



NNEDV
NATIONAL NETWORK
TO END DOMESTIC
VIOLENCE

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

Re: HUD Docket No. FR-6152-P-01, RIN 2506-AC53 Comments in Response to Proposed Rulemaking: Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs

Dear Office of the General Counsel:

The National Network to End Domestic Violence (NNEDV) supports equal access for all homeless individuals and families to shelters and programs funded by the U.S. Department of Housing and Urban Development's (HUD) Community Planning and Development (CPD) programs. We believe equal access includes housing transgender individuals in the single-sex or sex-segregated facilities that match their gender identity. We write in strong opposition to the Proposed Rule that would rollback HUD's Equal Access Rule, allowing HUD funded organizations to discriminate against transgender individuals in gender-specific homeless shelters.

NNEDV is a leading voice for domestic violence victims and their advocates. As a membership and advocacy organization of the 56 state and territory domestic violence coalitions, their 2,500 locally-based member domestic violence programs, NNEDV works closely with its members to understand the ongoing and emerging needs of domestic violence victims and advocacy programs. NNEDV makes sure those needs are heard and understood by policymakers at the national level. NNEDV is a nationally recognized technical assistance provider on the intersection of housing and domestic violence. We provide technical assistance and training across the nation on housing and shelter supported by HUD, the Violence Against Women Act (VAWA), and the Family Violence Prevention and Services Act (FVPSA). Based on NNEDV's connections with survivors and with the field of local domestic violence service providers, we strongly support full and equal access to shelter for all homeless individuals and families, including transgender individuals who may be survivors of violence. We reject the false generalization that admission of individuals to single-sex shelters consistent with their gender identity would pose security or privacy concerns for shelter residents, including survivors.

NNEDV opposes any discriminatory barriers to services, particularly during the COVID-19 pandemic, while people experiencing homelessness are particularly vulnerable.¹ The health

¹ Centers for Disease Control and Prevention. Coronavirus Disease 2019 (COVID-19). Retrieved on September 20, 2020 from <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/homelessness.html>.

benefits of housing have never been clearer. According to the CDC, people who are homeless are at a greater risk of COVID-19. In fact, the CDC indicates that connecting people with stable housing “should be a priority” and that homeless shelters “serve a critical function in our communities.” As essential staff working in domestic violence shelters during the pandemic, our membership is seeing homelessness and housing insecurity skyrocket and we are working with individuals and families who are suffering beyond comprehension. While our nation reels from a public health crisis that has already killed 200,000² adults and children in this country, we must do everything in our power to protect those who are most vulnerable. We urge HUD to rescind this Proposed Rule, and instead address the urgent health and housing crisis with increased resources and technical assistance.

Concerns about disregarded feedback in the rulemaking process

NNEDV not only objects to the content of the Proposed Rule but also urges HUD and the Administration to respond to our concern that the process in developing the Proposed Rule ignored the recommendations of the domestic violence and sexual assault movement.

When the rule was in an early stage of development, national organizations working to end domestic violence and sexual assault met with Administration officials at the Office of Information and Regulatory Affairs (OIRA). The feedback we provided to OIRA is rooted in our 2016 Consensus Statement³ signed by over 300 national, state, and local anti-sexual assault and domestic violence organizations, which rejects the sort of myths inherent in HUD’s Proposed Rule. The Consensus Statement also supports laws and policies that protect transgender people from discrimination, including those related to accessing facilities consistent with their gender identity. The Proposed Rule perpetuates the myth that protecting transgender people’s access to shelter consistent with their gender identity places other residents, women in particular, in danger. Claims about the dangers posed by transgender individuals in emergency shelters and domestic violence programs are often rooted in prejudice against the transgender community, in general, and in a desire to discount and discredit transgender survivors, in particular.

