

August 10, 2017

The Hon. Benjamin Carson, M.D.
Secretary
U.S. Department of Housing and Urban Development
Attn: Rules Docket Clerk, Room 5218
Washington, DC 20410

Re: Opposing Petition to Repeal the HUD Equal Access Rule, codified in 24 C.F.R. Part 5

On behalf of the nation's leading organizations serving and advocating for women, survivors of domestic and sexual violence, youth and adults experiencing homelessness, and lesbian, gay, bisexual, and transgender Americans, and advocating for the civil rights of all Americans, we write to urge you to reject any proposal to repeal or weaken the fundamental guarantee of fairness established by HUD's Equal Access Rule, codified in 24 C.F.R. Part 5.

We understand some individuals have recently urged HUD to revisit the Equal Access Rule. Opposition to the Equal Access Rule does not represent the views or experience of the homelessness or domestic violence fields. The Equal Access Rule underwent a rigorous review process prior to being finalized to ensure it was designed to further HUD's mission "to create strong, sustainable, inclusive communities and affordable homes for all" and benefit the public. No new and significant information has since arisen that would necessitate a review of the Rule. No actual, real-world problem posed by the Rule in either its 2012 or 2016 formulation, or by the longstanding local and state laws and policies around the country on which the rule was based, has been identified. In fact, the Rule was and is well-founded and has been widely embraced by HUD's community partners.

The Equal Access Rule was adopted to protect Americans who rely on HUD-funded programs from unfair and harmful discrimination. Over 10 million Americans are lesbian, gay, bisexual, and transgender, including over 1.5 million who are Americans are transgender.¹ Many LGBT Americans face discrimination in housing and even when accessing emergency shelters. In a national survey of nearly 28,000 transgender Americans, nearly one in four (23%) reported facing housing discrimination in the last year.² Nearly one-third had experienced homelessness at some point, including 12% who reported experiencing homelessness in the last year alone.³ And of transgender respondents who experienced homelessness in the last year, more than one-quarter (26%) reported that they didn't seek shelter out of fear of being mistreated or turned away, while 4% reported they were actually turned away from a shelter for being transgender.⁴ Research conducted prior to the 2016 clarification of the Rule also found that more explicit policies at the state level were associated with lower rates of

¹ Gallup, In US, *More Adults Identifying as LGBT* (Jan. 2017), <http://www.gallup.com/poll/201731/lgbt-identification-rises.aspx>; Flores, A.R., Herman, J.L., Gates, G.J., & Brown, T.N.T., *How Many Adults Identify as Transgender in the United States* (Williams Institute, June 2016), <https://williamsinstitute.law.ucla.edu/research/how-many-adults-identify-as-transgender-in-the-united-states/#sthash.9wS45RTI.dpuf>.

² James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*, 180. Washington, DC: National Center for Transgender Equality.

³ *U.S. Transgender Survey*, 179.

⁴ *U.S. Transgender Survey*, 178-180.

refusal or discriminatory treatment at shelters.⁵ These findings confirm what many working in the homelessness field have known for years: anti-LGBT housing discrimination is real, and thousands of transgender individuals each year are unable to access shelter simply because of their transgender status.

The Equal Access Rule was developed over several years and multiple public comment periods.

Consistent with a substantial body of case law, since 2010 HUD has interpreted the Fair Housing Act to prohibit discrimination against transgender people. In 2012, HUD sought public comment on and adopted the Equal Access Rule to provide clear and comprehensive protection for individuals seeking assistance from HUD-funded programs from discrimination based on sexual orientation, gender identity, and marital status. Over several years, HUD studied the issue, engaged leaders in the housing and homelessness fields, and in 2015 the Department announced additional guidance for emergency shelters at the National Conference on Ending Homelessness, where it was positively received. Following another public comment period, HUD codified this guidance in a 2016 update to the Rule.

Leaders in the housing and homelessness field support the Equal Access Rule. Leading organizations in the housing and homelessness fields expressed their support through comments to HUD or public statements when the rule was adopted in 2012 and updated in 2016.⁶ Those organizations, including several of the undersigned, support the Equal Access Rule because it helps ensure that all in need of shelter and services through HUD’s community partners are treated fairly and equally. Leaders in the field know that these policies have worked in shelters and other community programs around the country for years.

