



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
Submitted via www.regulations.gov

**Re: Equal Access to Housing in HUD Programs Revisions
HUD Docket No. FR-6518-P-01**

The City of New York (“The City”) submits this comment in opposition to the proposed rule by the United States Department of Housing and Urban Development (“HUD”) in *Equal Access to Housing in HUD Programs Revisions*, 91 Fed. Reg. 22779 (“Proposed Rule”).

HUD regulations currently provide that HUD-assisted housing and shelters “shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.”¹ The Proposed Rule would eliminate this important non-discrimination protection and would instead seek to condition access to such facilities to persons based on their “sex,” which would be defined as “an individual’s immutable biological classification as either male or female.”² To this end, the Proposed Rule would allow facility providers to require assurances or evidence to establish a person’s sex.³ The Proposed Rule would otherwise replace “gender identity,” “gender,” and “sexual orientation” throughout HUD regulations with “sex.”⁴

These proposed changes would harm LGBTQIA+⁵ community members, undermine years of progress toward addressing well-documented socio-economic challenges experienced by LGBTQIA+ people, create significant administrative burdens for local social service providers,

¹ 24 C.F.R. § 5.105(a)(2).

² Proposed Rule, 91 Fed. Reg. at 22780.

³ Id.

⁴ Proposed Rule, 91 Fed. Reg. at 22784 (amending 24 C.F.R. § 5.100). *See also* Proposed Rule, 91 Fed. Reg. at 22782, 22782 n.22.

⁵ LGBTQIA+ refers to individuals who identify as Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, or another identity outside of heterosexual or cisgender. The City uses this broad acronym to emphasize the Proposed Rule’s potential impact on intersex individuals, who may not neatly fit into HUD’s binary “biological sex” definitions.

and conflict with federal, New York State and City laws. The breadth and sweeping nature of the Proposed Rule will not only harm members of the LGBTQIA+ community. Cisgender people will also face harm because, if the Proposed Rule were put into effect, HUD-funded shelters will be required to restrict access based on how staff at each shelter perceive or understand what it means to be a woman or a man, leading to invasive, unwarranted inquiries.

New York City is home to one of the largest LGBTQIA+ populations in the country, and the City works diligently to ensure LGBTQIA+ New Yorkers have the support and resources needed to participate fully in civic life, and to provide fundamental services and rights, including the right to be free from discrimination. For this reason, the City has joined other localities in a comment submitted in opposition to the Proposed Rule on the grounds that it is unlawful. Specifically, the joint comment describes how the Proposed Rule conflicts with non-discrimination provisions in the Fair Housing Act and is arbitrary and capricious because HUD's reasoning, including with respect to religious liberty and federalism concerns, is inadequate.⁶

The City writes separately here to highlight unique administrative burdens it would face if the Proposed Rule were to take effect, to expand on the harms that the Proposed Rule would inflict on a vulnerable population, and to emphasize the political animus that underlies this and other federal actions taken against the transgender community in violation of federal constitutional principles. The City strongly urges HUD to withdraw the Proposed Rule in full.

I. The Proposed Rule Would Cause Chaos in City Shelter Systems

The City must provide shelter for all New Yorkers who need it, including single adults, adult families, families with children, and runaway and unhoused youth. As a practical matter, this means that the City must shelter unhoused individuals the same day that they apply. In a system charged with triaging and providing beds for approximately 82,681 people⁷ on any given night, every bed counts. Implementation of the Proposed Rule would create administrative chaos and force the City itself to perpetuate displacement and discrimination towards transgender individuals – which is in violation of New York City's local and state laws, regulations, policies, and principles.

The City partners and contracts with hundreds of shelter providers, including local business, faith-based entities, and community-based organizations to help meet the needs of unhoused New Yorkers. The City operates directly or contracts with vendors to provide a wide range of emergency shelter, homelessness prevention, and housing services. Although shelters are funded predominantly through local sources, the City nonetheless relies on a network of funding streams in order to meet emergency shelter needs in New York City—including HUD funding streams that are covered by the Proposed Rule. The City also relies more broadly on HUD funding for many homelessness and housing support services, including a network of supportive and long-term housing programs and shelters.

⁶ San Francisco, Public Comment on Equal Access to Housing in HUD Programs Revisions, (June 29, 2026), [regulations.gov](https://www.sfdph.org/dph/ehrp/comments/).

⁷ Current daily figure ranges and can be found at <https://www.nyc.gov/assets/dhs/downloads/pdf/dailyreport.pdf>

The Proposed Rule encourages fracturing of the City’s already complex shelter network, requiring individual sites or subgroups of shelters to enforce rules that run counter to rules that would otherwise uniformly apply to the entire shelter network and pushing off the responsibility of accommodating transgender or gender expansive individuals to the coordinating agency. This creates the potential for otherwise eligible clients to be excluded from shelters across the City and would cause a cascade of issues that will result in complete administrative and operational chaos.

