

June 29, 2026

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

Transmitted via regulations.gov

RE: Docket No. 91 FR 22779, Equal Access to Housing in HUD Programs Revisions

To Whom it May Concern:

The Legal Defense Fund (“LDF”) submits this comment opposing the U.S. Department of Housing and Urban Development’s (“HUD”) Notice of Proposed Rulemaking (NPRM) entitled “Equal Access to Housing in HUD Programs Revisions” on behalf of itself and the undersigned civil rights and racial justice organizations.¹ LGBTQ+ people, particularly Black and Latino LGBTQ+ people, experience homelessness and housing insecurity at disproportionately high rates compared to the general population.² The proposed rule, however, would permit federal housing programs to exclude eligible families and individuals based on “actual or perceived sexual orientation or gender identity” and permit invasive inquiries into gender identity in determining eligibility for certain federal housing programs. Additionally, the proposed rule removes guidance for housing providers about their duty to serve all people, creating confusion about their federal legal obligations and encouraging discrimination based on sexual orientation and gender identity. The proposed rule also seeks to preempt conflicting state and local laws permitting or requiring equal access to sex-segregated spaces in certain programs funded by HUD, like emergency shelters, in accordance with a person’s gender identity. If the proposed rule is enacted, it will have a devastating impact on the LGBTQ+ populations’ ability to access federal housing programs. Yet HUD does not provide a reasoned basis for repealing the current Equal Access Rule. LDF and the undersigned groups strongly urge HUD to rescind this proposed rulemaking and continue to enforce fair housing protections for LGBTQ+ people.

Founded in 1940 by Thurgood Marshall, LDF is the nation’s premier racial justice law organization. LDF’s mission has always been transformative: to achieve racial justice, equality, and an inclusive society. Since its inception, LDF has worked to increase fair housing opportunities for Black communities. Some of LDF’s early victories in the Supreme Court were won through *Shelley v. Kramer*, 334 U.S. 1 (1948), and *McGhee v. Sipes*, 334 U.S. 1 (1948), which held state enforcement of racially-restrictive covenants violated the Equal Protection Clause. In the decades since those victories, LDF and our civil right partners have continued to challenge public and private policies and practices that deny Black people safe and quality housing and free from discrimination.

¹ U.S. Department of Housing and Urban Development (HUD) Proposed Rule: Equal Access to Housing in HUD Programs Revisions, (April 28, 2026), <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions#citation-13-p22781>

² Kathryn K. O’Neill, et al, *Homeless Shelter Access Among Transgender Adults*, UC Berkley School of Law, (November 2020), <https://williamsinstitute.law.ucla.edu/publications/trans-homeless-shelter-access/>

I. Black LGBTQ+ People Are at Disproportionate Risk of Housing Instability, Homelessness, and Violence.

Black and Brown LGBTQ+ people are at disproportionate risk of housing instability and homelessness due to ongoing discrimination across sectors.³ Black transgender people experience poverty at more than three times the rate of the general U.S. population due to discrimination in employment⁴ and other sectors. Of the transgender people who reported experiencing homelessness in their lifetime, 39% were Black, 50% were Indigenous.⁵ Additionally, up to 40% of unhoused youth are LGBTQ+, and about 56% of transgender adults experience violent attacks while unhoused.⁶ Another survey of over 90,000 transgender people about their lives and experiences showed that 39% of Black respondents experienced homelessness during their lifetime, compared with 30% of respondents of all races.⁷

LGBTQ+ people who are unhoused face disproportionate rates of violence.⁸ When transgender people, particularly trans women, are forced into housing based on their sex assigned at birth rather than gender identity, they face a number of harms, including increased risk of violence and harassment. According to a study by the National Center for Transgender Equality in 2015, the year before the current rule was enacted, 70% of respondents who experienced homelessness and stayed in a shelter in the previous year reported some form of mistreatment, including being harassed, assaulted, or kicked out because of their gender identity.⁹ While data on the scope of violence against transgender people continues to develop, evidence shows violence against transgender people impacts Black transgender people at greater levels. In 2023, 50% of the reported deaths of trans women were Black trans women.¹⁰

