July 24, 2020

Mr. Paul Compton  
Regulations Division, Office of General Counsel  
U.S. Department of Housing and Urban Development  
451 7th Street SW, Room 10276  
Washington, D.C. 20410-0500

RE: Docket No. FR-6152-P-01: Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs

Dear Mr. Compton:

On behalf of the Los Angeles Continuum of Care (LA CoC), the Los Angeles Homeless Services Authority (LAHSA) submits our opposition to the modifications to the “Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs” Rule (Equal Access Rule) as proposed in Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs as issued in the July 24, 2020 Federal Register (Docket No. FR-6152-P-01).

LAHSA is a joint-powers authority of the City and County of Los Angeles and serves as the lead agency in the LA CoC. LAHSA is responsible for funding a significant portion of the interim housing, permanent housing, and supportive services for people experiencing homelessness in Los Angeles County. LAHSA’s mission is to combat homelessness and ensure everyone in the LA CoC has access to safe and stable housing. As such, we oppose the U.S. Department of Housing and Urban Development’s (HUD) proposed changes to the current Equal Access Rule, as these changes have the potential to further marginalize, traumatize, and destabilize vulnerable individuals.

The current iteration of the Equal Access Rule is explicit in its mandate that any HUD-funded homelessness and housing programs are to adhere to an individual’s self-expressed gender identity. Through its design, it effectively advanced two of HUD’s core functions as a federal agency – to protect against discrimination and to provide decent living conditions for all people. HUD, however, is now proposing to remove these protections by allowing HUD-funded shelter providers to determine access to and placement in emergency shelter services using a wide range of factors including a perception of an individual’s sex assigned at birth. These proposed changes only serve to weaken fair housing rights and further exclude and traumatize vulnerable populations that have historically been shut out of safe and stable housing. At a time when rates of homelessness are continuously rising across the country and are likely to be exacerbated by the COVID-19 global pandemic, HUD should be fulfilling its mission and enhancing efforts to bring stable housing to those that are most at-risk.

The proposed changes will allow discriminatory practices towards transgender, gender non-binary, and gender non-conforming individuals, who already face rampant discrimination in
the rental market as well as in privately-funded shelters.\(^1\) Transgender and gender non-conforming individuals experiencing homelessness are disproportionately likely to be unsheltered; among transgender people experiencing homelessness, 62% are unsheltered nationwide, while 78% of gender non-conforming individuals experiencing homelessness are unsheltered nationwide, compared to just over a third of the overall population experiencing homelessness.\(^2\) Unsheltered individuals face particular vulnerability to violence, accidents, health crises, and life-threatening weather conditions, all of which heighten vulnerability for transgender individuals who already face deeper histories of trauma and violence.\(^3\)

In the LA CoC, 86% of the unsheltered adult population and 93% of the unsheltered youth population cited weakened social networks as a driver into homelessness, including conflicts with or absence of family members or being kicked out of the home due to sexual orientation or gender identity.\(^4\) Nationally, 26% of lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ) youth experiencing homelessness reported being forced out of their homes due to their sexual orientation or gender identity.\(^5\) Housing-unstable LGBTQ individuals are therefore especially in need of access to homeless services for assistance due to these weakened networks. Allowing discrimination against this population can have especially dire consequences for these individuals.

The proposed changes will also have especially detrimental outcomes for LGBTQ people of color experiencing homelessness, who already face systemic discrimination and barriers. In particular, Black/African American transgender, gender non-binary, and gender non-conforming individuals may bear the brunt, as Black/African American individuals are already overrepresented in the population experiencing homelessness. According to national data, Black/African American youth made up just 14% of the total youth population but 31% of the homeless LGBTQ youth population in 2014.\(^6\) Additionally, Black/African American and American Indian transgender individuals face higher rates of unemployment, poverty, and negative interactions from law enforcement than other racial groups – all of which exacerbate and extend bouts of homelessness.\(^7\)

Recognizing the importance of ensuring that all people experiencing homelessness have access to non-discriminatory safe and stable housing, the LA CoC authored its own policy entitled “Ensuring Equal Access in Accordance with an Individual’s Gender Identity in the Los Angeles Continuum of Care” (Equal Access and Gender Identity Policy) in 2017. The policy established the requirement that all LAHSA-contracted programs, shelters, other buildings and facilities, benefits, services and accommodations, regardless of funding source, ensure equal access to an individual in accordance with gender identity.

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\(^3\) Los Angeles Homeless Services Authority. (2020). *Greater Los Angeles Homeless Count Results*.


\(^5\) National Coalition for the Homeless. (June 2017). “LGBTQ Homelessness.”


As a direct result of having this policy in place, LAHSA was able to capture and mitigate some of the grievances associated with violations of the Equal Access and Gender Identity Policy. In many instances, prior to the passage of HUD’s Equal Access Rule, the passage of the subsequent LA CoC policy and the associated technical assistance, training, and compliance efforts, shelter providers were asking intrusive and inappropriate questions to clients based on their gender identity. In some cases, clients were denied from shelters when they should have been accepted, clients were perceived to be threatening due to their gender identity, and basic needs such as showering and hygiene became contentious.

These situations sewed mistrust and fear between the client and the service provider (and by extension, the homeless services system), and in some cases retraumatized the client. Transgender, gender non-binary, and gender non-conforming individuals experiencing homelessness already face high rates of trauma and mistrust due to constant discrimination through various systems, including housing, education, and employment. Instead of creating safe, welcoming, and inclusive spaces for our most vulnerable clients, HUD’s proposed changes will only serve to create further disengagement from the homeless services system, moving these individuals further away from stable housing, and keeping overall homeless rates higher and more persistent.

HUD’s proposed changes are not only inconsistent with the mission of the LA CoC and many other jurisdictions as well, but are also inconsistent with the recent Supreme Court rulings of Bostock v. Clayton County, Georgia and R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission. In his majority opinion in one of the decisions, Justice Gorsuch stated, “An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.” These landmark rulings extended employment discrimination protections to include LGBTQ individuals, which set an important precedent that may influence future fair housing cases dealing with sexual orientation and gender identity. The Supreme Court’s ruling is consistent with HUD’s current iteration of the Equal Access Rule, which is to protect LGBTQ individuals from discrimination and allow them equitable access to necessities, such as housing and shelter.

The COVID-19 global pandemic will cause a greater need for safe and accessible housing and shelter, and the federal government must respond appropriately. Harmful proposed rule changes, such as this one, will only serve to exacerbate the homelessness crisis.

HUD’s core mission and responsibility is to create policies and regulations that will assist our most vulnerable rather than marginalize them further. For these reasons, we urge withdrawal of this proposed rule. We welcome any opportunity to work with HUD to create more inclusive and safe spaces for all.

Sincerely,

Sarah Dusseault
Chair, LAHSA Commission

Heidi Marston
Executive Director

8 Bostock v. Clayton County, Georgia, No. 17-1618 (Supreme Court of the United States, 2020).