HUD’s requirement around placements based on its definitions of sex also does not erode the City’s obligations to individual clients that exist under State and local laws. The Proposed Rule creates an explicit conflict with these local and State laws, which directly prohibit discrimination based on gender identity or expression. Furthermore, the City does not require disclosure of transgender status. Neither the City nor its providers screen unhoused individuals for physical traits or qualities related to their sex assigned at birth. Instead, City policy is to provide placements that affirm a person’s self-represented gender. The Proposed Rule contravenes City policies by mandating invasive and probing questions into a person’s sex assigned at birth. Doing so is not trauma-informed and will likely have a chilling effect on those seeking shelter whose gender expression is not typically aligned with their sex assigned at birth. The Proposed Rule’s conflict with State and local law would also create undue administrative burdens for the City’s efforts to provide housing to both transgender and cisgender clients alike, forcing the City to divert resources away from our clients in order to accommodate a rule change that is illegal and targets a vulnerable population without justification.⁸

Furthermore, the City’s shelter system is legally required to accommodate the needs of people with disabilities. As a public entity, the New York City Department of Homeless Services (“DHS”) is required, in compliance with Federal, State, and local laws and regulations to provide reasonable accommodations to individuals with disabilities and to make reasonable modifications to its policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of a disability. DHS is also required to ensure meaningful access to its programs, benefits, and facilities, in the most integrated setting appropriate, except where the provision of a reasonable accommodation would fundamentally alter the nature of DHS’s services, program or activity. New Yorkers experiencing homelessness may present with multifaceted and intersecting needs – such as dietary restrictions, mobility disabilities, hearing or visual disabilities, and service animals. Placements are made thoughtfully with the unique individual in mind. Should a placement be secured that addresses the specific needs of a particular client, such as a cooking facility for an extreme food allergy, it would be especially burdensome to permit that shelter to subsequently reject the client based on the perception of being transgender.

II. HUD’s Safety Concerns that Purportedly Motivate the Proposed Rule are Baseless.

a) HUD’s evidence supporting the Proposed Rule is threadbare.

⁸ San Francisco, Public Comment on Equal Access to Housing in HUD Programs Revisions, (June 29, 2026), [regulations.gov](https://www.regulations.gov). *See also* Section II below.

HUD asserts that the Proposed Rule is necessary to protect the safety and privacy of unhoused cisgender women,⁹ but offers no genuine evidence of safety concerns arising from non-discrimination protections for LGBTQIA+ individuals. HUD instead misconstrues sources to suggest that cisgender women experiencing homelessness are at increased risk of sexual violence from “biological males.” HUD relies on statements from the Ministry of Justice of the United Kingdom purportedly “showing that 62 percent of males identifying as females in UK prisons had committed at least one sexual offense.”¹⁰ This data about the carceral system in the UK, however, does not support HUD’s assertion that removing gender diverse individuals from HUD-funded housing in the U.S. contributes to overall safety. Instead, a closer look at the UK system reveals that nearly all transgender and gender non-binary individuals incarcerated in the UK are housed inconsistent with their gender identity, with transgender women facing alarming rates of assaults by other prisoners in men’s prisons.¹¹ HUD’s misuse of the UK data simply perpetuates the criminalization of transgender individuals in the United States.¹²

Similarly, HUD exaggerates and misconstrues a single 2019 decision from a federal district court in Alaska.¹³ There, the court preliminarily enjoined a municipality from enforcing local laws prohibiting discrimination in public accommodations on the basis of gender identity against a plaintiff homeless shelter that wanted to serve persons who were determined to be female at birth. The court concluded that plaintiffs were likely to succeed on the merits because the local laws did not appear to apply to plaintiff. In the preamble to the Proposed Rule, HUD highlighted an affidavit from a shelter resident stating that she preferred not to share a sleeping space with a “biological man.”¹⁴ Notably, the court did not make any finding regarding the risks that transgender women pose to cisgender women in shelter; the affidavit language that HUD has highlighted did not make any reference to sexual violence; and the local law continues to this day to prohibit discrimination in public accommodations on the basis of gender identity.¹⁵ This single case cannot reasonably support the sweeping policy that HUD is now advancing.

⁹ Proposed Rule, 91 Fed. Reg. at 22781.

¹⁰ See Proposed Rule, 91 Fed. Reg. at 22781, 22781 n.14 (citing *Prisoners: Transgender People – Question for Ministry of Justice*, UK Parliament (tabled on Dec. 16, 2024), <https://questions-statements.parliament.uk/written-questions/detail/2024-12-16/20298#>).