The rhetoric in the Proposed Rule is incredibly harmful, alluding to a world where “women” are vulnerable and transgender individuals pose a safety threat. The Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) community, and transgender people specifically, face alarming rates of sexual and domestic violence. In The 2015, U.S. Transgender Survey⁴ found that 47% of transgender people are sexually assaulted at some point in their lifetime. The Human

² https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases_casesinlast7days

³ National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community. (April 13, 2018). Retrieved on From <http://www.4vawa.org/ntf-action-alerts-and-news/2018/4/12/national-consensus-statement-of-anti-sexual-assault-and-domestic-violence-organizations-in-support-of-full-and-equal-access-for-the-transgender-community>

⁴ The Report of the 2015 U.S. Transgender Survey. (December 2016). National Center for Transgender Equality. Retrieved from <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF> on September 20, 2020.

Rights Campaign⁵ reported that in 2018 alone, there were 26 deaths of transgender people in the United States due to fatal violence, the majority of whom were Black transgender women.

Access to shelters is critical and many survivors face incredible barriers due to a lack of available shelter. NNEDV's annual Domestic Violence Counts Census report found that in just one day in 2019, over 77,000 survivors accessed shelter and services from domestic violence programs. On that same day, however, there were over 11,000 unmet requests, of which, 7,732 (68%) were for housing and shelter.⁶ Domestic violence is often deadly - so it is critical that when survivors flee, they have a safe place to go. In fact, domestic and sexual violence are one of the leading causes of homelessness for women and children. Abusers commonly sabotage a victim's economic stability, leaving nearly 40% of all domestic violence survivors homeless and in unstable housing situations. For transgender women of color these rates are even higher. LGBTQ survivors of domestic and sexual violence face housing and shelter discrimination often making them hesitant to seek help from police, hospitals, shelters or rape crisis centers, the very resources in communities that are supposed to help them.

The reality of domestic violence means that many survivors have to leave their hometowns or states to find safe and confidential shelter. Transgender survivors, like all survivors, should be able to prioritize their safety rather than having to decipher the local and state laws and the potential impact on their ability to access shelter programs that are available to all survivors. It is unreasonable for a transgender survivor who is fleeing their abusive partner, during one of the most stressful and potentially life-threatening moments of their lives, to take on the additional responsibility of understanding inconsistent legal requirements of shelter programs. This barrier violates core principles of the domestic and sexual violence field, which prioritizes access for all survivors, and is another reason NNEDV and our partners oppose the proposed changes to the Equal Access Rule.

On the foundation of the Consensus Statement and with the information outlined above, we unequivocally rejected the Proposed Rule. We were exceedingly clear on our position. We shared the domestic violence field's deliberate efforts to improve inclusive services to meet the needs of LBGTQ and male survivors. We discussed relevant federal laws, guidance and our field's philosophy of serving the most marginalized and vulnerable. OIRA staff asked us questions about faith-based service providers and our thoughts on "women's" safety. We affirmed that our position was one that prioritized safety for all survivors, and shared that we had not heard from a single faith-based provider about their concerns. We explained how domestic violence shelters worked to protect all residents through a number of well-honed processes and practices. We shared that the rollback under consideration seemed to be a solution in search of a problem.

Despite our meetings with OIRA, comments and public statements, the feedback of the domestic violence and sexual assault movement is not referenced in the Proposed Rule. HUD itself admits that the agency is "not aware of data suggesting that transgender individuals pose an inherent

⁵ Violence Against the Transgender Community. Human Rights Campaign. Retrieved September 20, 2020 from <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2019>

⁶ National Network to End Domestic Violence (2020). 14th Annual Domestic Violence Counts Report. Washington, DC. Retrieved from: NNEDV.org/DVCounts on September 20, 2020.

risk to biological women,” but instead points to “anecdotal evidence that some women may fear that non-transgender, biological men may exploit the process of self-identification under the current rule in order to gain access to women's shelters.” The preamble then only cites one lawsuit, and an additional single example of how women in a shelter expressed fear about sleeping alongside persons who did not share their biological sex. The claim that allowing transgender people to access shelters in accordance with their gender identity will open the floodgates for men to infiltrate women-only shelters is based either on a flawed understanding of what it means to be transgender or a misrepresentation of the law. We know from decades of experience that perpetuating discriminatory policies against any group or identity *does not increase safety in shelter programs*. Assaulting another person in an emergency shelter remains against the law in every single state regardless of the gender of the victim and perpetrator.

