

**September 22, 2020**

**Vince Malta**  
2020 President

**Bob Goldberg**  
Chief Executive Officer

**ADVOCACY GROUP**

**William E. Malkasian**  
Chief Advocacy Officer / SVP

**Shannon McGahn**  
SVP Government Affairs

The Honorable Dr. Ben Carson  
Secretary  
U.S. Department of Housing and Urban Development  
451 7th Street S.W.,  
Washington, DC 20410

**Docket Number:** FR-6152-P-01

**Title:** *Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs*

Submitted via: <https://www.federalregister.gov/>

Dear Secretary Carson:

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), I submit this letter opposing HUD's rollback of its 2016 Equal Access Rule, as proposed in a new rule, *Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs (RIN 2506-AC53)*.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,200 local associations or boards, and 54 state and territory associations of REALTORS®. NAR represents a wide variety of housing industry professionals, including approximately 25,000 licensed and certified appraisers, committed to the development and preservation of the nation's housing stock, along with its availability to the widest range of potential homebuyers.

As leaders of thriving, inclusive communities, we abhor discrimination in any form of housing. Our pledge to equal treatment for our transgender neighbors is enshrined in our Code of Ethics and REALTOR® policy. Our commitment to the diverse communities we serve is at the core of who we are.

NAR supports evidence-based approaches to preventing and ending homelessness, including providing immediate, low-barrier access to shelter for people in crisis and helping people transition quickly from emergency shelters to permanent housing. These approaches stabilize individuals, families, and communities, and help support a strong, expanding real estate market.



HUD's new rule would undermine critical protections for the most vulnerable among us. At a time when millions of Americans are at risk of losing their homes, the new rule would almost certainly force more people onto the streets and leave transgender people experiencing homelessness unsheltered<sup>1</sup> or vulnerable to violence<sup>2</sup>. It would weaken our communities.

HUD's proposed rule removes existing protections for extraordinarily vulnerable community members on the basis of limited anecdote and conjecture about other shelter occupants' possible concerns. HUD acknowledges that no data exist to support the implication that transgender persons pose a physical danger for other shelter occupants. As noted in the 2018 National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community, over 200 municipalities and 18 states have nondiscrimination laws protecting transgender people's access to facilities consistent with their gender identity. Some of these protections have been in place for decades. None of these jurisdictions has seen a rise in sexual violence or other public safety issues due to nondiscrimination laws. With respect to the potential privacy issues HUD raises, it provides no evidence for its assertion that the privacy and security procedures proposed by the 2016 rule "have proven unworkable for too many shelters," and ignores the input and experience of on-the-ground providers serving sexual assault and domestic violence survivors, who advocate for "all-inclusive services."<sup>3</sup>

HUD promulgated the 2016 Equal Access Rule when the public reported that the protections afforded by the 2012 Equal Access Rule were insufficient to prevent significant violence, harassment, and discrimination against transgender people as they attempted to access HUD services and programs. At a listening session sponsored by HUD and the U.S. Interagency Council on Homelessness, homeless providers reported that transgender persons often faced dangerous conditions in the shelters that correspond to their sex assigned at birth. Some commenters reported that, if given the choice between a shelter designated for their birth sex or sleeping in the streets, many transgender shelter-seekers would choose the streets. These experiences are borne out by data from HUD's 2019 Point-in-Time count, which found that transgender people experiencing homelessness were significantly more likely to be unsheltered than cisgender adults experiencing homelessness.

Despite evidence that transgender people face greater risk of unsheltered homelessness without the protections of the 2016 Equal Access Rule, HUD argues that its new rule is not discrimination because a shelter that refuses access based on its "good-faith belief" that a shelter-seeker is not of the sex the shelter accommodates would be required to provide her a referral to an alternative shelter. HUD asserts that "denial of accommodation solely because of a person's gender identity that differs from biological sex is not permitted." Yet, in practice, the rule would allow exactly that. If the only accommodation offered to a shelter-seeker is one not matching her gender identity, where she faces heightened risk of violence or sexual assault, she is not being offered accommodation at all.

HUD's proposed rule is written so broadly that it could also affect people who are not transgender. By allowing shelter workers to consider a person's physical appearance when making admission decisions, the rule would, in effect, allow shelter operators to make guesses about a shelter-seeker's sex, and to turn away those who do not conform to the shelter operator's expectations of what persons of a particular sex should look like.

Moreover, the proposed rule could potentially apply to HUD-funded buildings beyond emergency homeless shelters, since it applies broadly to "other buildings or facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities." The language suggests, for example, that HUD-funded transitional housing or other congregate living facilities could bar transgender women, or cisgender women, who do not satisfy the standards set forth in this rule.

---

<sup>1</sup> Before the 2016 Equal Access rule, a study of 100 homeless shelters in four states found that only 30% of shelters were willing to house transgender women with other women, and 21% would refuse shelter entirely. States with LGBT protections were twice as likely to be willing to provide a test caller with appropriate shelter. CAITLIN ROONEY ET AL., DISCRIMINATION AGAINST TRANSGENDER WOMEN SEEKING ACCESS TO HOMELESS SHELTERS (January 7, 2019), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>.

<sup>2</sup> According to the 2015 Transgender Survey, over half of transgender respondents who stayed in a shelter in the past year were verbally harassed, physically attacked, and/or sexually assaulted because of their gender identity. SANDY E. JAMES ET AL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY (2016).

<sup>3</sup> Statement on Housing and Urban Development (HUD) Rollback on Equal Access Rule Protections, National Task Force to End Sexual and Domestic Violence (July 2, 2020), <http://www.4vawa.org/ntf-action-alerts-and-news/2020/7/2/walkoo9jrm2jeuruffp9j5y6q6p>.

The National Association of REALTORS® is firm in its commitment to equal treatment, fairness, and respect for transgender people. Particularly during the COVID-19 pandemic, when more people are experiencing homelessness and seeking a safe place to stay, our duty as community leaders and neighbors is to provide shelter to the vulnerable among us. HUD should allow the 2016 Equal Access Rule to stand, and withdraw this proposal which would harm our neighbors and our communities. We look forward to continuing to work with you on this important issue. Please do not hesitate to reach out to me or our Director of Fair Housing Policy, Bryan Greene, at [BGreene@NAR.REALTOR](mailto:BGreene@NAR.REALTOR).

Sincerely

A handwritten signature in black ink, appearing to read "Vince Malta". The signature is fluid and cursive, with a prominent initial "V" and a long, sweeping tail.

Vince Malta  
2020 President, National Association of REALTORS®