¹¹ *Transgender People, Crime and Prisons*, TRANSLUCENT (Jan. 18, 2025), <https://translucent.org.uk/transgender-people-crime-and-prisons/#:~:text=There%20is%20a%20common%20theme%20in%20the%20culture,to%20provide%20accurate%20information%20to%20explore%20the%20narrative.>

¹² See, e.g., JOSHUA ARRAYALES, CHRISTY MALLORY & JORDAN GRASSO, *Law Enforcement and LGBTQ People*, WILLIAMS INST. 11–25 (Nov. 2025), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Police-Interactions-LGBTQ-Nov-2025.pdf>; Angela Dwyer & Jace L. Valcore, *Policing Transgender People*, in *TRANSGENDER PEOPLE AND CRIMINAL JUSTICE: AN EXAMINATION OF ISSUES IN VICTIMOLOGY, POLICING, SENTENCING, AND PRISONS* 99, 104–110 (Heather Panter & Angela Dwyer, eds. 2023), https://www.researchgate.net/publication/371267621_Policing_Transgender_People.

¹³ See Proposed Rule, 91 Fed. Reg. at 22781 nn.15, 20, 22782 n.21 (citing to testimony, complaint, case commentary, and preliminary injunction opinion of *Downtown Soup Kitchen v. Municipality of Anchorage*, 406 F. Supp. 3d 776, No. 3:18-cv-00190-SLG (D. Alaska 2019)); 2020 Proposed Rule, 85 Fed. Reg. at 44814 nn.20, 21 (citing to *Downtown Soup Kitchen* complaint). There is no decision on the merits in this case.

¹⁴ see also *id.*, 3:18-cv-00190, Doc. 34 at 2 ¶ 9 (homeless woman testifying that “I would rather sleep in the woods than sleep in the same area as a biological man”).

¹⁵ Anchorage, Alaska Code of Ordinances § 5.20.050.

HUD also posits, without support, that cisgender men may lie about their gender identity to enter women's shelters or other sex-segregated spaces.¹⁶

b) If implemented, the Proposed Rule would increase safety concerns.

The Proposed Rule dissuades a vulnerable population from seeking shelter or housing assistance and would thus increase homelessness. Yet, the Proposed Rule ignores evidence that homelessness itself is linked to less safety among *all* people irrespective of their gender/sex.¹⁷ People who are unhoused experience physical or sexual violence at similarly high rates. For example, in one study, 32% of women, 27% of men, and 38% transgender people reported either physical or sexual victimization in the previous year.

The Proposed Rule would also make it harder for survivors of domestic or intimate partner violence, particularly LGBTQIA+ and transgender individuals, to safely access emergency shelter and housing assistance during moments of crisis. Survivors often flee abusive situations without identification, financial resources, or support systems. As such, those fleeing violence or other emergency situations often arrive at shelters without identification or personal documents for themselves and their children. Requiring documentation or allowing intrusive questioning during intake will likely delay or prevent access to emergency shelter at times when immediate safety is critical and also retraumatize survivors by asking them invasive questions at an especially vulnerable time.

The Proposed Rule would also increase warranted fear of discrimination, invasive questioning, humiliation, or denial of services among survivors who are already vulnerable and in crisis. Our local agencies and community providers regularly work with transgender survivors who already face significant barriers when seeking shelter and housing assistance. CDC research has found that more than half of transgender women who experienced abuse during the previous 12 months also reported experiencing homelessness.¹⁸ The Proposed Rule could result in individuals remaining in an abusive relationships to avoid homelessness or exacerbate homelessness for an already vulnerable population.

Moreover, the impact of the Proposed Rule may extend beyond emergency shelter settings. As drafted, the Rule removes references to sexual orientation and gender identity protections across a wide range of HUD-funded housing and community development programs, including Section 8 and public housing programs. LGBTQIA+ survivors who rely on housing vouchers or subsidized housing may therefore face reduced federal protections when attempting to secure or maintain stable housing in contravention of State and local laws.

III. The Proposed Rule is Part of a Broader Effort by the Federal Government to Harm Persons Based on their Gender Identity and Gender Expression.

¹⁶ Proposed Rule, 91 Fed. Reg. at 22781.

¹⁷ SAGE, HUD EAR Proposal Fact Sheet, (May, 2026), <https://www.sageusa.org/wp-content/uploads/2026/05/HUD-EAR-Proposal-Fact-Sheet.pdf>.

¹⁸ Centers for Disease Control and Prevention (CDC), "Transgender Women Experiencing Homelessness — National HIV Behavioral Surveillance Among Transgender Women, Seven Urban Areas, United States, 2019–2020", <https://www.cdc.gov/mmwr/volumes/73/su/su7301a5.htm>.

