “acknowledges that this rulemaking would result in denying individuals ... access to ... shelters.”⁶³ HUD also deceptively omits the far-

⁵⁷ Sandy E. James, et al., *Early Insights: A Report of the 2022 U.S. Transgender Survey*, at 22 (Feb. 2024), https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf.

⁵⁸ 2016 Equal Access Rule, *supra* n.25, at 64767.

⁵⁹ Rigel C. Oliveri, *Housing Sexual Harassment: A Department of Justice Case Study*, 33 *Journal of Affordable Housing and Community Development Law* 161, 173 (2025).

⁶⁰ *Id.*

⁶¹ Kate Scott & Aastha Uprety, *Combating Sexual Harassment in Housing Requires Prioritizing the Safety of Survivors*, Equal Rights Ctr. (June 24, 2019), <https://equalrightscenter.org/sexual-harassment-housing/>.

⁶² 42 U.S.C. § 3608(e)(5).

⁶³ HUD Proposed Rule, *supra* n.9, at 22782.

reaching consequences beyond HUD-funded shelters by removing nondiscrimination protections for all LGBTQIA+ people across HUD programs. In doing so, HUD evades its obligations under the law in violation of the APA.

LGBTQIA+ protections in shelters are not only critical to addressing the high rates of homelessness faced by trans people, but also the significant disparities faced by LGBTQIA+ youth more broadly. Lesbian, gay, and bisexual youth are approximately 12% more likely to experience homelessness than heterosexual youth,⁶⁴ with some studies estimating that as much as 45% of all homeless youth are LGBTQIA+.⁶⁵ High rates of LGBTQIA+ youth homelessness is fueled by familial rejection of their sexual orientation or gender identity, with as much as one-third of all homeless LGBTQIA+ youth reporting they had left home due to “parental disapproval of their sexuality.”⁶⁶ Ensuring welcoming environments and rooting out discriminatory practices in emergency shelters is a critical step in addressing the disproportionate rates of youth homelessness.

HUD’s assertion that the FHA “does not apply to emergency shelters”⁶⁷ is unfounded, as courts have repeatedly applied a fact-specific analysis and, at times, determined that shelters constitute a dwelling under the FHA.⁶⁸ In one such case, the court found that an emergency shelter was a dwelling because “it cannot be said that the people who live there do not intend to return—they have nowhere else to go.”⁶⁹

But the FHA’s nondiscrimination mandate extends far beyond emergency shelters. The FHA ensures that people seeking HUD-assisted or insured housing are protected from discriminatory housing practices, including refusal to rent, higher rents, improper eviction, denial of mortgage loans, and sexual harassment or assault. In 2012, HUD clarified that prohibitions on sex-based discrimination encompassed sexual orientation and gender identity to “ensure that HUD’s rental housing and homeownership programs remain open to all eligible persons....”⁷⁰

HUD’s 2012 clarifications were therefore important steps in remedying ongoing discrimination faced by LGBTQIA+ people seeking fair housing more broadly. Indeed,

⁶⁴ Cameron Deal & Gilbert Gonzales, Homelessness Among Sexual Minority Youth, 152 *Pediatrics* (Dec. 2023), <https://doi.org/10.1542/peds.2023-062227>.

⁶⁵ Adam P. Romero, et al., *LGBT People and Housing Affordability, Discrimination, and Homelessness*, Williams Institute (Apr. 2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

⁶⁶ *Id.* at 16.

⁶⁷ HUD Proposed Rule, *supra* n.9 at 22781.

⁶⁸ See *Lakeside Resort Enters., LP v. Bd. of Supervisors of Palmyra Twp.*, 455 F.3d 154, 159 (3d Cir. 2006) (holding a shelter was a dwelling since facility was intended for occupants to remain for more than one night and was a place they would return); *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941, 942 (9th Cir. 1996) (applying the FHA to a homeless shelter); *Hunter v. District of Columbia*, 64 F. Supp. 3d 158, 175 (D.D.C. 2014).

⁶⁹ *Woods v. Foster*, 884 F. Supp. 1169, 1173 (N.D. Ill. 1995).

