

June 29, 2026

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

RE: Proposed Rule, “Equal Access to Housing in HUD Programs Revisions” | Docket No. FR-6518-P-01

We write to urge the Department of Housing and Urban Development (“HUD”) to withdraw its proposed rule titled Equal Access to Housing in HUD Programs Revisions, Docket No. FR-6518-P-01 (the “Proposed Rule”). The Proposed Rule is cruel and misleading, and it will severely harm vulnerable members of the LGBTQ+ community.

If finalized, the Proposed Rule will: (1) eliminate protections against discrimination based on sexual orientation and gender identity across HUD’s housing programs; and (2) mandate that HUD-funded shelters turn away transgender individuals or place them in single-sex shelters incongruent with their gender identity. These changes will hurt countless LGBTQ+ people, particularly transgender individuals, by facilitating discrimination against them, preventing and deterring them from accessing shelter and other housing resources, and subjecting them to higher rates of violence and homelessness.

Additionally, these changes will sow confusion for shelter providers in states like Massachusetts that have laws against discrimination based on sexual orientation and gender identity. The mandate for HUD-funded providers to ignore gender identity and consider only biological sex in making placement decisions puts the Proposed Rule in direct conflict with such laws and makes it impossible for providers to comply with both state and federal law.

HUD has utterly failed to show how the Proposed Rule is justified in light of these issues.

The 2012 and 2016 Equal Access Rules that this proposal would dismantle were a direct response to documented patterns of discrimination. These rules responded to specific documented harms: transgender people being turned away from shelters, placed in facilities for the wrong gender, subjected to harassment, and in many cases physically or sexually assaulted. Before the 2016 rule, national survey data showed that among transgender people who had attempted to access a shelter, 29 percent were turned away, 42 percent were placed in a facility inconsistent with their gender identity, more than half experienced harassment, one in four was physically assaulted, and one in five was sexually assaulted. Placing transgender women in men’s shelters does not protect anyone; it exposes them to exactly the harassment and violence the data document.¹ A separate survey found that 26 percent of homeless transgender people avoided shelters altogether out of fear of discrimination, harassment, violence, and the trauma of

¹Jaime M. Grant, Lisa A. Mottet, and Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality (2011), https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf.

being forced to present as a gender inconsistent with their identity. The data from those who did attempt to use shelters confirms those fears were well founded.²

Transgender people already experience homelessness at disproportionately high rates, and a rule that deters them from entering shelters will make that worse. The 2022 U.S. Transgender Survey, which collected responses from over 92,000 people, found that nearly one in three transgender individuals has experienced homelessness at some point in their lives.³ The National Alliance to End Homelessness reports that 63 percent of transgender adults experiencing homelessness are unsheltered, compared to 49 percent of cisgender adults, and that the number of transgender people experiencing homelessness has grown by 57 percent since 2017.⁴ These are people with very few options. Rather than submit to invasive questioning about their anatomy or be placed in a facility that does not match their gender identity, many will choose to remain on the street or stay in dangerous situations. Research shows that 60 percent of unsheltered transgender people experience co-occurring physical, mental health, and substance use disorders, compared to three percent of those who are sheltered.⁵ This rule will cause more people to become homeless and keep them homeless longer.

Before 2016, HUD had no rule requiring shelters to place people according to their gender identity. The 2012 Equal Access Rule prohibited discrimination based on sexual orientation and gender identity in HUD housing programs. The 2016 update went further by requiring CPD-funded shelters specifically to place individuals consistent with their gender identity and prohibiting invasive questioning about a person's anatomy or gender. That rule filled the gap. It has been in place for nearly a decade, and HUD has presented no evidence that it has caused the harms HUD now claims to fear. HUD suggests, without evidence, that transgender women pose a physical threat to cisgender women in shelters, and goes so far as to claim that men might exploit the current rule by falsely presenting as transgender to gain access to women's shelters. HUD offers no evidence that this has ever occurred. The 2006 study HUD leans on was published ten years before the 2016 rule existed and says nothing about transgender people.⁶ The agency also points to UK prison conviction data, which tells us nothing about people seeking emergency shelter. Hundreds of anti-sexual assault and domestic violence organizations have stated publicly that claims about transgender people threatening the safety of others in gender-appropriate spaces are not supported by evidence.⁷ The agency does not address any of it.

