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Submitted via www.Regulations.gov

Secretary Scott Turner
Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0500

RE: Comment on Proposed Rule entitled Equal Access to Housing in HUD Programs Revisions, 91 Fed. Reg. 22779 (April 28, 2026), HUD Docket No. FR-6518-P-01, RIN 2501-AE12

Dear Secretary Turner:

We, the undersigned Attorneys General of California, New York, Washington, Arizona, Colorado, Connecticut, Delaware, District of Columbia, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Vermont, and Virginia, submit these comments to oppose the 2026 Proposed Rule, *Equal Access to Housing in HUD Programs Revisions*, 91 Fed. Reg. 22,779 (April 28, 2026) (the Proposed Rule), issued by the Department of Housing and Urban Development (HUD). The Proposed Rule inflicts substantial harm upon transgender and gender-nonconforming individuals, members of the LGBTQ+ community, HUD-funded shelters and service providers, and our States. It should be withdrawn in its entirety.

HUD's Proposed Rule eliminates longstanding protections for LGBTQ+ people in HUD-funded programs in three primary ways. First, it rescinds HUD's 2016 Equal Access Rule¹, which prohibits discrimination against transgender and gender-nonconforming individuals in HUD-funded shelters and homelessness prevention programs.² Second, it rescinds HUD's 2012

¹ See *Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs*, 81 Fed. Reg. 64,763 (Sep. 21, 2016) [hereinafter 2016 Rule].

² See *Equal Access to Housing in HUD Programs Revisions*, 91 Fed. Reg. 22,779, 22,780 (Apr. 28, 2026) [hereinafter Proposed Rule].

Equal Access Rule³, which prohibits discrimination based on an individual’s actual or perceived sexual orientation, gender identity, or marital status in HUD-assisted or insured housing.⁴ Third, it removes references to “gender,” “gender identity,” and “sexual orientation” throughout anti-discrimination and recordkeeping provisions from all HUD regulations.⁵

In proposing this Rule, HUD relies almost exclusively on the policies set forth in Executive Order No. 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (January 20, 2026) (Anti-Transgender Order).⁶ The Anti-Transgender Order purportedly made it the “policy of the United States to recognize two sexes, male and female,” and directed federal agencies to redefine terms like “sex,” “male,” and “female,” and to abandon the use of “gender” in federal regulations. But bare reliance on an executive order—particularly one motivated by animus against transgender and gender-nonconforming people—is insufficient justification for the Proposed Rule under the Administrative Procedure Act (APA).

Even setting that aside, the Proposed Rule, if finalized, would violate the APA. The Proposed Rule ignores its impact on the transgender and gender-nonconforming community, LGBTQ+ people writ large, shelters and service providers, and our States. The Proposed Rule similarly conflicts with the Constitution, federal statutes, and States’ anti-discrimination laws. And none of the other justifications put forth by the Proposed Rule, including the propriety of the 2016 Rule, the safety and privacy of cisgender women, or concerns for the religious liberties of shelter providers, support HUD’s sudden proposed policy change. This gives away the game: these justifications are pretext, and the Proposed Rule will, by design, implement the Anti-Transgender Order’s goal of erasing transgender and gender-nonconforming people from society.

As Attorneys General, we are charged with representing and protecting the safety and wellbeing of the people living in our states. To ensure equal housing opportunity for all, we enforce laws that protect people from harm and discrimination, including on the basis of actual or perceived sexual orientation, gender, or gender identity. Our States are also facing an unprecedented housing affordability crisis and rising homelessness. Access to HUD-funded programs is essential to helping our states ensure shelter and safe and affordable housing for all and reducing homelessness. Transgender and gender-nonconforming people face some of the highest rates of homelessness nationwide and in our States. Our States rely on shelters to reduce homelessness amongst transgender and gender-nonconforming people, especially transgender youth, who are most safely housed in accordance with their gender identity.

³ See Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5,662 (Feb. 3, 2012) [hereinafter 2012 Rule].

⁴ See Proposed Rule, 91 Fed. Reg. at 22,780.

⁵ *Id.*

⁶ In other contexts, our States have referred to this Executive Order as the “Gender Ideology Order.” See, e.g., *Washington v. Trump*, 768 F. Supp. 3d 1239, 1250 (W.D. Wash. 2025). The States refer to the same Order as the “Anti-Transgender Order” in this letter because the Proposed Rule is focused on removing protections from transgender individuals specifically, rather than removing references to “gender ideology” more generally.

For these and other reasons described below, HUD should retain the 2012 and 2016 Equal Access Rules, retain all existing references to “gender,” “gender identity,” and “sexual orientation” in its regulations, and withdraw the Proposed Rule.

I. Background

A. States, local governments, and nonprofits rely on HUD funding to provide shelter, housing, and supportive services in our jurisdictions.

Congress has long recognized that homelessness and a shortage of safe, affordable housing impacts every State.⁷ To address these issues, Congress envisioned that the Federal Government, States, local governments, and nonprofit organizations would work collaboratively to increase the stock of affordable housing and reduce homelessness.⁸ States have taken up this charge, using HUD and state funding to provide emergency shelter and supportive services to people experiencing homelessness, provide affordable rental housing, and increase homeownership. And, as Congress anticipated, we now critically rely on HUD’s funding programs.

1. Community Planning and Development (CPD) funding is essential to reducing homelessness in our jurisdictions.

Our states rely on funding provided through HUD’s Office of Community Planning and Development (CPD) to reduce homelessness and provide affordable housing. The majority of CPD funding is mandated by statute, and allocated by formula.⁹ In fiscal year 2025, our States collectively received nearly \$756 million in formula CPD funding.¹⁰ CPD grants also provide critical funding to the cities and counties in our states: in fiscal year 2025, localities in our states

⁷ See 42 U.S.C. § 1437(a)(1)(A)–(B) (highlighting, in Housing Act of 1937, the shortage of safe, decent dwellings for low-income persons and affordable housing); *id.* § 1441 (noting same in Housing Act of 1949).

⁸ See 42 U.S.C. § 1437(a)(4) (stating, for the purposes of the Housing Act of 1937, that it is the policy of the United States “that our Nation should promote the goal of providing decent and affordable housing for all citizens through the efforts and encouragement of Federal, State, and local governments, and by the independent and collective actions of private citizens, organizations, and the private sector”); *id.* § 1441 (stating similarly in the Housing Act of 1949), *id.* § 12703(4) (stating similarly in the

Cranston-Gonzalez National Affordable Housing Act); *id.* § 5301(b)(1) (stating similarly in in Housing and Community Development Act of 1974); *id.* § 11301(a)(5) (stating similarly in the McKinney-Vento Homeless Assistance Act); *id.* § 12901 (stating similar for the AIDS Housing Opportunity Act); *see also* 12 U.S.C. § 4568(a)(1) (same as to the Housing Trust Fund).

⁹ See U.S. Dep’t of Hous. and Urb. Dev., *HUD Awards and Allocations*, HUD Exchange, <https://www.hudexchange.info/GRANTEES/ALLOCATIONS-AWARDS/> (last visited June 19, 2026) (reflecting allocations to States from HUD’s formula grants programs: the Community Development Block Grant (CBDG), Emergency Solutions Grant (ESG), Housing Opportunities for Persons with Aids (HOPWA), Housing Trust Fund (HTF) and the Rural Housing Stability Assistance (RHP) programs; compared to awards made through Continuum of Care and other non-formula programs).

¹⁰ HUD Data reflects that in 2025, \$1,966,032,948.31 were allocated directly to the 50 States and the District of Columbia through CPD block grants. *See* U.S. Dep’t of Hous. and Urb. Dev., FY 2025 CPD Allocations, *HUD Awards and Allocations*, <https://www.hudexchange.info/GRANTEES/ALLOCATIONS-AWARDS/> (last visited June 19, 2026).

received over \$2 billion in CPD formula grants.¹¹ States, often with the help of subgrantees, use these grants for a range of permitted purposes, including creating and maintaining emergency shelters; developing and preserving permanent and affordable housing; and providing services to homeless and other low-income people.¹² Our States and municipalities build their budgets around this constant and predictable stream of formula CPD funding.¹³ For example, CPD funds comprise nearly 30% of the California Department of Housing Community Development's operating budget.

CPD's competitive funding programs also provide a crucial source of funding that support our homelessness response systems and related efforts.¹⁴ For example, in fiscal year 2025, our States and local continuums of care collectively received over \$2.3 billion through HUD's Continuum of Care (CoC) program.¹⁵ In line with the goals of the CoC program, these funds are used to create and maintain permanent supportive housing, rapid rehousing, transitional housing, and coordinated systems to address homelessness.¹⁶

2. States also rely on HUD programs to help our residents access safe and affordable rental housing and homeownership.

In addition to CPD funds, our States vitally rely on HUD's rental housing and homeownership programs to house residents, and in particular low-income residents, in our States. HUD provides about \$8.7 billion to Public Housing Authorities (PHAs) each year for capital and operating expenses of public housing.¹⁷ These funds keep 1.5 million people housed, including the 347,000 people who live in public housing in Washington, California, and New York alone.¹⁸

¹¹ See *id.* (reflecting \$3.5 billion to counties and cities within the 50 States).

¹² See U.S. Dep't of Hous. and Urb. Dev., Community Planning and Development (CPD), *Programs of HUD*, <https://www.hud.gov/hudprograms/> (last visited June 19, 2026) (detailing eligible uses for programs); N.Y. Off. of Temp. and Disability Assistance, Service and Community Engagement Unit (SCEU), *Housing and Supportive Services*, <https://otda.ny.gov/programs/housing/spu.asp> (last visited June 19, 2026) (describing New York's use of HOPWA funds); see generally Wash. State Dep't. of Com., *Washington State Consolidated Plan 2025-2029* (June 1, 2025), <https://deptofcommerce.app.box.com/s/ubdwb0nxroe6zlds9d3ky7pvz3bqg06> (describing use of CDBG funds).

¹³ See *infra*, Section III.A.1.

¹⁴ See, e.g., U.S. Dep't of Hous. and Urb. Dev., *YHDP Funded Communities Rounds 1-8* <https://www.hudexchange.info/sites/onecpd/assets/File/Map-of-YHDP-Funded-CoCs.pdf> (last visited June 22, 2026) (reflecting that States, including Washington, Massachusetts, and Vermont have received YHDP grants); U.S. Dep't of Hous. and Urb. Dev., *HUD Awards \$26 Million to Address the HIV Epidemic through Housing* (June 28, 2024), <https://archives.hud.gov/news/2024/pr24-163.cfm> (reflecting competitive awards made to States including Oregon).

¹⁵ See U.S. Dep't of Hous. and Urb. Dev., *Continuum of Care Program*, <https://www.hud.gov/hud-partners/community-coc> (last visited June 24, 2026) (CoC competition Homeless Assistance Award Reports located under "FY2025 CoC Program Award Announcements").

¹⁶ See U.S. Dep't of Hous. and Urb. Dev., *Programs of HUD*, *supra* note 12.

¹⁷ See U.S. Dep't of Hous. and Urb. Dev., *Public Housing (PH) Data Dashboard*, 1, <https://www.hud.gov/helping-americans/public-housing-dashboard> (last visited June 22, 2026).

¹⁸ *Id.* at 6.

HUD further provides PHAs, and some state agencies, with more than \$32.7 billion for housing vouchers each year; these vouchers help 2.3 million households lease apartments they would otherwise be unable to afford.¹⁹ HUD additionally directly subsidizes private landlords who then rent units at below market rates.²⁰ In all, HUD subsidizes over 5.1 million units across the Country, including over a million units in California, Washington, and New York.²¹

Finally, HUD-insured housing provides an important source of housing in our States. As of April 2026, HUD insures mortgages for over 2 million rental units—including more than 274,000 rental units in Washington, New York, and California—through the Fair Housing Authority’s multifamily mortgage program alone.²² Other HUD programs insure additional housing in our States²³—in fiscal year 2025, the Federal Housing Administration insured over 876,500 single family home forward mortgages with a total original mortgage amount of \$274.76 billion, and over 28,000 Home Equity Conversion Mortgages for owners aged 62 years or older, with a total maximum claim amount of \$14.96 billion.²⁴

B. The Proposed Rule rescinds HUD’s longstanding equal access regulations and effectively promotes discrimination against transgender and gender-nonconforming people.

Because HUD-funded programs serve our States’ most vulnerable residents, it is critical that HUD-supported shelters, housing, and services be available to all, especially to those who have historically been marginalized. That includes members of the LGBTQ+ community who, as discussed below, are more likely than non-LGBTQ+ people to face housing discrimination and unaffordability, are less likely to own their own homes, and are more likely to experience homelessness.²⁵ For at least a decade, HUD’s Equal Access rules have provided anti-discrimination protections for LGBTQ+ people across HUD-supported programs. First, the 2012

¹⁹ See U.S. Dep’t of Hous. and Urb. Dev., *Housing Choice Voucher (HCV) Data Dashboard*, 2–3, <https://www.hud.gov/helping-americans/public-indian-housing-hecv-dashboard> (last visited June 22, 2026). Data reflects that the Housing Choice Voucher programs provides \$4.2 billion to help nearly 250,000 households lease units in California, Washington, and New York alone. *Id.* (filtering data to just New York, Washington, and California).

²⁰ See U.S. Dep’t of Hous. and Urb. Dev., Off. of Pol’y Dev. and Rsch., *Picture of Subsidized Household* (Feb. 17, 2026) https://www.huduser.gov/portal/datasets/assthsq.html#query_2009-2025 (describing privately-owned, project-based housing).

²¹ *Id.* (reflecting data for all HUD programs nationwide and in Washington, New York, and California).

²² See U.S. Dep’t of Hous. and Urb. Dev., *Active MF Insured Mortgages, HUD Insured Multifamily Mortgages* (May 31, 2026), <https://www.hud.gov/hud-partners/multifamily-fhasl-active>.

²³ See U.S. Dep’t of Hous. and Urb. Dev., *FHA and Housing Resources*, <https://www.hud.gov/fha> (last visited June 22, 2026) (reflecting additional mortgage programs including FHA Single Family Mortgage Insurance Programs).

²⁴ See Federal Hous. Admin., *Fiscal Year 2025: Annual Management Report* 15–16 (2025), <https://www.hud.gov/sites/dfiles/Housing/documents/FHAFY2025ANNUALMGMNTRPT.PDF>.

²⁵ See, e.g., Adam P. Romero et al., The Williams Institute, *LGBT People and Housing Affordability, Discrimination, and Homelessness* 3 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>; 2012 Rule, 77 Fed. Reg. at 5,662.

Rule,²⁶ primarily codified at 24 C.F.R. § 5.105, requires that eligibility for any housing “assisted by HUD or subject to a mortgage insured by HUD” be determined without regard to actual or perceived sexual orientation, gender identity, or marital status.²⁷ In plain terms, the 2012 Rule prohibits discrimination on the basis of sexual orientation and gender identity in all HUD-assisted or insured housing—including public housing, housing supported by housing choice vouchers, housing supported by CPD funds, and housing subject to Federal Housing Administration loans. This anti-discrimination provision is additionally incorporated by reference into a range of HUD programs,²⁸ including all HUD Programs covered by the Violence Against Women Act (VAWA) and all Federal Housing Administration programs.

Second, the 2016 Rule, primarily codified at 24 C.F.R. § 5.106, requires all entities receiving CPD-funding—including shelters with shared sleeping or bathing facilities—to place, serve, and accommodate people in accordance with their gender identity.²⁹ The 2016 Rule further requires that access be provided “in a manner that affords equal access to the individual’s family.”³⁰ Finally, the 2016 Rule prohibits CPD-funded programs from subjecting people to intrusive questioning or requests for documents to prove the person’s gender identity.³¹

HUD’s existing equal access regulations are imperative to protecting access to HUD-supported housing, shelters, and services for LGBTQ+ people, especially transgender and gender-nonconforming people. Additionally, HUD’s current equal access regulations ensure consistency between State and local laws that explicitly prohibit discrimination based on sexual orientation, gender, and gender identity; protect individuals in jurisdictions without these explicit protections in state or local law;³² and promote a nationwide policy of access to shelters for transgender and gender-nonconforming people facing homelessness.

The Proposed Rule repeals the 2012 and 2016 Rules and removes anti-discrimination protections and recordkeeping provisions throughout all HUD regulations, without reasonably explaining any evidence, law, or justification for that about-face.

1. HUD based its 2012 and 2016 Rules on reasonably articulated needs and thorough data and evidence.

²⁶ See 2012 Rule, 77 Fed. Reg. at 5,663.

²⁷ 24 C.F.R. § 5.105(a)(2).

²⁸ See 24 C.F.R. § 5.2001(a) (“HUD programs must also be operated consistently with HUD’s Equal Access Rule at § 5.105(a)(2), which requires that HUD–assisted and HUD–insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.”); *id.* § 200.300 (similarly incorporating § 5.105(a)(2) by reference).

²⁹ See 2016 Rule, 81 Fed. Reg. at 64,782.

³⁰ *Id.*

³¹ *Id.*

³² See, e.g., Fla. Stat. Ann. § 760.23; N.D. Cent. Code Ann. § 14-02.5; Tex. Prop. Code Ann. § 301.021.

HUD's current equal access rules (2012 Rule and 2016 Rule) are based on extensive evidence showing that LGBTQ+ people, particularly transgender and gender-nonconforming people, experience discrimination and harassment in housing.

The 2012 Rule was intentionally crafted to protect LGBTQ+ individuals and based on evidence that “lesbian, gay, bisexual, and transgender individuals and families are being arbitrarily excluded from some housing opportunities in the private sector.”³³ For example, HUD relied on surveys finding 26% of transgender respondents reported having to find different places to sleep for short periods of time due to bias; 11% reported having been evicted due to bias; and 19% reported becoming homeless due to bias.³⁴ HUD recognized “the difficulty that transgender persons have faced in finding adequate emergency shelter[,]” and explained that the 2012 Rule was intended to make clear that housing must be available without regard to actual or perceived gender.³⁵

In the years following the 2012 Rule, HUD conducted research to assess discrimination against transgender and gender-nonconforming people in housing.³⁶ HUD concluded that “transgender and gender-nonconforming persons continue to experience significant violence, harassment, and discrimination in attempting to access programs, benefits, services, and accommodations,”³⁷ and that the 2012 Rule “did not adequately address the significant barriers faced by transgender and gender-nonconforming persons when accessing temporary and emergency shelters and other facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or bathing facilities.”³⁸ Thus, HUD promulgated the 2016 Rule to ensure “individuals are accommodated in accordance with their gender identity.”³⁹

³³ 2012 Rule, 77 Fed. Reg. at 5,662 (explaining that since “HUD is charged with promoting the federal goal of providing decent housing and a suitable living environment for all,” “evidence suggesting LGBT individuals and families do not have equal access to housing,” concerned HUD and led to the 2012 Rule); *see also* Equal Access to Housing in HUD Programs-Regardless of Sexual Orientation or Gender Identity, 76 Fed. Reg. 4,194, 4,195 (Jan. 24, 2011) [hereinafter Proposed 2011 Rule] (explaining that “[i]n considering the mounting evidence of violence and discrimination against LGBT persons, the Department is concerned that its own programs may not be fully open to LGBT individuals and families,” HUD is initiating its rulemaking for the 2012 Rule); *id.* at 4,194 (explaining that HUD also focused on the “increasing awareness of housing discrimination against LGBT” by reviewing the legislative records of 20 states and the District of Columbia, who had at that time enacted laws prohibiting discrimination on the basis of sexual orientation or gender identity).

