

September 22, 2020

**National Sign-on letter of Domestic Violence, Sexual Assault, and Trafficking
Organizations and Programs in Support of Full and Equal Access to Shelter for the
Transgender Community**

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:

These comments are submitted in response to, and in **strong opposition** to, the proposed Rule titled, “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs,” published in the Federal Register on July 24, 2020 by the Office of the Secretary of the U.S. Department of Housing and Urban Development (HUD). We, the undersigned domestic violence, sexual assault, and trafficking organizations and programs (hereinafter survivor services providers), represent or offer a range of services to individuals who are experiencing or have experienced domestic violence, sexual assault, and human trafficking. This encompasses organizations offering shelter and housing services, including single-sex facilities. **We believe equal access includes housing transgender survivors in the single-sex or sex-segregated facilities that matches their gender identity.** We write in strong opposition to the pending final rule that would reinterpret HUD’s Equal Access Rule so that HUD will no longer protect transgender individuals from discrimination in HUD’s gender specific shelters. Further, we reject the sweeping-- and false--generalization that admission of transgender individuals to single-sex shelters consistent with their gender identity would pose widespread, safety, security or privacy concerns for shelter residents, including cisgender women survivors.

Specifically, HUD’s recent proposal to amend the Equal Access Rule rolls back life-saving protections for transgender people seeking shelter. HUD proposes to walk back its existing regulation that ensures transgender people can safely access emergency shelters upon which they rely. Under the new proposal, HUD would allow single-sex shelter providers to essentially question someone’s biological sex based on “good faith belief” factors such as the person’s physical appearance, including height and the presence of facial hair. Such questioning will humiliate not only transgender persons, but also individuals who do not conform with gender stereotypes. Upon such questioning, the shelter is then permitted to “request evidence” of the person’s biological sex. Such a “good faith belief” may also be used as the basis for denying the shelter seeker admission altogether. When denying an applicant access to services because of

their biological sex, the shelter then only has to provide a transfer recommendation to the shelter seeker, but it is not required to take additional steps to ensure that the person seeking shelter can realistically be successfully accommodated elsewhere. This rule is completely silent on what someone in need of shelter is supposed to do if there are no shelters nearby that would admit them. Many will return to substandard housing arrangements where they are being sexually assaulted or exploited or return to an abusive partner rather than face homelessness or potential further rejection.

As providers working to end violence, including essential workers working in emergency crisis shelters, we oppose any discriminatory barriers to services, particularly in the context of the COVID-19 pandemic. According to the Centers for Disease Control and Prevention (CDC), people who are experiencing homelessness are at a greater risk of contracting COVID-19. In fact, the CDC indicates that connecting people with stable housing “should continue to be a priority.”¹ For victims of sexual exploitation and human trafficking, there is often a reciprocal relationship between housing instability and violence. Sexual abuse is often a precursor to running away and/or being kicked out of one’s home. Housing instability and homelessness often directly precede and lead to experiences of victimization and violence. Many survivors report experiencing homelessness directly before their trafficking situation and note that their exploiter specifically targeted their need for stable housing.² According to a 2017 Covenant House study which surveyed young people who were experiencing homelessness, nearly one in five had been a victim of human trafficking.³

Further, the proposed rule perpetuates the myth that protecting transgender individuals’ access to shelter consistent with their gender identity places other residents, women in particular, in danger. Actually, individuals who identify as transgender are at greater risk for violent victimization due to hate crimes stemming from transphobia and discriminatory beliefs in our society. As experts in this field, we rely on our experience and expertise to debunk this myth. Claims about the dangers posed by transgender individuals in emergency shelters, including 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.

In reality, transgender people face alarming rates of sexual and domestic violence and are at increased risk of trafficking.⁴ According to the 2015 National Transgender Discrimination Survey, over half (54%) of respondents reported some form of intimate partner violence, and

¹ People experiencing homelessness. Centers for Disease Control and Prevention. 10 August 2020.

Available at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/homelessness.html>

² Sullivan O. Human trafficking survivors share how homelessness leads to sexual exploitation. Bellevue Reporter. 29 January 2020. <https://www.bellevuereporter.com/news/human-trafficking-survivors-share-how-homelessness-leads-to-sexual-exploitation/>.

³ Largest-ever research studies find one-fifth of surveyed homeless youth in the United States and Canada are victims of human trafficking. Covenant House. 17 April 2017. <https://www.covenanthouse.org/charity-blog/blog-news/largest-ever-research-studies-find-one-fifth-surveyed-homeless-youth-united>.