²S.E. James, J.L. Herman, S. Rankin, M. Keisling, L. Mottet, and M. Anafi, *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

³Sandy E. James, Jody L. Herman, Laura E. Durso, and Rodrigo Heng-Lehtinen, *Early Insights: A Report of the 2022 U.S. Transgender Survey*, National Center for Transgender Equality 21 (Feb. 2024), https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf.

⁴National Alliance to End Homelessness, *Trans and Gender Non-Conforming Homelessness* (July 2020, updated March 2025), <https://endhomelessness.org/resources/research-and-analysis/trans-and-gender-non-conforming-homelessness/>.

⁵National Alliance to End Homelessness, *Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tell Us 2* (July 2020), <https://endhomelessness.org/wp-content/uploads/2020/07/Trans-Homelessness-Brief-July-2020.pdf>.

⁶Lisa Goodman, Katya Fels, and Catherine Glenn, *No Safe Place: Sexual Assault in the Lives of Homeless Women*, Applied Research Forum (Sept. 2006), https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SAHomelessness.pdf.

⁷ Id.

HUD acknowledges in the proposed rule itself that it “would result in denying individuals who claim a different gender identity than their sex being denied access to their preferred single-sex shelters.”⁸ Under the current 2016 rule, shelters are expressly prohibited from subjecting individuals to invasive questioning or demanding anatomical information about their gender. The proposed rule eliminates that protection and replaces it with no definition at all. The rule states that providers may require “reasonable assurances or evidence” to establish a person’s sex but never defines what that means or who decides. That discretion gets handed to individual shelter workers with no guidance, no limits, and no accountability. Anyone whose appearance raises questions in a staff member’s mind could be subjected to whatever that worker decides counts as proof.

The rule’s impact extends beyond shelters. The proposed rule would remove the regulatory requirement that HUD-assisted housing be made available “without regard to actual or perceived sexual orientation or gender identity.” It would also change how “family” and “household” are defined in a way that could allow housing authorities and property owners to deny housing to same-sex couples or LGBTQ+ families and individuals, require applicants to produce identity documents that conflict with their gender identity, or evict families after learning that a member is gay or transgender. For families already navigating a difficult housing market, any of these outcomes means lost housing, disrupted lives, and in many cases no realistic alternative. Removing this language also eliminates data collection requirements that currently allow communities to identify disparities in how LGBTQ+ people access HUD assistance, which undermines efforts to identify and root out discriminatory policies and conduct in housing programs. These families retain some protections under state and federal law, but removing the federal regulatory language signals that this kind of treatment is acceptable and takes away one of the clearest tools people have to challenge it.

Massachusetts has made a deliberate choice to protect its LGBTQ+ residents from discrimination in housing. Chapter 151B of the Massachusetts General Laws, the state anti-discrimination law, prohibits discrimination based on sexual orientation and gender identity, and state-funded shelter programs have operated consistently with the 2016 federal rule for years. The Proposed Rule would override those state protections. Specifically, its preemption provision states that CPD-funded facilities must comply with the federal mandate even where doing so conflicts with state or local law, and that noncompliance could result in loss of federal funding.⁹ But complying with the federal mandate would put those same providers in violation of Massachusetts law. HUD provides no guidance on how to resolve that conflict, and its own document contradicts itself: the preamble states the rule preempts conflicting state and local laws, while elsewhere HUD claims the rule does not affect state authority and does not preempt state law. Both cannot be true. What the conflict would produce in practice is confusion and legal risk for the organizations doing the hardest work in our homelessness system, some of which would likely pull back from serving transgender clients rather than navigate the uncertainty.

⁸U.S. Department of Housing and Urban Development, “Equal Access to Housing in HUD Programs Revisions,” Federal Register 91, no. 82 (April 28, 2026): 22,782, <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions>.

