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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

Docket Number: FR-44811 - Proposed Rule: Community Planning and Development Housing Programs: Making Admission or Placement Determinations Based on Sex in Facilities

To the Office of General Counsel:

Texas Homeless Network (THN) appreciates the opportunity to submit comments on the proposed rule on equal access to safe shelter for transgender individuals. Texas Homeless Network strongly opposes the U.S. Department of Housing and Urban Development (HUD) on the current proposed change to the 2016 Equal Access Rule. The [proposed modification](#) will allow discrimination against transgender people seeking access to shelter through HUD-funded services by returning decision-making of who can access services to local shelter providers rather than Continuums of Care (CoCs) for homeless services and similar community-wide planning groups. In effect, this will have dire consequences for members of the LGBTQ+ community, especially transgender people experiencing homelessness.

Transgender individuals experience homelessness at a highly disproportionate rate and deserve access to safe shelter.

[One out of three](#) (33.3%) people who are transgender experience homelessness at one point in their lives compared to one out of 476 (0.2%) cisgender men. Nationally, [44 percent](#) of the transgender population experiencing homelessness were sheltered in 2018, while 56 percent were estimated to be unsheltered. 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 4 states would appropriately house transgender women with other women, and one in five shelters would turn them away outright. In addition, a year before these protections [US Transgender Survey](#), over half of transgender survey respondents who stayed in a shelter in the past year were verbally harassed, physically attacked, and/or sexually assaulted because of their gender identity.

By revoking the protections for transgender people experiencing homelessness, HUD will undoubtedly increase the likelihood that transgender individuals do not seek shelter, creating an inherent and preventable risk to their health and well-being. In addition to experiencing the highest rates of homelessness, [Black transgender individuals](#) face the highest rates of violence and murder as a result of their identity, and in eliminating Equal Access protections, HUD is enabling and allowing the continuation of harm against the most impacted individuals.

While housing transgender people according to their gender identity does not pose a safety issue to others, failing to do so puts transgender people in danger.

The history and present use of policing gender must be mentioned in the context of this proposed rule, especially in regard to Secretary Carson's [past comment](#) referencing transgender women in shelters as "big hairy men" and the [HUD guidance](#) to allow shelters to use "factors such as height, the presence (but not the absence) of facial hair, the presence of an Adam's apple, and other physical characteristics which, when considered together, are indicative of a person's biological sex." The remark by Secretary Carson and HUD's subsequent guidance to shelters is directly informed by white supremacist ideologies and colonial histories and is reminiscent of the movement towards eugenics in the 20th century. HUD's use, acceptance, and normalization of this language is not only inflammatory but will have direct violent consequences for transgender, non-binary, intersex, and/or people belonging to other sexual and gender minority groups.

The 2016 Equal Access Ruling is not perfect but is useful and necessary for the continued care and housing for transgender people experiencing homelessness. However, none of the concerns raised in the justification of the proposed rule have factual basis. For example, the proposed Equal Access change asserts that cisgender men alleged of domestic abuse and/or sexual violence might claim to be a transgender woman to seek access to their survivors. There is simply no documented evidence to support that claim. HUD even mentions [this](#) in the justification for the rule change in the Federal Register saying "While HUD is not aware of data suggesting that transgender individuals pose an inherent risk to biological women, there is 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." Anecdotal evidence is not evidence at all and is a weak claim to appease people using their religious beliefs as a shield for actively endangering the lives of transgender people experiencing homelessness by refusing to give them housing and culturally-responsive care.

HUD, along with other federal agencies, continues to conflate "biological sex" with gender presentation, expression, and identity. A person's sex assigned at birth is not indicative of their gender presentation, expression, or identity. Some transgender men and women have the privilege of passing as one gender or another while others exist beyond the gender binary. Regardless of one's perceived existence within the binary or outside of it, people experiencing homelessness have an inherent right to seek the services most aligned with their identities. In addition, the term "biological sex" assumes that there are two possible answers to a person's anatomical or chromosomal composition at birth when an estimated [one to two people per 100](#) people is born intersex in the United States. It is for these reasons that an individual's self report should be considered the only valid "good faith consideration indicative of biological sex".

Ethics concerns aside, there are severe administrative limitations in the Equal Access rule change as well. There may be no “transfer recommendation” to make. In many rural and less developed areas in the country, there is not another shelter or Coordinated Entry provider that transgender people experiencing homelessness can be referred to if turned away from the only shelter or service provider in that area. This is especially true in West Texas, the Texas Panhandle, and some areas of South Texas. In addition, HUD should more clearly define what is expected with a “transfer recommendation.” This term is not used in any prior HUD literature, when referring to Coordinated Entry or Coordinated Access. Leaving this term open to interpretation opens the door to further discrimination.

THN urges HUD to uphold the 2016 Equal Access Ruling, maintaining the right to safe, inclusive, competent services for our transgender neighbors. It is the responsibility of HUD and agencies across our country to protect all of our neighbors experiencing homelessness, regardless of their gender identity. Without these protections, transgender people will face another barrier to living freely in the land of the free.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Texas Homeless Network.