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SUBMITTED VIA REGULATIONS.GOV

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0500

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

To the Regulations Division, Office of General Counsel:

The National Low Income Housing Coalition (NLIHC) submits this comment to strongly oppose the U.S. Department of Housing and Urban Development's (HUD) Notice of Proposed Rulemaking, "Equal Access to Housing in HUD Programs Revisions" (Proposed Rule).¹

NLIHC is an organization whose members include state and local affordable housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, faith-based organizations, public housing agencies, private developers and property owners, local and state government agencies, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we work on behalf of and with low-income people who receive or need federal housing assistance, especially extremely low-income people and people who are homeless.

The Proposed Rule attempts to erase LGBTQIA+ people from HUD regulations, relies on harmful stereotypes about transgender women accessing shelter, and attempts to disregard the will of numerous states and localities to protect their residents from sexual orientation or gender identity discrimination.

Accordingly, NLIHC urges HUD to withdraw the Proposed Rule in its entirety.

¹ 91 Fed. Reg. 22,779 (Apr. 28, 2026).

A. The Proposed Rule Makes Housing Less Accessible for LGBTQIA+ People During an Affordable Housing Crisis

As is widely acknowledged, the United States is facing a housing affordability crisis. Yet, instead of focusing on how to address this crisis, HUD is using its regulatory agenda to remove protections against sexual orientation and gender identity discrimination across its programs. Such changes would make housing programs upon which low-income Americans rely less inclusive of LGBTQIA+ people and their families. In fact, HUD's Proposed Rule admits that the rulemaking would result in transgender individuals seeking shelter needing to "find other shelter options."² HUD fails to acknowledge that, in some parts of the country, "other shelter options" may not exist. We are deeply concerned that, if implemented, the Proposed Rule would further exacerbate housing instability for LGBTQIA+ people and households.

According to NLIHC research, in the United States, there are 11 million renter households with extremely low incomes, yet only 3.8 million rental units affordable and available to such households.³ People of color, specifically Black, Latino, and American Indian or Alaska Native (AIAN) households, "are disproportionately extremely low-income renters and disproportionately impacted by the housing shortage."⁴ Furthermore, income is not keeping up with housing costs. In 2025, NLIHC's analysis revealed that a worker would need to make \$33.63 per hour to afford a modest two-bedroom rental, and \$28.17 per hour for a modest one-bedroom.⁵ Nearly half of workers in the United States make less per hour than needed to afford a modest one-bedroom rental.⁶ It is therefore no surprise that hundreds of thousands of Americans experience homelessness each year. According to HUD, on a single night in 2025, at least 745,652 people experienced homelessness in the United States.⁷

The LGBTQIA+ community continues to experience housing discrimination and housing insecurity. For example, according to a Trevor Project publication, 28 percent of LGBTQ youth reported being homeless or housing insecure at a point in their lives.⁸ According to the Williams Institute, research finds "that housing, lending, and employment discrimination against LGBT people is widespread – discrimination that reduces housing affordability and increases housing instability and the risk of homelessness."⁹ Protecting LGBTQIA+ individuals from housing discrimination is key to ameliorating the impacts of the nation's shortage of affordable housing

² 91 Fed. Reg. at 22,782.

³ NLIHC, *The Gap: A Shortage of Affordable Homes* (2026), at 11, available at: <https://nlihc.org/gap>

⁴ *The Gap* at 4 (noting that "[e]ighteen percent of Black non-Latino households, 16% of AIAN households, and 13% of Latino households are extremely low-income renters compared to just 6% of white households")

⁵ NLIHC, *Out of Reach: The High Cost of Housing* (2025), at 11, available at: <https://nlihc.org/oor>

⁶ *Out of Reach* at 11.

⁷ U.S. Department of Housing and Urban Development, *The 2025 Annual Homelessness Assessment Report (AHAR) to Congress. Part 1: Point-In-Time Estimates of Homelessness* (May 2026), <https://www.huduser.gov/portal/sites/default/files/pdf/2025-AHAR-Part-1.pdf>.