Due to a severe racial wealth gap and the long-lasting legacy of systemic housing discrimination, Black households are also more likely to rely on the federal housing subsidies covered by the Equal Access Rule, like the Housing Choice Voucher (HCV) program and the Project Based Rental Assistance (PBRA) program. Because of historical and ongoing housing discrimination, Black households are more likely to live in public housing and receive federal rental assistance. For example, the HCV program assists roughly five million people in over two

³ David Schwegman, *Rental Market Discrimination Against Same-Sex Couples: Evidence From a Pairwise-Matched Email Correspondence Test*, Housing Policy Debate, (2018), <https://nlihc.org/sites/default/files/Rental-Market-Discrimination-Against-Same-Sex-Couples.pdf>

⁴ Gabi Velasco & Mel Langness, *COVID-19 Action that Centers Black LGBTQ People Can Address Housing Inequities*, The Urban Institute, (June 23, 2020), <https://www.urban.org/urban-wire/covid-19-action-centers-black-lgbtq-people-can-address-housing-inequities>

⁵ Daniel Soucy, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters*, National Alliance to End Homelessness, (May 18, 2026), <https://endhomelessness.org/resources/nationwide-survey-shows-widespread-discrimination-against-gender-expansive-people-including-in-emergency-shelters/>

⁶ Advocates for Trans Equality, *Housing and Homelessness*, (2023), <https://transequality.org/issues/housing-homelessness>

⁷ Daniel Soucy, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters*, National Alliance to End Homelessness, (May 18, 2026), <https://endhomelessness.org/resources/nationwide-survey-shows-widespread-discrimination-against-gender-expansive-people-including-in-emergency-shelters/>; The survey also found one in three transgender respondents experienced homelessness in their lifetime, eight times the rate of the general population.

⁸ Bianca D.M. Wilson, et al, *Homelessness Among LGBT Adults in the US*, The Williams Institute at UCLA School of Law, (May 2020), <https://williamsinstitute.law.ucla.edu/publications/lgbt-homelessness-us/>

⁹ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality, (2016), <https://transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>

¹⁰ *Id.*

million households, approximately 48% Black.¹¹ Additionally, 43% of the participants in the PBRA program are Black.¹² White households are more likely to receive other federal housing subsidies like the mortgage interest deduction¹³, which is the largest housing tax subsidy that the US offers. The proposed rule puts those Black people who are receiving federal rental assistance and members of the LGBTQ+ community in jeopardy of being discriminated against by housing providers.

II. The Proposed Rule Weakens Vital Federal Regulations and Preempts State Laws that Help Prevent Discrimination Against LGBTQ+ People.

The Equal Access Rule was codified in 2012 by HUD to ensure its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status.¹⁴ This rule was enacted after HUD gathered evidence suggesting LGBTQ+ individuals and families were being arbitrarily excluded from housing opportunities in the private sector and as persuasive case law emerged in the lower courts, subsequently reinforced by the Supreme Court in *Bostock v. Clayton County*, 590 U.S. 644 (2020), holding that discrimination on the basis of sexual orientation or gender identity constitutes sex discrimination.¹⁵ Since 2012, the rule has helped LGBTQ+ people secure housing during their most difficult times. In 2016, HUD expanded the Equal Access Rule to ensure equal access for individuals in accordance with their gender identity in programs and shelter funded under programs administered by HUD.¹⁶ By explicitly prohibiting housing programs from inquiring about sexual orientation or gender identity, the Equal Access Rule ensured safe access to shelters without requiring invasive verification.