⁷⁰ 2012 Equal Access Rule, *supra* n.38, at 5662.

the 2012 rule spoke to the broader housing disparities faced by LGBTQIA+ people beyond the emergency shelter context, noting that enumerated protections based on sexual orientation and gender identity were necessary to effectuate HUD's principal purpose of "providing decent housing and a suitable living environment for all."⁷¹ The 2012 rule sought to both "ensure that [HUD's] own programs do not involve arbitrary discrimination against any individual or family otherwise eligible for HUD-assisted or -insured housing, but [also ensure] that [HUD's] policies and programs serve as models for equal housing opportunity."⁷²

Even with the nondiscrimination protections of the current Equal Access Rule, LGBTQIA+ people continue to face broad and persistent disparities in homelessness, applying for and obtaining stable housing, and home ownership.⁷³ Housing providers are more likely to ignore rental inquiries from same-sex couples⁷⁴ and more likely to quote male same-sex couples higher rents than comparable different-sex couples.⁷⁵ Same-sex couples are less likely to be approved for a mortgage loan and more likely to be charged higher interest or fees.⁷⁶

Despite these well-established and ongoing disparities, HUD now attempts to remove sexual orientation and gender identity protections not only from emergency shelters, but across a broad range of HUD's programs. The proposed revisions are not limited to emergency shelters or sex-separated spaces and undermine fair housing protections, broadly, for all LGBTQIA+ people. Contrary to the APA's requirements, HUD has provided no explanation at all for so dramatically and widely undermining legal protections against discrimination in housing.

Furthermore, HUD discards the practical implications of its own muddled messaging. Enumeration of protected groups in nondiscrimination protections is an important indicator that alerts individuals to their rights under the law and signals compliance obligations to institutional actors, such as housing providers. In both the education and workplace contexts, enumerated policies are effective at promoting inclusive environments and reducing harassment and discrimination.⁷⁷

⁷¹ *Id.*

⁷² *Id.*

⁷³ Adam P. Romero, et al., *supra* n.71.

⁷⁴ Dep't of Housing and Urban Dev., An Estimate of Housing Discrimination Against Same-Sex Couples (June 2013), <https://www.opportunityhome.org/wp-content/uploads/2020/02/An-Estimate-of-Housing-Discrimination-Against-Same-Sex-Couples.pdf>.

⁷⁵ DK Levy, et al., A Paired-Testing Pilot Study of Housing Discrimination against Same-Sex Couples and Transgender Individuals, The Urban Institute (2017). https://www.urban.org/sites/default/files/publication/91486/2017.06.27_hds_lgt_final_report_report_finalized.pdf.

⁷⁶ H Sun & L Gao, Lending practices to same-sex borrowers, 116 Proceedings of the Nat'l Academy of Sciences of the United States of America 9293 (2019), doi.org/10.1073/pnas.1903592116.

⁷⁷ Stephen T. Russell, Promoting School Safety for LGBTQ and All Students, 8 *Policy Insights from the Behavioral and Brain Sciences* 160 (2021), doi.org/10.1177/23727322211031938; Laura G. Barron & Michelle Hebl, The Force of Law: The Effects of Sexual Orientation Antidiscrimination Legislation

B. HUD’s proposed rule conflicts with the Violence Against Women Act (VAWA) and improperly ignores shelters’ reliance on consistent rules.

HUD’s proposed exclusion of trans people in emergency shelters conflicts with other federal laws that explicitly protect against gender identity-based discrimination, namely the Violence Against Women Act (VAWA). HUD’s proposed rule unnecessarily creates confusion and significant administrability issues through its internal inconsistency and contradictory requirements that will ultimately force shelters to choose between different funding streams with different rules. Such a result leaves communities with fewer resources to address housing insecurity, including for vulnerable populations like survivors of gender-based violence, undermining HUD’s statutory responsibility to further fair housing.