³⁴ *See* Proposed 2011 Rule, 76 Fed. Reg. at 4,194.

³⁵ 2012 Rule, 77 Fed. Reg. at 5,666.

³⁶ *See* 2016 Rule, 81 Fed. Reg. at 64,772 (reflecting that in arriving at its 2016 Rule, HUD spent four years engaging relevant communities and monitoring and reviewing national research, its own programs and other Federal agency policies).

³⁷ *Id.* at 64,764.

³⁸ *Id.*

³⁹ *Id.* at 64,777.

In promulgating the 2016 Rule, HUD relied upon significant information, data and evidence, and reviewed issues “not only from the perspective of transgender and other gender-nonconforming persons, but also from the perspective of individuals whose sex assigned at birth and whose gender identity are the same.”⁴⁰ HUD considered evidence that transgender persons face dangerous conditions (including physical and sexual assault) in shelters that correspond to their sex assigned at birth,⁴¹ leading many to choose to sleep on the streets rather than in a shelter that does not align with their gender identity.⁴² For example, HUD relied on the 2015 U.S. Transgender Survey, which showed that 70% of respondents who stayed in shelters in the year prior to the survey reported mistreatment in shelters due to their gender identity, and 52% experienced verbal, physical, and/or sexual harassment and/or assault during their stay.⁴³ The same study found that 44% left the shelter due to poor treatment or unsafe conditions, despite having nowhere else to go.⁴⁴

HUD also considered studies demonstrating that some shelters were unwilling to house transgender women with other women, and that some turned away transgender women outright.⁴⁵ HUD considered evidence related to the disproportionate risk faced by transgender youth.⁴⁶ HUD reviewed the outcome of its own guidance which showed that transgender and gender-nonconforming people could be safely accommodated without privacy, health or safety concerns

⁴⁰ *Id.* at 64,772.

⁴¹ *Id.* at 64,764 (based on a “listening session” on lesbian, gay, bisexual, and transgender issues, conducted with the U.S. Interagency Council on Homelessness).

⁴² *Id.* (“Some commenters reported that, if given the choice between a shelter designated for assigned birth sex or sleeping on the streets, many transgender shelter-seekers would choose the streets.”).

⁴³ See Sandy E. James et al., Nat’l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* 176 (2016), <https://transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.pdf> [hereinafter 2015 U.S. Transgender Survey]; Sarah Kellman et al., *The Dire Consequences of the Trump Administration’s Attack on Transgender People’s Access to Shelters*, Ctr. for Am. Progress (July 31, 2019), <https://www.americanprogress.org/article/dire-consequences-trump-administrations-attack-transgender-peoples-access-shelters/> (citing the 2015 U.S. Transgender Survey).

⁴⁴ See 2015 U.S. Transgender Survey, *supra* note 43, at 182.

⁴⁵ See 2016 Rule, 81 Fed. Reg. at 64,765 (citing Caitlin Rooney et al., *Discrimination Against Transgender Women Seeking Access to Homeless Shelters*, Ctr. for Am. Progress (Jan. 7, 2016), <https://www.americanprogress.org/issues/lgbtqrights/reports/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>).

⁴⁶ See Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs, 80 Fed. Reg. 72,642, 72,644 (Nov. 20, 2015) (citing Hannah Hussey, Ctr. for Am. Progress, *Beyond 4 Walls and a Roof: Addressing Homelessness Among Transgender Youth*, 4 (2015); Admin. for Child. and Families, U.S. Dep’t of Health and Hum. Servs., *Street Outreach Program: Data Collection Project Executive Summary* (2014)) (explaining that a disproportionately high 6.8% of youth living on the streets identify as transgender, despite making up only 1% of the population, and that they are “particularly at risk of emotional distress resulting from discrimination or harassment because of gender identity,” which according to HUD, “support[s] establishing clear nondiscrimination and antiharassment policies relating to gender identity.”).

caused to other residents in shelters.⁴⁷ According to HUD’s four-year review, “there is no reason to assume that transgender individuals pose risks to health or safety.”⁴⁸ Taken together, HUD concluded that this evidence supported the establishment of clear nondiscrimination and antiharassment policies to protect transgender and gender-nonconforming people experiencing homelessness.⁴⁹

2. The 2012 and 2016 Rules are still necessary to protect LGBTQ+ individuals, particularly transgender and gender-nonconforming individuals, from discrimination.

The 2012 and 2016 Rules are still necessary to ensure LGBTQ+ people, and particularly transgender and gender-nonconforming people, can access shelters, housing, and services.

Research released following the implementation of the 2016 Rule shows that LGBTQ+ people are still more likely than non-LGBTQ+ people to face housing unaffordability.⁵⁰ LGBTQ+ youth in particular are more than twice as likely to experience homelessness than non-LGBTQ+ youth,⁵¹ with 28% of LGBTQ+ youth reporting that they have faced homelessness at some point in their lives.⁵² Transgender and gender-nonconforming people in particular face staggeringly high risks of homelessness.⁵³ Data from the 2022 U.S. Transgender Survey reveals that nearly one in

⁴⁷ See 2016 Rule, 81 Fed. Reg. at 64,773 (citing U.S. Dep’t of Hous. and Urb. Dev., Notice CPD-015-02, Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities (Feb. 20, 2015), <https://www.nhlp.org/wp-content/uploads/2017/10/CPD-15-02.pdf>); George I. Gonzalez, *HUD Issues Guidance on Home Lending and Appropriate Placement for Transgender Persons in Homeless Shelters*, HUD Archives: News Releases (Feb. 23, 2015), <https://archives.hud.gov/news/2015/pr15-023.cfm> (explaining that after HUD’s guidance clarified that HUD expected shelters to make placements based on a person’s gender identity, HUD found that “transgender and other gender-nonconforming persons can be and have been safely accommodated in accordance with their gender identity in single-sex facilities without” privacy, health, or safety concerns caused to other residents in shelters, and “without the types of disruptions feared” by commenters to the proposed rule).

⁴⁸ See 2016 Rule, 81 Fed. Reg. at 64,773; see also Amira Hasenbush et al., *Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms*, *Sexuality Rsch. & Soc. Pol’y*, March 2019, 70–83, <https://escholarship.org/content/qt4rs4n6h0/qt4rs4n6h0.pdf> (showing that fears of increased safety and privacy violations as a result of gender identity-inclusive public accommodations nondiscrimination laws are not empirically founded).

⁴⁹ See 2016 Rule, 81 Fed. Reg. at 64,772, 64,763.

⁵⁰ See Romero et al., *supra* note 25.

⁵¹ *Id.*

⁵² See The Trevor Project, *Homelessness and Housing Instability Among LGBTQ Youth 4* (2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/02/Trevor-Project-Homelessness-Report.pdf>.

⁵³ See Daniel Soucy, Nat’l All. to End Homelessness, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters 1* (2026), https://endhomelessness.org/wp-content/uploads/2026/05/US-Trans-Survey-Brief-V4_Working-File.pdf.

three respondents has experienced homelessness, eight times the rate of the general population.⁵⁴ Other sources show that one in five transgender and gender-nonconforming people will experience homelessness during their lifetimes.⁵⁵ Further, transgender and gender-nonconforming youth, immigrants, and people of color experience even higher rates of homelessness as compared to transgender and gender-nonconforming people overall.⁵⁶ All of this data reflects that LGBTQ+ people, particularly transgender and gender-nonconforming people, continue to need access to HUD-supported shelter, housing, and services.

Recent data also reflects that LGBTQ+ people continue to face high rates of discrimination in accessing shelters and housing. Zillow, the popular real-estate marketplace, found that 79% of LGBTQ+ respondents in a 2024 study reported experiencing housing discrimination based on their identity—more than any other group in the survey.⁵⁷ A 2024 study found that more than one in five LGBTQ+ individuals who recently moved believed they were discriminated against based on their sexual orientation.⁵⁸ And data shows that transgender and gender-nonconforming people

⁵⁴ *Id.* (citing U.S. Transgender Surv., 2022 U.S. Trans Survey, <https://ustranssurvey.org/> (last visited June 24, 2026)).

⁵⁵ See Advoc. For Trans Equal., *Housing & Homelessness*, <https://transequality.org/issues/housing-homelessness> (last visited June 23, 2016) (“Homelessness is a critical issue for transgender people, and one in five transgender individuals have experienced homelessness at some point in their lives. Family rejection and discrimination and violence have contributed to a large number of transgender and other LGBTQ-identified youth who are homeless in the United States”); see also Brad Sears, The Williams Inst., *Housing is an LGBTQ Issue 2* <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LA-County-Housing-Oct-2024.pdf> (“One in four (25%) TNB people surveyed report currently being unhoused, compared to 1% of the general population in Los Angeles County.”).

⁵⁶ See The Trevor Project, *Homelessness and Housing Instability Among LGBTQ Youth* (Feb. 3, 2023), <https://www.thetrevorproject.org/research-briefs/homelessness-and-housing-instability-among-lgbtq-youth-feb-2022/> <https://www.thetrevorproject.org/research-briefs/homelessness-and-housing-instability-among-lgbtq-youth-feb-2022/> (finding that “[h]owever, transgender girls/women, transgender boys/men, and nonbinary youth all had significantly greater odds of experiencing homelessness or housing instability compared to cisgender LGBTQ boys/men”); Elana Redfield et al., *Experiences of Transgender and Nonbinary Immigrants in Los Angeles*, The Williams Inst. (Oct. 2025), <https://williamsinstitute.law.ucla.edu/publications/tnb-immigrants-in-la-county/> (finding that “[t]hirty-nine percent (39%) of immigrant respondents and 40% of trans Latina immigrants reported that they were currently experiencing homelessness—twice the rate of non-immigrants (19%)” and that “[f]orty percent (40%) of immigrants and 41% of trans Latina immigrants attributed their homelessness to their trans or nonbinary status”).

⁵⁷ See Zillow, *Most LGBTQ Individuals Experience Discrimination in Housing* (June 11, 2024), <https://www.zillow.com/news/most-lgbtq-experience-discrimination-in-housing/>; see also Caleb Smith & Haley Norris, *The LGBTQ+ Community Reported High Rates of Discrimination in 2024*, Ctr. for Am. Progress (Mar. 12, 2025), <https://www.americanprogress.org/article/the-lgbtqi-community-reported-high-rates-of-discrimination-in-2024/> (10% of LGBTQ adults reported they were prevented or discouraged from renting or buying a home in 2024).

⁵⁸ See Lily Katz & Elijah de la Campa, *The Pride Premium: People in LGBTQ+ Friendly Areas Need to Earn \$150,000 to Afford the Typical Home—A Premium of Nearly 50%*, Redfin News (May 29, 2024), <https://www.redfin.com/news/lgbtq-housing-affordability-2024>.

continue to regularly report being denied shelter due to their gender identity.⁵⁹ For example, even with the 2016 Rule in effect, the majority of gender-expansive⁶⁰ people surveyed have been denied access to shelter due to their gender identity, and many reported leaving shelter due to poor treatment, or being sheltered with the wrong gender.⁶¹

Transgender people also continue to face unacceptable rates of violence in society at large. A 2025 Williams Institute study found that “transgender people experienced violence at a rate of 93.7 per 1,000 persons, compared with 21.1 per 1,000 among non-LGBTQ+ persons,”⁶² and a 2024 nationwide study found that “nearly half of transgender people (47.6%) reported being physically attacked or sexually assaulted, and 45.1% had property damaged, stolen, or were robbed.”⁶³ Even more alarming, the violence faced by transgender and gender-nonconforming people is often deadly, especially for transgender and gender-nonconforming people of color.⁶⁴ For many unhoused individuals, including transgender and gender-nonconforming individuals, safety concerns can also mean being afraid to access homeless shelters and other supportive services.⁶⁵ In one study, 59% of unhoused transgender and nonbinary people reported that they did not access shelters primarily due to concerns for their personal safety; 39% pointed to fear of harassment as a deterrent.⁶⁶ The 2016 Rule’s prohibition on intrusive screening procedures—e.g., questioning regarding individuals’ physical anatomy and demands for physical evidence of gender identity—directly addressed concerns about fear of harassment by shelter staff. Through this protection, the 2016 Rule addresses transgender and gender-nonconforming people’s safety in shelters and helps them to avoid the more dangerous alternative of living unsheltered.

The ongoing discrimination LGBTQ+, and transgender and gender-nonconforming people in particular, experience, reflects the continued need to preserve and enforce laws and regulations like the 2012 and 2016 Rules that prohibit discrimination against and reduce the risk of violence to LGBTQ+, transgender, and gender-nonconforming people.

⁵⁹ See Sears, *Housing is an LGBTQ Issue*, *supra* note 55, at 4 (highlighting that “[m]ore than one-quarter (28%) of TNB [transgender and non-binary] people surveyed said they have been denied access to shelters because of their gender identity”).

⁶⁰ See Soucy, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters*, *supra* note 53 (using the term “gender-expansive” people to describe people whose gender identities have changed since birth, and/or whose identities do not neatly fit into categories of male or female).

⁶¹ *Id.*

⁶² Joshua Arrayales & Christy Mallory, *Hate Crimes and Violence Against Transgender People in California and the US*, The Williams Inst. (Mar. 2026), <https://williamsinstitute.law.ucla.edu/publications/hate-crimes-lit-review-ca-us/>.

⁶³ *Id.*

⁶⁴ See, e.g., Hum. Rts. Watch, “*I Just Try to Make It Home Safe*”: *Violence and the Human Rights of Transgender People in the United States* (Nov. 18, 2021), <https://www.hrw.org/report/2021/11/18/i-just-try-make-it-home-safe/violence-and-human-rights-transgender-people-united> (noting that “transgender advocates have documented killings of more than 200 transgender and gender-nonconforming people in the United States since 2013, with transgender women of color making up roughly 4 of 5 anti-transgender homicides.”).

⁶⁵ See Sears, *Housing is an LGBTQ Issue*, *supra* note 55, at 4.

⁶⁶ *Id.*

3. The Proposed Rule Repeals the Protections Afforded under the 2012 and 2016 Rules.

Despite the robust record supporting the need for the 2012 and 2016 Rules, and new data demonstrating the ongoing need for the Rules, HUD's Proposed Rule drastically and dangerously changes course. HUD frames the Proposed Rule as a necessary reconsideration of the 2012 and 2016 Rules in light of the Anti-Transgender Order.⁶⁷ Among other things, the EO directs agencies to enforce laws governing sex-based rights and opportunities to “protect men and women as biologically distinct sex;” orders agencies to remove all regulations that “promote or otherwise inculcate gender ideology;” and instructs HUD's Secretary, in particular, to rescind the 2016 Rule.⁶⁸

The Proposed Rule proposes changes across HUD regulations in three main ways. First, the Proposed Rule repeals and replaces portions of the 2016 Rule, codified in 24 C.F.R. § 5.106, that requires equal access to all CPD-funded programs. Second, the Proposed Rule repeals and replaces portions of the 2012 Rule, codified in 24 C.F.R. § 5.105, that prohibit discrimination on the basis of gender identity and sexual orientation across all HUD regulations. And third, the Proposed Rule removes all references to “gender” and “gender identity” across all HUD regulations.

a. The Proposed Rule repeals the 2016 Rule's equal access protections for transgender and gender-nonconforming people in all CPD-funded programs, including housing with shared living and/or bathing facilities.

The Proposed Rule requires that all CPD-funded programs provide services, placement, and accommodation in accordance with their “sex,” which the Proposed Rule defines as “an individual's immutable biological classification as either male or female.”⁶⁹ The Proposed Rule explicitly states that sex “is not a synonym for” gender, and adopts non-scientific definitions of “male” and “female.”⁷⁰ This change would apply to all programs funded at least in part by CPD funds, including “temporary, emergency shelters and other buildings and facilities with shared sleeping quarters or shared bathing facilities.”⁷¹

⁶⁷ See Proposed Rule, 91 Fed. Reg. at 22,779.

⁶⁸ Exec. Order No. 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. §§ 3(b), (e), 4(b) (Jan. 30, 2025) [hereinafter *Anti-Transgender Order*].

⁶⁹ Proposed Rule, 91 Fed. Reg. at 22,784.

⁷⁰ The Proposed Rule specifically defines “female” as a person “of the sex characterized by a reproductive system with the biological function of (at maturity, absent disruption or congenital anomaly) producing eggs (ova)[,]” and “male” as a person “of the sex characterized by a reproductive system with the biological function of (at maturity, absent disruption or congenital anomaly) producing sperm.” *Id.*

⁷¹ *Id. But cf.* 24 C.F.R. § 5.106(b)(1)–(2) (providing individuals the right to be “placed, served, and accommodated in accordance with [their] gender identity,” as to “CPD programs, shelters, other buildings and facilities, benefits, services, and accommodations”).

The Proposed Rule also repeals language prohibiting “intrusive questioning” and requests for “anatomical information or documentary, physical, or medical evidence of the individual’s gender identity.”⁷² HUD further reveals it “intends to provide *maximum deference* to grantees [while] recogniz[ing] that some grantees may be more flexible or stringent in their policies than others for providing evidence of a person’s sex.”⁷³

Finally, HUD proposes new regulatory language “stating that these requirements preempt any conflicting state or local laws[.]”⁷⁴ Specifically, the proposed language provides that non-compliance “by state or local entities due to adherence to conflicting local laws or policies may be considered a violation of federal requirements, subject to appropriate enforcement actions, including but not limited to the withholding or revocation of federal funds provided through the CPD programs”⁷⁵ In proposing this addition, HUD explains that it “believes” such proposal would “ensur[e] maximum uniformity and compliance.”⁷⁶

b. The Proposed Rule removes all language explicitly prohibiting discrimination on the basis of gender identity and sexual orientation across all HUD regulations.

The Proposed Rule rescinds explicit, longstanding anti-discrimination protections for LGBTQ+ individuals. The Proposed Rule dismantles the 2012 Rule by removing language, codified at 24 C.F.R. Section 5.105(a)(2), that prohibits discrimination on the basis of sexual orientation and gender identity when determining a person’s eligibility for housing assisted by HUD dollars or subject to a HUD mortgage.⁷⁷ The Proposed Rule likewise strips language introduced by the 2012 Rule that prohibits discrimination on the basis of sexual orientation and gender identity from all FHA programs, including the multi-family and single-family mortgage insurance programs.⁷⁸ The Proposed Rule further removes language prohibiting discrimination on the basis of sexual orientation and gender identity from regulations that reference Section 5.105(a)(2); in doing so, the rule removes language aimed at guaranteeing that victims of domestic violence, dating violence, sexual assault, and stalking can access VAWA covered programs regardless of their sexual orientation or gender identity.⁷⁹

The Proposed Rule also removes anti-discrimination language from a range of regulations that were not added by the 2012 or 2016 Rules. The Proposed Rule strikes language that explicitly prohibits discrimination on the basis of sexual orientation and gender identity in a broad array of programs, including: additional federal mortgage programs;⁸⁰ programs to fund housing and

⁷² Proposed Rule, 91 Fed. Reg. at 22,780. *But cf.* 24 C.F.R. § 5.106(b)(3).