⁸ The Trevor Project, *Homelessness and Housing Instability Among LGBTQ Youth* (Feb. 3, 2022), <https://www.thetrevorproject.org/research-briefs/homelessness-and-housing-instability-among-lgbtq-youth-feb-2022/>

⁹ Adam Romero, Shoshana Goldberg, & Luis Vasquez. *LGBT People and Housing Affordability, Discrimination, and Homelessness*, The Williams Institute (Apr. 2020), at 16, <https://williamsinstitute.law.ucla.edu/publications/lgbt-housing-instability/>

for the LGBTQIA+ community. Unfortunately, HUD has chosen to propose a rule that does the exact opposite.

B. HUD Fails to Justify its Decision to Remove Sexual Orientation and Gender Identity Nondiscrimination Protections Across HUD Programs Writ Large

HUD's proposal does not provide sufficient reasoning for its wholesale removal of "sexual orientation," "gender," and "gender identity" from HUD regulations, including the broadly applicable Equal Access provision at 24 C.F.R. § 5.105(a)(2). As HUD acknowledges, the changes will span "Section 8 housing and other housing programs, fair housing enforcement and administration, mortgage programs, programs to help the homeless and domestic violence victims, and community development programs."¹⁰ Yet, Section III of the Proposed Rule ("Justification for the Rule Change") overwhelmingly focuses on attempting to explain why it is rolling back protections for transgender and gender expansive individuals accessing HUD CPD programs, specifically single-sex shelters. In doing so, HUD attempts to minimize the fact that it is removing references to "sexual orientation," in addition to "gender" and "gender identity," across HUD programmatic regulations. The following discussion focuses on the non-shelter aspects of the Proposed Rule.

The preamble provides no analysis of the harm that denying public housing units, Housing Choice Vouchers, or mortgages on the basis of sexual orientation or gender identity would have on individuals and families. HUD does not account for the updates to ACOPs and Administrative Plans that PHAs will need to make to comply with the new proposed definitions. HUD makes no effort to quantify how removing anti-discrimination protections within HUD programs broadly will contribute to increased housing instability and possible homelessness. In fact, HUD devotes a small portion of Section III to convey that it is making these changes to make HUD regulations consistent with Executive Order 14168. However, this explanation is lacking for at least two reasons.

First, the executive order does not focus on or discuss sexual orientation.¹¹ Instead, HUD's attempt to explain the removal of sexual orientation can be found in a passing footnote in the Proposed Rule's preamble. The footnote states that sexual orientation is "often considered" a subset of sex without elaboration.¹² Yet HUD fails to explain why sexual orientation is considered a subset of sex while gender identity would not be, given the Supreme Court's decision in *Bostock v. Clayton County*.¹³ Furthermore, the removal of references to nondiscrimination on the basis of "sexual orientation" across HUD regulations sends a clear message that HUD no longer considers discrimination against gay, lesbian, and bisexual individuals a violation of its general equal access provision. Expecting practitioners to locate HUD's language regarding sexual orientation in a preamble footnote, which is equivocal at best, is a wholly insufficient explanation of HUD's sweeping changes.

¹⁰ 91 Fed. Reg. at 22,780.

¹¹ The only reference to the term "sexual orientation" is as part of a title of a document mentioned within Section 7 of the Executive Order.

¹² 91 Fed. Reg. at 22,782 n.22.

¹³ 590 U.S. 644 (2020).

Second, HUD does not analyze whether removal of references to “sexual orientation” and “gender identity” across HUD programs writ large runs afoul of the agency’s statutory obligation to affirmatively further fair housing (AFFH),¹⁴ which cannot be superseded by executive order. HUD fails to explain how excising references to nondiscrimination on the basis of sexual orientation or gender identity across HUD regulations – including in programs such as public housing or Housing Choice Vouchers – does not clearly violate the agency’s AFFH obligation, especially since, as noted above, HUD admits that sexual orientation “is often considered” a subset of sex.

In short, HUD fails to justify its wholesale removal of “sexual orientation,” “gender,” and “gender identity” from across HUD program regulations.

