



September 22, 2020

Submitted via www.regulations.gov

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 General Counsel:

On behalf of Funders Together to End Homelessness, I am writing to voice our opposition to the Department of Housing and Urban Development (HUD's) proposed changes published in the Federal Register on July 24, 2020 (RIN 2506-AC53; HUD Docket No. FR-6152-P-01) entitled, "Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs." **We urge that this proposed rule change be withdrawn in its entirety.**

Funders Together to End Homelessness is a national network of more than 250 private funders from across the country, including private foundations, community foundations, United Ways, corporate giving programs, and individual philanthropists, all dedicated to preventing and ending homelessness. As an organization, we work to mobilize our members to utilize the voice, influence, and expertise of philanthropy in ways that will advance lasting solutions to end homelessness, including addressing its underlying causes like structural and racial inequities, and helping to create policies and systems that center people with lived experience.

This proposal directly puts members of the LGBTQ+ community at risk of not just experiencing homelessness in communities across the country, but it also places LGBTQ+, transgender, nonbinary, and gender nonconforming individuals at a higher risk of violence and loss of life by denying them access to life saving basic needs, like shelter. In addition, this proposed rule will add to the current homelessness crisis and reduce the impact our mutual investments through public-private partnership have on ending housing instability and homelessness.

We urge HUD to abandon its pursuit of this proposed rule and work to protect all communities and individuals facing harm and homelessness.

The proposed rule directly causes harm for those in the LGBTQ+ community, particularly transgender, nonbinary, and gender nonconforming individuals.

At its core, the proposed rule threatens to remove access to basic needs that save the lives of

members of our communities, especially transgender people experiencing homelessness, survivors of violence, and those fleeing disasters.

One in three transgender Americans have experienced homelessness at some point in their lives, and this proposal would place additional barriers as these individuals seek assistance and shelter to save their lives. The difference between having shelter or not is especially critical and dangerous for transgender people experiencing homelessness, particularly transgender persons and youth of color who already face harassment and threats from others, as well as higher rates of policing and violence within police custody.

Before the Equal Access Rule's 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 house transgender women with other women, and one in five shelters would turn them away. While housing transgender people according to their gender identity does not create safety issues for others, failing to do so puts transgender people in danger of violence and even death. In fact, according to the 2015 [US Transgender Survey](#), over half of transgender survey respondents who stayed in a shelter in the past year were verbally harassed, physical attacked, and/or sexually assaulted because of their gender identity.

Discrimination from safe and accessible shelter puts transgender members of our community at disproportional risk of experiencing violence and possible loss of life. As investors in our communities and community members' well-being, we want to ensure everyone has access to safe and affirming shelter and housing – something this proposed rule change would create barriers to, especially as we still navigate a global health pandemic with COVID-19.

The proposed rule will disproportionately hurt Black, Indigenous, and People of Color seeking shelter and services.

This proposed rule is in direct conflict with Funders Together's value of ensuring homelessness is a rare, short-term, and one-time event, and that housing opportunities are not conditioned by race, ethnicity, gender identity, and other personal characteristics. It would mainly affect people of color, specifically Black people, who are already at a higher risk of experiencing homelessness and currently make up a disproportional percentage of the homeless population.

People of color experience homelessness at higher rates than whites and make up a disproportionate share of the homeless population. Black people make up 13 percent of the general population, but more than 40 percent of the homeless population. American Indians/Alaska Natives, Native Hawaiians and Pacific Islanders, and people who identify as two or more races also make up a disproportionate share of the homeless population. Nearly 1/3 of transgender people experience homelessness at some point in their lives, according to the 2015 [US Transgender Survey](#) mentioned earlier. That number increases to 50% for transgender people of color.

According to a recent [survey from the Center for American Progress](#), of survey respondents who are people of color and identify as transgender, nonbinary, or gender nonconforming, 83 percent said it would be somewhat difficult, very difficult, or impossible to find alternative shelter if they were denied access from their nearest shelter location.

