

United States Senate

WASHINGTON, DC 20510

June 24, 2026

The Honorable Scott Turner
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Secretary Turner,

We write in strong opposition to the Department of Housing and Urban Development's (HUD) proposed rule entitled, "Equal Access to Housing in HUD Programs Revisions."¹ The stated intent of the rule is to implement the President's Executive Order (EO) entitled "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government."² This proposed rule actually directs HUD to ignore longstanding legal precedent prohibiting discrimination on the basis of both sexual orientation and gender identity, including by removing references to "sexual orientation," "gender," and "gender identity," throughout HUD regulations despite no explanation of this significant change anywhere in the rule's justification.³ Additionally, the rule encourages grantees to take invasive action to investigate Americans' sex.⁴ While the administration claims this is an effort to "defend women's rights,"⁵ the reality is that it will target the entire LGBTQ+ community, lead women to be harassed and investigated regarding their sex, and deny Americans access to their fair housing rights under the law. The apparent purpose of this rule is to advance cruel policy ideologies and score political points by placing vulnerable communities in harm's way. We urge you to withdraw this proposed rule.

¹ U.S. Department of Housing and Urban Development, "Equal Access to Housing in HUD Programs Revisions," Federal Register Notice, April 28, 2026, <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions>.

² *Id.*

³ The White House, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," January 20, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>; U.S. Department of Housing and Urban Development, "HUD to Enforce Fair Housing Act to Prohibit Discrimination on the Basis of Sexual Orientation and Gender Identity," February 11, 2021, <https://archives.hud.gov/news/2021/pr21-021.cfm>; U.S. Department of Housing and Urban Development, "Equal Access to Housing in HUD Programs Revisions," Federal Register Notice, April 28, 2026, <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions>.

⁴ U.S. Department of Housing and Urban Development, "Equal Access to Housing in HUD Programs Revisions," Federal Register Notice, April 28, 2026, <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions>.

⁵ *Id.*, p. 22782.

Background

HUD is statutorily obligated to administer and enforce the Fair Housing Act (FHAct), which prohibits discrimination in housing, lending, and community development—whether it occurs through disparate treatment (which often appears as intentional discrimination) or disparate impact (which often appears as facially neutral or unintentional discrimination).⁶ The FHAct prohibits discrimination on the basis of seven protected characteristics, including sex.⁷ After the Supreme Court ruled in *Bostock v. Clayton County* that sex discrimination under Title VII includes discrimination based on sexual orientation and gender identity, HUD issued a memorandum stating that the Office of General Counsel had concluded that the FHAct’s “sex discrimination provisions are comparable to those of Title VII and that they likewise prohibit discrimination because of sexual orientation and gender identity.”⁸ Several courts have also held that LGBTQ+ individuals are protected from discrimination in private housing under the FHAct.⁹

In 2016, HUD issued a final rule entitled, “Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs,” which mandated that individuals be given access to single-sex or sex-specific programs, benefits, and accommodations in accordance with their “gender identity,” which HUD defined as the “gender with which a person identifies, regardless of the sex assigned at birth and regardless of the person’s perceived gender identity.”¹⁰ This rule required that grantee policies and procedures not subject individuals to “intrusive questioning” or requirements to “provide anatomical information or documentary, physical, or medical evidence” of their gender identity.¹¹

Several Actions by the Trump Administration Have Undermined Legal Precedent in Ways that Target LGBTQ+ Individuals

In January 2025, the President announced an EO that directed HUD to rescind the 2016 Equal Access rule and replace all references to “gender identity” with “sex.”¹² The EO also went on to define sex as an individual’s “immutable biological classification as either male or female,” and defined “female” and “male” based on an individual’s belonging “at conception” to “the sex that produces the large [and small] reproductive cell,” respectively.¹³ Medical and legal experts have

⁶ Pub. L. 90–284.

⁷ *Id.*

⁸ *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020); U.S. Department of Housing and Urban Development, “Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act,” February 11, 2021, <https://www.fairhousingnc.org/wp-content/uploads/2021/02/Worden-Memo-EO13988-FHAct-Implementation-2-11-21-signed-final.pdf>.