Leaders in the domestic violence and sexual assault fields support the Equal Access Rule. In 2016, a coalition of over 300 local, state, and national domestic violence and sexual assault organizations—including nearly every state coalition—issued a statement strongly supporting transgender inclusive policies based on their experience and expertise. These organizations serve transgender victims every day, and understand that 47% of transgender adults have experienced sexual assault, including 10% in the last year.⁷ These experts, many of whom operate their own shelters, stated: “we favor laws and policies that protect transgender people from discrimination, including in accessing facilities that match the gender they live every day.”⁸

The Equal Access Rule was based on successful policies and practices around the country. The Equal Access Rule was modeled on successful state and local policies and laws for housing and shelters that have been in place successfully in many jurisdictions for years, including 20 states and hundreds of cities and counties. Shelters across the country—including shelters operated by signatories to this

⁵ Rooney, C., Durso, L.E., Gruberg, S. (2016). “Discrimination Against Transgender Women Seeking Access to Homeless Shelters.” Washington, DC: The Center for American Progress.

⁶ See, e.g., comments of National Alliance to End Homelessness (2011), National Coalition for the Homeless (2016), National Fair Housing Alliance (2011 and 2016), National Housing Law Project (2011 and 2016), National Law Center on Homelessness & Poverty (2016), and National Low Income Housing Coalition (2016). See also National Alliance to End Homelessness, *The Alliance applauds new rule to ensure equal access to shelter for transgender people* (Nov. 3, 2016), <http://www.endhomelessness.org/blog/entry/new-rule-to-ensure-equal-access-to-shelter-for-transg>.

⁷ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*, 205-206. Washington, DC: National Center for Transgender Equality.

⁸ National Consensus Statement of Anti-Sexual Assault & Domestic Violence Organizations in Support of Equal Access for the Transgender Community (April 2016), <http://endsexualviolence.org/where-we-stand/statement-of-antisexual-assault-domestic-violence-organizations-in-support-of-equal-access-for-the-transgender-community>.

letter have had transgender-inclusive policies in place successfully for years, some for well over a decade.

The Equal Access Rule is legally sound. Like countless other federal and state laws and regulations, the Equal Access Rule prohibits discrimination based on gender identity, as well as sexual orientation and marital status. The Rule is a valid exercise of HUD's authority to adopt reasonable rules that ensure HUD-funded programs are operated effectively and in a manner consistent with the purposes Congress created them for: to provide decent housing and shelter and serve those in need.⁹ In addition, HUD has interpreted the Fair Housing Act's sex discrimination prohibition to encompass anti-transgender discrimination since 2010, an interpretation embraced by numerous federal courts over the last two decades.¹⁰ The contention that the term gender identity is vague has no merit, as it is found in hundreds of federal and state statutes and regulations as well as standard dictionaries, and routinely used by major medical and mental health associations.

The Equal Access Rule imposes no new costs. There is no new or increased cost associated with the simple prohibition of arbitrary discrimination in HUD-funded programs. Rather, the rule simply helps ensure that HUD-funded programs meet the goals prescribed by Congress of meeting basic needs and strengthening communities.

In conclusion, we urge you to maintain the Equal Access Rule to ensure that the intended beneficiaries of HUD-funded programs are able to access these programs without discrimination based on factors unrelated to eligibility or need.

Signed:

⁹ See section 2 of the Housing Act of 1949 (42 U.S.C. 1441); section 2 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701t), sections 101 and 102 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701-702), and section 2(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 note); 42 U.S.C. § 3531i; 42 U.S.C. § 3535(d).