The proposed rule ends these protections and explicitly permits facility providers of emergency shelters to “require reasonable assurances or evidence to establish a person's sex.”¹⁷ These changes will lead to LGBTQ+ people being denied emergency housing, increasing homelessness and the likelihood of violence against them. The proposed rule also purports to preempt conflicting state and local laws permitting or requiring equal access to sex-segregated spaces in certain programs funded by HUD. 22 states and the District of Columbia have laws prohibiting discrimination based on gender identity in housing.¹⁸ HUD stated its reason for

¹¹ Abby Vesoulis, *A Mask for Racial Discrimination: How Housing Voucher Programs Can Hurt the Low-Income Families They're Designed to Help*, Time Magazine, (February 20, 2020), <https://time.com/5783945/housing-vouchers-discrimination/>

¹² *Regulatory Impact Analysis: 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent*, U.S. Dep't Hous. & Urb. Dev. (2023) (HUD-2023-0098-0002), <https://www.regulations.gov/document/HUD-2023-0098-0002>

¹³ National Low Income Housing Coalition, *New Report Shows That the Mortgage Interest Deduction is One of the Drivers of the U.S. Racial Wealth Gap*, (October 17, 2017), <https://nlihc.org/news/new-report-shows-mortgage-interest-deduction-one-drivers-us-racial-wealth-gap>

¹⁴ HUD Proposed Rule: Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, (February 3, 2012), <https://www.federalregister.gov/documents/2012/02/03/2012-2343/equal-access-to-housing-in-hud-programs-regardless-of-sexual-orientation-or-gender-identity>

¹⁵ Id.

¹⁶ HUD Proposed Rule: Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs, (September 21, 2016), <https://www.federalregister.gov/documents/2016/09/21/2016-22589/equal-access-in-accordance-with-an-individuals-gender-identity-in-community-planning-and-development>

¹⁷ U.S. Department of Housing and Urban Development (HUD) Proposed Rule: Equal Access to Housing in HUD Programs Revisions, (April 28, 2026), <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions#citation-13-p22781>

¹⁸ Transgender Law Center, *Tools for Transgender and Gender-Nonconforming People to Address Discrimination*, (April 2021), <https://transgenderlawcenter.org/resources/tools-for-transgender-and-gender-nonconforming-people->

preempting state and local anti-discrimination laws for “maximum uniformity and compliance,” but does not take into consideration the confusion that the proposed rule may cause.¹⁹ This confusion could cause providers and landlords to not want to participate in HUD programs. Removing these protections will hurt LGBTQ+ people, particularly Black and Latino LGBTQ+ people, and limit their housing options.

III. HUD Does Not Provide a Reasoned Basis for Significantly Altering the Equal Access Rule

HUD has not provided a sufficient rationale for why it should eliminate the Equal Access Rule. When an agency substantially alters an existing regulation, it must provide a reasoned explanation for the change.²⁰ Courts have made it clear that, if an agency fails to “provide sufficient factual detail and rationale,” then “interested parties [cannot] comment meaningfully,” which can violate the Administrative Procedures Act²¹

HUD does not cite a change in facts or law to warrant weakening the Equal Access Rule, but points to false reasons for changing the rule. First, HUD incorrectly states in its justification section that the Fair Housing Act does not apply to emergency shelters. Courts have found that many forms of temporary residences, like emergency shelters, are covered by the Fair Housing Act. In *Lakeside Resort Enterprises v. Board of Sup’rs of Palmyra Twp.*, 455 F.3d 154 (3d Cir. 2006), the Third Circuit applied a two-part test in determining whether a drug and alcohol treatment center comprised a dwelling and subject to the Fair Housing Act. Similarly, in *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941, 942 (9th Cir. 1996), the Ninth Circuit found the Fair Housing Act covered an emergency shelter, holding the city of Caldwell violated the Fair Housing Act when it enforced unreasonable occupancy limits and fail to provide “reasonable accommodation” for disabled homeless individuals residing in shelters.

