



September 18, 2020

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

RE: Docket Number FR-6152-P-01, Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs

Dear Mr. Santa Anna:

Enterprise Community Partners (Enterprise), Local Initiatives Support Corporation (LISC), Low Income Investment Fund (LIIF), and National Housing Trust (NHT) appreciate the opportunity to provide comments on the U.S. Department of Housing and Urban Development's (HUD's) proposed rulemaking on *Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs*. As nonprofit organizations committed to ensuring that all people have equitable access to housing opportunities, we oppose this proposed rule and its intent to unwind existing federal protections for transgender individuals experiencing homelessness. We ask that HUD withdraw this proposed rule in its entirety and maintain current protections that ensure equal access to its housing programs regardless of gender identity.

The proposed rule would rescind requirements under the 2016 amendment to the 2012 Equal Access Rule, which aimed to ensure "equal access for individuals in accordance with their gender identity in programs and shelter funded under programs administered by HUD's Office of Community Planning and Development." The final *Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs* rule was adopted in September 2016 through the Secretary's legal authority to administer "all programs, functions, and authorities of the Department" under the authority of the Department of HUD Act and related program statutes. We disagree with the proposed rulemaking's premise that the 2016 amendment to the 2012 Equal Access Rule goes beyond the authority granted to HUD by Congress. HUD's Secretary inherently has the legal authority to adopt regulations governing the agency's housing programs, including regulations that ensure equal access to HUD-funded shelter and housing.

Ensuring equal access to HUD's housing programs regardless of gender identity is essential to address persisting housing instability challenges facing transgender people across the nation. As former HUD Secretaries Julián Castro and Shaun Donovan noted in an op-ed¹ published in the Los Angeles Times on

¹ Julián Castro, Shaun Donovan, and Cyndi Lauper, "Op-Ed: Trump's HUD Wants to Make Transgender Discrimination Legal - Los Angeles Times," *The Los Angeles Times*, September 8, 2020,

September 8, 2020, transgender Americans face devastating rates of homelessness, with nearly one-third reporting experiencing homelessness at some point. We also share a concern among policymakers and housing advocates that the proposed rule would exacerbate these issues by discouraging transgender Americans experiencing homelessness from seeking shelter due to fear of potential discrimination. A report prepared for HUD² highlighted that nearly 30 percent of transgender individuals seeking shelter faced discrimination and denial of shelter admission due to their transgender status at some point.

Furthermore, this proposed rule would establish a discriminatory admission policy at federally funded homeless shelters whose facilities are segregated by sex, making humane treatment of certain people optional³. The proposal would remove federal protections for transgender people seeking shelter and would instead defer to local decision making, thereby allowing a single-sex or sex-segregated homeless shelter to deny admission to the facility due to an individual's sex as reflected in official government documents. The proposed rulemaking would also allow the owners, operators, and managers of federally funded single-sex shelters to request "information or documentary evidence" of the sex of individuals seeking shelter based on a "good faith belief that the person seeking access to the shelter is not of the sex which the shelter accommodates as determined under its policy." We believe that by allowing for this approach, as opposed to adopting intake policies that accept an individual's assertion of gender identity, HUD would remove federal protections against harmful gender stereotyping and invasive questioning in shelter intake policies and practices.

The Covid-19 pandemic has exacerbated the nation's housing instability challenges, especially for transgender Americans who entered the pandemic disproportionately afflicted by poverty and homelessness. Populations experiencing homelessness are at higher risk of getting infected with the coronavirus due to overcrowding and the inability to follow recommended public health measures for containing the spread of the virus. Furthermore, the pandemic's economic fallout has placed more vulnerable populations at the risk of eviction and homelessness. Therefore, we believe that maintaining and enhancing federal protections for transgender people experiencing homelessness is now more important than ever. **Enterprise, LISC, LIIF, and NHT urge HUD to withdraw its proposed rulemaking on *Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs* and continue to enforce the 2016 rule.**

If you have any additional questions regarding our comments, please contact Marion McFadden (mmcfadden@enterprisecommunity.org), Mark Kudlowitz (mkudlowitz@lisc.org), Olivia Barrow (obarrow@liifund.org), or Ellen Lurie Hoffman (eluriehoffman@nhtinc.org).

<https://www.latimes.com/opinion/story/2020-09-08/op-ed-trumps-wants-to-make-trans-discrimination-legal-again-dont-let-it>.

² HUD, "Equal Access for Transgender People: Supporting Inclusive Housing and Shelters," accessed September 9, 2020, <https://endhomelessness.org/wp-content/uploads/2018/07/Equal-Access-for-Transgender-People-Supporting-Inclusive-Housing-and-She....pdf>.

³ Sarah Brundage, "Enterprise Opposes HUD Proposed Rule That Would Roll Back Transgender Protections at Federally Funded Homeless Shelters," Enterprise Community Partners, July 24, 2020, <https://www.enterprisecommunity.org/blog/enterprise-Enterprise-opposes-hud-proposed-rule-that-would-roll-back-transgender-protections-at-federally-funded-homeless-shelters>.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. McFadden', with a stylized flourish at the end.

Marion McFadden
Senior Vice President, Public Policy
Enterprise Community Partners

A handwritten signature in black ink, appearing to read 'Matt Josephs', with a long horizontal flourish extending to the right.

Matt Josephs
Senior Vice President, Policy
Local Initiatives Support Corporation

A handwritten signature in black ink, appearing to read 'Lucy Arellano Baglieri', with a circular flourish at the beginning.

Lucy Arellano Baglieri
Chief Strategy Officer and Senior Vice President
Low Income Investment Fund

A handwritten signature in black ink, appearing to read 'Ellen Lurie Hoffman', with a long horizontal flourish extending to the right.

Ellen Lurie Hoffman
Federal Policy Director
The National Housing Trust