⁹ *Smith v. Avanti*, 249 F. Supp. 3d 1194, 1200 (D. Colo. 2017); *Wetzel v. Glen St. Andrew Living Community, LLC*, 901 F.3d 856, 862 (7th Cir. 2018).

¹⁰ U.S. Department of Housing and Urban Development, “Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs,” Federal Register Notice, September 21, 2016, <https://www.federalregister.gov/documents/2016/09/21/2016-22589/equal-access-in-accordance-with-an-individuals-gender-identity-in-community-planning-and-development>.

¹¹ *Id.*

¹² The White House, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” January 20, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

¹³ *Id.*

raised concerns about the language in the EO, which “is shockingly out of step with what we know from science.”¹⁴ At a basic scientific level, sexual differentiation via reproductive cells doesn’t occur until six weeks *after* conception, making the EO’s definition meaningless.¹⁵ Furthermore, it ignores intersex individuals, who have variations in their sex traits.¹⁶ Finally, the EO targets transgender and nonbinary individuals whose gender presentation does not align with their assigned sex at birth.¹⁷

HUD also took steps prior to the April rulemaking to override the agency’s fair housing enforcement based on gender identity and sexual orientation. For example, according to current and former employees within HUD’s Office of Fair Housing (OFH) within the Department’s Office of General Counsel (OGC) and its Office of Fair Housing and Equal Opportunity (FHEO), HUD leadership has been systemically undermining the Department’s fair housing, civil rights, and Violence Against Women Act (VAWA) implementation and enforcement efforts since the Trump Administration took office.¹⁸ Further, last year, HUD began responding to fair housing complaints stating that the agency had “determined housing decisions based upon one’s sexual orientation are not subject to federal fair housing laws.”¹⁹ Since his confirmation in October 2025, Assistant Secretary for FHEO Craig Trainor has been committed to departing from the agency’s standing interpretations of gender identity under the FHAct. During his confirmation hearing, after Senator Smith asked whether he believed housing discrimination on the basis of sexual orientation was against the law,²⁰ Trainor asserted that under *Bostock* “sexual orientation is covered within the protected class, [but] that decision does not apply to ... the Fair Housing Act.”²¹

HUD’s Proposed Rule Rolls Back Civil Rights Enforcement and Leaves the LGBTQ+ Community and Women at Increased Risk of Unchecked Housing Discrimination

HUD’s proposed rule would remove all references to “gender” and “gender identity” from HUD regulations, and replace those references where relevant with the term “sex,” as defined in the President’s EO.²² The proposed rule, however, goes further than the President’s EO directive by striking “sexual orientation” across all HUD regulations – a move so egregious it appears the

¹⁴ ABC News, “Trump’s definition of ‘male,’ ‘female’ criticized by medical and legal experts,” Kiara Alfonseca, January 23, 2025, <https://abcnews.com/Politics/trumps-definition-male-female-criticized-medical-legal-experts/story?id=117975718>.

¹⁵ National Institutes of Health, National Library of Medicine, Endotext, “Sexual Differentiation,” Rodolfo Ray, MD, PhD and Chrystèle Racine, PhD, , updated July 24, 2025, <https://www.ncbi.nlm.nih.gov/books/NBK279001/>.

¹⁶ Cleveland Clinic, “Intersex,” updated May 1, 2026, <https://my.clevelandclinic.org/health/articles/16324-intersex>.

¹⁷ *Supra* note 12.

¹⁸ Letter from Senator Warren to Acting Inspector General Brian D. Harrison, U.S. Department of Housing and Urban Development Office of Inspector General, September 22, 2025, <https://www.banking.senate.gov/newsroom/minority/breaking-new-hud-whistleblower-claims-expose-trump-administrations-targeted-attacks-on-civil-rights-warren-calls-for-independent-investigation>.

¹⁹ Letter from HUD Region VI Office of Fair Housing and Equal Opportunity to Fair Housing Complainants, 2025.

²⁰ Senate Banking Committee on Banking, Housing, and Urban Affairs, “Nomination Hearing,” June 12, 2025, <https://www.banking.senate.gov/hearings/06/05/2025/nomination-hearing>.