⁷³ Proposed Rule, 91 Fed. Reg. at 22,780 n.10 (emphasis added).

⁷⁴ *Id.* at 22,780, 22,784.

⁷⁵ *Id.* at 22,784 (outlining proposed 24 C.F.R. § 5.106(e)).

⁷⁶ *Id.* at 22,780–81

⁷⁷ *Id.* at 22,784.

⁷⁸ *See* 24 C.F.R. §§ 200.300(a), 203.33(b).

⁷⁹ *See* 24 C.F.R. § 5.2001.

⁸⁰ *See* 24 C.F.R. §§ 206.37(b)(3)(i), 266.220(b).

services for individuals at risk of and experiencing homelessness;⁸¹ programs to support the construction and rehabilitation of housing;⁸² programs that support the elderly and disabled⁸³; public housing programs;⁸⁴ and programs to serve Indian and Native Hawaiian homebuyers.⁸⁵ The Proposed Rule further removes language prohibiting sexual orientation or gender identity discrimination when assessing a family’s admission to a program, and determining eligibility for housing, and marketing of available housing.⁸⁶

c. The Proposed Rule removes all other references to gender, gender identity and sexual orientation.

In addition to removing language prohibiting discrimination, as discussed above, the Proposed Rule removes and replace all references to “gender,” “gender identity,” and “sexual orientation” across all HUD regulations, full stop,⁸⁷ including in provisions governing definitions, reporting, recordkeeping, and other provisions, across a host of housing programs.⁸⁸

The Proposed Rule amends all definitions that contain reference to “gender” across a variety of HUD programs.⁸⁹ These changes include redefining the meaning of “Family” in the Section 8 and Public Housing program regulations and “Household” in the regulations’ CDBG provisions, and replacing the words “actual or perceived sexual orientation, gender identity” with “sex.”⁹⁰ The sweeping amendment even redefines the criteria for members on the Institutional Review Board for review of research by institutions on human subjects.⁹¹ The changes also remove “sexual orientation” and “gender identity” from the definition of “family” under HOPWA, a program critically relied on by transgender women, who are disproportionately affected by HIV.⁹²

⁸¹ See 24 C.F.R. § 578.93(e).

⁸² See 24 C.F.R. §§ 850.151(g), 880.603(b)(3).

⁸³ See 24 C.F.R. §§ 891.740(a)(2), 891.750(b)(3), 891.610(a), (f).

⁸⁴ See, e.g., 24 C.F.R. §§ 960.206(b)(1)(iii), 970.21(a), 982.207(b)(1)(iii), 984.201(d)(4), 984.203(d)(3), 960.206(b)(1)(iii), 970.21(a), 982.207(b)(1)(iii), 984.201(d)(4), 984.203(d)(3).

⁸⁵ See 24 C.F.R. §§ 1005.407(b), 1005.457(b), 1005.517(a), 1006.355.

⁸⁶ See e.g., §§ 578.93(e), 850.151(g), 891.740(a)(2), 891.750(b)(3), 1005.407(b), 1005.457(b), 1005.517(a), 1006.355.

⁸⁷ Proposed Rule, 91 Fed. Reg. at 22,784–87.

⁸⁸ See *id.* at 22,780.

⁸⁹ Compare 24 C.F.R. §§ 5.100, 5.403, 570.3, 574.3, 60.107(a), with Proposed Rule, 91 Fed. Reg. at 22,784–86.

⁹⁰ Compare 24 C.F.R. §§ 5.403, 570.3, with Proposed Rule, 91 Fed. Reg. 22,784–85

⁹¹ Where the current rule requires diversity of “gender,” the Proposed Rule only requires diversity of “sex.” Compare 24 C.F.R. § 60.107(a), with Proposed Rule, 91 Fed. Reg. at 22,785 (requiring changes to § 60.107).

⁹² Kathryn Lee et al., *Factors Associated with Use of HIV Prevention and Health Care Among Transgender Women — Seven Urban Areas, 2019–2020*, 71 *Morbidity and Mortality Wkly. Rep.* 673, 678 (2022) <https://pmc.ncbi.nlm.nih.gov/articles/PMC9129907/> (“Transgender women are disproportionately affected by HIV.”).

The Proposed Rule also replaces all references to gender in recordkeeping and reporting provisions with the term “sex,”⁹³ including in all reporting and data provisions in the Section 8 Program and other housing programs,⁹⁴ such as Supportive Housing for the Elderly,⁹⁵ and Supportive Housing for Persons with Disabilities.⁹⁶

II. HUD fails to consider the Proposed Rule’s substantial harms to LGBTQ+ people and others seeking HUD-funded housing and services.

The Proposed Rule violates the APA because HUD fails to consider that it will significantly increase the discrimination and other barriers faced by LGBTQ+ people when accessing HUD-funded shelter, supportive services, housing, and homeownership programs. Under the APA, an agency action is arbitrary and capricious if it is not “reasonable and reasonably explained”⁹⁷—including if “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not

⁹³ See e.g., 24 C.F.R. § 92.508(a)(7)(i)(A) (data on those who participated in a program receiving HOME funds); *id.* § 93.407(a)(5)(ii) (records concerning applicants and participants in Housing Trust Fund program); *id.* § 202.12(a)(8) (data used under regulations implementing Home Mortgage Disclosure Act (12 U.S.C. §§ 2801–2810)); *id.* § 221.795(f)(3) (records to demonstrate compliance with mortgage insurance program); *id.* § 236.1001(f)(3) (records to demonstrate compliance with mortgage program); *id.* § 291.440 (records to determine compliance with requirements of subpart E, Lease and Sale of HUD-Acquired Single Family Properties for the Homeless); *id.* § 582.300(d)(1) (data on recipients of assistance from Shelter Plus Care); *id.* § 583.300(g) (data on recipients of assistance from Supportive Housing Program); *id.* § 700.175(d)(3) (data on applicants and beneficiaries of Congregate Housing Services Program); *id.* § 570.490(a)(1), (b) (records for audit of State’s administration of Community Development Block Grants (CDBG); *id.* § 570.506(g)(2), (g)(4), (g)(6) (records to determine recipient compliance with CDBG requirements); *id.* § 570.904(b)(1), (b)(2), (d) (records to determine compliance with Equal Opportunity and Fair Housing Review Criteria).

⁹⁴ See e.g., 24 C.F.R. § 5.655(c)(1)(iv) (owner preferences in selection for a project unit under the Section 8 Project-Based Assistance Programs); *id.* § 886.138(f)(3) (responsibility owner to assure steps are taken to minimize the displacement of persons); *id.* § 886.321(b)(5) (records regarding marketing to applicants); *id.* § 884.214(b)(5) (pertaining to set-aside for new construction for Section 515 Rural Rental Housing Projects); *id.* § 982.158(f)(1) (records on housing choice voucher program under Section 8 Tenant-Based Assistance); *id.* § 880.603(b)(3) (assistance payments program for new construction under Section 8 Housing Assistance); *id.* § 882.514(a)(2) (records regarding families selected for Section 8 Moderate Rehabilitation Programs); *id.* § 882.810(f)(3) (regarding responsibility to maintain records to demonstrate compliance with the provisions of Section 8 Moderate Rehabilitation Programs).

⁹⁵ 12 U.S.C. § 1701q.

⁹⁶ 42 U.S.C. § 8013; see also 24 C.F.R. § 891.410(a) (chronological waiting list showing each person applying for the program); *id.* § 891.410(f) (records of applicants and approved eligible households); *id.* § 891.510(e) (data on status of displaced persons); *id.* § 891.610(a) (chronological waiting list of each person applying for the program); *id.* § 891.610(a)(f) (“[r]ecords on applicants and approved eligible families, which provide racial, ethnic, gender, handicap status, and place of previous residency data required by HUD, must be retained”); *id.* § 891.750(b)(4) (records on applicants and approved eligible families).

⁹⁷ *F.C.C. v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

be ascribed to a difference in view or the product of agency expertise.”⁹⁸ Agency action is unreasonable and therefore arbitrary and capricious when it “relies on an erroneous interpretation of the law.”⁹⁹ For decisions to be reasonable, agencies must offer “genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public.”¹⁰⁰ When an agency changes its existing policy, it must “display awareness that it is changing position” and “show that there are good reasons for the new policy[.]”¹⁰¹ Agencies must provide “more detailed justification” for a change in policy when their prior policy “engendered serious reliance interests.”¹⁰²

HUD has failed to consider the harmful consequences of the Proposed Rule. First, as it relates to CPD-funded shelters and programs, HUD fails to consider that the Proposed Rule will put transgender and gender-nonconforming people and their families at increased risk of homelessness, discrimination, and violence. Second, HUD fails to consider the effect the Proposed Rule will have on shelter and service providers, which must now abandon a decade’s worth of practice and procedures or face the loss of funding and legal liability. Third, HUD fails to consider that the Proposed Rule will increase discrimination against LGBTQ+ people in HUD’s rental housing and homeownership programs and make it more difficult for this community to secure stable housing, which will exacerbate the housing affordability crisis in our States.

A. HUD fails to consider the harms the Proposed Rule will cause to people seeking access to CPD-funded shelters and programs.

HUD fails to consider the negative impacts the Proposed Rule would have on transgender and gender-nonconforming people, like increasing the risk of violence and harassment, increasing homelessness, and decreasing access to supportive services. The Proposed Rule would also cause harm to survivors of domestic violence, and to people who do not conform to sex stereotypes and their families.

1. The Proposed Rule places transgender and gender-nonconforming people at increased risk of violence and harassment.

As noted above, HUD promulgated the 2016 Rule in large part to address the significant violence and harassment experienced by transgender and gender-nonconforming people when accessing CPD-funded shelters and facilities. The 2016 Rule addresses this problem by giving

⁹⁸ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co. (State Farm)*, 463 U.S. 29, 43 (1983).

⁹⁹ *Filazapovich v. Dep’t of State*, 560 F. Supp. 3d 203, 243 (D.D.C. 2021), *rev’d and remanded on other grounds sub nom. Goodluck v. Biden*, 104 F.4th 920 (D.C. Cir. 2024); *see also SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) (holding that agency action is unlawful “if the agency has misconceived the law”).

¹⁰⁰ *Dep’t of Commerce v. New York*, 588 U.S. 752, 756 (2019).

¹⁰¹ *F.C.C. v. Fox Television Stations, Inc. (Fox)*, 556 U.S. 502, 515 (2009).

¹⁰² *Housatonic River Initiative v. EPA*, 75 F.4th 248, 270 (1st Cir. 2023) (quoting *Fox*, 556 U.S. at 515).

transgender and gender-nonconforming people the right to access CPD-funded shelters and programs in a manner most aligned with their gender identity.¹⁰³

In stark contrast, the Proposed Rule, if finalized, will subject transgender and gender-nonconforming people to increased risk of violence and harassment in CPD-funded shelters by requiring these shelters to make admission and placement decisions based on a person's sex, as defined by HUD. As observed in the 2016 Rule,¹⁰⁴ the Proposed Rule's requirement that people be placed in shelters based on HUD-defined sex, as opposed to their gender identity, will significantly increase transgender and gender-nonconforming people's risk of experiencing violence and discrimination in these settings. This policy, along with language giving providers the right to demand "reasonable assurances or evidence to establish a person's sex," will deter transgender and gender-nonconforming people from accessing HUD-funded shelters altogether, thus putting them back onto the streets. Simply put, the Proposed Rule will encourage the very discrimination, violence, and harassment that HUD sought to address via the 2016 Rule.

HUD's failure to consider the Proposed Rule's impacts on transgender and gender-nonconforming people is especially problematic given that this community continues to experience high rates of violence¹⁰⁵ and faces barriers to redress through the criminal legal system due to stigma and animus.¹⁰⁶ Despite the 2016 Rule's recognition of these problems, the Proposed Rule does not meaningfully address these issues—or even mention them. Instead, the Proposed Rule offers transgender and gender-nonconforming people the Hobson's choice of seeking shelter in a HUD-funded shelter that places them at significant risk of violence or remaining unsheltered, where they face the same risk.

2. The Proposed Rule will increase homelessness amongst transgender and gender-nonconforming people.

HUD also promulgated the 2016 Rule to reduce significant rates of homelessness experienced by transgender and gender-nonconforming people and address the pervasive lack of shelters available to this community. The United States continues to experience high rates of homelessness. From 2023 to 2024, the national homeless rate grew 18%, with a 7% increase in the unsheltered population.¹⁰⁷ The Proposed Rule will exacerbate homelessness: many transgender

¹⁰³ See 2016 Rule, 81 Fed. Reg. at 64,764.

¹⁰⁴ *Id.* (highlighting that "that transgender persons . . . face dangerous conditions in the shelters that correspond to their sex assigned at birth).

¹⁰⁵ See *supra*, Sections I.B.1–3.

¹⁰⁶ See Hum. Rts. Watch, *supra* note 64; Alexi Jones, *Visualizing the Unequal Treatment of LGBTQ People in the Criminal Justice System*, Prison Pol'y Initiative (Mar. 2, 2021), <https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/> (noting that "nearly half of trans people reported that they do not feel comfortable seeking help from police," and "1 in 5 trans people who have had police contact reported that they have been harassed by police, include 38% of Black trans individuals").

¹⁰⁷ See Sean Cremin, *Homelessness Hits Record High in California, Jumps Dramatically in Rest of US*, Pub. Pol'y Inst. of Cal. (Mar. 25, 2025), <https://www.ppic.org/blog/homelessness-hits-record-high-in-california-jumps-dramatically-in-rest-of-us/> (showing that despite national numbers outpacing California, homelessness within California during the same time grew by 3%, with an 0.4% increase in unsheltered homelessness).

and gender-nonconforming people will reasonably choose not to access HUD-funded shelters if they can only access shelters that align with their HUD-defined sex and subject them to increased risk of violence and harassment. Further, the Proposed Rule would likely force single-gender shelters currently in compliance with the 2016 Rule to remove transgender and gender-nonconforming occupants. HUD acknowledges that the Proposed Rule’s provisions will “result in denying individuals who claim a different gender identity than their HUD-defined sex being denied access to their preferred single-sex shelters or their preferred accommodations in other shelters.”¹⁰⁸ However, HUD offers no meaningful solution to address this issue. The Proposed Rule simply directs transgender and gender-nonconforming people to “find other shelter options that are not limited to a single sex or seek admission to a single-sex shelter consistent with their HUD-defined sex.”¹⁰⁹

Furthermore, in many states and localities, the vast majority of people experiencing homelessness are unsheltered,¹¹⁰ because there are simply not enough shelter beds to house the United States’ current homeless population.¹¹¹ As such, transgender and gender non-conforming people may not be able to seek alternative shelter if they are functionally excluded from HUD-funded shelters. This is especially true in suburban and rural areas where lack of shelter beds is especially pronounced.¹¹² Even when transgender and gender-nonconforming people can find alternate shelter, they may be displaced from the communities where they have active social ties, which runs counter to the goals of many CPD programs.¹¹³

The Proposed Rule further fails to consider how increasing the lack of shelter available to transgender and gender-nonconforming people puts them at risk of arrest and incarceration for crimes related to their homelessness.¹¹⁴ This risk is also likely to increase as the current administration has instructed HUD to direct its discretionary funding to jurisdictions that enforce

¹⁰⁸ Proposed Rule, 91 Fed. Reg. at 22,782.

¹⁰⁹ *Id.*

¹¹⁰ See Jialu L. Streeter, *Homelessness in California: Causes and Policy Considerations*, Stanford Inst. for Econ. Pol’y Rsch. (May 2022), <https://siepr.stanford.edu/publications/policy-brief/homelessness-california-causes-and-policy-considerations> (highlighting that “[a]bout 70 percent of California’s homeless live outside a shelter system, sleeping in tents, public open spaces, or vehicles.”).

¹¹¹ See Daniel Soucy, Andrew Hall & Joy Moses, *State of Homelessness: 2025 Edition*, Nat’l All. to End Homelessness (Sep. 4, 2025), <https://endhomelessness.org/state-of-homelessness/>.

¹¹² See Meagan Mitchell, Hous. Assistance Council, *Rural Research Brief: Homelessness Continues to Increase in the U.S. and in Rural America* (2025), <https://ruralhome.org/wp-content/uploads/2025/03/rural-research-brief-ahar-2024.pdf>.

¹¹³ See 42 U.S.C. § 11381(2) (stating that one of the goals of the CoC Program is to “minimize[] the trauma and dislocation caused to individuals, families, and communities by homelessness”).

¹¹⁴ See, e.g., Marisa Kendall, *Homeless-related Arrests, Citations Soared in these California Cities After Supreme Court Case*, CalMatters (June 27, 2025), <https://calmatters.org/housing/homelessness/2025/06/homelessness-enforcement-data/>; see also Jane Hereth, Safety and Just. Challenge, *Overrepresentation of People Who Identify as LGBTQ+ in the Criminal Legal System* 3, 6 (2022), <https://safetyandjusticechallenge.org/wp-content/uploads/2022/05/LGBTQOverrepresentationReport-1.pdf> (finding that transgender people face heightened risk for arrest and high rates of incarceration and highlighting how homelessness increases transgender people’s risk of arrest).

prohibitions on “urban camping and loitering.”¹¹⁵ Simply put, the Proposed Rule does not address the chief concern of the CPD programs—homelessness and its predictable consequences. This failure undermines the purposes of HUD’s CPD programs and HUD’s mandate under the HUD Act to provide housing opportunity for all.¹¹⁶

3. The Proposed Rule will decrease transgender and gender-nonconforming people’s access to supportive services and healthcare.

HUD additionally fails to consider the negative impacts of the Proposed Rule on homeless transgender and gender-nonconforming people’s access to critical supportive services and healthcare. CPD-funded programs often provide supportive services that can aid individuals in permanently exiting homelessness, including food assistance, healthcare, employment counseling, education services, and family support.¹¹⁷ The Proposed Rule will make it more difficult for transgender and gender-nonconforming people to access CPD-funded supportive services, despite the fact that this community has a greater need for supportive services as compared to cisgender people.¹¹⁸ Studies show that many transgender and gender-nonconforming people experience high rates of food insecurity,¹¹⁹ and face significant obstacles when accessing education¹²⁰ and

¹¹⁵ Exec. Order No. 14321, Ending Crime and Disorder on America’s Streets, 90 Fed. Reg. 35,817 §§ 1, 3 (July 29, 2025) (directing HUD Secretary to “take immediate steps to assess . . . [its] discretionary grant programs and determine whether priority for those grants may be given to grantees in States and municipalities that actively . . . enforce prohibitions on urban camping and loitering.”).

¹¹⁶ See, *infra*, Section V.B.