C. The Proposed Rule Relies Upon False, Harmful Stereotypes About Transgender People

The Proposed Rule relies upon unfounded and pernicious stereotypes about transgender people, particularly transgender women. The Proposed Rule cites the safety of women as a reason for excluding transgender women from single-sex spaces and implies that transgender women are inherently dangerous or threatening. The preamble, without evidence, states that individuals “may exploit the process of self-identification under the current rule to gain access to women’s shelters.”¹⁵ Despite the fact that the Equal Access Rule has been in effect for years, HUD fails to cite any examples of this occurring in CPD-funded shelters. Nor does HUD offer any examples of incidents of harassment or violence committed by someone who is transgender or gender expansive within HUD-assisted shelters.

In 2024, numerous anti-sexual assault and domestic violence organizations issued a national statement explaining that “[c]laims that allowing transgender people to access sex-separated spaces aligning with their gender identity threatens the safety or privacy of women and girls are *false*.”¹⁶ The statement explains that 18 states and over 200 municipalities, as of 2024, had nondiscrimination laws that protect transgender people’s access to facilities consistent with their gender identity, and no jurisdiction had experienced, as a result of such laws, a rise in sexual violence or other public safety issues.¹⁷ In short, there is no evidence demonstrating that transgender women are a threat to cisgender women’s safety in shelters.

Rather, transgender people experience a disproportionate amount of violence. Despite significant underreporting, research shows that transgender people are “over four times more likely than cisgender people to experience violent victimization, including rape, sexual assault, and aggravated or simple assault.”¹⁸ This risk is compounded for people experiencing

¹⁴ See 42 U.S.C. 3608(e)(5).

¹⁵ 91 Fed. Reg. at 22,781.

¹⁶ Letter from the National Task Force to End Sexual Assault & Domestic Violence, *National Statement in Support of Full and Equal Access for the Transgender Community from Anti-Sexual Assault and Domestic Violence Organizations*, at 1 (Oct. 30, 2024), <https://endsexualviolence.org/wp-content/uploads/2025/09/NTF-Statement-in-Support-of-Transgender-Community-Anti-SV-and-DV-Orgs.pdf> (emphasis added).

¹⁷ National Task Force Letter, at 2.

¹⁸ Williams Institute, UCLA School of Law, Press Release, “Transgender people over four times more likely than cisgender people to be victims of violent crime” (Mar. 23, 2021), <https://williamsinstitute.law.ucla.edu/press/ncvs-trans-press-release/> (providing an overview of Andrew Flores, Ilan Meyer, Lynn Langton, & Jody Herman, “Gender

unsheltered homelessness.¹⁹ Data from the 2022 U.S. Transgender Survey found that nearly all respondents experienced abuse – i.e., respondents were verbally harassed, physically attacked, or sexually assaulted while homeless (including when accessing shelter); additionally, the majority (58 percent) of respondents reported being denied access to shelter due to their gender, and 27 percent left shelter due to poor treatment.²⁰ Furthermore, transgender people, particularly Black transgender women, face a heightened risk of fatal intimate partner violence. Black transgender women “comprise 66% of all victims of fatal violence against transgender and gender non-conforming people.”²¹

Despite the lived realities of transgender people who endure harassment and violence, HUD’s preamble makes no mention of the life-threatening harms to transgender and gender expansive individuals who are victims of violence being unable to access safe shelter. Instead, HUD puts the onus on a person, potentially in crisis, to “find other shelter options.”

HUD’s reliance on stereotypes about the threats posed by transgender women is baseless and harmful and cannot stand as a rationale to removing critical protections from HUD regulations.

D. The Proposed Rule Will Invite Invasive and Intrusive Questioning of People Trying to Access Shelter

The Proposed Rule would allow CPD-shelters to “require reasonable assurances or evidence to establish a person’s sex,”²² a change that invites invasive and intrusive questioning of people who urgently need a place to stay. As noted above, earlier research reveals that transgender people are denied access to shelter and receive poor treatment. HUD’s proposal would exacerbate these harms, particularly given that HUD is affording “maximum deference” to grantees – with HUD acknowledging that some grantees may be more “stringent” in seeking evidence.²³ More concerning, HUD proposes to remove current regulatory language that explicitly prohibits someone from being “subjected to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence” of the person’s gender identity.²⁴

Because shelter seekers will not know in advance which shelters will demand the most “stringent” documentation, it is possible that shelter seekers who would be eligible even under

Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017-2018,” *American Journal of Public Health* 111, no. 4 (2021): 726-729, <https://doi.org/10.2105/AJPH.2020.306099>.

