

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

June 29, 2026

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Office of the General Counsel

Rules Docket Clerk

Department of Housing and Urban Development

451 Seventh Street SW, Room 10276

Washington, DC 20410-0500

To Whom It May Concern:

The Legal Aid Justice Center (“LAJC”) and partner VA-based legal services organizations submit this comment in opposition to the U.S. Department of Housing and Urban Development’s (“HUD”) Notice of Proposed Rulemaking, “Equal Access to Housing in HUD Programs Revisions” (“Proposed Rule”). We oppose the Proposed Rule for a few reasons.

When it was originally established in 2012, the Equal Access Rule (“EAR”) ensured that individuals who qualified for certain housing programs could have access to shelter regardless of their sexual orientation, marital status, or gender identity. In 2016, HUD expanded these protections to ensure that all individuals in shelters funded by the Office of Community Planning and Development (“CPD”) could reside in spaces that aligned with their gender identity, rather than their sex assigned at birth. The Proposed Rule would instead eliminate these protections for transgender and nonbinary individuals seeking shelter or emergency services at CPD-funded facilities, which is directly in conflict with the original intent of the existing rule from 2016. Furthermore, if passed, the Proposed Rule will create legal uncertainty regarding gender identity protections in subsidized housing, both on a federal and state level. These gaps in legislation will make it difficult to understand when discrimination is prohibited and reveal even more complications when considering its tensions with existing housing law in Virginia.

In short, the Proposed Rule will have a detrimental impact on LAJC and the other Signatories’ client communities in Virginia by: (1) restricting access to federally subsidized facilities/shelters and (2) rolling back protections against discrimination toward transgender and nonbinary individuals in these spaces.

I. About the Signatories to this Comment Letter

LAJC is a 501(c)(3) nonprofit that partners with Virginia communities and clients to fight for racial, social, and economic justice. LAJC’s Housing and Consumer Justice Program defends tenants’ rights, including the right to safe, affordable, and dignified housing. Of particular concern to LAJC are policies that have a discriminatory impact on our client communities, including on

the basis of sex (including gender identity and sexual orientation), in violation of the federal Fair Housing Act, which HUD is tasked with enforcing, and companion Virginia fair housing laws.

The Access to Justice Clinic at the University of Richmond School of Law provides legal services to clients with limited incomes in civil matters, including housing, public benefits, family, and education law cases. Under the supervision of the Clinic Director, Professor Cassie Powell, student attorneys develop civil litigation and advocacy skills while advancing the rights of people experiencing poverty before local courts and administrative agencies. The Clinic routinely represents tenants in public and subsidized housing in eviction matters and administrative hearings.

Housing Opportunities Made Equal of Virginia, Inc. (“HOME”) is a 501(c)3 non-profit corporation and a HUD-approved housing counseling agency. HOME was born out of the necessity to enforce the Fair Housing Act. Our purpose is to address housing-related systemic inequities that perpetuate segregation, concentrations of poverty, and wealth inequality. We tackle systemically divisive housing practices through fair housing enforcement, research, advocacy, and statewide policy work. We also aid first-time homebuyers, those under the threat of foreclosure, and we assist housing choice voucher recipients in placing and maintaining their vouchers.

Founded in 1978, the **Virginia Poverty Law Center** (“VPLC”) is a 501(c)(3) that fights for equal access to justice for low-income Virginians. VPLC’s Housing Advocacy program focuses on improving tenants’ rights to safe, affordable and stable housing. VPLC emphasizes trying to ensure that tenants are not denied housing due to policies with a discriminatory impact.

Legal Aid Works has been providing high-quality civil representation and advocacy on behalf of low-income families since 1973 in seventeen mostly rural counties extending from the Blue Ridge Mountains to the Chesapeake Bay. Our advocacy efforts partner with homeowners and renters to avoid illegal evictions and foreclosures.

Established in 1966, **Legal Aid Society of Roanoke Valley** (“LASRV”) is the oldest staff-modeled legal aid society in Virginia. LASRV provides a full range of expert free civil legal services to qualifying low-income clients in the Roanoke Valley and surrounding counties. In recent years, almost sixty percent of LASRV’s caseload has involved housing instability, including cases in which the landlord is a public housing authority. LASRV is signing on to this comment out of concern that the Proposed Rule will lead to further housing instability and an increased risk of homelessness for low-income families.

II. Why this Proposed Rule’s effects Matter to LAJC’s Client Communities

a. Shelter Access

LAJC’s clients largely consist of low-income (below 200% of the federal poverty standards) individuals and families in Richmond, Petersburg, Charlottesville, the Eastern Shore, and Northern Virginia, many of whom identify outside the gender binary. This is due, in part, to

the disproportionate levels of poverty experienced by transgender, as opposed to cisgender, individuals. According to the latest United States Transgender Survey (USTS), the only nationally conducted survey of transgender individuals, over a third of the respondents were found to be experiencing poverty.¹ The other Signatories serve similar populations but in more limited jurisdictions with the exception of HOME that operates throughout the Commonwealth.