¹¹⁷ See, e.g., 42 U.S.C. § 5305(a)(8) (authorizing the use of CDBG funds for the “provision of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs”); *id.* § 11374(a)(2) (authorizing the use of ESG funds for the “provision of essential services related to emergency shelter or street outreach, including services concerned with employment, health, education, family support services for homeless youth, substance abuse services, victim services, or mental health services”); *id.* § 11408(b)(1)(J) (authorizing the use of RHSP funds for “development of comprehensive and coordinated support services that use and supplement, as needed, community networks of services”); *id.* § 11383(a)(6) (authorizing the use of CoC funds for supportive services).

¹¹⁸ See, e.g., Christopher S. Carpenter, Maxine J. Lee & Laura Nettuno, Economic Outcomes for Transgender People and Other Gender Minorities in the United States: First Estimates from a Nationally Representative Sample, 89 S. Econ. J. 280, 280 (2022), <https://onlinelibrary.wiley.com/doi/abs/10.1002/soej.12594> (finding that “non-cisgender individuals are significantly less likely to be employed, have higher poverty rates, are more likely to have public health insurance, and report greater food insecurity compared to otherwise similar cisgender individuals”).

¹¹⁹ See, e.g., Kerith J. Conron & Kathryn K. O’Neill, The Williams Inst., *Food Insufficiency Among Transgender Adults During the COVID-19 Pandemic* 2 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Food-Insufficiency-Update-Apr-2022.pdf> (noting that Census Bureau’s 2021 Household Pulse Survey found that “food insufficiency was almost two and a half times as common among transgender as cisgender people [19.9% vs. 8.3%]”).

¹²⁰ See, e.g., Kerith J. Conron, Kathryn K. O’Neill & Luis A. Vasquez, *Educational Experiences of Transgender People: Findings from a National Probability Survey* 2 (2022), <https://williamsinstitute.law.ucla.edu/publications/transgender-higher-ed/><https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Higher-Ed-Apr-2022.pdf>.

employment.¹²¹ Transgender and gender-nonconforming people experiencing homelessness face particularly high barriers in accessing supportive services.¹²²

The Proposed Rule will make it more difficult for transgender and gender-nonconforming people to access CPD-funded supportive services. The Proposed Rule does not explain how CPD-funded service providers would comply with the Rule's requirement to provide CPD-funded services in accordance with sex¹²³, which may encourage supportive service providers to engage in many of the discriminatory and harassing behaviors that led to the promulgation of the 2016 Rule. Nor does the Proposed Rule discuss how its provisions will impact the efficacy of CPD-funded supportive services, especially where shelter and supportive services are provided in tandem as a homelessness prevention strategy. The Proposed Rule also fails to discuss or mention these impacts in CPD programs that largely require the provision of supportive services, like the CoC Program.¹²⁴

Relatedly, HUD does not consider the impact of the rule on transgender and gender-nonconforming people's health and access to healthcare. Due to violence, discrimination, stigma, and other social, political, and economic factors, transgender and gender-nonconforming people experience poorer health outcomes than cisgender individuals¹²⁵ and lack access to adequate healthcare.¹²⁶ Predictably, homelessness both worsens health outcomes for transgender and

¹²¹ See, e.g., Brad Sears et al., The Williams Inst., *Workplace Experiences of Transgender Employees 2* (2024), <https://williamsinstitute.law.ucla.edu/publications/transgender-workplace-discrim/> (“Most transgender employees [surveyed] (82%) reported experiencing discrimination or harassment at work [including being fired, not hired, not promoted, or verbally, physically, or sexually harassed] because of their sexual orientation or gender identity at some point in their lives. Transgender employees were more likely to report these experiences than cisgender LGBTQ employees (47%) and nonbinary employees (59%).”).

¹²² See, e.g., Elena Tubertini et al., *Services for LGBTQ+ Individuals Experiencing Homelessness: A Systematic Review*, J. Cmty. & Applied Soc. Psych., Sep. 2025, <https://onlinelibrary.wiley.com/doi/epdf/10.1002/casp.70173> (summarizing the various barriers encountered by LGBTQ+ persons, especially transgender people, when accessing supportive services for people experiencing homelessness).

¹²³ See Proposed Rule, 91 Fed. Reg. at 22,784 (stating that “[e]qual access to CPD programs, shelters, other buildings and facilities, benefits, services, and accommodations is provided to an individual in accordance with the individual’s sex”).

¹²⁴ See 42 U.S.C. § 11385(a) (mandating in the CoC program that grantees, to the extent practicable, “provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants”).

¹²⁵ See, e.g., Caroline Medina et al., Center for American Progress, *Protecting and Advancing Health Care for Transgender Adult Communities* (Aug. 18, 2021), <https://www.americanprogress.org/article/protecting-advancing-health-care-transgender-adult-communities/> (“Research demonstrates that, compared with the general population, transgender people suffer from more chronic health conditions and experience higher rates of health problems related to HIV/AIDS, substance use, mental illness, and sexual and physical violence, as well as higher prevalence and earlier onset of disabilities that can also lead to health issues.”) (citations omitted).

¹²⁶ See, e.g., *id.*; Kedryn Berrian et al., *Barriers to Quality Healthcare Among Transgender and Gender Nonconforming Adults*, Health Servs. Rsch., Feb. 2025, at 1–9, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1475-6773.14362>.

gender-nonconforming people and makes it more difficult for them to access healthcare.¹²⁷ The Proposed Rule, however, fails to consider how erecting barriers to shelter and supportive services for transgender and gender-nonconforming people will exacerbate health outcomes and make it more difficult for this population to receive adequate health care.

This also impacts the HOPWA program, which seeks to increase housing for people living with HIV/AIDS to improve their access to supportive services.¹²⁸ The HOPWA program is premised on the consensus that shelter and housing improves access to the life-saving healthcare medications necessary to manage an HIV diagnosis.¹²⁹ The program provides benefits and services that are not otherwise provided by other federal HIV/AIDS supportive services programs.¹³⁰ Transgender and gender-nonconforming people are disproportionately impacted by the HIV/AIDS epidemic.¹³¹ However, HUD fails to consider that the rule would make it more

¹²⁷ See, e.g., Medina et al., *supra* note 125 (finding that “[a]mong unsheltered transgender populations, 60 percent are trimorbid, facing co-occurring physical, mental, and substance use disorders.”); Nat’l All. 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/> (finding that unsheltered transgender people are significantly more likely have chronic health, mental health, and drug/alcohol issues than their sheltered counterparts).

¹²⁸ See E-mail from Rita Harcrow, Dir., HUD Off. of HIV/AIDS Hous., to HOPWA Grantees, Project Sponsors, and Friends (Oct. 28, 2022, at 14:27), <https://www.hud.gov/sites/dfiles/CPD/documents/HOPWA-In-Focus-HOPWA-30th-2022-10-28.pdf> (“Thirty years ago, the HOPWA program was established to provide communities with resources and incentives for devising long-term strategies to develop a range of housing assistance and supportive services for low income people living with HIV and their families to overcome key barriers to stable housing such as affordability and discrimination.”).

¹²⁹ See Letter from Jonathan H. Mermin, U.S. Ctrs. for Disease Control and Prevention, Jemine A. Bryon, U.S. Dep’t of Hous. and Urb. Dev. & Laura Cheever, Health Res. and Servs. Admin., *HIV Outbreaks Among People Experiencing Homelessness and Housing Instability* (Apr. 12, 2023), <https://www.cdc.gov/nchhstp/director-letters/hiv-among-people-experiencing-homelessness.html> (finding that “[h]omelessness and housing instability are linked to higher viral loads and failure to attain or sustain viral suppression among people with HIV.” Additionally, homelessness and housing instability are associated with increased vulnerability for HIV acquisition); Russell L. Bennett & Bianca Hannon, Nat’l Low-Income Hous. Coal., *Housing Opportunities for Persons with AIDS (HOPWA)* 1 (2025), https://nlihc.org/sites/default/files/AG-2025/4-135_Housing-Opportunities-for-Persons-with-Aids-HOPWA.pdf (“For people living with HIV/AIDS, housing intersects with healthcare by providing stability allowing access and compliance to life sustaining medications. For people with low-income struggling to manage HIV/AIDS care, housing is an essential cornerstone of health and stability.”).

¹³⁰ See Jeffrey S. Crowley, O’Neill Inst., *Safe and Affordable Housing Improves HIV Outcomes* 1 (2025), <https://oneill.law.georgetown.edu/wp-content/uploads/2025/08/QT-HOPWA.pdf> (highlighting that “[t]he Ryan White HIV/AIDS Program (RWHAP) . . . works in tandem with HOPWA to meet the housing needs of people with HIV,” and that RWHAP is largely focused on time-limited rental assistance).

¹³¹ See U.S. Ctrs. for Disease Control and Prevention, *Fast Facts: HIV and Transgender People* (Mar. 28, 2024), <https://www.cdc.gov/hiv/data-research/facts-stats/transgender-people.html> (reporting that “[n]early 1 million people (.3%) identify as transgender in the United States (US), yet transgender people made up 2% (671) of new HIV diagnoses in the US and dependent areas in 2019”).

difficult for transgender people to access HOPWA programs and thus undercut the purpose of this program.

4. HUD fails to consider the Proposed Rule’s impact on survivors of domestic violence and other groups fleeing violence.

The Proposed Rule does not address the effects of its provisions on survivors of domestic violence, especially transgender and gender-nonconforming survivors. Prior HUD rulemaking recognized that equal access protections were necessary to ensure that survivors of domestic violence could safely access HUD-funded programs without discrimination based on gender identity or sexual orientation.¹³² The Proposed Rule contravenes these protections. Notably, the Proposed Rule fails to consider how rescinding the prohibition on invasive questioning about one’s gender may affect survivors of domestic violence, who often lack identity documents,¹³³ fear disclosure of sensitive personal information,¹³⁴ face safety risks if forced to reveal details relating to their gender identity or medical history,¹³⁵ or would be retraumatized if asked for “assurances” about their bodies.

One of the Proposed Rule’s stated justifications is protecting homeless women from sexual assault.¹³⁶ Butas discussed in Section V.C below, HUD fails to put forth credible evidence in support of that proposition. Further, the Proposed Rule relies on unsupported claims that transgender women are dangerous,¹³⁷ while simultaneously failing to consider that transgender

¹³² See 2016 Rule, 81 Fed. Reg. at 64,778–79.

¹³³ See Insider NJ, *Stewart Introduces Bill to Remove Barriers for Domestic Violence Survivors Seeking Identification Cards, Driver’s Licenses* (Mar. 11, 2026, at 14:31), <https://www.insidernj.com/press-release/stewart-introduces-bill-to-remove-barriers-for-domestic-violence-survivors-seeking-identification-cards-drivers-licenses/> (“For many survivors, escaping abuse means leaving behind important paperwork such as birth certificates, Social Security cards, or proof of residency.”); see also Lindsay B. Gezinski & Kwynn B. Gonzalez-Pons, *Unlocking the Door to Safety and Stability: Housing Barriers for Survivors of Intimate Partner Violence*, 36 J. Interpersonal Violence (2021), <https://doi.org/10.1177/0886260519851792> (abstract reflecting that barriers to obtaining permanent housing includes lack of documentation).

¹³⁴ See Nat’l Ctr. on Domestic Violence, Trauma, and Mental Health, *Confidentiality for Survivors Across Services 1* (2023), https://ncdvtmh.org/wp-content/uploads/2023/09/Confidentiality-for-Survivors-Across-Services-Tip-Sheet_202309.pdf (highlighting that “[s]urvivors of domestic violence are at risk when seeking services, as an abusive partner or others may actively attempt to obtain confidential information about survivors to cause further harm”); Nat’l Network to End Domestic Violence, *Why Privacy and Confidentiality Matters for Victims of Domestic & Sexual Violence*, Safety Net Project, <https://www.techsafety.org/privacymatters> (last visited June 24, 2026) (“Since community-based programs began serving victims of domestic violence, sexual assault, and stalking, privacy and even secrecy have been considered a crucial component of a victim’s safety.”).

¹³⁵ See, e.g., N.Y. State Off. for the Prevention of Domestic Violence, *Domestic and Sexual Violence in the LGBTQI+ Community*, <https://opdv.ny.gov/domestic-and-sexual-violence-lgbtqi-community> (last visited June 24, 2026) (describing how abusive partners can track LGBTQ+ survivors through service providers based on the information they are required to disclose).

¹³⁶ See Proposed Rule, 91 Fed. Reg. at 22,781.

¹³⁷ See *infra*, Section V.C.

women are victims of sexual violence, too—and disproportionately so.¹³⁸ Transgender and gender-nonconforming survivors who fear humiliation, exclusion, or denial of shelter on the basis of their gender identity or sexual orientation may be unable to seek emergency housing or protective services at all. For survivors fleeing violence, the inability to access safe emergency shelter can have life-threatening consequences.¹³⁹ By failing to analyze these foreseeable harms to transgender and gender-nonconforming survivors of domestic violence and the programs designed to protect them, HUD fails to consider an important aspect of the problem before the agency.¹⁴⁰

5. HUD fails to consider the Proposed Rule’s harms on Intersex People.

HUD further fails to account for the harms its Proposed Rule will cause to intersex people. The Proposed Rule requires CPD-programs to accommodate, place, and serve people according to their “sex,” which HUD defines as an “immutable biological classification as either male or female.”¹⁴¹ This definition fails to account for intersex people, who are “born with sex traits that don’t fit into typical male or female patterns.”¹⁴² In some cases, the Proposed Rule’s definition of sex is unintelligible when applied to intersex people.¹⁴³ In other cases, the Proposed Rule would require CPD providers to accommodate, place, and treat intersex people in accordance with

¹³⁸ See Press Release, The Williams Inst., *Transgender People Over Four Times More Likely Than Cisgender People to be Victims of Violent Crime* (Mar. 31, 2021), <https://williamsinstitute.law.ucla.edu/press/news-trans-press-release>. (citing Andrew R. Flores et al., *Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017–2018*, 111 Am. J. Pub. Health 726 (2021)); see also Hum. Rts. Campaign Found., *Understanding Intimate Partner Violence in the LGBTQ+ Community* (Nov. 4, 2022), <https://www.hrc.org/resources/understanding-intimate-partner-violence-in-the-lgbtq-community> (last visited June 24, 2026) (noting that 54% of transgender and nonbinary individuals have experienced intimate partner violence in their lifetimes).

¹³⁹ See, e.g., Nat’l Domestic Violence Hotline, *Emergency Housing for Domestic Violence Victims*, <https://www.thehotline.org/resources/emergency-housing-for-domestic-violence-victims> (last visited June 25, 2026) (“The threat of homelessness on domestic violence survivors increases danger . . . while escaping their abusive partners.”).

¹⁴⁰ See, e.g., *R.I. Coal. Against Domestic Violence v. Kennedy*, 812 F. Supp. 3d 180, 193 (D.R.I. 2025) (finding that domestic violence coalition plaintiffs had demonstrated a likelihood of success on APA arbitrary and capricious claim, in part, because HUD failed to consider impacts of Anti-Transgender Order grant condition on domestic violence survivors); *R.I. State Council of Churches v. Rollins*, 808 F. Supp. 3d 370, 382 (D.R.I. 2025) (finding agency action to be “patently” arbitrary and capricious where agency failed to account for the “practical consequences” of its action and thereby disregarded an “important aspect of the problem”).

¹⁴¹ Proposed Rule, 91 Fed. Reg. at 22,784.

¹⁴² Cleveland Clinic, *Intersex* (May 1, 2026), <https://my.clevelandclinic.org/health/articles/16324-intersex>.

¹⁴³ Compare Proposed Rule, 91 Fed. Reg. at 22,783 (defining male and female according to whether a reproductive system produces sperm or eggs) with Cleveland Clinic, *Intersex*, *supra* note 142 (explaining that some intersex people have both ovaries and testicles).

genders to which they have never identified.¹⁴⁴ These consequences will only exacerbate the discrimination faced by intersex people, who “are often subjected to discrimination and abuse if it becomes known that they are intersex, or if they are perceived not to conform to gender norms.”¹⁴⁵ The Proposed Rule’s sanctioning of intrusive questioning regarding individuals’ physical anatomy all but ensures this discrimination and in so doing, puts intersex people at greater risk of harassment and violence.

6. HUD fails to consider the Proposed Rule’s negative impacts to non-LGBTQ+ people, including individuals that do not conform to gender stereotypes and families.

HUD also fails to consider the negative impacts of the Proposed Rule on family preservation and people who are not transgender and gender non-conforming. First, HUD fails to consider that the Proposed Rule puts homeless families at increased risk of family separation, which is directly at odds with the explicit goals of many CPD programs.¹⁴⁶ The current rules require HUD-funded programs to recognize families regardless of their members’ actual or perceived sexual orientation or gender identity.¹⁴⁷ And, current rules require CPD-funded programs to provide equal access to all individuals and their families.¹⁴⁸ The Proposed Rule, however, would remove the references to sexual orientation or gender identity from the definition of “family.”¹⁴⁹ The proposed definition of “family” would enable discrimination or exclusion of families with same-sex parents or families with transgender members. This would put many families in an impossible position: they can either access shelter for some, but not all, family members, or avoid HUD-funded shelter altogether and likely remain unsheltered. Because the Proposed Rule allows CPD-funded programs to require proof of sex that unhoused people may lack, even families without LGBTQ+ people could risk separation.

¹⁴⁴ See InterAct Advocates for Intersex Youth, *What is Intersex?* (Apr. 15, 2026), <https://interactadvocates.org/faq/#gender> (noting that intersex is an adjective describing a person’s body and varies from gender).

¹⁴⁵ United Nations Office of the High Commissioner for Human Rights, *Fact Sheet: Intersex 1*, https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/FactSheets/UNFE_FactSheet_Intersex_EN.pdf (“Intersex persons are often subjected to discrimination and abuse if it becomes known that they are intersex, or if they are perceived not to conform to gender norms. Anti-discrimination laws do not typically ban discrimination against intersex persons, leaving them vulnerable to discriminatory practices in a range of settings.”).

¹⁴⁶ 42 U.S.C. §§ 11361b(a) (requiring HUD to provide technical assistance to ESG, CoC, and RHSP program grantees “to prevent the separation of families in emergency shelter or other housing programs”); 11381(2) (stating that one of the purposes of the CoC program is “to provide funding for efforts by nonprofit providers and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to individuals, families, and communities by homelessness”).

¹⁴⁷ 24 C.F.R. § 5.403 (2026); *see also* 24 C.F.R. § 5.100 (2026) (“Family has the meaning provided this term in § 5.403, and applies to all HUD programs unless otherwise provided in the regulations for a specific HUD program.”).

¹⁴⁸ 24 C.F.R. § 5.106(b)(1) (added by the 2016 Rule).

¹⁴⁹ Proposed Rule, 91 Fed. Reg. at 22,784.