⁴ Unique obstacles put transgender people at risk of trafficking. Polaris Project. 10 March 2017.

Available at: <https://polarisproject.org/blog/2017/03/unique-obstacles-put-transgender-people-at-risk-of-trafficking/>.

47% had been sexually assaulted at some point in their lifetime.⁵ The Human Rights Campaign reported that in 2020, there have already been at least 27 deaths of transgender or gender non-conforming people in the United States due to fatal violence, the majority of whom were Black transgender women.⁶

In 2016, over 300 national, state, and local anti-sexual assault and domestic violence organizations, many of which operate rape crisis centers, shelters, and other direct services for survivors, issued a Consensus Statement rejecting the sort of myths inherent in HUD's proposed rule.⁷ The Consensus Statement also supports laws and policies that protect transgender people from discrimination, including protections related to accessing facilities consistent with their gender identity. Nondiscrimination laws protecting transgender people have existed in many states and local jurisdictions: the Equal Access Rule has been in place since 2012, and the Office of Community Planning and Development updates to the Equal Access Rule were issued in 2016.⁸ Further, more than 300 municipalities and 20 states have nondiscrimination laws protecting transgender individuals' access to shelter consistent with their gender identity. In some cases, these protections have been in place for decades. These laws and federal regulations have protected people from discrimination without creating harm or causing a rise in sexual violence or other public safety issues. Research shows that the passage of public accommodations nondiscrimination laws is not associated with an increase in criminal incidents.⁹

This study finds that the passage of such laws is not related to the number or frequency of criminal incidents in these spaces. Additionally, the study finds that reports of privacy and safety violations in public restrooms, locker rooms, and changing rooms are exceedingly rare. This study provides evidence that fears of increased safety and privacy violations as a result of nondiscrimination laws are not empirically grounded.

HUD's efforts to ban transgender people from safely accessing emergency shelters obscure the fact that survivor services providers are deeply concerned about safety and privacy. In fact,

⁵ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M., 2015 National Transgender Discrimination Survey. National Center for Transgender Equality.
Available at: <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

⁶ Violence Against the Transgender and Gender Non-Conforming Community in 2020, Human Rights Campaign. Available at: <https://www.hrc.org/resources/violence-against-the-trans-and-gender-non-conforming-community-in-2020>.

⁷ National consensus statement of anti-sexual assault and domestic violence organizations in support of full and equal access for the transgender community. The National Task Force to End Sexual and Domestic Violence. 13 August 2018.
Available at: <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>.

⁸ Equal access in accordance with an individual's gender identity in community planning and development programs, U.S. Department of Housing and Urban Development, 21 September 2016.
Available at: <https://www.federalregister.gov/documents/2016/09/21/2016-22589/equal-access-in-accordance-with-an-individuals-gender-identity-in-community-planning-and-development>.

⁹ Hasenbush, A., 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. *Sexuality Research and Social Policy*. 16, 70–83, March 2019.
Available at: <https://link.springer.com/article/10.1007%2Fs13178-018-0335-z>.

safety and privacy are at the core of our service provision. HUD itself admits that the agency is “not aware of data suggesting that transgender individuals pose an inherent 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.”¹⁰ 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. Transgender people already experience unconscionably high rates of homelessness and sexual assault.¹¹ Forcing them out of safety-net programs makes them even more vulnerable.

Expanding nondiscrimination provisions has been an important and needed step in the right direction, benefiting both victims of violence and service providers. Before these nondiscrimination protections were put in place, a study by the Center for American Progress and the Equal Rights Center found that only 30% of shelters across four states would appropriately house transgender women with other women, and one in five shelters would turn them away outright.¹² In a 2015 study from the National Coalition of Anti-Violence Programs, 44% of LGBTQ and/or HIV-affected survivors who worked with antiviolence programs reported that they were denied access when they attempted to access a shelter.¹³ The domestic violence field fought hard to rectify this disparity in services with the expansion of nondiscrimination protections in the Violence Against Women Act (VAWA) of 2013, which included explicit protections on the basis of gender identity in the law's nondiscrimination language. This victory, which supported the field's commitment to serving all victims of violence and addressed a serious and challenging gap in service provision, was lauded by survivors and advocates.

