

# Shelter Access for Transgender People Experiencing Homelessness

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**D**uring its tenure, the Trump Administration made a concerted effort to remove the protections and rights of lesbian, gay, bisexual, transgender, and queer (LGBTQ) people. In 2019, HUD, under the leadership of Secretary Ben Carson, announced plans to gut protections for transgender and gender-nonconforming people experiencing homelessness by removing a crucial provision in the Equal Access Rule of 2016. This proposed rule change was an explicit attack on a community that already faced steep barriers to accessing shelter. One in three transgender Americans has been homeless at some point in their lives. The 2015 U.S. Transgender Survey found that 70% of respondents reported mistreatment in shelters due to their gender identity, and 44% reported they had to leave shelters due to poor or unsafe conditions. In April 2021, HUD, under the Biden Administration, withdrew the previous Administration’s harmful changes to the Equal Access Rule, and reaffirmed HUD’s mission and commitment to creating inclusive communities. The withdrawal also sends a signal that the agency will not engage in the federally funded discrimination proposed by the Trump Administration.

## CHANGES TO THE EQUAL ACCESS RULE

### Background

On February 3, 2012, HUD published its final rule entitled “[Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity](#).” The 2012 Equal Access Rule was created to ensure that HUD’s housing programs would be open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. On September 21, 2016, HUD published a follow-up rule, “[Equal Access in Accordance with an Individual’s](#)

[Gender Identity in Community Planning and Development Programs](#),” which built upon the Equal Access Rule of 2012, ensuring equal access to HUD’s Office of Community Planning and Development (CPD) programs, specifically shelters, in accordance with a shelter seeker’s gender identity. HUD’s 2016 Equal Access Rule amendments constitute crucial policy to improve the treatment of transgender and gender-nonconforming individuals in securing emergency shelter.

### Now Withdrawn: Anti-Transgender Equal Access Rule

On July 24, 2020, the Trump Administration published its proposed anti-transgender changes to the Equal Access Rule, “[Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs](#)”. This proposed rule change would have weakened protections for transgender people experiencing homelessness and seeking emergency shelter, allowing shelter providers to deny admission or access to services consistent with a person’s gender identity.

Features of the harmful proposed changes included:

- Revisions to the definition of gender identity to mean actual or perceived gender-related characteristics (deleting the current rule’s “the gender by which a person identifies, regardless of the sex assigned to that person at birth and regardless of the person’s perceived gender identity”).
- Allowing shelter providers to place and accommodate individuals on the basis of the shelter provider’s policies for determining someone’s sex.
- Allowing shelter providers to deny admission using a range of factors, including the provider’s “good faith belief” that an individual is not of the sex that the

shelter serves (e.g., a women’s shelter), an individual’s sex as reflected in official government documents, or the gender with which a person identifies.

- Allowing shelter providers to use physical characteristics as “reasonable considerations” to determine a person’s biological sex. This may include factors such as height, the presence of facial hair, the presence of an Adam’s apple, and other physical characteristics that the Trump Administration claimed “when considered together, are indicative of a person’s biological sex.”

Despite admitting that data was lacking, HUD under the Trump Administration based its justifications on anecdotal evidence and dangerous stereotypes, undocumented “religious freedom” assertions, unfounded regulatory burdens on shelters, and other false, misleading, and discriminatory claims.

Due in part to the tremendous success of the Housing Saves Lives campaign and efforts by advocates nationwide, the publication of the final rule was delayed and never published by the Trump Administration.

### **Housing Saves Lives Campaign**

In response to the proposed rule, True Colors United launched the Housing Saves Lives campaign, co-led by over 50 national and local organizations, including NLIHC. The Housing Saves Lives campaign encouraged advocates to submit comments during the 60-day comment period in opposition to the Trump Administration’s proposed rule. Together, the campaign worked with members of Congress to urge HUD to rescind the rule, hosted a *Week of Action* with an array of national events led by partner organizations, recruited mayors and other public officials from across the nation to submit a public comment letter opposing the proposed rule, submitted op-eds and contributed to news articles. More than 66,000 public comments were submitted during the 60-day period, becoming the largest comment campaign on a HUD regulation ever.

### **Bostock v. Clayton County Ruling**

On June 15, 2020, The United States Supreme Court issued a landmark ruling on the civil rights of LGBTQ people. In a 6-3 vote in *Bostock v. Clayton County, Georgia* and *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*, the court held that Title VII of the “Civil Rights Act” bars discrimination based on gender identity and sexual orientation. This landmark civil rights ruling protects LGBTQ people from discrimination in employment, extending protections for millions of LGBTQ workers and making it illegal to be fired for simply being LGBTQ. The majority’s interpretation is consistent with the Equal Access Rule’s 2016 provision to ensure protections for transgender people from discrimination in homeless shelters and HUD-funded services.