Second, the 2016 Rule affords protections to individuals who do not identify as transgender or gender-nonconforming. HUD has previously concluded that it is not appropriate to “isolate, ostracize, or treat people differently because of the way others, such as other shelter residents or shelter employees, view them.”¹⁵⁰ Yet under the Proposed Rule, people who do not fulfill the stereotypes of male or female, as determined by providers, may be subjected to intrusive questioning before accessing services, including emergency shelters. This may deter many individuals seeking shelter and increase the numbers of individuals experiencing unsheltered homelessness¹⁵¹ particularly because many people experiencing homelessness may lack sufficient proof of their sex.¹⁵²

B. HUD fails to consider how the Proposed Rule would disrupt the operations CPD-funded shelters and service providers.

The Proposed Rule also places shelter and supportive services providers in a precarious position: it will add significant pressure on providers’ already slim operating margins and potentially expose providers to costly legal risk. For nearly a decade, CPD-funded shelters and programs have structured their operations to comply with the 2016 Rule’s straightforward requirement of placing people according to their self-reported gender. The Proposed Rule would force providers to change their practices, update their policies, and retrain their employees to ignore a decade worth of processes and knowledge. This would add unnecessary burdens to shelters, which already often operate on a shoestring budget, are stretched for time, and lack sufficient staffing.¹⁵³

The Proposed Rule further exposes CPD-funded shelters and programs to needless legal liability. First, CPD-funded shelters will face legal liability from the increased violence against and harassment of transgender people that would result from the Rule.¹⁵⁴ Second, as detailed later in this Comment Letter, the Proposed Rule is in tension with many State and local anti-discrimination and other laws.¹⁵⁵ Any conflict between state law and the Proposed Rule would put shelters in a precarious position: follow the Proposed Rule and risk potential legal exposure for

¹⁵⁰ 2016 Rule, 81 Fed. Reg. at 64,775.

¹⁵¹ See Nat’l All. to End Homelessness, *Preserving Access to Homelessness Resources 2*, <https://endhomelessness.org/wp-content/uploads/2025/05/Equal-Access-Rule-Preserving-Access-to-Homelessness-Resources.pdf> (last visited May 11, 2026) (reflecting Ohio Faith-Based Shelter Provider’s perspective that intrusive questioning will increase the number of unsheltered people).

¹⁵² U.S. Gov’t Accountability Office, *Homelessness: Barriers to Obtaining ID and Assistance Provided to Help Gain Access* (Feb. 7, 2024), <https://www.gao.gov/products/gao-24-105435> (detailing the various barriers faced by people experiencing homelessness when attempting to obtain and keep identity documents and finding that “[h]omeless individuals often lack a reliably safe place to store IDs and other important personal documents, making these items subject to loss, destruction by the elements, and theft”).

¹⁵³ See Nat’l All. to End Homelessness, *supra* note 151, at 2.

¹⁵⁴ See, *supra*, Section II.A.1.

¹⁵⁵ See *infra*, Section III.A; see also Proposed Rule, 91 Fed. Reg. at 22,780, 22,784 (acknowledging that proposed §5.105 may conflict with state law); see also *id.* at 22,782 (“HUD acknowledges that this rulemaking would result in denying 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.”).

violating state law, or follow state law and risk CPD funding. This risk would be particularly daunting given that federal and state funding for homelessness and housing services are often entwined. In sum, the Proposed Rule would add bureaucratic and legal minefields that only distract shelters and other providers from their real work of providing housing assistance. Yet, the Proposed Rule offers no explanation to justify these harms nor any insight as to how shelters are to mitigate these increased legal and financial risks.

C. HUD fails to consider that the Proposed Rule will harm LGBTQ+ Renters and Homebuyers.

The Proposed Rule's removal of all regulatory language prohibiting discrimination on the basis of gender identity and sexual orientation is also arbitrary and capricious because HUD fails to adequately consider other foreseeable and real harms to the LGBTQ+ community. HUD has disregarded the substantial evidence demonstrating that LGBTQ+ people face significant discrimination in the rental and purchase of housing. The Proposed Rule similarly fails to consider that its provisions will make it more difficult for low- and moderate-income LGBTQ+ persons to access affordable housing, which would exacerbate the housing affordability crisis in our States. Lastly, the Proposed Rule fails to address the impacts on transgender and gender-nonconforming people of removing sexual orientation and gender identity from HUD's recordkeeping regulations.

Impact on LGBTQ+ renters and homebuyers. First, HUD fails acknowledge its findings in prior rulemakings that LGBTQ+ people experience disproportionately high rates of discrimination, harassment, and housing instability.¹⁵⁶ As described above, the basis for the 2012 Rule was evidence of pervasive discrimination against LGBTQ+ people, including transgender and gender-nonconforming Americans. HUD claims it has "reconsidered" these regulations,¹⁵⁷ but provides no evidence that prompted or supported its reconsideration. Indeed, unlike HUD's prior four rulemakings on this issue, the Proposed Rule does not review research conducted on this topic since its last rulemaking or reference any additional information HUD collected itself. This is arbitrary and capricious.

Second, the Proposed Rule fails to consider that by removing regulatory language prohibiting discrimination on the basis of sexual orientation and gender identity, the Proposed Rule will encourage individuals or businesses that own HUD-assisted housing to discriminate on these bases. This would be devastating given current evidence demonstrating that LGBTQ+ people, and transgender people in particular, continue to experience widespread discrimination in housing markets nationwide.¹⁵⁸ Moreover, the Proposed Rule fails to consider the collateral impacts of the

¹⁵⁶ See Proposed 2011 Rule, 76 Fed. Reg. at 4,194 (stating that there is "evidence suggesting that LGBT individuals and families do not have equal access to housing" and citing 2007 study documenting housing discrimination based on sexual orientation in Michigan and a 2009 national survey highlighting significant levels of housing instability for transgender people); see also 80 Fed. Reg., *supra* note 46, at 72,643–44 (recognizing same in 2015 Proposed Rule); 2012 Rule, 77 Fed. Reg. at 5,662 (restating same in 2012 Final Rule).

¹⁵⁷ Proposed Rule, 91 Fed. Reg. at 22,780.

¹⁵⁸ See, e.g., Sears, *Housing is an LGBTQ Issue*, *supra* note 55, at 3 (finding that "[o]ver one in five (21%) TNB [transgender and non-binary] people surveyed who have sought housing in the last five years believed they were denied housing because of their gender identity or their gender expression or

increased discrimination that the Proposed Rule will prompt. Access to affordable rental housing, such as HUD’s rental housing programs and Federal Housing Administration-insured multi-family housing backed promotes long-term stability for renters and is necessary for low-income LGBTQ+ renters to permanently exit homelessness.¹⁵⁹ The Proposed Rule’s apparent sanctioning of discrimination against LGBTQ+ persons is particularly pernicious given that HUD has taken several meaningful steps to weaken fair housing enforcement,, especially as it relates to gender identity and sexual orientation discrimination,¹⁶⁰ at both the federal and state level. As a result, LGBTQ+ housing discrimination victims may be left without limited recourse to address the discrimination that will likely result from the Proposed Rule. In short, HUD’s failure to revisit its “previous factual findings” and consider the current state of affairs also renders the Proposed Rule arbitrary and capricious.¹⁶¹

Housing affordability. HUD does not consider evidence that shows that reducing anti-discrimination protections for LGBTQ+ people in an already constrained housing market will increase housing costs for this community. Many states already face severe shortages of affordable housing¹⁶² and rising rental costs. These are particularly acute problems in our States: rents often outpace area median incomes and low- and moderate-income people are often overly rent burdened, meaning they pay more than one-third of their monthly income in rent.¹⁶³ As a

appearance”); Sandy E. James et al., *Early Insights: A Report of the 2022 U.S. Transgender Survey*, National Center for Transgender Equality (Feb. 2024), https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf (30% of respondents in national survey of transgender individuals experienced homelessness); Wash. State Dep’t of Health, *Office of Infectious Disease Health Equity Report 2024* 8 (2024), <https://doh.wa.gov/sites/default/files/2024-01/150159-OIDHealthEquityReport2024-English.pdf> (one in four transgender women in Washington experienced homelessness in the last twelve months); *see also, supra*, Section I.A.2.

¹⁵⁹ *See, e.g.* Urban Inst., *Housing First Breaks the Homelessness-Jail Cycle* (Jul. 15, 2021), <https://www.urban.org/features/housing-first-breaks-homelessness-jail-cycle>.

¹⁶⁰ *See infra*, Section III.B.

¹⁶¹ *Organized Village of Kake v. U.S. Dep’t. of Agric.*, 795 F.3d 956, 969 (2015).

¹⁶² Dan Emmanuel et al., *The Gap: A Shortage of Affordable Homes*, Nat’l Low Income Hous. Coal. 4 (Mar. 2026), https://nlihc.org/sites/default/files/gap/2026/gap-report_2026_english.pdf (“Nationally, there is a shortage of 7.2 million affordable and available rental homes for 11 million extremely low-income renter households. Only 35 affordable and available rental homes exist for every 100 of these lowest-income renters.”); Nat’l Low Income Hous. Coal., *2026 California Housing Profile* (Mar. 2026), https://nlihc.org/sites/default/files/SHP_CA.pdf (finding that “California needs to make 982,000 more homes affordable for extremely low-income households”).

¹⁶³ *See, e.g.*, Cal. Dep’t of Hous. & Cmty. Dev., *Addressing a Variety of Housing Challenges*, <https://www.hcd.ca.gov/policy-and-research/addressing-variety-housing-challenges> (“The majority of Californian renters — more than 3 million households — pay more than 30 percent of their income toward rent, and nearly one-third — more than 1.5 million households — pay more than 50 percent of their income toward rent.”); Wash. State Dep’t of Com., *2024-2029 State of Washington Homeless Housing Strategic Plan* 1 (2024), https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=Commerce%20Reports_Housing%20Division_2024-29%20State%20Homeless%20Housing%20Strategic%20Plan_Final_0f55af6c-3d50-430e-99b3-2e72ed3b6719.pdf (rental costs in Washington have increased on average 50% over the last decade); Wash. State Dep’t of Health, *Housing and Homelessness Data*, <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/housing-and-homelessness> (2 out of every 3 renters in

consequence, homelessness in our States has increased significantly over the past several years.¹⁶⁴

The housing affordability crisis is disproportionately felt by LGBTQ+ people, who experience higher rates of poverty, lower rates of homeownership, and higher rates of homelessness as compared to non-LGBTQ+ people.¹⁶⁵ By removing regulatory language prohibiting discrimination on the basis of sexual orientation and gender identity, the Proposed Rule would likely make it more expensive for LGBTQ+ people to secure housing, especially affordable housing. Indeed, individuals facing discrimination in housing often must spend more time and resources searching for housing or securing alternative housing in more competitive markets.¹⁶⁶ Further, LGBTQ-friendly areas, including those in our States, are often substantially more expensive, which compounds affordability barriers.¹⁶⁷

HUD has wholly failed to account for these realities in the Proposed Rule. While HUD appears to briefly recognize that the Proposed Rule would impact transgender individuals seeking emergency housing¹⁶⁸, HUD fails to even acknowledge how removal of prohibitions on discrimination on the basis of sexual orientation and gender identity will affect LGBTQ+ renters and homebuyers in the housing market at large. HUD's failure to meaningfully consider these foreseeable consequences renders the Proposed Rule arbitrary and capricious under the APA.

Recordkeeping requirements. Accurate data is essential to identifying and resolving problems. As discussed above, many current regulations require HUD funding recipients to report various data by gender. The Proposed Rule would require recipients to instead report data by sex,

Washington live in an area where rent is too high for someone earning the median income, and homelessness in Washington has increased by 29% over the last ten years).

¹⁶⁴ See, e.g., Cal. Interagency Council on Homelessness, *Action Plan for Preventing and Ending Homelessness in California 2025-2027* 20 (Dec. 2024), https://www.bcsh.ca.gov/calich/documents/action_plan.pdf (“According to the 2024 Point-in-Time (PIT) Count, over 187,000 people experience homelessness in California on a given night, representing a 3% increase from 2023”); Wash. State Dep’t of Health, *Housing and Homelessness Data*, *supra* note 163.

¹⁶⁵ Romero et al., *supra* note 25, at 9-15; see also Sears, *Housing is an LGBTQ Issue*, *supra* note 55, at 1–2 (showing that in Los Angeles County, LGBTQ adults rent at higher rents, are more housing cost-burdened, are twice as likely to be unhoused as non-LGBTQ, and that 25% of transgender and gender conforming surveyed at the time reported currently being unhoused—compared to 1% of the general population).

¹⁶⁶ For example, in a 2017 paired-testing study, housing providers were less likely to show available units to gay men and quoted them higher prices. See Diane K. Levy et al., *A Paired- Testing Pilot Study of Housing Discrimination against Same-Sex Couples and Transgender Individuals*, Urban Institute 63 (June 2017), [2017.06.27_hds_lgt_final_report_report_finalized.pdf](https://www.urbaninstitute.org/publications/a-paired-testing-pilot-study-of-housing-discrimination-against-same-sex-couples-and-transgender-individuals). This study also found that housing providers were less likely to tell transgender testers who identified themselves as transgender that units were available.

¹⁶⁷ See Katz & de la Campa, *supra* note 58 (areas with the largest LGBTQ+ populations have the smallest share of affordable homes); see also Ryan Adamczeski, *Which State Has the Most Transgender People?* The Advocate (Aug. 2025), <https://www.advocate.com/news/states-with-most-transgender-people#rebellitem11> (listing states with most transgender people).

¹⁶⁸ HUD acknowledges the Proposed Rule would result in transgender and nonconforming individuals “being denied access to their preferred single-sex shelters or their preferred accommodations in other shelters.” Proposed Rule, 91 Fed. Reg. at 22,782.

as defined by HUD. Accurate data is essential to identifying and resolving problems. In crafting the 2016 Rule, HUD relied on data about transgender and gender-nonconforming people's experiences with housing discrimination.¹⁶⁹ The Proposed Rule could therefore make it more difficult for HUD to identify and address problems transgender and gender-nonconforming people face in accessing housing.

The total rescission of the term “gender” from HUD regulations and recordkeeping provisions further creates a dignitary harm as it “denies and denigrates the very existence of transgender people—despite the evidence that they do exist and have as long as human history has been recorded.”¹⁷⁰

III. HUD fails to consider the Proposed Rule's conflict with States' reliance interests, sovereignty, and federalism.

HUD fails to consider how the Proposed Rule would harm our States' reliance interests, undermine our anti-discrimination laws and enforcement, and conflict with our sovereignty and principles of federalism.

A. The Proposed Rule would negatively impact States' reliance interests.

1. HUD fails to consider how the Proposed Rule will harm States' response to homelessness and provision of social services and increase homelessness and the States' cost of addressing it.

HUD fails to consider how the Proposed Rule would strain our States' public services and significantly disrupt our homelessness response systems and affordable housing infrastructure.

Strain on public services. The Proposed Rule will increase homelessness, especially unsheltered homelessness in our States because transgender and gender-nonconforming persons will no longer be able to access shelters and/or facilities that align with their gender identity, which will in turn deter individuals from seeking services at all.¹⁷¹ This increase in homelessness will shift costs to other public services and programs in our States, including our States' health systems. People experiencing homelessness have a higher prevalence of acute and chronic physical and mental health conditions, as well as higher mortality rates.¹⁷² In addition, people experiencing homelessness often receive health care from emergency departments, which is more costly than seeking preventative and other care.¹⁷³ In contrast, individuals enrolled in permanent supportive

¹⁶⁹ 2016 Rule, 81 Fed. Reg. at 64,764.

¹⁷⁰ *Washington v. Trump*, 768 F. Supp. 3d at 1277 (internal quotations omitted) (discussing the Anti-Transgender Order).

¹⁷¹ Soucy, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters*, *supra* note 53, at 4 (noting that 97% of people taking the survey experienced abusive treatment while homeless).

¹⁷² Cheyenne Garcia, et al., *Homelessness & Health: Factors, Evidence, Innovations that Work, and Policy Recommendations*, 43 *Health Affairs* 164, 165 (Feb. 5, 2024), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2023.01049>.

¹⁷³ *Id.* at 166.

housing programs have lower health care costs, including lower needs for inpatient and emergency department services.¹⁷⁴

The increase in homelessness will also strain our public safety systems because law enforcement officers are typically the default first responders in addressing homelessness in many communities,¹⁷⁵ which is already costly for many states and localities.¹⁷⁶ HUD fails to address the impacts of the Proposed Rule on States' public safety systems, which is inconsistent with the current administration's view that homelessness reduces safety for all people and that homelessness should be reduced to promote public safety.¹⁷⁷

Moreover, creating and prolonging homelessness for youth has consequences for State-funded public education and related services to support young people. LGBTQ+ youth experience higher levels of homelessness than non-LGBTQ+ youth, and family rejection is a major contributing factor.¹⁷⁸ Youth who experience homelessness are more likely to struggle in school and require additional supportive services, many of which are paid for in part with State funds. Responses to addressing and ending youth homelessness require coordination among a variety of governmental agencies that support homeless youth or youth at risk of homelessness¹⁷⁹ and an increase in homelessness caused by the Proposed Rule will further strain the resources of these agencies.

Disruption to State Homelessness Response Systems and affordable housing. The Proposed Rule's requirement that placement and accommodation of an individual in shelters be

¹⁷⁴ See Blue Cross Blue Shield of Mass. Found., *Study: Supportive Housing Programs for Chronically Homeless Lower Health Care Costs* (Dec. 22, 2020), <https://www.bluecrossmafoundation.org/about-us/news-updates/study-supportive-housing-programs-chronically-homeless-lower-health-care>; Nat'l Low Income Hous. Coal., *New Research Provides Stronger Evidence that Housing First Leads to Health Care Savings* (Jan. 16, 2024), https://nlihc.org/resource/new-research-provides-stronger-evidence-housing-first-leads-health-care-savings?utm_source.

¹⁷⁵ Emily Rogers & Katie Holihen, *Planning, Implementing, and Assessing Law Enforcement Responses to Homelessness*, Council of State Governments (CSG) Justice Center 3 (Aug. 2025), https://csgjusticecenter.org/wp-content/uploads/2025/08/JC_Brief_PolicingHomelessness_508-revised.pdf.

¹⁷⁶ See, e.g., Urban Inst., *Five Charts That Explain the Homelessness-Jail Cycle—and How to Break It* (Sept. 16, 2020), <https://www.urban.org/features/five-charts-explain-homelessness-jail-cycle-and-how-break-it> (finding that “[i]n Denver . . . a person experiencing long-term homelessness in 2016 had 24 contacts with police over 90 days, including four citations, one arrest, one jail stay, and 18 other kinds of contacts, such as being ordered to move along. This 90-day period cost the city nearly \$4,000 and represents the experience of just one person”).

¹⁷⁷ Exec. Order No. 14321, *supra* note 115, at § 1 (stating that “[e]ndemic vagrancy . . . has[] made our cities unsafe,” and homelessness has left American citizens “vulnerable to public safety threats”).

¹⁷⁸ Romero et al., *supra* note 25, at 4.

¹⁷⁹ See, e.g., New York City YHDP Planning Committee, *Opportunity Starts with a Home: New York City's Plan to Prevent and End Youth Homelessness*, 7 (2022), available at https://cwlibrary.childwelfare.gov/discovery/delivery/01CWIG_INST:01CWIG/1220978480007651 (example of agency coordination to support homeless youth).

made according to HUD-defined sex will put at risk essential CPD funding that fuels our States' response to homelessness and cause substantial confusion for our State agencies.