¹⁰ Making admission or placement determinations based on sex in facilities under community planning and development housing programs. U.S. Department of Housing and Urban Development. 14 July 2020. Available at: <https://www.federalregister.gov/documents/2020/07/24/2020-14718/making-admission-or-placement-determinations-based-on-sex-in-facilities-under-community-planning-and>

¹¹ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M., 2015 National Transgender Discrimination Survey. National Center for Transgender Equality. Available at: <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹² Rooney C, Durso L, and Gruberg S. Discrimination against transgender women in access to homeless shelters. Center for American Progress. 7 Jan 2016. Available at: <https://www.americanprogress.org/issues/lgbtq-rights/reports/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>.

¹³ Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2015. National Coalition of Anti-Violence Programs. 2016 Release Edition. Available at https://avp.org/wp-content/uploads/2017/04/2015_ncavp_lgbtqipvreport.pdf

The current Equal Access Rule is in alignment with the legal requirements for nondiscrimination and accessibility under VAWA and the Family Violence Prevention and Services Act (FVPSA), meaning that both shelter and housing programs, as well as survivors, have clear guidance and expectations under the law. Additionally, the Office of Victims of Crime (OVC) under the Department of Justice has also cited the importance of culturally competent services for victims of human trafficking.¹⁴ OVC noted the importance of finding LGBTQ-affirming spaces for survivors of trafficking and requiring service providers receiving OVC awards to serve all victims of human trafficking regardless of gender identity.

Further, **there is existing guidance, training and technical assistance for shelter services to best serve victims of violence, including transgender and gender non-conforming survivors.** While we agree that it is important for shelter services to have the flexibility to craft policies and procedures specific to their context, there is existing guidance and best practices for how to serve LGBTQ individuals, including data collection and respecting the privacy of individuals. The proposed regulations are the opposite of best practices and would undermine these adopted practices.

Clarity and consistency help to mitigate the anxiety that survivors experience when leaving dangerous situations and make it easier for programs to understand and meet their obligations. Making additional changes to the Equal Access Rule would create considerable confusion in the field. Changing these regulations puts sex-specific shelters far out of line with both congressional and other departmental regulations mandating conditions under which service providers may holistically serve all survivors of violence. This level of disharmony across the field will only lead to confusion both for internal policies as well as for staff trying to align multiple services, often across geographic regions, in order to provide comprehensive services for victims.¹⁵

Transgender survivors, like all survivors, should be able to prioritize their safety rather than having to decipher 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 sexual abuse or 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 is inhumane and goes against core principles of the survivor services field, which prioritize access for all survivors. Further, proposed regulations serve an important role in the development of federally funded services and in the improvement of care. Just as important is the message regulations communicate to stakeholders, including clients. The federal government should signal to victims that no one deserves to be the target of violence, and no one should have to stay in a violent situation for lack of other options. Rolling back the Equal Access rule says the opposite to victims.

¹⁴ Human Trafficking Task Force e-Guide: LGBTQ Victims. Office for Victims of Crime Training and Technical Assistance Center, Department of Justice. Available at: <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/45-victim-populations/lgbtq-victims/>.

¹⁵ Comprehensive Victim Services. Office of Victims of Crime Training and Technical Assistance Center, Office of Justice Programs. Available at: <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/44-comprehensive-victim-services/>.

Instead of rolling back regulatory protections, we propose working with our partners at HUD to continue implementation of the Equal Access Rule as currently written and withdraw this proposed rule. The survivor services field strongly supports transgender-inclusive nondiscrimination protections for all survivors and strongly opposes rolling back the crucial protections of the Equal Access Rule. We urge you to withdraw this rule.

For additional information, please contact Monica McLaughlin at mmclaughlin@nnev.org.

Respectfully submitted,

List of organizations (alphabetical order):

360 Communities
A New Leaf
A Window Between Worlds
A.L.I.V.E., INC
Arizona Coalition to End Sexual and Domestic Violence
Artemis Center
Asian Pacific Institute on Gender-Based Violence
Asian Services in Action
ASPEN
AVAIL, Inc.
Benedict Center
Bolton Refuge House, Inc
Bridges: Domestic & Sexual Violence Support Services
CADA Inc.
California Partnership to End Domestic Violence
Caring Unlimited
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
Catalyst Domestic Violence Services
CAWS North Dakota
Center for Domestic Peace
CHILD, Inc.
Christina House Domestic Violence Program
Circle
Community Overcoming Relationship Abuse
Community Resource Center
Community Safety Network
Converse Hope Center
Coordinadora Paz para las Mujeres
Crisis Care Line
Crook County Family Violence
DC Coalition Against Domestic Violence
DeafHope
Delaware Coalition Against Domestic Violence