²¹ Senate Banking Committee on Banking, Housing, and Urban Affairs, “Nomination Hearing,” June 12, 2025, <https://www.banking.senate.gov/hearings/06/05/2025/nomination-hearing>.

²² U.S. Department of Housing and Urban Development, “Equal Access to Housing in HUD Programs Revisions,” Federal Register Notice, April 28, 2026, <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions>.

Administration would prefer no one notice it.²³ Through these changes, the proposed rule purports to ensure that equal access to qualifying facilities would be provided in accordance with an individual's "immutable biological classification as either male or female."²⁴ Additionally, the proposal would provide grant recipients, subrecipients, owners, operators, managers, and providers of single-sex or sex-specific facilities with the ability to require assurances and evidence to confirm the sex of the individual seeking service.²⁵ The changes in the proposed rule would apply to all of HUD's programs, including the Housing Choice Voucher Program, fair housing enforcement, programs that help the homeless and domestic violence victims, and community development programs. The proposal also contemplates preempting state and local laws that may conflict with these requirements by adding § 5.106(e).²⁶ HUD proposes in the rule to penalize any state or locality that has a law which violates the rule using all available remedies, including "loss of federal funding," in order to, as HUD puts it, "advance the important policy objectives of this proposed rule by ensuring maximum uniformity and compliance."²⁷

This proposed rule would deny safe and equal access to housing and shelter for anyone who a grantee chooses to question and will disproportionately affect gay, transgender, and intersex Americans. This is particularly egregious because LGBTQ+ people are more likely to experience housing instability, homelessness, and violence compared to the general population. Among young people experiencing homelessness, LGBTQ+ youth are 120% more likely to experience homelessness compared to non-LGBTQ+ youth and represent 40% of all youth experiencing homelessness.²⁸ According to another study, 17% of LGBTQ+ adults experienced homelessness in their lifetime—a figure that represents more than twice the rate of the general population.²⁹ Transgender people experiencing homelessness are more likely to experience unsheltered homelessness (63%, compared to 49% of cisgender people), which makes it even more critical that these communities have fair access to shelters without fear of rejection or targeted harassment.³⁰

The proposed rule also places an undue burden on third-parties to make determinations about an individual's gender identity. A shelter provider should not be directed by the federal government to implement policies that would force them to filter residents based on a social worker's perception of their gender, resulting in inappropriate or unsafe living assignments or deterring vulnerable individuals from seeking shelter altogether. Nor should a non-profit be forced to turn someone in need away because a client is intersex or because the client fears the consequences of the rule. Comments already submitted in response to this rule illustrate the extent of this burden.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*, p. 22780.

²⁷ *Id.*, p. 22781.

²⁸ National Network for Youth, "LGBTQ+ Youth Homelessness," <https://nn4youth.org/learn/lgbtq-homeless-youth/>.

²⁹ UCLA School of Law, Williams Institute, "Homelessness Among LGBT Adults in the US," Bianca D.M. Wilson, Soon Kyu Choi, Gary W. Harper et al., May 2020, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Homelessness-May-2020.pdf>.

³⁰ National Alliance to End Homelessness, "Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tell Us," July 24, 2020, <https://endhomelessness.org/resources/research-and-analysis/transgender-homeless-adults-unsheltered-homelessness-what-the-data-tell-us/>.

For example, experts have noted that the Administration’s proposed rule “replaces clear working rules and introduces vague standards, such as allowing providers to require ‘reasonable assurances and evidence’ of sex, creating legal risk, operational confusion, and staff-resident conflict” and does so “without evidence of necessity or benefit.”³¹ Service providers themselves state that “[i]ncreasing restrictions on housing access” will “only make it more difficult for service providers...to do [their] jobs.”³²

While the EO and the Administration’s justification for the rule does not explicitly mention changes related to “sexual orientation” references, the proposed rule strikes the definition of the term from both HUD’s regulatory definition, and the regulations for community development, federal lending, Housing Opportunities for Persons with AIDs, and Indian and Native Hawaiian housing programs.³³ Although they do not acknowledge this major change, the Administration has in effect moved to erase fair housing protections for LGBTQ+ Americans under the guise of “defend[ing] women’s rights.”³⁴