States and their agencies play key roles in administering CPD programs, including in coordinating programs and overseeing the funding they receive in formula grants. For example, our States administer funding to local jurisdictions, nonprofits, and other entities for a variety of CPD programs.¹⁸⁰ In addition, through the CoC Program, States coordinate complex communitywide planning approaches to meet the needs of our most vulnerable residents. In some States, state agencies act as a Collaborative Applicant for CoCs throughout our jurisdictions, which means that they are responsible for overseeing and administering CoC grants on behalf of participating localities and service providers.¹⁸¹

As administrators of these programs, state agencies are responsible for ensuring that our States and grantees are adhering to all applicable laws, including federal and state law. Yet the Proposed Rule is in considerable tension with the requirements under these laws, as described below. Most egregiously, if HUD finalizes the Rule to effectively preempt state and local law, States will risk essential CPD funding in complying with laws in our jurisdictions. The potential loss of CPD funds would have significant financial consequences for our States. We have developed our homeless response systems around CPD funds and rely on their availability when planning our budgets. Further, we often direct our CPD funds to the most underserved communities in our States, which are not otherwise eligible for direct CPD assistance.¹⁸² This loss would also jeopardize projects funded by state and federal dollars: many States match federal awards with state dollars to fund substantial investments in homelessness and supportive housing, using state dollars to fund the acquisition or rehabilitation of housing, supplement rental assistance, and expand services.¹⁸³ As a result, state and local expenditures and programs rely on and are intertwined with CPD-funded programs and entities.

¹⁸⁰ See, e.g., New York State Homes and Cmty. Renewal, *NYS HOME Program*, <https://hcr.ny.gov/nys-home-program> (last visited June 23, 2026); New York State Office of Cmty. Renewal, *New York State Community Development Block Grant (CDBG Program) Request for Applications 1* (2024), ¹⁸⁰ https://hcr.ny.gov/system/files/documents/2024/07/2024-cdbg-housing-rfa-final-1_0.pdf; Cal. Dep't of Hous. and Cmty. Dev., *State of California 2025 – 2029 Federal Consolidated Plan* (Jun. 2, 2025), <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/2025-2029-federal-consolidated-plan.pdf> [hereinafter CA 2025-2029 Consolidated Plan].

¹⁸¹ See, e.g., N.Y. State Office of Temporary & Disability Assistance, *Balance of State Continuum of Care*, <https://otda.ny.gov/resources/continuum-of-care/> (last visited May 20, 2026); Wash. State Dep't. of Comm., *Continuum of Care*, <https://www.commerce.wa.gov/homelessness-response/federal-grants/continuum-of-care/> (last visited June 4, 2026).

¹⁸² CA 2025-2029 Consolidated Plan, at 5.

¹⁸³ For example, the New York State HOME Program uses both federally allocated funds and state funds to acquire, rehabilitate, or construct affordable housing, or aid low-income homebuyers or renters. N.Y. State Homes & Cmty. Renewal, *NYS HOME Program*, *supra* note 180; N.Y. State Homes & Cmty. Renewal, *New York State Consolidated Plan 2021-2025* 153 (July 2021), <https://hcr.ny.gov/system/files/documents/2021/10/new-york-state-2021-2025-consolidated-plan-as-submitted-to-hud.pdf>. Similarly, in California, CDBG, ESG, and HOME grantees rely on state housing funding to satisfy the matching funds requirements in these programs. CA 2025-2029 Consolidated Plan, at 250–51.

Moreover, our State agencies often provide technical assistance for applicants and grantees of CPD funds, which the Proposed Rule would make more difficult and costly.¹⁸⁴ For example, if the Proposed Rule were to take effect, some State agencies would face substantial confusion regarding how to advise grantees regarding their new obligations to effectively verify a person’s HUD-defined sex with the reality that some State laws ensure that individuals have the right to have their driver’s license, state ID, or birth certificate reflect their gender identity.¹⁸⁵

HUD fails to consider how complying with the Proposed Rule will increase the costs of responding to homelessness and providing other social services for States.

2. HUD fails to consider how the Proposed Rule will interfere with State’s reliance on HUD recordkeeping regulations.

The Proposed Rule also impacts recordkeeping regulations for the programs by eliminating the requirement to gather information about the gender of program applicants and participants to ensure compliance with fair housing and equal opportunity requirements.¹⁸⁶ The Proposed Rule’s revisions to recordkeeping regulations go far beyond the programs governed by those 2012 and 2016 Rules.¹⁸⁷ These changes to recordkeeping provisions fail to account for States’ reliance interests in the data collected by those regulations.

States rely on the data collected under HUD-funded programs to allocate their limited resources, to determine the extent of housing discrimination against transgender and gender-nonconforming populations in their borders and develop responses and solutions to that discrimination. For instance, Washington’s Office for Homeless Youth historically used this data to identify possible system level gaps in services and improve outcomes related to disproportionate

¹⁸⁴ N.Y. State Homes & Cmty. Renewal, *NYS HOME Program*, *supra* note 180 (example of agency website consolidating needed forms and resources in one place).

¹⁸⁵ *See, e.g.*, Gender Recognition Act, Assemb. B. 5465D, 2021–2022 Reg. Sess. (N.Y. 2021); Wash. Admin. Code § 246-490-075.

¹⁸⁶ *See, e.g.*, 24 C.F.R. §§ 94.307(a)(5)(ii) (requiring collection of information on the gender of the heads of single-headed households who applied for, participated in, or benefited from” programs funded by HTF funds); 24 C.F.R. § 92.508(a)(7)(i)(A) (requiring program participants to maintain records sufficient to show compliance with equal opportunity and fair housing requirements, including collection of data on the gender of single-headed households who applied for, participated in, or benefited from programs funded by HOME funds). The same is true for CDBG, if such data is already being collected. *See* 24 C.F.R. §§ 570.490; 570.506(g)(2) (“Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements.”); *Id.* at 570.506(g)(6) (“Such [affirmative] steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of . . . gender.”).

¹⁸⁷ For example, the Proposed Rule would make significant changes to the recordkeeping requirements for the Housing Choice Voucher or “Section 8” program. Other programs impacted by the Proposed Rule include requirements that participants collect and retain information showing that they have complied with collection of “gender” information requirements for each business funded by the program, such as requirements that mortgages, lenders, and lessees maintain certain information about the gender of applicants and program participants to ensure program compliance. *See, e.g.*, 24 C.F.R. § 291.440; 24 C.F.R. § 236.1001; 24 C.F.R. § 221.795; 24 C.F.R. § 202.12.

impacts of homelessness. HUD fails to consider States' reliance interests in the data collected under these provisions.

B. The Proposed Rule will interfere with States' anti-discrimination laws and enforcement.

The Proposed Rule will effectively force States to make the untenable choice of potentially running afoul of our own laws and allowing our grantees to do the same or jeopardizing essential CPD funding to help our most vulnerable residents access shelter, housing, and other services.

As previously recognized by HUD, at least 23 States and the District of Columbia have enacted and enforce anti-discrimination laws that explicitly prohibit discrimination based on sexual orientation, gender, and, or gender identity in housing, public accommodations, and lending, among other areas.¹⁸⁸ These laws apply with equal force to the emergency shelters, facilities, and other programs and activities affected by the Proposed Rule.¹⁸⁹ However, the Proposed Rule now seeks to preempt these laws by requiring in some contexts, and sanctioning in others, discriminatory conduct that raises conflicts with our States' anti-discrimination laws. By requiring CPD programs to assign people to shelter, facilities, and other services and benefits according to HUD-defined sex, and threatening to revoke funding for entities that fail to do so, the Proposed Rule puts States and local jurisdictions in the precarious position of potentially running afoul of their own anti-discrimination laws, or risking billions of dollars in essential CPD funding. In addition, HUD fails to consider how the Proposed Rule's allowance to ask for invasive documentation of HUD-defined sex would effectively condone staff asking intrusive questions of those seeking services, raising substantial concerns of harassment under state and federal law.

At minimum, HUD fails to consider the confusion that the Proposed Rule will cause for CPD-funded entities and other entities throughout States' jurisdictions.¹⁹⁰ This confusion will, in turn, lead to costly administrative and operational adjustments. The confusion will also increase the demand for technical assistance from agencies that are responsible for passing through CPD funds. For example, the Housing Trust Fund Corporation's Office of Community Renewal (OCR)

¹⁸⁸ See 2012 Rule, 77 Fed. Reg. at 5,662 (noting, at the time of the 2012 Rule's publication, that "[twenty states, the District of Columbia, and over 200 localities have enacted laws prohibiting discrimination in housing on the basis of sexual orientation or gender identity]"); see also, e.g., Cal. Civ. Code § 51; Cal. Gov. Code § 12955; Co. Rev. Stat. § 24-34-502; Conn. Gen. Stat. §§ 46a-64c, 46a-81d, 46a-81f; Del. Code Ann. tit. 6, §§ 4502-3; D.C. Code § 2-1402.21; 775 Ill. Comp. Stat. 5/1-102, 103(O-1); Me. Rev. Stat. Ann. tit. 5, § 4581; Md. Code Ann., State Gov't §§ 20-702, 20-705; Mass. Gen. Laws ch. 272, § 98; Mich. Comp. Laws § 37.2102; N.J. Stat. Ann. § 10:5-1, *et seq.*; N.M. Stat. Ann. § 28-1-7(F); Nev. Rev Stat § 118.100; N.Y. Exec. Law §§ 291-2, 296; Or. Rev Stat § 659A.403; 34 R.I. Gen L § 34-37; 9 V.S.A. § 4503; Wash. Rev Code § 49.60.222; Wis. Stat. § 106.50.

¹⁸⁹ 2012 Rule, 77 Fed. Reg. at 5,663; Cal. Code Regs. Tit. 2, § 12005(o) (including "homeless shelters" within coverage of California's housing discrimination statute); N.Y. Exec. Law § 296(5); 18 NYCRR 452.9(a)(1) (requiring "residential programs for victims of domestic violence" to "provide appropriate available services for all victims of domestic violence, regardless of . . . sexual orientation [or] gender identity").

¹⁹⁰ See, *supra*, Section III.A.1.

in New York serves as the administrator of HOME programs and the CDBG programs.¹⁹¹ OCR also provides technical assistance for applicants, including on regulatory and legal requirements.¹⁹² Because the Proposed Rule is in tension with state anti-discrimination laws and other federal requirements described below, this technical assistance will become incredibly difficult and costly to provide. This extends beyond agencies that administer CPD programs. For example, California’s Civil Rights Department has investigated many discrimination complaints where private housing providers attempt to rely on HUD guidance or rules to justify their discrimination, even though these guidance documents/rules do not apply to them. Housing providers’ confusion as to which law to apply requires the department to expend more time and resources in educating providers and in resolving complaints.

The Proposed Rule will likely result in an increase in complaints of discrimination to States’ agencies, requiring more State resources. This in turn will cause an increase in staffing needs and time spent on various stages of the complaint and resolution process, including agency investigation, administrative hearings, mediation, case resolution, and appeals. Making matters worse, housing and public accommodation discrimination victims often look first to these agencies to remedy the discrimination they face, and they are often the primary forum where anti-discrimination law enforcement takes place in our States. For example, in 2024, States and local agencies participating in the Fair Housing Assistance Program (“FHAP”) received 6,754 housing discrimination complaints, an increase of almost 200 complaints from the previous year.¹⁹³ Moreover, since the federal government has taken several other steps to weaken fair housing enforcement nationwide since early 2025, including by reducing HUD’s own fair housing enforcement capabilities¹⁹⁴, and charging significantly fewer housing discrimination cases than in the past¹⁹⁵, State and local agencies are likely to see an increase in volume in discrimination cases related to housing.

HUD has also failed to consider how the Proposed Rule will make it more difficult to detect and address discrimination in HUD-assisted housing, especially in states where HUD previously took lead in processing complaints from such housing providers like California. Because HUD

¹⁹¹ New York State Homes & Cmty. Renewal, *supra* note 180; New York State Office of Cmty. Renewal, *supra* note 180.

¹⁹² New York State Homes & Cmty. Renewal, *supra* note 180, at 3.

¹⁹³ Nat’l Fair Hous. All., *2025 Fair Housing Trends Report* 15 (2025), <https://nationalfairhousing.org/wp-content/uploads/2025/11/2025-NFHA-Fair-Housing-Trends-Report.pdf>.

¹⁹⁴ Cassandra Dumay & Katherine Hapgood, *White House Fires Hundreds of HUD Employees in Latest Staff Reduction*, Politico Pro (Oct. 10, 2025), <https://subscriber.politicopro.com/article/2025/10/white-house-fires-hundreds-of-hud-employees-in-latest-staff-reduction-00604042>; Katherine Hapgood, *HUD Shutdown Plan Reveals Extent of Trump Administration’s Reductions*, Politico Pro (Oct. 1, 2025), <https://subscriber.politicopro.com/article/2025/10/hud-shutdown-plan-reveals-extent-of-trump-administrations-reductions-00589903>; Debra Kamin, *Trump Appointees Roll Back Enforcement of Fair Housing Laws*, N.Y. Times (Sep. 22, 2025), <https://www.nytimes.com/2025/09/22/realestate/trump-fair-housing-laws.html>.

¹⁹⁵ Kamin, *supra* note 194.

will no longer investigate complaints related to sexual orientation and gender identity discrimination and seeks to prevent FHAP agencies from doing the same, it is highly unlikely that HUD will refer such complaints to FHAP agencies for investigation and resolution. This consequence is especially harmful for unrepresented housing discrimination victims who may miss the applicable state statute of limitations

C. The Proposed Rule violates the States' sovereignty guaranteed by the Tenth Amendment.

In the Proposed Rule, HUD states its plan to add a new subparagraph (e) to § 5.106, which would “subject to appropriate enforcement actions, including but not limited to the withholding or revocation of federal funds provided through the CPD programs,” any grant recipient that prioritizes compliance with state and local laws over federal policies.¹⁹⁶ HUD has failed to consider how this proposed addition violates the Tenth Amendment and State sovereignty.

“Under the Tenth Amendment, the states—not the federal government—wield the general police power.”¹⁹⁷ Public health and safety are the touchstones of this police power, and States have “great latitude” in legislating to protect the “lives, limbs, health, comfort, and quiet of all persons.”¹⁹⁸ There is no clearer example of the States’ sovereign prerogative to protect the health, safety, and general welfare of our residents than in protecting from discrimination.¹⁹⁹ Whenever “Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute.”²⁰⁰ And a federal agency may only preempt state laws when it has been delegated the authority to do so by Congress.²⁰¹

No such delegation of authority exists for HUD’s proposed § 5.106(e), which HUD explicitly intends to “preempt any conflicting state or local laws[.]”²⁰² Indeed, Congress has expressly stated that the States are free to regulate in this space so long as the States’ regulations

¹⁹⁶ Proposed Rule, 91 Fed. Reg. at 22,784.

¹⁹⁷ *Halgren v. City of Naperville*, 577 F. Supp. 3d 700, 721 (N.D. Ill. 2021) (citing U.S. Const. amend. X).

¹⁹⁸ *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (quoting *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985)).

¹⁹⁹ *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 609 (1982) (“Just as we have long recognized that a State’s interests in the health and well-being of its residents extend beyond mere physical interests to economic and commercial interests, we recognize a similar state interest in securing residents from the harmful effects of discrimination.”).

²⁰⁰ *Gregory v. Ashcroft*, 501 U.S. 452, 460–61 (1991) (citations omitted).

²⁰¹ See *WFS Fin. Inc. v. Dean*, 79 F. Supp. 2d 1024, 1028 (W.D. Wis. 1999).

²⁰² Proposed Rule, 91 Fed. Reg. at 22,780 (explicitly stating HUD’s intent to “preempt any conflicting state or local laws non-compliance [sic]”).

do not “constitute a discriminatory housing practice” under the Fair Housing Act.²⁰³ Protecting LGBTQ+ individuals from discrimination is entirely consistent with the Fair Housing Act.

D. The Proposed Rule raises substantial concerns under the Spending Clause.

The Proposed Rule, if finalized, would raise substantial concerns under the Spending Clause. HUD effectively proposes to condition billions of dollars of essential CPD funding on state and local compliance with requirements that are in substantial tension with our jurisdictions’ anti-discrimination laws and upend our longstanding responses to homelessness. Any effort to “coerce[] a State [or local government] to adopt a federal regulatory system as its own” is “contrary to our system of federalism.”²⁰⁴ Although Congress may provide incentives, the “financial inducement offered” must not be “so coercive as to pass the point at which pressure turns into compulsion.”²⁰⁵

The Proposed Rule would put States in the precarious position of acquiescing to HUD’s unlawful policy demands in potential violation of our own laws, or jeopardizing billions of dollars in essential federal funding. This puts millions of dollars at risk for the States. For example, in fiscal year 2025, California received over \$107 million, New York received nearly \$100 million, and Washington received over \$27 million in CPD formula grants.²⁰⁶ Washington typically receives an additional \$22.6 million in annual CPD funding through the CoC program.²⁰⁷

In addition, the Proposed Rule raises substantial uncertainty as to when and how States must comply with its terms. As an initial matter, the Proposed Rule is at best unclear regarding when HUD expects compliance with its complete reversal of longstanding regulations and at worst expects immediate compliance as it threatens to withhold all CPD funding for failure to abide by its terms. Moreover, it is entirely unclear how States can avoid running afoul of the Proposed Rule’s mandate to provide all benefits, services, and accommodations to an individual in accordance with an individual’s HUD-defined sex. For example, how does this requirement apply to entities that use CDBG funding to improve senior and community centers, or to provide grants to small businesses?²⁰⁸ For CPD recipients who do not operate sex-segregated facilities, what does it mean to “serve” someone in accordance with HUD’s definition of sex? This uncertainty is

²⁰³ 42 U.S.C. § 3615.

²⁰⁴ *Nat’l Federation of Independent Business (NFIB) v. Sebelius*, 567 U.S. 519, 577–78 (2012).

²⁰⁵ *South Dakota v. Dole*, 483 U.S. 203, 211 (1987) (quoting *Steward Machine Co. v. Davis*, 301 U.S. 548, 590 (1937)) (internal quotation marks omitted).

²⁰⁶ See FY 2025 CPD Allocations, *supra* note 10.

²⁰⁷ U.S. Dep’t of Hous. & Urban Dev., *HUD’s 2024 Continuum of Care Program Funding Awards: Washington* 2
https://files.hudexchange.info/reports/published/CoC_AwardComp_State_WA_2024.pdf (last visited June 2, 2026) (reflecting awards to Washington Balance of State CoC).