The Proposed Rule must be understood within the broader context of recent actions concerning gender identity and gender expression that have been taken by the federal administration and its agencies to implement Executive Order 14168, titled “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”¹⁹ The Executive Order adopts a categorical framework that excludes recognition of gender identities beyond a binary conception of sex and further directs federal agencies to implement policies that adversely affect transgender, nonbinary, intersex, and other gender-diverse individuals’ ability to access government-funded programs and services. Through additional executive orders, the federal administration has sought to impose this harmful framework on all aspects of life, including education, health care, sports, and the military.²⁰ Moreover, with the policy set by Executive Order 14168, the U.S. Department of Justice has prioritized investigations of doctors, hospitals, and other entities that provide gender affirming care.²¹ The U.S. Department of Health and Human Services has proposed a rule that would prohibit hospitals that participate in Medicare and Medicaid from providing gender affirming care.²² The U.S. Department of Education sought to terminate federal funding to jurisdictions that recognize transgender persons.²³ The U.S. Equal Employment Opportunity Commission is similarly restricting funding for states and localities that bring cases relating to gender identity and transgender status.²⁴

The U.S. Constitution creates guardrails against the “bare [] desire to harm a politically unpopular group,” which is not a legitimate government interest.²⁵ Like many other recent federal actions concerning gender identity and expression, the Proposed Rule lacks an adequate justification for the burdens it would impose on transgender, nonbinary, intersex, and gender-diverse individuals and raises substantial equal protection concerns. This government action fails

¹⁹ Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

²⁰ See, e.g., Exec. Order No. 14183, 90 Fed. Reg. 8757 (Jan. 27, 2025) (forbidding transgender armed servicemembers from using the sleeping, changing, or bathing facilities consistent with their gender identity); Exec. Order No. 14187, 90 Fed. Reg. 8771 (Jan. 28, 2025) (banning gender-affirming care for minors); Exec. Order No. 14190, 90 Fed. Reg. 8853 (Jan. 29, 2025) (directing law enforcement to investigate educational/education-related institutions suspected of involvement in the “instruction, advancement, or promotion of gender ideology”); Exec. Order No. 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025) (prohibiting transgender women from participating in women’s sports).

²¹ Ellie DeGarmo and Katie Keith, Trump Administration Escalates Attacks on Transgender Health Care Using Subpoena Authority, Health Affs. Forefront (June 18, 2026), <https://www.healthaffairs.org/content/forefront/trump-administration-escalates-attacks-transgender-health-care-using-subpoena-authority>.

²² Medicare and Medicaid Programs; Hospital Condition of Participation: Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children, Proposed Rule, 90 Fed. Reg. 59463 (proposed Dec. 19, 2025) (to be codified at 42 C.F.R. pt. 482), <https://www.federalregister.gov/documents/2025/12/19/2025-23465/medicare-and-medicaid-programs-hospital-condition-of-participation-prohibiting-sex-rejecting>.

²³ Nate Raymond and Jack Queen, Trump administration moves to pull Maine’s school funding over transgender athletes, REUTERS (Apr. 12, 2025), <https://www.reuters.com/legal/trump-administration-cannot-freeze-maine-school-lunch-funds-over-transgender-2025-04-12/>.

²⁴ U.S. Equal Empl. Opp. Comm., Mem. for Fair Employment Practices Agency Directors from Thomas Colclough, Director Office of Field Programs (May 20, 2025) (stating with retroactive effect: “Effective January 20, 2025, we are not granting credit for intakes or charge resolutions that implicated by ... Executive Order 14168 and Executive Order 14281.”).

²⁵ See *Romer v. Evans*, 517 U.S. 620, 634–35 (1996) (citing *Department of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)).

each level of scrutiny under the Equal Protection Clause, including rational basis review, because the actions in question are not even rationally related to a legitimate government interest,²⁶ but instead target marginalized groups out of hostility.²⁷ The Proposed Rule, and the Executive Order upon which it is grounded, show a clear intent to harm gender diverse individuals—including transgender, gender non-conforming, gender non-binary, and intersex individuals—and will also hurt countless others in practice. Despite purporting to bring “truth” back to the federal government, E.O. 14168 is based on falsehoods and distortions that ignore scientific and socioeconomic evidence and place a target on transgender Americans.

For all of the reasons above, the City strongly urges HUD not to finalize the Proposed Rule.

²⁶ See, e.g., *Carolene Products*, 304 U.S. at 144; *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 307-08 (1993).

²⁷ *Moreno*, 413 U.S. at 534; see also *Romer*, 517 U.S. at 634–35.