In justifying this proposed rule, HUD argues that the 2016 final rule violates the privacy and safety of homeless women.³⁵ The Administration suggests that men would exploit the self-identification process to gain access to all-female homeless shelters.³⁶ However, pushing providers of single-sex and sex-specific homeless shelters and other resources to investigate a resident’s sex will instead result in increased violation of all participants’ privacy and safety. Participants will be vulnerable to invasive questioning, requests for documentation that they may not have, and examinations that they can’t decline without putting their housing, services, or shelter at risk.³⁷ Housing authorities and shelter providers have expressed concerns around this proposed rule and its impact on housing program participants and shelter applicants, including “additional questioning, scrutiny, and denial of services” that may “perpetuate the cycles of poverty, homelessness, housing instability, and incarceration.”³⁸ Research finds that LGBTQ+ people often have to choose between not having shelter or sharing quarters where they may face discrimination and harassment.³⁹ The 2016 final rule was a necessary step to avoid putting

³¹ Comment submitted by Center for Disability & Elder Law, May 8, 2026, <https://www.regulations.gov/comment/HUD-2026-0529-0244>.

³² Comment submitted by Stevie Rajwar, May 1, 2026, <https://www.regulations.gov/comment/HUD-2026-0529-0098>.

³³ U.S. Department of Housing and Urban Development, “Equal Access to Housing in HUD Programs Revisions,” Federal Register Notice, April 28, 2026, <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions>.

³⁴ *Supra note 5*.

³⁵ *Id.*

³⁶ *Id.*

³⁷ National Low Income Housing Coalition, “HUD Proposes to Rescind LGBTQ+ Anti-Discrimination Protections in HUD Programs; Advocates 4 Trans Equality Launches Campaign Opposing Rule,” May 4, 2026, <https://nlihc.org/resource/hud-proposes-rescind-lgbtq-anti-discrimination-protections-hud-programs-advocates-4-trans>.

³⁸ National Alliance to End Homelessness, “Defending the Equal Access Rule: Supporting Vulnerable Clients & Preserving Universal Protections,” June 5, 2025, p. 16, https://endhomelessness.org/wp-content/uploads/2025/06/NAEH_Defending-the-Equal-Access-Rule_6.5.2025.pdf.

³⁹ Letter from The Williams Institute to the U.S. Department of Housing and Urban Development, “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs (FR-6152) (RIN 2506-AC53),” September 22, 2020, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Comment-HUD-Equal-Access-Sep-2020.pdf>.

LGBTQ+ people “in situations where they will be at increased risk of violence, discrimination, and harassment,” and this proposed rule would roll back crucial protections that result in increased violations of privacy.⁴⁰

In the proposed rule, HUD recognizes that the rulemaking—if implemented—would result in “individuals who claim a different gender identity than their sex being denied access to their preferred single-sex shelters or their preferred accommodations in other shelters” and requiring them to find “other shelter options,” which may not be available to them.⁴¹ This will exacerbate already limited options in that 61% of states and territories already have too few beds to meet demand overall, let alone alternative shelter options.⁴² The Administration claims that this loss of fair access to shelter options is outweighed by HUD’s need to ensure safe shelter environments for women, respect the free exercise of religion, and follow the clear meaning of the statute.⁴³ The FHAct does not mandate HUD to choose between protecting one protected group over another, nor are women and LGBTQ+ individuals mutually exclusive or conflicting groups. HUD is required by law to provide fair and equal housing protections to all Americans. While the Administration claims to protect women through this proposed rule, both women and LGBTQ+ individuals who are experiencing homelessness will be left *less* safe and subject to *more* discrimination without recourse from HUD as a result of invasive attempts to prove their biological sex.

Conclusion

In the midst of a housing crisis, when homelessness is at a record high, HUD should not be implementing a rule change that would make it more difficult for vulnerable populations to seek assistance. This administration is dismantling the fair housing infrastructure that has contributed to the nation’s progress in guaranteeing equal rights for all, and this proposed rule is one more step in that cruel mission. We call on HUD to withdraw this proposed rule and leave the agency’s current regulations in place.