²⁰⁸ See, e.g., New York State Homes & Cmty. Renewal, *Community Development Block Grant*, <https://hcr.ny.gov/community-development-block-grant> (last visited May 15, 2026); Robin MacLennan, 33 *Community Development Block Grants Announced*, New York Construction Report (Nov. 23, 2023), <https://www.newyorkconstructionreport.com/33-community-development-block-grants-announced/>.

compounded by the practical implications of the Proposed Rule's demands. For example, in jurisdictions in which laws ensure that individuals have the right to have their identification documents reflect their gender identity²⁰⁹ how would States and grantees provide services in accordance with the Proposed Rule? In any event, States did not accept CPD funds agreeing to potentially forgo their own anti-discrimination protections or otherwise undermine the efficacy of their response to homelessness.²¹⁰ Indeed, many of the CPD funds the Proposed Rule places in jeopardy are formula funds mandated by statute.²¹¹ As such, the States did not consider let alone acquiesce to the conditioning of CPD funding on HUD's new policy demands. In addition, States are required to certify their compliance with the 2012 and 2016 Rules to receive CPD funding, the latter of which mandates the exact opposite of what the Proposed Rule would demand and aligns with our State and local laws.²¹²

Moreover, the Proposed Rule threatens to withhold or terminate CPD funding if States provide equal access in accordance with an individual's gender identity, which is not reasonably related to the purpose of CPD programs.²¹³ Finally, the Proposed Rule effectively conscripts States into carrying out HUD's animus-driven policies against transgender and gender-nonconforming people in violation of the Equal Protection Clause.²¹⁴

IV. HUD fails to consider the Proposed Rule's conflicts with the Constitution and federal law.

A. The Proposed Rule conflicts with the Equal Protection Clause.

The Proposed Rule raises significant concerns under the Equal Protection Clause. The proposed revisions to the 2016 Rule reflect a desire to harm transgender and gender-nonconforming people. Federal action motivated by discriminatory intent violates the Fifth

²⁰⁹ See, e.g., Wash. Admin. Code § 246-490-075; D.C. Code § 7-231.22; Cal. Health & Safety Code § 103426; Colo. Code Regs. § 1006-1-5.5; 410 Ill. Comp. Stat. 535/17; 10-146-016 Me. Code R. § 2; Mass. Gen. Laws ch. 46, § 13; Nev. Admin. Code § 440.030; N.Y. Pub. Health Law § 4138; Or. Rev. Stat. § 432.235 (allowing amendments to birth certificate gender markers); see also Movement Advancement Project, *Equality Maps: Identity Document Laws and Policies* (June 12, 2026), <https://mapresearch.org/equality-map/identity-document-laws-and-policies/> (reflecting that 22 states and Washington D.C. allow residents to amend the gender marker on their driver's licenses).

²¹⁰ See, e.g., *City & Cnty. of San Francisco v. Trump*, 783 F. Supp. 3d 1148, 1192–93 (N.D. Cal. 2025) (finding Spending Clause violation where localities were unaware of and therefore could not assent to conditions when choosing to receive federal funding); cf. *Tennessee v. Becerra*, 131 F.4th 350, 363 (6th Cir. 2025) (explaining that “HHS’s decision to discontinue” the relevant grant “based on the state’s refusal to adhere to the” applicable conditions “would violate the Spending Clause if it imposed new requirements after Tennessee’s acceptance of the grant”).

²¹¹ See, *supra*, Section I.A.1.

²¹² See, e.g., U.S. Dep’t Hous. & Urban Dev., *HUD Form 424-B Assurances and Certifications*, <https://www.hud.gov/sites/dfiles/OCHCO/documents/424-B.pdf> (last visited May 20, 2026).

²¹³ See *Dole*, 483 U.S. at 207–08.

²¹⁴ See *id.* at 208 (noting that “other constitutional provisions may provide an independent bar to the conditional grant of federal funds”).

Amendment’s guarantee of equal protection under the law because a bare “desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.”²¹⁵ The deliberate decision to take an adverse action against a person based on animus is unlawful.

HUD’s discriminatory intent is clear from the Proposed Rule itself and the context leading to the Proposed Rule. The record established during rulemaking for the 2012 Rule and 2016 Rule shows that transgender women will face increased threats of violence and homelessness in the absence of the 2016 Rule.²¹⁶ Despite this robust record, the Proposed Rule replaces that rule with a policy that requires CPD-funded programs to ignore the existence of transgender people and provide services to them in a manner that will risk their safety.²¹⁷

The Anti-Transgender Order similarly reveals the animus driving the proposed evisceration of the 2016 Rule. Despite studies showing that at least 2.8 million people in the United States identify as transgender,²¹⁸ the Anti-Transgender Order casts the non-existence of transgender people as the “truth” and labels transgender women as “men” scheming to “gain access to intimate single-sex spaces.”²¹⁹ The Order explicitly labels efforts to include and recognize transgender people as “wrong” and a threat to the “the validity of the entire American system.”²²⁰ One federal district court has already concluded that the Anti-Transgender Order’s denial, denigration, and erasure of “the very existence of transgender people” constitutes “baldfaced stigmatization” and purposeful discrimination in violation of the Fifth Amendment.²²¹

The context leading to the Proposed Rule and the Executive Order it relies upon is further evidence of discriminatory intent. During the 2024 Presidential Campaign, then-Presidential candidate Trump promoted lies about transgender people, including the falsehood that transgender identities were “invented” “a few years ago.”²²² President Trump labeled support for transgender people as “insanity” and falsely claimed that that “in all of human history nobody’s ever heard” of

²¹⁵ *U. S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534–37(1973); *see also Romer v. Evans*, 517 U.S. 620, 632 (1996) (holding that law prohibiting state and local anti-discrimination protections for gays and lesbians was “inexplicable by anything but animus” and violated the Equal Protection Clause).

²¹⁶ *See, supra*, Section I.B.1. (discussing evidence supporting 2012 and 2016 rules).

²¹⁷ *See, supra*, Section II.A. (outlining harms of proposed rule to transgender and gender non-conforming people).

²¹⁸ Jody L. Herman & Andrew R. Flores, *How Many Adults and Youth Identify as Transgender in the United States?*, Williams Institute (Aug. 2025), <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/>.

²¹⁹ Anti-Transgender Order, *supra* note 68, at 8,615 § 1.

²²⁰ *Id.*

²²¹ *Washington v. Trump*, 768 F. Supp. 3d 1239, 1250, 1277 (W.D. Wash. 2025) (citing *Romer v. Evans*, 517 U.S. 620, 634 (1996)).

²²² Kaitlin Housler, *President-Elect Trump Unveils Plan to End the Promotion of Gender Transitions, ‘Gender Affirming Care’ for Minors*, The Tennessee Star (Nov. 26, 2024), <https://tennesseestar.com/news/president-elect-trump-unveils-plan-to-end-the-promotion-of-gender-transitions-gender-affirming-care-for-minors/khousler/2024/11/26/> (linking to video posted by Trump Campaign on January 31, 2023, available at <https://www.youtube.com/watch?v=6xGOZwZo1S8>).

transgender people.²²³ Then-candidate Trump promised that if elected, he would direct agencies to “cease all programs that promote the concept of sex and gender transition at any age.”²²⁴ This animus-filled promise was partially realized with the Anti-Transgender Order and through HUD’s actions leading up to the publication of the Proposed Rule²²⁵; HUD now attempts to further punish transgender people by repealing and replacing the 2016 Rule.

For the same reasons, the Proposed Rule’s removal of language prohibiting discrimination on the basis of sexual orientation and gender identity suggests the intent was to discriminate. As described above, HUD reviewed substantial evidence demonstrating the need for the 2012 Rule, including language prohibiting discrimination on the basis of sexual orientation and gender identity.²²⁶ HUD’s unexplained departure from its previous findings suggests discriminatory animus rather than any rational purpose, as does the highly unusual nature of this proposal.²²⁷ The removal of language prohibiting discrimination is discordant with the FHA’s purpose “to provide, within constitutional limitations, for fair housing throughout the United States” and appears to be without precedent.²²⁸

Finally, like the other major components of the Proposed Rule, the removal of all references to “gender” appears motivated by a bare desire to harm a politically unpopular group. The excision of the term “gender” attempts to erase transgender people, intersex people, and other gender-nonconforming people from not only HUD regulations but also from records kept by HUD funding recipients. Because a federal action motivated by a bare desire to hurt a politically unpopular group is inconsistent with the Fifth Amendment’s Equal Protection guarantee, the Proposed Rule is contrary to the Constitution.

B. The Proposed Rule conflicts with the Fair Housing Act.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ For example, HUD ceased all enforcement of the 2016 Rule in February 2025, even though it remains in effect. HUDChannel, *Secretary Turner Halts Enforcement Actions of Gender Identity Rule*, at 0:15 (YouTube, Feb. 10, 2025), <https://www.youtube.com/watch?v=VyTGFmDtyTI>. HUD has also attempted to condition its grants on compliance with the Anti-Transgender EO. E.g. HUD, *General Administrative, National, and Departmental Policy Requirements and Terms for HUD’s Financial Assistance Programs* 5, <https://www.hud.gov/sites/default/files/CFO/documents/Administrative-Requirements-Addendum-FY2025.pdf>. Additionally, in September 2025, HUD informed state and local government agencies that the Fair Housing Assistance Program would no longer reimburse these agencies for investigating and resolving housing discrimination complaints based on sexual orientation and gender identity discrimination. Memorandum from Acting Dir. Nathan S. Roth, HUD Off. of Fair Hous. & Equal Opportunity to Fair Hous. Assistance Program Agency Directors, *Transmittal Memo: FY2025 Guidance Package for the Fair Housing Assistance Program* (Sep. 2025) (on file with authors).

²²⁶ See, *supra* Section I.B.1. (discussing evidence supporting 2012 and 2016 rules).

²²⁷ See *Romer*, 517 U.S. at 633 (quoting *Louisville Gas & Elec. Co. v. Coleman*, 277 U.S. 32, 37–38 (1928)) (“The absence of precedent for [the law at issue] is itself instructive; [d]iscriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.”).

²²⁸ 42 U.S.C. § 3601.

The Proposed Rule is contrary to or otherwise in tension with the Fair Housing Act (FHA). First, the removal of all regulatory language prohibiting discrimination based on sexual orientation and gender identity is contrary to the FHA. Federal courts, and HUD itself,²²⁹ have recognized that the FHA prohibits discrimination on both grounds. For example, in *Smith v. Avanti*, the District Court of Colorado recognized that discrimination against a lesbian couple was discrimination on the basis of sex when it was based on “stereotype norms concerning to or with whom a woman should be attracted, should marry, and/or should have children.”²³⁰ Likewise, the court concluded that discrimination against a transgender woman because she does not conform to male gender norms constitutes sex discrimination.²³¹ And in 2018, the 7th Circuit clarified that *any* discrimination based on sexual orientation qualifies as discrimination under the FHA.²³²

Supreme Court precedent further instructs that discrimination based on gender identity or sexual orientation necessarily constitutes sex discrimination prohibited by the FHA. In *Bostock*, the Court held “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”²³³ This holding, while specific to Title VII, applies in equal force to the FHA because the two statutes use nearly identical language to proscribe sex discrimination²³⁴ and courts rely on interpretations of Title VII when

²²⁹ Memorandum from John Trasviña, HUD Asst. Sec’y for Fair Housing and Equal Opportunity (FHEO), to FHEO Regional Directors, *Assessing Complaints that Involve Sexual Orientation, Gender Identity, and Gender Expression* (June 15, 2010), <https://www.fairhousingnc.org/wp-content/uploads/2012/03/HUD-Memo-re-Sexual-Orientation-Discrimination-6-15-2010.pdf> (explaining, over 16 years ago, that sexual orientation and gender identity discrimination can constitute sex discrimination under the FHA).

²³⁰ 249 F. Supp. 3d 1194, 1200 (D. Colo. 2017) (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989)).

²³¹ *Id.* at 1201. *See also* *Kaeo-Tomaselli v. Pi’ikoi Recovery House for Women*, No. CIV. 11-00670 LEK, 2011 WL 5572603, at *3 (D. Haw. Nov. 16, 2021) (finding transgender woman stated an FHA claim on gender stereotyping grounds).

²³² *Wetzel v. Glen St. Andrew Living Cmty., LLC*, 901 F.3d 856, 862 (7th Cir. 2018).

²³³ *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 660 (2020).

²³⁴ *Compare* 42 U.S.C. § 2000e-2(a) (“It shall be an unlawful employment practice for any employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individuals’ . . . sex[.]”) *with* 42 U.S.C. § 3604(b) (“[I]t shall be unlawful . . . to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . sex[.]”).

interpreting the FHA.²³⁵ As such, post-*Bostock* federal courts have recognized that the FHA prohibits any housing discrimination on the basis of sexual orientation and gender identity.²³⁶

The Proposed Rule therefore runs counter to the text of the FHA, case law interpreting the statute, and the explicit goal of the FHA “to provide, within constitutional limitations, for fair housing throughout the United States.”²³⁷

Second, HUD’s proposal to effectively mandate discrimination against transgender and gender-nonconforming people in the Proposed Rule similarly runs roughshod over the FHA. As previously recognized by HUD, the FHA applies to some shelters,²³⁸ and both courts and HUD have recognized that discrimination on the basis of gender identity is covered by the FHA’s sex discrimination provisions. Accordingly, HUD’s mandate in the Proposed Rule to now discriminate based on gender identity is contrary to the Act.

Finally, the Proposed Rule attempts to preempt more protective state laws despite language in the FHA that makes clear that the statute does not “invalidate or limit” state or local housing law except those that “require or permit” discriminatory housing practices prohibited by the Act.²³⁹ The Proposed Rule is thus contrary to the statute.

C. The Proposed Rule conflicts with the statutes that authorize CPD Programs and raises separation of powers concerns.

The Proposed Rule’s conditioning of State and local CPD funds on compliance with its requirements is contrary to the specific statutes that authorize CPD programs and which mandate

²³⁵ *Kyles v. J.K. Guardian Sec. Servs., Inc.*, 222 F.3d 289, 295 (7th Cir. 2000) (“Courts have recognized that Title VIII is the functional equivalent of Title VII, and so the provisions of these two statutes are given like construction and application”) (internal citation omitted); *Curto v. A Country Place Condo. Ass’n, Inc.*, 921 F.3d 405, 411 n. 4 (3d Cir. 2019) (“[W]e frequently rely on our Title VII jurisprudence to guide our understanding of the FHA’s antidiscrimination provisions.”); *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 533 (2015) (*Inclusive Communities*) (explaining that Title VII case law provides “essential background and instruction” when interpreting the FHA).

²³⁶ See, e.g., *Larocque v. Spring Green Corp.*, No. 22-CV-00249-MSM-PAS, 2024 WL 4198607, at *4 (D.R.I. Sept. 16, 2024); *United States v. SSM Props., LLC*, 619 F. Supp. 3d 602, 606 (S.D. Miss. 2022) (in dicta).

²³⁷ 42 U.S.C. § 3601.

²³⁸ 2016 Rule, 81 Fed. Reg. at 64,771 n. 15 (collecting cases where courts have held shelters and other short-term accommodations to be dwellings covered by the Fair Housing Act); see also 64,770–71 (“HUD does not categorically exclude temporary, emergency shelters providing short-term housing accommodations from coverage under the Fair Housing Act. In fact, HUD’s established policy and regulations explicitly identify homeless shelters and other short-term or transient housing as “dwellings” subject to the Act.”).

²³⁹ 42 U.S.C. § 3615; see also *Hunter v. Erickson*, 393 U.S. 385, 388–89 (1969) (noting that the FHA “specifically preserves and defers to local fair housing laws” when those fair housing laws are more protective than the FHA; and *Inclusive Communities*, 576 U.S. at 588 (Alito, J. dissenting) (“[N]othing prevents States and local government from enacting their own fair housing laws, including laws creating disparate-impact liability.”) (citing 42 U.S.C. § 3615).

that funding be allocated according to Congress’s proscribed formulas. For example, the CBDG Program provides that each “metropolitan city and urban county *shall* be entitled to an annual grant” in accordance with the statute’s formula.²⁴⁰ Several other statutes that authorize CPD programs similarly guarantee formula grants to states, including those that authorize HOPWA funds,²⁴¹ ESG funds,²⁴² and HOME funds.²⁴³ As courts have made clear, “[a]bsent Congressional authorization, the Administration may not redistribute or withhold properly appropriated funds in order to effectuate its own policy goals.”²⁴⁴ HUD’s proposal to withhold or revoke these funds has no basis in law and is contrary to the funding mandates of the statutes that authorize CPD funding. The Proposed Rule thus exceeds HUD’s statutory authority.²⁴⁵ For the same reasons, HUD’s proposal encroaches on Congress’s power to appropriate funds in violation of the Separation of Powers.²⁴⁶

Moreover, the Proposed Rule is in tension with the purpose of the statutes that authorize CPD funds. As described above, Congress enacted these programs to ensure shelter access and housing for all persons, particularly of low and moderate income, living in the United States.²⁴⁷ Yet, as explained throughout this letter, the rules will make it more difficult for LGBTQ+ people, and transgender people in particular, to access shelter and stay housed.

D. HUD fails to consider the Proposed Rule’s conflicts with the Violence Against Women Act and the Family Violence Prevention Services Act.

HUD fails to consider the Proposed Rule’s conflicts with the Violence Against Women Act (VAWA) and the Family Violence Prevention Services Act (FVPSA).

VAWA authorizes programs and funding that support survivors of gender-based violence.²⁴⁸ VAWA operates in part through grants made to States and administered by state agencies, which then make subgrants to organizations providing direct services to impacted

²⁴⁰ 42 U.S.C. § 5306(d) (CBDG) (emphasis added).

²⁴¹ *See, e.g.*, 42 U.S.C. § 12903.

²⁴² 42 U.S.C. §§ 11372–73.

²⁴³ 42 U.S.C. § 12747.

²⁴⁴ *New York v. Trump*, 769 F. Supp. 3d 119, 138–40 (D.R.I. 2025), *aff’d in part, vacated in part*, 171 F.4th 1 (1st Cir. 2026) (quoting *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1235 (9th Cir. 2018) (internal quotation marks omitted) (holding that plaintiff states had a likelihood of success on the merits that defendant agencies acted “not in accordance with the law” in violation of the APA when exceeding their statutory authority to carry out a categorical federal funding freeze).

²⁴⁵ *See New York v. Dep’t of Health & Human Servs.*, 414 F. Supp. 3d 475, 532–33 (S.D.N.Y. 2019) (enforcement remedy in proposed rule to terminate all of a recipient’s funding exceeds agency’s statutory authority).

²⁴⁶ *See, e.g., id.* at 561–62 (explaining that rule unlawfully expanding agency’s enforcement powers “aggrandizes the Executive Branch at Congress’s expense” in violation of the separation of powers).

²⁴⁷ *See, infra*, Section V.B.

²⁴⁸ Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 10446.

survivors.²⁴⁹ VAWA also authorizes discretionary grants to organizations, localities, and government institutions, including grants for transitional housing to assist survivors.²⁵⁰

VAWA explicitly prohibits discrimination based on gender identity and sexual orientation under any program or activity funded under the Act.²⁵¹ Recipients of funding under VAWA also receive CPD funding, including for shelter and housing. The Proposed Rule conflicts with VAWA's prohibition on such discrimination, making it effectively untenable for entities to comply with both. In addition, HUD fails to consider how recipients of CPD and VAWA funds, or States that administer both sources of funding to various subgrantees, can reconcile the Proposed Rule's conflicting provisions with VAWA.