Second, HUD falsely argues that the Equal Access Rule goes beyond HUD’s statutory authority to create a new class of individuals to be protected by federal non-discrimination law. The Equal Access Rule, however, is consistent with how courts have interpreted the Fair Housing Act and similar antidiscrimination laws. The U.S. Supreme Court ruled in *Bostock v. Clayton County*, 590 U.S. 644 (2020), that the prohibitions against sex discrimination in the workplace contained in Title VII of the Civil Rights Act of 1964 include discrimination on the basis of sexual orientation and gender identity. Because the Fair Housing Act and Title VII are similar statutes,²² when courts hear cases under the Fair Housing Act, they often look to Title VII case law for guidance.²³ Both before and since *Bostock*, several federal courts have found the

[to-address-discrimination/](#) ; the 22 states are: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Virginia, and Washington.

¹⁹ U.S. Department of Housing and Urban Development (HUD) Proposed Rule: Equal Access to Housing in HUD Programs Revisions, (April 28, 2026), <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions#citation-13-p22781>

²⁰ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).

²¹ *Cement Kiln Recycling Coal. v. EPA*, 493 F.3d 207, 225 (D.C. Cir. 2007) (citation omitted); see also *Conn. Light & Power Co. v. Nuclear Regul. Comm’n*, 673 F.2d 525, 529–30 (D.C. Cir. 1982) (explaining that this requirement facilitates “genuine interchange” between the agency and the public and that “an accurate picture of the [agency’s] reasoning” is required for interested parties to be able to “comment meaningfully”)

²² The first court to hear a case of sexual harassment in housing relied exclusively on Title VII precedent. See *Shellhammer v. Lewallen*, No. C 82-689 ¶ 15,472 (W.D. Ohio Nov. 22, 1983); *Bloch v. Frischholz*, 587 F.3d 771, 779 (7th Cir. 2009) (noting that § 3604(b) of the FHA mirrors Title VII)

²³ *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 524-27 (2015).

Fair Housing Act also protects people from discrimination based on their sexual orientation and gender identity.²⁴ The Equal Access Rule ensures that HUD programs comply with these judicial interpretations. Moreover, HUD has broad rulemaking authority to implement the Fair Housing Act and prevent discrimination.²⁵

Another justification that HUD uses to weaken the Equal Access Rule is because “it is not beneficial to institute a national policy that forces homeless women to choose between sleeping alongside and interacting with men in other intimate settings or refusing emergency shelter or other facilities.” HUD also stated homeless women are at increased risk of sexual assault by “biological males” compared to other women. This is a mischaracterization of the Equal Access Rule and the facts. The Equal Access Rule allows for a case-by-case determination to be made as to whether alternative accommodation is necessary to ensure health and safety.²⁶ If there are safety concerns, the Rule allows shelter operators to deny placement based on a perceived threat to health or safety. More importantly, HUD provided no data showing there has been any increase in violence against women at emergency shelters since the Equal Access Rule was put into place.

Finally, HUD went on to say requiring shelters to place “biological males”²⁷ with homeless women in shared sleeping, bathroom, and other intimate settings places women at risk of sexual harassment and assault and exacerbates prior traumas for many homeless women. HUD does not include any citations or facts to back up its claim. Research shows it is LGBTQ+ people who are experiencing sexual harassment and assaults in emergency shelters. One survey found 44% of LGBTQ+ people who spent time at an emergency shelter experienced some form of mistreatment at a shelter, including harassment or assault.²⁸ HUD uses no evidence showing homeless women are at more risk of harm due to the presence of transgender people at an emergency shelter.

IV. The Equal Access Rule Created Substantial Reliance Interests for Emergency Shelter Operators, HUD Housing Providers, and the Broader American Public and Weakening the Rule Leaves Them Without Guidance on Complying with the Fair Housing Act.

