



September 11, 2020

**Submitted via [www.regulations.gov](http://www.regulations.gov)**

Regulations Division, Office of General Counsel  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW, Room 10276  
Washington, D.C. 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:

Thank you for the opportunity to comment on the Department of Housing and Urban Development's (HUD) proposed rule change 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 We urge that this proposed rule change be withdrawn in its entirety.

The National Disability Rights Network (NDRN) is the non-profit membership association of Protection and Advocacy (P&A) agencies that are located in all 50 States, the District of Columbia, Puerto Rico, and the United States Territories. In addition, there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A Network comprises the nation's largest provider of legally-based advocacy services for persons with disabilities, including advocacy on housing and community integration to ensure people with disabilities who want to live in the community can do so.

This proposed rule would strip protections for transgender and gender non-conforming people seeking HUD-funded shelter and is rooted in harmful and dangerous stereotypes about transgender persons, particularly transgender women. HUD even acknowledges in the proposed rule that they are "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."

NDRN rejects HUD's decision to create regulations that have sweeping and impactful consequences on the basis of anecdotal evidence rather than data.

The U.S. Trans Survey of 2015 indicates that the proportion of transgender individuals who identify as having a disability exceeds that of the general population<sup>1</sup> and overall thirty-nine percent of transgender respondents admitted having one or more disability, compared to fifteen to twenty percent of the general population<sup>1</sup>. Unfortunately, the mistreatment of both individuals with disabilities and LGBTQ+ individuals is not a new phenomenon<sup>2</sup>. Both communities intersect and are subject to heightened vulnerability to discrimination, violence, and mistreatment in many facets of life including employment, housing, and intimate partner violence all of which may lead an individual to seek refuge in a temporary emergency shelter<sup>3</sup>. Given this reality, there is no question that HUD's proposed rule would have a negative impact on transgender individuals with disabilities.

HUD's proposed rule allows temporary, emergency single-sex shelters to ask someone to provide evidence of their sex "based on a good faith belief" that the person seeking shelter is not of the biological sex that the shelter serves. Adopting this "good faith belief" approach, as opposed to simply accepting someone's assertion of their own gender identity, invites sex stereotyping and invasive questioning by program staff. HUD specifically requests comments on what are good faith considerations that are indicative of a person's biological sex. Again, we reiterate that HUD should abandon a "good faith" approach when determining sex for the purposes of admissions into a shelter as we believe this approach will make it easier to discriminate against transgender individuals. Additionally, NDRN believes that moving forward with this proposed rule change in the midst of a global pandemic is particularly egregious and inappropriate. People with disabilities have been devastated by the COVID-19 pandemic and many have lost, or are at risk of losing their community and health supports. By limiting access to safe and healthy shelters for transgender persons, HUD's rulemaking will create additional barriers for individuals to safely physically distance and self-isolate.

HUD also seeks comment on whether it should maintain the anti-discrimination protections in the 2012 final rule entitled "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity". NDRN strongly believes that HUD should maintain the anti-discrimination protections in the 2012 rule which explicitly make clear that eligibility determinations for HUD-assisted or insured housing must be made without regard to actual or perceived sexual orientation, gender identity, or marital status<sup>4</sup>. Any erosion of anti-discrimination protections in housing could potentially

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1 James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.

2 David Pettinicchio, Why Disabled Americans Remain Second-Class Citizens, WASHINGTON POST (July 23, 2019), <https://www.washingtonpost.com/outlook/2019/07/23/why-disabled-americans-remain-second-class-citizens/>; Susan Miller, 'Not just about a cake shop': LGBT People Battle Bias in Everyday Routines, USA TODAY (Jan. 16, 2018), <https://www.usatoday.com/story/news/nation/2018/01/16/not-just-cake-shop-lgbt-people-battle-bias-everyday-routines/1031339001/>

3 Miller, *supra* note 2.

4 24 CFR Parts 5, 200, 203, et al. Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity; Final Rule

threaten the ability of people, including those with disabilities, to remain safely housed in their communities and would be a massive step backwards in this effort.

Again, we urge that this proposed rule change be withdrawn in its entirety and instead we encourage HUD to dedicate its efforts towards mitigating the current effects that COVID-19 has had on housing stability for not only the disability and LGBTQ+ communities but for everyone. The country is in the midst of an economic, health, and housing crisis with no end in sight. The administration should not be devoting scarce agency resources to facilitating discrimination and perpetuating stereotypes. Please contact Cyrus Huncharek, Public Policy Analyst, at [cyrus.huncharek@ndrn.org](mailto:cyrus.huncharek@ndrn.org) should you have any questions or concerns with these comments.

Sincerely,



Curtis L. Decker  
Executive Director