Similarly, HUD fails to consider the Proposed Rule's conflict with FVPSA. Under FVPSA, States receive formula grants to provide shelter, supportive services, and access to community-based programs for survivors of interpersonal violence.²⁵² States, in turn, administer these funds through subgrants to entities for programs and projects to provide immediate shelter and support services for survivors.²⁵³ Recipients of funding under FVPSA may also receive CPD funding. FVPSA explicitly states that "No condition may be applied for the receipt of emergency shelter" under the Act.²⁵⁴ Yet, the Proposed Rule's requirement to place individuals in emergency shelters in accordance with HUD-defined sex along with giving providers the right to demand "reasonable assurances or evidence to establish a person's sex,"²⁵⁵ would effectively impose conditions on survivors seeking emergency shelter. For example, under the Proposed Rule facilities would be permitted and may indeed be forced to request verification of a person's HUD-defined sex before allowing access to shelter and other services, which FVPSA prohibits.

V. HUD otherwise fails to provide adequate justification for the Proposed Rule.

Even if the Proposed Rule were not unlawful for all the reasons outlined above, it is arbitrary and capricious because HUD fails to adequately explain or justify it.²⁵⁶ HUD does not "display awareness that it is changing position" nor does it "show that there are good reasons for the new policy."²⁵⁷ Here, a "more detailed justification" is required because the agency's prior policy "rests upon factual findings that contradict those which underlay [the] prior position" and "engendered serious reliance interests."²⁵⁸

²⁴⁹ 34 U.S.C. § 10446.

²⁵⁰ *See* 34 U.S.C. § 12351.

²⁵¹ 34 U.S.C. § 12291(b)(13).

²⁵² 42 U.S.C. § 10406(a).

²⁵³ *Id.* § 10408.

²⁵⁴ *Id.* § 10408(d)(2).

²⁵⁵ Proposed Rule, 91 Fed. Reg. at 22,784.

²⁵⁶ *Fox*, 556 U.S. at 515.

²⁵⁷ *Id.*

²⁵⁸ *Housatonic River Initiative v. EPA*, 75 F.4th at 270 (quoting *Fox*, 556 U.S. at 515) (internal quotation marks omitted).

A. The Anti-Transgender Order cannot support the Proposed Rule.

HUD claims that the Proposed Rule is justified by the Anti-Transgender Order.²⁵⁹ That is insufficient under the APA which applies to final agency action even when those actions attempt to implement an executive order.²⁶⁰ A regulation based on an executive order does not “insulate [agency action] from judicial review under the APA, even if the validity of the [executive order] were thereby drawn into question.”²⁶¹ As explained throughout this letter, the proposed rescission and replacement is arbitrary and capricious and contrary to law. The Proposed Rule therefore must be set aside under the APA notwithstanding the existence of the Anti-Transgender Order.

The Proposed Rule’s reliance on the Anti-Transgender Order is flawed because the Order itself is arbitrary and capricious. As noted above, at least one district court has called into question the legitimacy of the Order as a whole.²⁶² Further, the portions of the Order relevant to the Proposed Rule are themselves underexplained changes in policy. Courts,²⁶³ Congress,²⁶⁴ and the Executive Branch²⁶⁵ have all recognized the existence of transgender and gender-nonconforming people. The Anti-Transgender Order rejects that policy with little explanation or evidence.

B. HUD had authority to adopt the 2016 Rule.

²⁵⁹ Proposed Rule, 91 Fed. Reg. at 22,781–82.

²⁶⁰ *State v. Su*, 121 F.4th 1, 15 (9th Cir. 2024); see also *Kingdom v. Trump*, No. 1:25-CV-691-RCL, 2025 WL 1568238, at *10 (D.D.C. June 3, 2025) (“[A]s numerous courts have held, the fact that an agency’s actions were undertaken to fulfill a presidential directive does not exempt them from arbitrary-and-capricious review.”) (collecting similar cases).

²⁶¹ *Chamber of Com. Of U.S. v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996); see also *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 773 (9th Cir. 2018) (“The Rule [incorporating the presidential Proclamation] together with the Proclamation is arbitrary and capricious . . .”).

²⁶² *Washington v. Trump*, 768 F. Supp. 3d at 1250; See also *San Francisco A.I.D.S. Found. v. Trump*, 786 F. Supp. 3d 1184, 1214–17 (N.D. Cal. 2025) (finding plaintiffs were likely to succeed on equal protection challenge to provisions of Anti-Transgender Order related to grant funding and termination).

²⁶³ *Washington v. Trump*, 768 F. Supp. 3d 1239, 1250 (W.D. Wash. 2025); *QueerDoc, PLLC v. U.S. Dep’t of Justice*, 807 F. Supp. 3d 1295, 1303-04 (W.D. Wash. 2025) (quashing administrative subpoena issued to medical provider who treated transgender and gender-nonconforming minors because it was issued for an improper purpose to “pressure providers to cease offering gender-affirming care rather than to investigate specific unlawful conduct.”).

²⁶⁴ See, e.g., Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, 18 U.S.C. §§ 249(a)(2), (c)(4) (criminalizing violence motivated by “gender,” “gender identity,” and “sexual orientation”).

²⁶⁵ Proclamation No. 8387, Lesbian, Gay, Bisexual, and Transgender Pride Month, 74 Fed. Reg. 26,929 (June 1, 2009) (recognizing the contributions of Lesbian, Gay, Bisexual, and Transgender people and calling for “equal rights of all, regardless of sexual orientation or gender identity.”); See, e.g., Memo from John Trasviña, HUD Assistant Secretary for Fair Housing and Equal Opportunity (HEO), to FHEO Regional Directors, *supra* note 229 (noting that complaints involving sexual orientation, gender identity or gender expression might raise claims under the FHA and announcing FEHO’s plan to collect data related to gender identity in housing discrimination); Mia Macy, EEOC Appeal No. 0120120821 (April 20, 2012) (finding that discrimination against a person because they are transgender is discrimination based on sex in violation of Title VII); 2012 Rule, 77 Fed. Reg. at 5,663 (requiring all HUD-assisted or insured housing be made without regard to sexual orientation or gender identity).

The Proposed Rule states that the 2016 Rule is “without proper congressional authorization[,]”²⁶⁶ and so must be withdrawn. But the 2016 Rule fits comfortably within HUD’s rulemaking authority. First, the 2016 Rule falls under HUD’s authority pursuant to the HUD Act, to provide housing opportunity for all people living in the United States.²⁶⁷ Similarly, the Housing Act of 1949 requires that HUD exercise its powers, functions, and duties consistent with Congress’ goal of providing “a decent home and a suitable living environment for every American family.”²⁶⁸ Congress vests HUD with similarly broad rulemaking powers to promulgate rules and regulations necessary to carry out these mandates.²⁶⁹

Second, the 2016 Rule is also consistent with the broad remedial goals of CPD programs covered by the Rule. Indeed, the CPD program authorization statutes speak in broad terms: they mandate that HUD increase housing and shelter access for all people and confer broad rulemaking powers on HUD to reach this goal.²⁷⁰

Third, the 2016 Rule does not exceed HUD’s plenary authority and is consistent with the FHA.²⁷¹ HUD argues that the FHA’s failure to prohibit sex discrimination in free, temporary, emergency shelters or other buildings or facilities “evinces the intent of Congress to permit single-sex housing” in such situations. HUD further argues that 2016 Rule is in excess of this authority because it creates a new class of individuals to be protected by the FHA. But, as discussed here, these arguments fail on several fronts.

In sum, by ensuring that transgender and gender-nonconforming people are not arbitrarily excluded from HUD-funded shelters and facilities, the 2016 Rule furthers the HUD Act’s and CPD

²⁶⁶ Proposed Rule, 91 Fed. Reg. at 22,781.

²⁶⁷ 42 U.S.C. § 3531 (requiring HUD to “provide for full and appropriate consideration, at the national level, of the needs and interests of the Nation’s communities and of the people who live and work in them.”).

²⁶⁸ 42 U.S.C. § 1441.

²⁶⁹ 42 U.S.C. § 3535(d).

²⁷⁰ 42 U.S.C. §§ 12702, 12725 (giving HUD power to promulgate rules and regulations to “ensure that *every resident* of the United States has access to decent shelter or assistance in avoiding homelessness,” and “to improve housing opportunities for *all residents* of the United States, particularly members of disadvantaged minorities, on a nondiscriminatory basis” under the HOME Investment Partnerships Program) (emphasis added); 42 U.S.C. §§ 5301(c)(3)-(4), 5305(e)(1) (broad rulemaking power under the Housing and Community Development Act); 12 U.S.C. 4568(g)(1) (rulemaking authority in Housing Trust Fund program); 42 U.S.C. §§ 11301(b)(2) (rulemaking authority under the McKinney-Vento Homeless Assistance Act); *see also* 42 U.S.C. § 11376(a) (ESG program), 11387 (CoC program).

²⁷¹ In making this argument, HUD seemingly suggests that the 2016 Rule is in excess of congressional authorization because HUD did not rely upon the FHA in promulgating the rule. To the extent that HUD makes this argument, it is unpersuasive. HUD relied partially upon its rulemaking authority under the FHA when promulgating the 2016 Rule. 2016 Rule, at 64,769–70. As with the HUD Act, Housing Act of 1949, and CPD program enabling statutes, HUD enjoys broad rulemaking authority to carry out the FHA’s goal of providing for fair housing throughout the United States and “replac[ing] the ghettos by truly integrated and balanced living patterns.” 42 U.S.C. § 3614a; 42 U.S.C. § 3601; *Trafficante v. Metro Life Ins. Co.*, 409 U.S. 205, 211 (1972) (internal quotation marks omitted).

programs' goal of ensuring housing and shelter for all persons and the FHA's goal of promoting fair housing.²⁷² Accordingly, HUD cannot reasonably claim that the 2016 Rule is without proper congressional authorization, and this argument cannot support the Proposed Rule.

C. The Proposed Rule is not supported by any credible, relevant evidence and reveals HUD's pretextual purpose.

Finally, the Proposed Rule lacks credible evidence to support HUD's change in position. The Proposed Rule purports to be necessary to protect cisgender women's privacy and providers' religious liberties but provides no evidence that the 2016 Rule results in such harm.

Instead, the Proposed Rule relies upon irrelevant studies or inaccurate and discriminatory assumptions about transgender women—for example, that transgender people lie about their gender identity to get access to women and women's spaces. Further, the Proposed Rule claims that homeless women are at increased risk of sexual assault by transgender women, and that shared sleeping, bathroom, and other intimate settings places women at risk of assault and harassment. The one source cited in support of these assertions does not address the placement of transgender women in shelters at all.²⁷³ Likewise, HUD asserts that cisgender women are especially at risk of violence and harassment because "biological men may exploit the process of self-identification under the current rule to gain access to women's shelters."²⁷⁴ But in support of this position, the Proposed Rule cites statistics regarding the sexual offense conviction rate for transgender and gender-nonconforming people assigned male at birth in the United Kingdom.²⁷⁵ The Proposed Rule does not explain how these (irrelevant) statistics relate to its contention at all, or why it suggests that a new policy requiring shelters to house people based on sex is necessary.

The Proposed Rule also fails to provide evidence to substantiate the need to add new protections for shelter providers' religious liberties. In 2017, HUD reported that it could not identify any requests for waivers to or religious accommodation of the 2012 and 2016 Equal Access rules from the date of the 2012 Rule's publication to May 2017.²⁷⁶ In any event, religious

²⁷² *Accord Thorpe v. Housing Auth of the City of Durham*, 393 U.S. 268, 280–81 (1969) (upholding HUD circular requiring public housing authorities to follow certain procedural steps before initiating eviction proceedings against public housing tenants as proper exercise of HUD's rulemaking authority under the Housing Act of 1937 was reasonably related to the Act's goal of providing "a decent home and a suitable living environment for every American family").

²⁷³ See Proposed Rule, 91 Fed. Reg. at 22,781 (citing Lisa Goodman et al., *No Safe Place: Sexual Assault in the Lives of Homeless Women*, *Applied Research Forum* (2006), which does not discuss how the placement of so-called "biological males" in shelters impacts cisgender women, let alone mention how placing cisgender and transgender women together in homeless shelters puts the former at increased risk of violence and harassment).

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ Sarah Kellman et al., *The Dire Consequences of the Trump Administration's Attack on Transgender People's Access to Shelters*, *Center for American Progress* (Jul. 31, 2017), <https://www.americanprogress.org/article/dire-consequences-trump-administrations-attack-transgender-peoples-access-shelters/> ("There is no significant evidence that emergency shelters have petitioned the federal government for the kind of changes that HUD is considering. For example, HUD's response to a

beliefs, even sincerely held ones, cannot be used to invalidate or otherwise limit the application of anti-discrimination laws.²⁷⁷ HUD also provides no evidence that the number of shelters or beds have decreased because of providers' religious exercise concerns. To the contrary, recent reporting suggests that the number of shelter beds (HUD-funded or otherwise) has grown since the 2016 Rule's promulgation²⁷⁸, with nearly 40,000 shelter beds added between 2016 and 2023.²⁷⁹

Nor does *Downtown Soup Kitchen v. Anchorage*²⁸⁰ support this sudden change in policy. In that case, a faith-based homeless shelter alleged that a municipal anti-discrimination ordinance violated the First Amendment, Fourteenth Amendment, and the Establishment Clause because it would force the shelter to admit transgender women to its shelter. The district court granted a preliminary injunction in favor of the shelter because the shelter was not a public accommodation under the Anchorage ordinance, not because Anchorage's ordinance violated the Constitution, and the parties subsequently settled the case.²⁸¹ But the case is irrelevant to the Rules here: the plaintiff there did not sue HUD nor challenge the 2016 Rule or its implementation by HUD. The decision does not even *mention* the 2016 Rule. HUD's reliance on the opinion does not support the Proposed Rule. Ultimately, this is not *evidence* and does not support the Proposed Rule.

Unlike HUD's prior rulemakings on this issue, the Proposed Rule does not review new research conducted on this topic since its last rulemaking or describe any additional information HUD collected itself. The Proposed Rule is counter to the weight of the evidence that HUD previously concluded made the 2016 Rule necessary in the first place. HUD's failure to revisit "previous factual findings" and consider current information renders the Proposed Rule arbitrary and capricious.²⁸²

May 31, 2017, Freedom of Information Act (FOIA) request from the Center for American Progress for information regarding waivers or religious accommodations made under the 2012 and 2016 Equal Access rules from their date of publication to May 31, 2017, failed to locate any waiver requests from service providers").

²⁷⁷ *Accord Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 584 U.S. 617, 631–32 (2018) (noting that while "religious and philosophical objections are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law") (citing *Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 402, n. 5 (1968) (*per curiam*)).

²⁷⁸ Daniel Soucy et al., *State of Homelessness: 2025 Edition, Nat'l All. to End Homelessness* (NAEH) (Sept. 4, 2025), <https://endhomelessness.org/state-of-homelessness/> (stating that the United States' homeless response system added 60,143 shelter in 2024); Daniel Soucy et al., *State of Homelessness: 2024 Edition*, NAEH (Aug. 5, 2024), <https://endhomelessness.org/resources/research-and-analysis/state-of-homelessness-2024-edition/> (highlighting that "[b]etween 2022 and 2023, there was a 14 percent increase in the number of people staying in shelters on the night of the Point-in-Time Count").

²⁷⁹ Soucy et al., *State of Homelessness: 2024 Edition*, *supra* note 278.

²⁸⁰ See Proposed Rule, 91 Fed. Reg. at 22,781–82 (discussing *Downtown Soup Kitchen v. Municipal. of Anchorage*, 406 F. Supp. 3d 776 (D. Alaska 2019)).

²⁸¹ *Downtown Soup Kitchen*, 406 F. Supp. 3d at 794–97.

²⁸² *Organized Village of Kake*, 795 F.3d at 969.

HUD is unable to articulate any valid support for the Proposed Rule, and its proffered reasons amount to little more than pretext. Agencies must offer the true reason for a decision.²⁸³ This Rule does not.

VI. The Proposed Rule fails to comply with binding executive orders.

The Proposed Rule also fails to comply with Executive Orders 13132, 12866, and 13563, all of which HUD should have considered prior to promulgating the Rule. These failures also make the Proposed Rule unlawful.

The Proposed Rule has federalism implications within the meaning of Executive Order 13132.²⁸⁴ As discussed above, by forcing States and local jurisdictions to make the impossible choice between forgoing critical CPD funding and adhering to and enforcing their own anti-discrimination laws, the Proposed Rule would effectively preempt State and local law or jeopardize billions in funding on which States rely. In addition, HUD’s proposal will have “substantial direct effects on States,”²⁸⁵ including by severely harming our response to homelessness, causing confusion regarding conflicting responsibilities under HUD regulations and state and local requirements, and increasing the States’ costs to ensure compliance with anti-discrimination laws and provide technical assistance to HUD-funded entities within our jurisdictions. The Proposed Rule, therefore, should not be enacted without, at minimum, engaging in the required consultation and other requirements set forth in Executive Order 13132.

Further, the Proposed Rule acknowledges that the rule revisions are a “significant regulatory action” within the meaning of Executive Order 12866 but does not follow the community engagement requirements for such actions. Specifically, HUD has failed to “seek the involvement of those ... expected to be burdened by” the proposed rule, like the States, before issuing the proposed rule.²⁸⁶ Similarly, Executive Order 13563 requires that “[b]efore issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those ... who are potentially subject to such rulemaking.”²⁸⁷

No such community engagement occurred prior to the issuing of the notice containing the Proposed Rule. HUD has failed to engage with stakeholders—the States, tribes, local governments, and nonprofit organizations that form the backbone of the country’s response to homelessness and a national housing shortage—before proposing to back grant recipients into a corner that requires them to discriminate against LGBTQ+ individuals in violation of many States’ laws and

²⁸³ *Dep’t of Com. v. New York*, 588 U.S. 752, 780, 785 (2019); *Saget v. Trump*, 375 F. Supp. 3d 280, 361 (E.D.N.Y. 2019) (“An agency’s actions are arbitrary and capricious under the APA if they are pretextual”).

²⁸⁴ Proposed Rule, 91 Fed. Reg. at 22,782.

²⁸⁵ Exec. Order No. 13,132, § 1(a), 64 Fed. Reg. 43,255 (Aug 10, 1999).

²⁸⁶ Exec. Order No. 12,866, § 6(a)(1), 58 Fed. Reg. 51735 (Sept. 30, 1993).

²⁸⁷ Exec. Order No. 13,563, § 2(c), 76 Fed. Reg. 3821 § 1(c) (Jan. 18, 2011).

regulations, not to mention the service providers' own policies and preferences. HUD's process has complied with neither the spirit nor the letter of Executive Orders 12866 and 13563.

VII. Conclusion

If finalized, the Proposed Rule would cause significant and needless, direct harm to the States and our residents, especially transgender and gender-nonconforming individuals, members of the LGBTQ+ community, HUD-funded shelters and service providers. In light of all the foregoing, the States therefore urge HUD to withdraw its Proposed Rule.

Sincerely,



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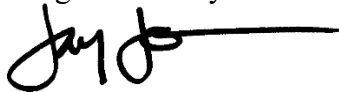
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