⁹ HUD, “Equal Access to Housing in HUD Programs Revisions,” 22,784; preamble at 22,780 stating “these requirements preempt any conflicting state or local laws,” <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions>.

The rule also conflicts with the Violence Against Women Act, which explicitly prohibits grantees receiving VAWA funding from discriminating based on “gender identity” or “sexual orientation.” Mandating that shelters exclude or misplace transgender survivors goes directly against that statutory requirement. Congress built in a limited exception allowing sex-segregated programming when truly necessary, but attached a condition: anyone turned away from a sex-segregated facility must be offered comparable services elsewhere. HUD’s rule drops that condition entirely and offers no explanation for why. A rule that places people based on biological sex rather than gender identity treats transgender individuals differently from cisgender individuals by definition: a transgender woman is denied access to women’s facilities solely because her sex assigned at birth differs from her gender identity. The Supreme Court held in 2020 that this kind of differential treatment constitutes sex discrimination, and courts have begun applying that reasoning to Fair Housing Act claims.¹⁰ HUD’s proposed rule does not engage with any of those claims.

HUD frames part of its justification around the religious liberty of faith-based shelter operators. But if that were the real concern, the appropriate remedy would be a case-by-case exemption process, not a mandatory nationwide rule. HUD could have allowed religious shelters to request accommodation while maintaining gender-identity-based placement as the default. It chose not to. The only shelter HUD cites as an example of the problem it is trying to solve is a facility in Alaska that sued the city of Anchorage over a local anti-discrimination ordinance, not HUD’s rule, and whose connection to HUD funding is unclear from the regulatory text. HUD has not produced evidence that any faith-based shelter ever filed a waiver request or a complaint under the 2012 or 2016 rules. A single lawsuit against a local ordinance, by a shelter with no documented relationship to HUD, cannot serve as justification for a mandatory nationwide rule eliminating protections for everyone. The choice to issue a mandatory rule eliminating protections for everyone, rather than a targeted accommodation for the few, is not explained.

The first Trump Administration proposed rolling back the 2016 update to the Equal Access Rule in 2020. More than 66,000 people submitted comments opposing it, the largest response to any HUD rulemaking on record at the time, and the proposal was withdrawn in 2021. The rule now before us goes considerably further. It replaces a rule requiring placement consistent with gender identity with one requiring placement based on biological sex. It removes protections across all HUD housing programs, not just shelters. It includes a preemption provision that would force Massachusetts providers to choose between state law and federal funding. And it authorizes an undefined sex-verification regime that HUD has made no effort to limit or define. HUD has not explained what has changed that justifies a more aggressive version of a proposal that was abandoned four years ago. HUD offers no evidence of harm under the existing rules and no adequate justification for any of this. The proposal cannot be read as anything other than an attempt to restore discrimination against LGBTQ+ people in federal housing programs.

We urge HUD to withdraw this rule. The 2012 and 2016 Equal Access Rules addressed real harms based on real evidence and have made a genuine difference for transgender people trying

¹⁰National Housing Law Project, *Legal Analysis of Equal Access to Housing in HUD Programs Revisions* (2026), <https://www.nhlp.org/wp-content/uploads/2026.05.12-HJN-EAR-Revisions-Legal-Analysis.pdf>. On whether the Fair Housing Act applies to shelters, see Renee Williams, “Shelters and the Definition of ‘Dwelling’ Under the Fair Housing Act,” *Housing Law Bulletin* 43 (Nov./Dec. 2013): 225, <https://www.nhlp.org/wp-content/uploads/Shelters-and-the-Definition-of-Dwelling-43-Hous.-L.-Bull.-225-230-31-Nov-Dec-2013.pdf>.

to access shelter safely. HUD has offered no credible justification for eliminating those protections for a population that already experiences homelessness, violence, and discrimination at disproportionately high rates. Walking them back will put more people on the street.

Sincerely,

Cc: Governor Maura Healey; Massachusetts Congressional Delegation