Both federal law and HUD’s own regulations have required trans-inclusive policies in emergency shelters and other housing programs for more than a decade. In 2013, Congress passed a reauthorization of the Violence Against Women Act (VAWA) that included explicit gender identity-related protections,⁷⁸ noting that such protections were necessary to “support[] victims who have difficulty accessing traditional services because of their ... gender identity.”⁷⁹ Many emergency shelters, transitional housing providers, and domestic violence agencies rely on grant funding through both VAWA and HUD.⁸⁰ In finalizing the 2016 rule, where HUD “requires that individuals be accommodated in accordance with their gender identity,” HUD itself acknowledged the Department of Justice guidance on VAWA implementation could be instructive to housing providers serving survivors.⁸¹

Indeed, guidance on VAWA’s grant conditions specifically clarifies that trans people should be assigned to shelter placements “which correspond[] to the gender with which the beneficiary identifies.”⁸² Indeed, the Department of Justice cautions that shelters “should ensure that its services do not isolate or segregate victims based upon actual or perceived gender identity” and that “[a] victim’s own views with respect to personal safety deserve serious consideration.”⁸³ Notably, the guidance cautions that “[a] recipient may not make a determination about services for one

on Interpersonal Discrimination in Employment, 19 *Psychology, Public Policy, and Law* 191 (2013), doi.org/10.1037/a0028350.

⁷⁸ Violence Against Women Reauthorization Act, Pub. L. No. 113-4 § 3(b)(4), 127 Stat. 53, 61 (2013).

⁷⁹ S. Rep. No. 112-153, at 21 (2012).

⁸⁰ See U.S. Dep’t of Justice, Office on Violence Against Women, 2024 Biennial Report to Congress on the Effectiveness of Grant Programs Under the Violence Against Women Act (Dec. 13, 2024), <https://www.justice.gov/ovw/media/1385821/dl?inline> (noting 1,388 victim service agencies receiving VAWA subgrants in FY 2021).

⁸¹ 2016 Equal Access Rule, *supra* n.25, at 64778-79.

⁸² U.S. Dep’t of Justice, Frequently Asked Questions: Nondiscrimination Grant Conditions in the Violence Against Women Reauthorization Act of 2013, at 8 (Apr. 9, 2014), <https://www.justice.gov/archive/ovw/docs/faqs-ngc-vawa.pdf>.

⁸³ *Id.* at 8-9.

beneficiary based on the complaints of another beneficiary when those complaints are based on gender identity” and that shelters may not “ask questions about the beneficiary’s anatomy or medical history or make burdensome demands for identity documents.”⁸⁴

The U.S. Supreme Court has repeatedly cautioned that, “[i]n explaining its changed position, an agency must also be cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account.’”⁸⁵ HUD’s proposed rule does not consider shelters’ reliance on consistent rules across its federal funding sources, but instead instigates a conflict by directly contradicting VAWA’s grant conditions. HUD’s proposed rule recklessly jeopardizes shelter operations through its encouragement of sex-screening that either violates the dignity of trans survivors or leaves them vulnerable to undesirable placements in facilities that are inconsistent with their gender identity.⁸⁶

C. HUD’s proposed rule conflicts with state and local laws.

HUD’s proposed rule conflicts with state and local nondiscrimination laws that protect trans people seeking shelter. Again, at least twenty-two states, the District of Columbia, and over 375 municipalities have explicit housing nondiscrimination protections—covering 63% of the national population and constituting over 214 million people.⁸⁷ These protections would continue to apply even if HUD shirks from its enforcement responsibilities under the FHA.

HUD specifically notes that “[t]his rule would not ... preempt state law within the meaning of” Executive Order 13132.⁸⁸ Preemption of state law through federal regulation requires meeting a high standard, as courts must determine “whether Congress intended that federal regulations supersede state law.”⁸⁹ Indeed, the U.S. Supreme Court has evaluated preemption claims by evaluating whether federal agencies “meant to preempt [state] law, and, if so, whether that action is within the scope of the [agency’s] delegated authority.”⁹⁰ Here, it is unnecessary to reach the question of whether HUD has gone through the required consultations that would indicate its intent to preempt state law, much less demonstrate that preemption is

⁸⁴ *Id.* at 9.

⁸⁵ *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016) (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

⁸⁶ See Jaime M. Grant, *supra* n.15.

⁸⁷ *Id.*

⁸⁸ HUD Proposed Rule, *supra* n.9, at 22782. Throughout the preamble, HUD is intentionally unclear and internally inconsistent as to how it would apply the proposed regulations in jurisdictions with trans-affirming policies. HUD proposes a non-compliance provision that threatens to revoke federal funds from HUD-funded shelters who are legally required to maintain trans-affirming policies through state or local laws. *Id.* at 22784. HUD even suggests that the non-compliance provision would “preempt any conflicting state or local laws.” *Id.* at 22780.