Sincerely,

⁴⁰ *Id.*

⁴¹ U.S. Department of Housing and Urban Development, “Equal Access to Housing in HUD Programs Revisions,” Federal Register Notice, April 28, 2026, <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions>.

⁴² National Alliance to End Homelessness, “State of Homelessness: 2025 Edition,” Daniel Soucy, Andrew Hall, and Joy Moses, September 4, 2025, <https://endhomelessness.org/state-of-homelessness/>.

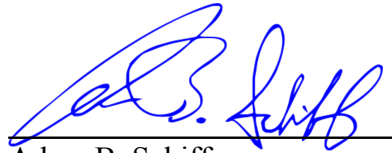
⁴³ U.S. Department of Housing and Urban Development, “Equal Access to Housing in HUD Programs Revisions,” Federal Register Notice, April 28, 2026, <https://www.federalregister.gov/documents/2026/04/28/2026-08244/equal-access-to-housing-in-hud-programs-revisions>.



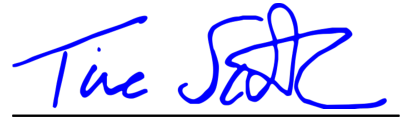
Elizabeth Warren
Ranking Member
Committee on Banking,
Housing, and Urban Affairs



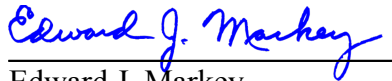
Jeffrey A. Merkley
United States Senator



Adam B. Schiff
United States Senator



Tina Smith
United States Senator



Edward J. Markey
United States Senator



Michael F. Bennet
United States Senator



Jacky Rosen
United States Senator



Alex Padilla
United States Senator



Kirsten Gillibrand
United States Senator



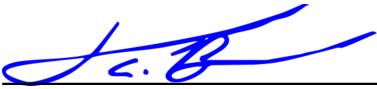
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United States Senator



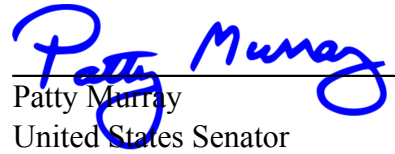
Chris Van Hollen
United States Senator



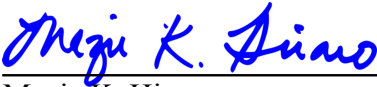
Bernard Sanders
United States Senator



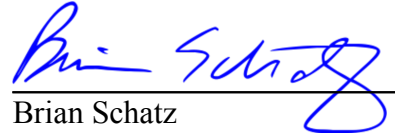
Cory A. Booker
United States Senator



Patty Murray
United States Senator



Mazie K. Hirono
United States Senator



Brian Schatz
United States Senator



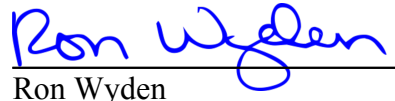
Sheldon Whitehouse
United States Senator



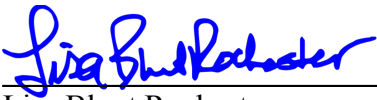
Andy Kim
United States Senator



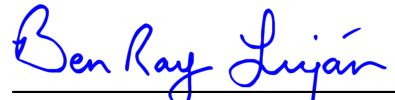
Jack Reed
United States Senator



Ron Wyden
United States Senator



Lisa Blunt Rochester
United States Senator



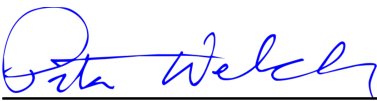
Ben Ray Lujan
United States Senator



Catherine Cortez Masto
United States Senator



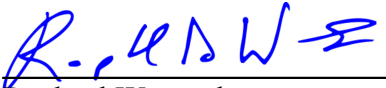
Tammy Baldwin
United States Senator



Peter Welch
United States Senator



Richard Blumenthal
United States Senator



Raphael Warnock
United States Senator



Tammy Duckworth
United States Senator