When organizations make substantial investments or structural changes based on existing federal rules, agencies must consider these interests before making consequential policy

²⁴ See *Kummerow v. Ohawcha.org*, 2022 WL 873599, at *4 (W.D. Wis. 2022); *United States v. SSM Properties, LLC*, 598 F. Supp. 3d 478, 483 (S.D. Miss. 2022); *Wetzel v. Glen St. Andrew Living Community, LLC*, No. 17-1322 (7th Cir. 2018) (The Seventh Circuit reaffirmed that discrimination based on sexual orientation qualifies as sex discrimination under the FHA, holding a housing provider liable for failing to protect a gay resident from harassment by other tenants).

²⁵ 42 U.S.C. § 3614a.

²⁶ HUD Proposed Rule: Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs, (September 21, 2016), <https://www.federalregister.gov/documents/2016/09/21/2016-22589/equal-access-in-accordance-with-an-individuals-gender-identity-in-community-planning-and-development>

²⁷ The assertion by the government that transgender women are “biological males” is, in itself, a misleading statement that is not grounded in science. See Linda Arrighi, *The Spectrum of Sex and Gender*, 54 Arch Sex Behav. 3785–3791 (2025). <https://doi.org/10.1007/s10508-025-03331-y> (Overall, the research presented suggests that historically endorsed binary classifications of sex (e.g., stating that all individuals are either male or female) are, at a minimum, biologically inaccurate...To ensure scientific accuracy and true inclusion, it may be more appropriate to define sex as a spectrum which entails several traits, from the genetic to the behavioral, with the more typical male and female presentations at either end.)

²⁸ Kathryn K. O'Neill, et al, *Homeless Shelter Access Among Transgender Adults*, UC Berkley School of Law, (November 2020), <https://williamsinstitute.law.ucla.edu/publications/trans-homeless-shelter-access/>

changes and provide a well-reasoned explanation for reversing policy.²⁹ The 2016 Equal Access Rule has been in effect for ten years and Public Housing Authorities (PHAs), states, and local governments, and other HUD program recipients, subrecipients, owners, operators, managers, and providers have come to rely on the current Equal Access Rule for guidance. PHAs and emergency shelter operators to which states and municipalities have sub granted HUD funds have created materials and have trained their staff to ensure compliance with the Equal Access Rule and the Fair Housing Act. In its justification for the NPRM, HUD provides no well-reasoned explanation for weakening the rule and does not take into account the substantial investments organizations and other housing providers have made to ensure compliance with the current Equal Access Rule and the Fair Housing Act. Courts have found reliance interests in similar cases.³⁰ Furthermore, HUD cannot make discrimination on the basis of sexual orientation and gender identity legal by removing references to “sexual orientation,” “gender identity,” and “gender” in HUD’s regulations. *Bostock* and the Fair Housing Act cases following the Supreme Court case remain still good law, and housing providers are still prohibited from discriminating based on sexual orientation and gender identity. By weakening the Equal Access Rule and removing references to “gender identity,” HUD has left housing providers with little guidance on how to comply with this new regulation and still comply with the Fair Housing Act, 42 U.S.C. § 5309, and, in some cases, state and local law, as noted above.

V. Conclusion

HUD’s Equal Access Rule is a vital regulation that helps prevent discrimination against LGBTQ+ people. Since 2012, the rule has helped LGBTQ+ people secure housing during their most difficult times. Removing these protections will only hurt LGBTQ+ people, particularly Black and Latino LGBTQ+ people, and limit their housing options. In the midst of a housing affordability crisis, denying housing opportunities to people because of their gender identity will only increase housing instability and homelessness. LDF and the undersigned civil rights and racial justice organizations urge HUD to rescind the proposed rule and continue to enforce fair housing and other non-discrimination protections for LGBTQ+ people.

Thank you for the opportunity to give a comment. If you have any questions, please contact David Wheaton, Assistant Policy Counsel, at dwheaton@naacpldf.org.

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²⁹ *Dep’t of Homeland Sec. v. Regents of the University of California*, 591 U.S. 1 (2020).

³⁰ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009); *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020)