Title VIII of the “Civil Rights Act of 1968” (the “Fair Housing Act”) and its proceeding amendments made it unlawful to sell, rent, or otherwise make unavailable or deny a dwelling to anyone because of race or color, religion, sex, national origin, familial status, or disability. In addition to the Equal Access Rule of 2012 and the addition to it in 2016, HUD has historically enforced the Fair Housing Act’s prohibition of sex stereotyping to cover LGBTQ people. The *Bostock* ruling will continue to influence fair housing rulings because the lower courts often rely on Title VII when interpreting the Fair Housing Act.

### **President Biden’s Executive Order Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation**

On his first day in office, President Joe Biden signed [Executive Order 13998](#) directing the federal government to fully implement the U.S. Supreme Court’s landmark ruling in *Bostock v. Clayton County, Georgia*. The order reinforced laws that prohibited sex discrimination, including the Fair Housing Act, which prohibits discrimination on the basis of gender identity or sexual orientation.

This order repudiated the anti-transgender rhetoric that was commonplace in the previous Administration and instructed the heads of

all federal agencies to review agency actions relating to sex discrimination and make decisions consistent with the instruction of the order within 100 days. The order required agency directors to consider whether to revise, suspend, or rescind such agency action, or create new agency actions, as necessary to fully implement statutes that prohibit sex discrimination and the policy set forth in the Executive Order.

### **HUD Withdraws Anti-Transgender Proposal**

HUD published in the *Federal Register* on April 27, 2021, a withdrawal of its proposed rule “[Making Admissions or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs; Withdrawal; Regulatory Review.](#)” This removed the previous Administration’s harmful anti-transgender proposal from HUD’s Spring 2021 Unified Agenda and Deregulatory Actions. HUD also restored most guidance and technical assistance from the 2016 Equal Access Rule to CPD-funded emergency shelters, temporary housing, buildings, housing, and other programs that were designed to ensure they comply with the rule. HUD continued to release resources by technical assistance providers to HUD grantees.

### **Legislative Action**

In the 117<sup>th</sup> Congress, Senator Jeff Merkley (D-OR) and Representative David Cicilline (D-RI) introduced “The Equality Act,” (H.R. 5/S.393), which would expand civil rights protections to LGBTQ people by banning discrimination based on sexual orientation and gender identity in housing, education, employment, and other areas. The bill defines and includes sex, sexual orientation, and gender identity among the classes protected against discrimination or segregation and amends the 1964 Civil Rights Act to explicitly prohibit discrimination on the basis of sexual orientation and gender identity in employment, education, housing, credit, jury service, public accommodations, and federal funding. In the 117<sup>th</sup> Congress, the bill passed the U.S. House of Representatives but has not received a vote in the U.S. Senate.

## **HOW ADVOCATES CAN TAKE ACTION**

### **Urge legislators to:**

- Pass the “Equality Act,” to expand civil rights protections to LGBTQ individuals by banning discrimination based on sexual orientation and gender identity in housing, education, employment, and other areas.
- Pass the “Fair and Equal Housing Act” (H.R. 4286 in the 117th Congress) to prohibit housing discrimination based on sexual orientation and gender identity.
- Address issues of discrimination and violence against transgender people, especially Black and Latinx transwomen.

### **Urge HUD to:**

- Work to address the housing and emergency shelter needs of the LGBTQ community.
- Urge the Biden Administration to:
- Work with Members of Congress to pass S.393, the “Equality Act” and ensure immediate and full enforcement across all federal departments and agencies.
- Work to address the housing and emergency shelter needs of the LGBTQ community.
- Address issues of discrimination and violence against transgender people, especially Black and Latinx transwomen.

## **FOR MORE INFORMATION**

The “Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity” is at

<https://www.govinfo.gov/content/pkg/FR-2012-02-03/pdf/2012-2343.pdf>.

The “Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs” is at <https://www.govinfo.gov/content/pkg/FR-2016-09-21/pdf/2016-22589.pdf>.

HUD’s Press Release: “HUD Withdraws Proposed Rule, Reaffirms Its Commitment to Equal

Access to Housing, Shelters, and Other Services Regardless of Gender Identity.” <https://bit.ly/3EQGgJT>.

HUD’s Withdrawn Proposed Rule: “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs; Withdrawal; Regulatory Review.” <https://bit.ly/3hVXTPr>.

Executive Order “Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation”: <https://bit.ly/3OxFwwh>.

HUD’s Office of Fair Housing and Equal Opportunity’s (FHEO’s) LGBTQ website is at [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/housing\\_discrimination\\_and\\_persons\\_identifying\\_lgbtq](https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq).

National Center for Transgender Equality: <https://transequality.org/>.

True Colors United: <https://truecolorsunited.org/>.