We are experts in survivor safety. We strive for it daily. Safety, especially during the pandemic, depends on access to safe, immediate shelter. The threat of violence against women has been used as a reason to perpetuate discrimination and yet the perspectives of the domestic violence and sexual assault movement have been ignored. We urge HUD to rescind the Proposed Rule and to respond to our concerns about the process.

Harmful, traumatic processes enshrined in the Proposed Rule

Our field has worked to improve our trauma-informed responses, as we understand the impact that re-traumatization can have on individuals who have lived with violence. Individuals who are experiencing homelessness, a traumatizing experience, should not be subjected to the further trauma of invasive questions and the fear, rejection and uncertainty that results from denial of admissions into shelter. If the individual is facing violence from a partner or on the streets, the trauma and fear will be compounded. By treating individuals humanely and respecting their gender identity, programs can mitigate harm and reduce trauma.

We share concerns outlined in number comments about the screening processes set forth in the rule to assess someone's gender (based upon factors such as the person's physical appearance, including height and the presence of facial hair). We believe these invasive and undignified screening processes are harmful and will be traumatizing to individuals seeking shelter. When denying an applicant because of their biological sex, the shelter then only has to provide a transfer recommendation to the shelter seeker, but is not required to take additional steps to ensure that the person seeking shelter can realistically be successfully accommodated elsewhere. The Proposed Rule fails to dictate a procedure for the likely scenario that other shelter accommodation is not available. An individual denied access to shelter will have faced a harmful, traumatic interaction and likely be left without services or shelter. We urge HUD to rescind the Proposed Rule to avoid traumatic screening processes and discrimination.

Creates challenges for technical assistance providers

Federal agencies, including HUD, non-profit shelter providers, and technical assistance providers have been working for decades to identify and eradicate barriers that homeless individuals and families face when accessing emergency, temporary shelter. NNEDV, along with a number of other national technical assistance partners, work with domestic violence emergency shelters, state coalitions, Continuums of Care, and other stakeholders to explain their obligations under federal law and to help them develop inclusive, safe services. We provide training and technical

assistance on the non-discrimination provisions in the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA). Our focus has been on gender-inclusive services and prioritization of the most vulnerable. We have never encountered a domestic violence program that expressed a concern about the Equal Access Rule or serving transgender survivors.

Our field has worked hard to create clarity around what survivors can expect when accessing support and care in the wake of experiencing violence. Shelter programs are trained on intake procedures to ensure that the program can meet residents' needs. Programs work to ensure the safety of their buildings in light of the fact that residents are fleeing dangerous abusers. The current Equal Access Rule is in alignment with the nondiscrimination and accessibility legal requirements under the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA), which means that both shelter and housing programs, as well as survivors, have clear guidance and expectations under the law. Clarity and consistency help to mitigate the anxiety and fear that survivors experience when leaving dangerous situations and make it easier for domestic violence programs to understand and meet their obligations. As news of the rollback began to spread, we heard from a number of organizations that were confused by what this would mean for their services and for transgender individuals. Proposed changes to the Equal Access Rule are creating incredible confusion in the field, as service providers have had training and technical assistance that has increased access for transgender survivors. Again, in the midst of the pandemic, as organizations work to understand shifting landscapes and to help homeless people who are navigating reduced community resources, organizations and individuals should not be required to understand new federal regulations that reduce access to shelter.

Conclusion

NNEDV strongly supports access to shelter for all and strongly opposes rolling back the crucial protections of the Equal Access Rule. We urge HUD to heed the recommendations of our field and movement and rescind the Proposed Rule. Please feel free to contact me for any further information at mmclaughlin@nnev.org.

Sincerely,

A handwritten signature in black ink that reads "Monica McLaughlin". The signature is written in a cursive, flowing style.

Monica McLaughlin
Director of Public Policy
National Network to End Domestic Violence