¹⁰ See, e.g., *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034 (7th Cir. May 30, 2017) (Title IX, Equal Protection); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011) (Equal Protection Clause); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005) (Title VII); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004) (Title VII); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000) (Equal Credit Opportunity Act); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000) (Gender Motivated Violence Act); *Smith v. Avanti*, --- F.Supp.3d ---, 2017 WL 1284723 (D. Colo. Apr. 5, 2017) (Fair Housing Act); *Mickens v. Gen. Elec. Co.*, No. 16-603, 2016 WL 7015665 (W.D. Ky. Nov. 29, 2016) (Title VII); *Students & Parents for Privacy v. U.S. Dep't of Educ.*, No. 16-cv-4945, 2016 WL 6134121 (N.D. Ill. Oct. 18, 2016) (Title IX); *Bd. of Educ. of Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 208 F.Supp.3d 850 (S.D. Ohio 2016), *stay pending appeal denied sub nom*, *Dodds v. U.S. Dep't of Educ.*, 845 F.3d 217 (6th Cir. 2016) (Title IX, Equal Protection Clause); *Cruz v. Zucker*, 195 F.Supp.3d 554 (S.D.N.Y. 2016) (Affordable Care Act); *Fabian v. Hosp. of Cent. Conn.*, 172 F.Supp.3d 509 (D. Conn. 2016) (Title VII); *Doe v. Ariz.*, No. CV-15-02399-PHX-DGC, 2016 WL 1089743 (D. Ariz. Mar. 31, 2016) (Title VII); *Dawson v. H&H Elec., Inc.*, No. 4:14CV00583 SWW, 2015 WL 5437101 (E.D. Ark. Sept. 15, 2015) (Title VII); *U.S. v. S.E. Okla. State Univ.*, No. CIV-15-324-C, 2015 WL 4606079 (Title VII); *E.E.O.C. v. R.G. & G.R. Harris Funeral Homes, Inc.*, 100 F.Supp.3d 594 (E.D. Mich. 2015) (Title VII); *Rumble v. Fairview Health Servs.*, No. 14-cv-2037, 2015 WL 1197415 (D. Minn. Mar. 16, 2015) (Affordable Care Act); *Finkle v. Howard Cty.*, 12 F.Supp.3d 780 (D. Md. 2014) (Title VII); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008) (Title VII); *Lopez v. River Oaks Imaging & Diagnostic Group, Inc.*, 542 F.Supp.2d 653 (S.D. Tex. 2008) (Title VII); *Mitchell v. Axcan Scandipharm, Inc.*, No. Civ.A. 05-243, 2006 WL 456173 (W.D. Pa. 2006) (Title VII); *Tronetti v. Healthnet Lakeshore Hosp.*, No. 03-CV-0375E, 2003 WL 22757935 (W.D.N.Y. Sept. 26, 2003) (Title VII). See also *Hively v. Ivy Tech*, 853 F.3d 339 (7th Cir. 2017) (en banc) (citing gender identity cases favorably and holding that sexual orientation discrimination constitutes sex discrimination). But see *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215 (10th Cir. 2007) (holding that discrimination based on "transsexualism" is not covered by Title VII *per se* but recognizing that some cases of discrimination against transgender people based on sex stereotypes are covered); *Texas v. United States*, 201 F.Supp.3d 810 (N.D. Tex. 2016) (holding Title IX does not cover gender identity discrimination).

National Organizations

American Civil Liberties Union
American Unity Fund
Anti-Defamation League
Asian Pacific Institute on Gender-Based Violence
Bassuk Center for Homeless and Vulnerable Children & Youth
Bend the Arc Jewish Action
Bisexual Resource Center
Casa de Esperanza: National Latin@ Network
Center for American Progress
Center for Social Innovation
Center for the Study of Social Policy
CenterLink: The Community of LGBT Centers
Coalition for Juvenile Justice
Council for Global Equality
Covenant House International
Family Equality Council
FORGE, Inc.
Freedom for All Americans
GLBTQ Legal Advocates & Defenders
Grounded Solutions Network
HomeBase
Human Rights Campaign
Lambda Legal
Legal Momentum, the Women's Legal Defense and Education Fund
LGBT Technology Partnership & Institute
Liz Bramlet Consulting, LLC
Movement Advancement Project
NAACP
National Alliance to End Homelessness
National Alliance to End Sexual Violence
National Asian Pacific American Women's Forum (NAPAWF)
National Black Justice Coalition
National CAPACD
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition Against Domestic Violence
National Coalition of Anti-Violence Programs
National Community Reinvestment Coalition (NCRC)
National Council of Jewish Women
National Fair Housing Alliance
National Health Care for the Homeless Council
National Housing Law Project
National Housing Trust
National Juvenile Justice Network

National Law Center on Homelessness & Poverty
National LGBTQ Task Force
National Low Income Housing Coalition
National Network for Youth
National Network to End Domestic Violence
National Resource Center on Domestic Violence
National Sexual Violence Resource Center
National Women's Law Center
NMAC
People For the American Way
Polaris
Pride at Work
SchoolHouse Connection
SparkAction
StandUp For Kids
Transgender Law Center
True Colors Fund
Union for Reform Judaism
URGE: Unite for Reproductive & Gender Equity
YWCA USA

State and Local Organizations

Arizona

Phoenix Counseling Center
1N10, Inc. (Phoenix)
Southern Arizona AIDS Foundation (Tuscon)