¹⁹ See Margot Kushel, *Violence Against People Who Are Homeless: The Hidden Epidemic*, Benioff Homelessness and Housing Initiative (July 14, 2022), <https://homelessness.ucsf.edu/blog/violence-against-people-homeless-hidden-epidemic>

²⁰ Daniel Soucy, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters*, National Alliance to End Homelessness and Advocates for Trans Equality 1, 4 (May 18, 2026), https://endhomelessness.org/wp-content/uploads/2026/05/US-Trans-Survey-Brief-V4_Working-File.pdf.

²¹ Human Rights Campaign Foundation, *An Epidemic of Violence: Fatal Violence Against Transgender and Gender Non-Conforming People in the United States in 2021* (2021), <https://reports.hrc.org/an-epidemic-of-violence-fatal-violence-against-transgender-and-gender-non-confirming-people-in-the-united-states-in-2021#resources>

²² Proposed 24 C.F.R. 5.106(c).

²³ 91 Fed. Reg. at 22,780 n.10.

²⁴ Compare 24 C.F.R. 5.106(b)(3) with 91 Fed. Reg. at 22,784 (proposed amendments to § 5.106).

the Proposed Rule would be dissuaded from seeking admission to shelter, as invasive questioning about one’s anatomy is traumatizing in and of itself. We are concerned that “stringent” evidence requirements – for example, if a shelter demands a birth certificate or government-issued ID demonstrating one’s sex assigned at birth – will result in people being turned away for circumstances beyond their control, such as inability to afford government ID or lack of access to vital documents due to domestic violence or property loss.²⁵ We are also concerned that anyone who is gender expansive – or even individuals who do not have stereotypical gender-based presentation – will be subjected to higher scrutiny than other shelter seekers, based on subjective criteria such as height, hairstyle, clothing choice, or voice.

Asking shelter providers to become adjudicators of someone’s sex assigned at birth will likely divert resources, weaken trust within communities, and put the onus on those who need shelter to prove who they are.

E. HUD’s Proposed Rule Conflicts With Existing State and Local Laws, Ensuring Uncertainty for Grantees

The Proposed Rule will cause chaos, confusion, and uncertainty for grantees who are simply trying to fulfill their missions. The Proposed Rule clearly threatens CPD funding for grantees solely for complying with state and local prohibitions on sexual orientation or gender identity discrimination.²⁶

HUD provides no analysis of the impacts of creating such conflicting legal mandates, nor does it outline a legal rationale allowing it to preempt state and local nondiscrimination laws.²⁷ Conflicting legal directives will cause immense confusion for CPD grantees, as they will be simultaneously concerned about losing their funding if they do not affirmatively exclude transgender individuals from single-sex spaces, as well as liability under state and local nondiscrimination laws. CPD grantees will be left with uncertainty around how to design day-to-day policies governing single-sex shelters.

In sum, as the nation faces an affordable housing crisis, HUD’s focus on rolling back protections for LGBTQIA+ individuals is cruel, unproductive, and based upon unfounded stereotypes about a community that still faces discrimination in myriad facets of life, including housing.

²⁵ According to the Brennan Center for Justice, over 9 percent of U.S. citizen adults, or 21.3 million people, lack proof of citizenship readily available. Kevin Morris & Cora Henry, Brennan Center for Justice, “Millions of Americans Don’t Have Documents Proving Their Citizenship Readily Available” (June 11, 2024), available at: <https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily>. While the article’s discussion is not specific to sex, documents such as a birth certificate or passports do reference a person’s sex assigned at birth. This figure is helpful to underscore that many people do not have readily available access to vital documents.

²⁶ See Proposed 24 C.F.R. 5.106(e).

²⁷ Somewhat confusingly, HUD clearly states that it is considering preempting state and local laws, *see* 91 Fed. Reg. at 22,780-81, yet also states that the Proposed Rule would not “preempt state law within the meaning of the [applicable] Executive Order.” 91 Fed. Reg. at 22,782. HUD fails to explain this, or why the E.O. 13132 would not apply here.

For the above reasons, we urge HUD to withdraw the Proposed Rule in its entirety.

Sincerely,

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