Requiring an individual to provide proof of one's sex and assuming gender based on superficial and subjective criteria will only exacerbate the disproportional discrimination transgender people of color experience when trying to access basic needs. As the country works to reckon with the racial injustices it has created, we must name and address the implications this proposed rule will have on Black, Indigenous, and People of Color transgender individuals as they seek to find protection and shelter amid a crisis.

Private philanthropy will not be able to “fill the gap” to address the unmet needs that this rule change will create.

Despite belief and an on-going narrative from the Administration, philanthropy will not be able to fill the funding gaps for the ongoing housing and other service needs of those forced into homelessness because of this rule. Private funding cannot and should not be a substitute for a responsive and effective government that has an obligation to protect its citizens and create communities in which they can thrive. According to [Candid](#), in 2018, philanthropy granted nearly \$739 million towards housing and homelessness programs and services. This pales in comparison to the \$56 billion budget of the U.S Department of Housing and Urban Development in 2020, a federal department whose explicit purpose is to address our nation's housing needs.

These resources from philanthropy are already allocated towards critical homelessness and housing programs. If private funders are forced to redirect these investments to address the needs caused by this proposed rule, then another gap will be created leaving many of our neighbors without life-saving basic needs. It is also important to note that philanthropic funding is not distributed evenly in all parts of the country. This results in funding disparities in areas that are in the most need, particularly Black and Brown communities that have been historically marginalized and often excluded from federal resources.

The proposed rule conflicts with federal policy priorities on preventing and responding to homelessness.

The proposed rule runs counter to federal policy priorities on preventing and ending homelessness and conflicts federal mandates for states to provide certain assistance and programs to everyone. The U.S. Interagency Council on Homelessness (USICH) mission is to affirmatively remove barriers to housing access, all while acknowledging that “communities that are diverse—in their demographics, in their needs, in their geographic characteristics, in their progress to date, in their resources, in their infrastructure, in their housing markets, and in many other ways.” The proposed rule runs contradictory to this by placing additional barriers to basic need service access. What's more, the U.S Department of Housing and Urban Development's own mission states that it aims “to create strong,



sustainable, inclusive communities and quality affordable homes for all” as well as “build inclusive and sustainable communities free from discrimination.”

The proposed rule weakens discrimination protections put in place by the 2012 Equal Access Rule by allowing shelters to discriminate against transgender, nonbinary, and gender nonconforming people in need. This is the opposite of building inclusive and sustainable communities free from discrimination and, in fact, perpetuates and encourages discrimination.

As we stated above, we believe we must uphold nondiscrimination policies and create safe and accessible shelter and housing options for everyone, especially those who are most at risk like transgender people and youth of color experiencing homelessness. This proposed rule change would not just be a step backwards in the protection of vulnerable citizens, but it is inhumane and cruel, especially in the midst of a health pandemic and economic downturn as many are facing losing their homes while trying to remain safe and healthy.

We urge HUD to immediately withdraw its current rule change proposal and dedicate its efforts to mitigating the current effects that COVID-19 has had on housing stability for not only the LGBTQ+ community but for everyone. The country is in the midst of an economic, health, and housing crisis and the administration should be not devoting scarce resources to facilitating and encouraging discrimination.

In closing, the philanthropic community calls on our partners at the U.S. Department of Housing and Urban Development to rescind this proposed rule and protect LGBTQ+, transgender, nonbinary, and gender nonconforming individuals from housing instability and homelessness in our communities. We are available to work in partnership with HUD and the administration to ensure our neighbors have access to one of the most basic of human rights – a safe and affordable place to call home.

On behalf of Funders Together to End Homelessness, I appreciate the opportunity to voice our collective concern with the implementation of this rule and to provide input on the impacts it will have on communities across the country. I encourage you to reach out to me with any questions or comments at amanda@funderstogether.org.

Sincerely,

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