California

California Coalition Against Sexual Assault (CALCASA)
Equality California
Los Angeles LGBT Center
Community United Against Violence (San Francisco)
Pacific Center for Human Growth (Alameda County)
Sacramento LGBT Community Center (Sacramento)
San Francisco LGBT Center
Solano Pride Center (Fairfield)
The Source LGBT+ Center (Visalia)
Think Dignity (San Diego)

Colorado

Colorado Coalition Against Sexual Assault
Advocate Safehouse Project (Glenwood Springs)

Connecticut

Connecticut Alliance to End Sexual Violence
Triangle Community Center (Norwalk)

Florida

ALSO Youth (Sarasota)
SunServe (Wilton Manors)

Illinois

Illinois Coalition Against Sexual Assault
Illinois National Organization for Women
Center on Halsted (Chicago)
Central Illinois Pride Health Center (Bloomington)
Q Center (St Charles)

Iowa

Iowa Coalition Against Sexual Assault
Monsoon United Asian Women of Iowa
Crisis Intervention & Advocacy Center (Adel)
Domestic Violence Intervention Program (Iowa City)
Latinas Unidas Por Un Nuevo Amanecer (Des Moines)

Kansas

Kansas Coalition Against Sexual and Domestic Violence

Louisiana

LGBT Community Center of New Orleans

Maine

Maine Coalition Against Sexual Assault

Maryland

Friends of the Family (Baltimore)

Massachusetts

Jane Doe Inc., the Massachusetts Coalition Against Sexual Assault and Domestic Violence
The Violence Recovery Program (Boston)
Y2Y (Cambridge)

Michigan

OutFront Kalamazoo (Kalamazoo)
Ruth Ellis Center (Highland Park)

Missouri

Missouri Coalition Against Domestic and Sexual Violence

Montana

Montana Coalition Against Domestic and Sexual Violence

Nebraska

Nebraska Coalition to End Sexual and Domestic Violence

Outlinc (Lincoln)

Nevada

Nevada Coalition to End Domestic and Sexual Violence

The Gay and Lesbian Community Center of Southern Nevada (Las Vegas)

New Jersey

Hudson Pride (Jersey City)

New York

New York State Coalition Against Sexual Assault

Brooklyn Community Pride Center (NYC, Brooklyn)

The LOFT LGBT Community Services Center (White Plains)

North Carolina

NC Coalition Against Sexual Assault

Campaign for Southern Equality

Blue Ridge Pride Center, Inc. (Asheville)

Reach of Cherokee County (Murphy)

The Outer Banks Hotline, Inc. (Manteo)

Time Out Youth Center (Charlotte)

North Dakota

CAWS North Dakota

Oregon

Oregon Coalition Against Domestic & Sexual Violence

Brave Space, LLC (Portland)

New Avenues for Youth & The Sexual and Gender Minority Youth Resource Center (Portland)

Pennsylvania

Pennsylvania Coalition Against Rape

Bradbury-Sullivan LGBT Community Center (Allentown)

Centre Co. Women's Resource Center (State College)

Lancaster County Behavioral Health and Developmental Services (Lancaster)

SARCC (Lebanon)

Sullivan County Victim Services (Laporte)

Survivors, Inc. (Gettysburg)

The Abuse Network, Inc. (Lewistown)

The LGBT Center of Greater Reading (Reading)

The Women's Center, Inc. (Bloomsburg)
Transitions of PA (Lewistown)
Washington County Gay Straight Alliance, Inc. (Washington)
Women's Resources of Monroe County (Delaware Water Gap)
YWCA Carlisle (Carlisle)
YWCA Lancaster (Lancaster)

Tennessee

OUTMemphis (Memphis)

Texas

Resource Center (Dallas)
The Montrose Center (Houston)
Trans Pride Initiative (Dallas)

Vermont

Green Mountain Crossroads
Outright Vermont
Pride Center of Vermont (Burlington)

Virginia

Virginia Anti-Violence Project
Virginia Sexual and Domestic Violence Action Alliance
Diversity Richmond (Richmond)
Health Brigade (Richmond)
Lynchburg Diversity Center (Lynchburg)

Washington

Washington Coalition of Sexual Assault Programs
Rainbow Center, Tacoma
Gay City: Seattle's LGBTQ Center (Seattle)

Wisconsin

Wisconsin Coalition Against Sexual Assault
Milwaukee LGBT Community Center (Milwaukee)

Wyoming

Wyoming Coalition Against Domestic Violence and Sexual Assault