Domestic Abuse Center
Domestic and Sexual Violence Services of Carbon County
Domestic Violence & Child Advocacy Center
Domestic Violence Solutions for Santa Barbara County
Emerge Center Against Domestic Abuse
End Domestic Abuse Wisconsin
EndTAB
Family Crisis Center
Family Safety Network
Family Services of Tulare County
Family Violence Appellate Project
Family Violence Law Center
Family Violence Project
Filipina Women's Network
First Step Center for Domestic Violence services
FORGE, Inc.
Freeborn County Crime Victims Crisis Center
Friendship Home
Futures Without Violence
Georgia Coalition Against Domestic Violence
Gillette Abuse Refuge Foundation
Haven Women's Center of Stanislaus
House of Ruth
Illinois Accountability Initiative
Illinois Coalition Against Domestic Violence
Immigrant Resource Center Of Maine
Indiana Coalition Against Domestic Violence
Iowa Coalition Against Domestic Violence
Jane Doe Inc.
Jewish Family Service Association of Cleveland
Jewish Family Services, LA
Jewish Women International
Kentucky Coalition Against Domestic Violence
Los Angeles LGBT Center
Louisiana Coalition Against Domestic Violence
Lutheran Settlement House
Maine Coalition to End Domestic Violence
Marjaree Mason Center
Maryland Network Against Domestic Violence
Michigan Coalition to End Domestic & Sexual Violence
Minnesota Elder Justice Center
Monsoon Asians & Pacific Islanders in Solidarity
Montana Coalition Against Domestic and Sexual Violence
Mosaic Georgia, Inc.
National Alliance to End Sexual Violence
National Center on Domestic and Sexual Violence

National Coalition Against Domestic Violence
National Coalition of Anti-Violence Programs (NCAVP)
National Network to End Domestic Violence
National Organization of API Ending Sexual Violence
National Resource Center on Domestic Violence
Nebraska Coalition to End Sexual and Domestic Violence
Nevada Coalition to End Domestic and Sexual Violence
New Beginnings - Without Violence and Abuse
New Directions Center
New Hope For Women
New Jersey Coalition Against Sexual Assault
New Jersey Coalition Against Domestic Violence
New York State Coalition Against Domestic Violence
NewHope for Women
Next Door Solutions to Domestic Violence
NextStep Domestic Violence Project
North Carolina Coalition Against Domestic Violence
Ohio Domestic Violence Network
Ohio Hispanic Coalition
OneEighty
Oregon Coalition Against Domestic and Sexual Violence
OutFront Minnesota
Partners for Peace
Peace Over Violence
Pennsylvania Coalition Against Rape
Pride Center of Vermont
Project Woman of Ohio
Rainbow Community Cares
Raksha, Inc
Renew, Inc.
Rhode Island Coalition Against Domestic Violence
RISE San Luis Obispo County
SAFE
Safe Haven
Safe Voices
Safehouse Progressive Alliance for Nonviolence
Sakhi for South Asian Women
Sarah's Friends, Inc.
SD Network Against Family Violence and Sexual Assault
Sexual Assault Counseling Center
Sexual Violence Law Center
Shelter House, Inc.
Skid Row From A Woman's Perspective
Sojourn
Sojourner Center
South Carolina Coalition Against Domestic Violence and Sexual As

Southwest Crisis Center
Spouse Abuse Sexual Assault Crisis Center, Inc
Stepping Stones, Inc
Stopping Domestic Violence
Strength United
Supportive Housing Providers Association
Survivor Advocacy Outreach Program
Texas Association Against Sexual Assault
The Center for Family Safety and Healing
The Cocoon
Through These Doors
Trans Pride Initiative
Tri-County Help Center
Tri-Valley Haven
Tubman
Turning Point
Turning Points Network
Ujima Inc. The National Center on Violence Against Women in the Black Community
Violence Free Minnesota
Virginia Sexual & Domestic Violence Action Alliance
VSDVA Alliance Policy Committee
W.O.M.A.N., Inc.
Walnut Avenue Family & Women's Center
Warriors
Washington Coalition of Sexual Assault Programs
Washington State Coalition Against Domestic Violence
West Virginia Coalition Against Domestic Violence
Wisconsin Coalition Against Sexual Assault
WOAR - Philadelphia Center Against Sexual Violence
Women Helping Women
Women's Center-High Desert, Inc.
Women's Self Help Center
Womens Shelter and Support Center
Women's Shelter Inc.
WomenShelter of Long Beach
Wyoming Coalition Against Domestic Violence and Sexual Assault
YWCA Great Falls
YWCA Greater Cincinnati
YWCA Lancaster
YWCA New Hampshire
YWCA Utah