⁸⁹ *La. Pub. Serv. Comm’n v. F.C.C.*, 476 U.S. 355, 369 (1986).

⁹⁰ *Fidelity Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 154 (1982).

within its delegated authority, because HUD expressly stated that “[t]his rule would not ... preempt state law.”⁹¹ This statement alone should put an end to the inquiry. Failure to adhere to the required rulemaking process is a critical signal that HUD did not intend for its proposed regulations to preempt existing state laws. Furthermore, HUD cites no statutory authority for its entirely new requirements that emergency shelters adopt trans-exclusionary policies. As stated above, such policies stand in stark contrast to express Congressional intent, especially given the VAWA reauthorization in 2013⁹² and HUD’s own statutory obligations to affirmatively further fair housing.⁹³

Ultimately, HUD’s conflicting regulations will foster administrative confusion and burdens. Shelters and housing providers will be forced to expend time and resources in navigating the different requirements imposed by HUD’s regulations or potentially jeopardize vital funding streams—either through declining HUD funding or risking loss of funds through HUD enforcement actions. Increased instability in the housing market will only harm families, resulting in increased costs, fewer placement opportunities, and an increase in the number of vulnerable people who lose stable housing. Such a result is inconsistent with HUD’s statutory responsibilities to affirmatively further fair housing for all.

IV. HUD should withdraw its unlawful and unjustified proposal and instead focus on fully enforcing the 2016 Equal Access Rule.

LGBTQIA+ people disproportionately face discrimination that inhibits access to safe shelter, stable housing, and home ownership. This is especially true for trans people navigating homelessness and gender-based violence, who face disproportionate risks to their safety if denied services or forced into facilities that are inconsistent with their gender identity. For these reasons, Congress, federal agencies, state governments, and municipalities have acted repeatedly to close disparities and enshrine clearer nondiscrimination protections. HUD has done so itself twice with the 2012 and 2016 rules to ensure equal access.

HUD’s current proposed changes to the Equal Access Rule disregard the very real access and safety issues faced by LGBTQIA+ people seeking emergency shelter and housing, and HUD has failed to offer a reasoned explanation for doing so. As a result, LGBTQIA+ people will be left with fewer protections from exclusion, refusal, or discrimination—exacerbating the already plentiful barriers to stable housing in today’s increasingly expensive and difficult market. In rolling back existing protections against discrimination and removing those protections broadly from HUD-supported housing, HUD has contravened its statutory obligations under the FHA. Moreover, HUD’s rule conflicts with other federal, as well as state and local

⁹¹ HUD Proposed Rule, *supra* n.9, at 22782.

⁹² S. Rep. No. 112-153, at 21 (2012).

⁹³ 42 U.S.C. § 3608(e)(5).

laws, as well as the Supreme Court's ruling in *Bostock v. Clayton County*, all of which will only create further confusion for housing providers. Threats to withdraw or revoke federal funds will arbitrarily deprive communities of essential resources to address homelessness and gender-based violence. Such a result is unlawful and unjustified under the APA.

Accordingly, we collectively urge HUD to withdraw this proposed rule and instead direct its attentions toward rooting out sex-based discrimination in housing, including such discrimination faced by LGBTQIA+ individuals. You are welcome to contact Brian Dittmeier, the National Women Law Center's Director of LGBTQIA+ Equality, at bdittmeier@nwlc.org for further information about our opposition to this harmful proposal.

Sincerely,

National Women's Law Center
California Women's Law Center
Coalition on Human Needs
Electronic Privacy Information Center (EPIC)
Girls for Gender Equity
Idaho Coalition Against Sexual and Domestic Violence
International Action Network for Gender Equity and Law (IANGEL)
Japanese American Citizens League
Mexican American Legal Defense and Educational Fund (MALDEF)
National Association of Social Workers
National Association of Women Lawyers
National Council of Jewish Women
National Network to End Domestic Violence
National Urban League
North Carolina Justice Center
Nurses for Sexual and Reproductive Health
Red Wine & Blue
SisterReach, Inc.
SisterReach Illinois
Standpoint
Union for Reform Judaism
URGE: Unite for Reproductive & Gender Equity
Violence Free Minnesota
Women of Reform Judaism
WV Free