Not only do genderqueer people—individuals who identify outside of the traditional male/female binary—broadly face higher financial burdens, but they are also far more likely to experience housing insecurity than cisgender individuals.² In the same USTS survey from 2022, nearly a third of respondents experienced housing insecurity in their lifetime that could be directly attributed to their gender identity.³ What’s more is that our clients who identify as transgender or nonbinary often face a disproportionately high level of risk when experiencing housing insecurity due to harassment, lack of access to medical care, and general exclusion from cisgender spaces. LAJC takes a unique interest in USTS’s survey statistics because the respondents live disproportionately in the South (41%; the next-highest region was 23%), which USTS defines as including all of LAJC’s coverage areas in Virginia.⁴ The Proposed Rule will lead to the complete erasure of existing protections that seek to combat these issues that are exacerbated in genderqueer communities served by LAJC.

To understand the full extent of harm the Proposed Rule will deliver to transgender and nonbinary Virginians, it is important to understand the general picture of unhoused people in Virginia. An important statistic for assessing homelessness in any region is the Point-in-Time Count (PIT)—a yearly estimate of the number of unhoused individuals in a particular region on a single night in January. According to the Metropolitan Washington Council of Governments (COG), PIT counts for LAJC’s northern Virginia regions largely rose between 2025 and 2026.⁵ Drastically, in Alexandria, the COG found a 14 percent increase in the unhoused population from 2025 to 2026, while in Arlington, the drop during the same time frame amounted to only 1 percent.⁶ In LAJC’s other coverage regions of Norfolk, Charlottesville, and Richmond/Petersburg, there was either no change displayed between 2025 and 2026 or a slight decrease in the number of

¹ See SANDY E. JAMES ET AL., *EARLY INSIGHTS: A REPORT OF THE 2022 U.S. TRANSGENDER SURVEY* 21 (2022).

² See Jennifer L. Glick et al., *Housing Insecurity and Intersecting Social Determinants of Health Among Transgender People in the USA: A Targeted Ethnography*, 21 INT’L J. TRANSGENDERISM 337 (2020).

³ See JAMES, *supra* at 21.

⁴ See *id.*

⁵ See SAM KENNEY & HILARY CHAPMAN, METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS, *HOMELESSNESS IN METROPOLITAN WASHINGTON* 11 (2026).

⁶ See *id.*

unhoused people in those regions.⁷ Ultimately, the numbers ranged from 1365 in Fairfax to 189 in Alexandria.⁸

Although PIT counts are a start toward understanding homelessness in a region, they only scratch the surface of a complete understanding of the issue. Particularly in this case, none of the reports can break down their counts by gender identity because the statistics are merely estimates (e.g., the COG reports: “Single adults are *more likely* to identify as male (69%)”).⁹ Further, the PIT counts are limited to one night, so year-round fluctuations are not accounted for in the data.

Because more data would be needed for a comprehensive view, it is helpful to examine the PIT statistics alongside eviction data from recent years. RVA Eviction Lab reports from 2021 (January to March) show that cities like Norfolk had some of the highest eviction rates in the state (206 judgments over the course of three months).¹⁰ In 2025, during those same three months, Norfolk issued 1212 eviction judgments, a significant increase from just a few years prior.¹¹ Many other municipalities saw similar rises in eviction judgments from 2021 to 2025. For example, Fairfax saw only 84 eviction judgments in the 2021 three-month period rise to 858 in the same period in 2025. Though this data makes it clear that Virginia’s level of housing insecurity will continue to worsen if left unaddressed, it is still unclear how these judgments were classified by gender identity or sex assigned at birth.

We are accordingly left to interpret trends from national surveys, such as USTS, and apply them to Virginia’s worsening housing conditions for housing-insecure individuals. As evictions and PIT counts continue to rise, genderqueer individuals—who have been historically overburdened by issues of housing insecurity and poverty—will experience increasingly more instances of housing insecurity in Virginia in the coming years. Ultimately, the increase in these issues will lead to a heightened demand for shelters, particularly for transgender and nonbinary individuals.

With a prospectively heightened demand for shelter in the coming years, the Proposed Rule’s amendment to 24 C.F.R. § 5.106 will be particularly damaging to genderqueer individuals for a few reasons. By *mandating* that shelters admit individuals based on their “sex” rather than “gender identity,” shelters will be forced to collect evidence assessing biological characteristics.

⁷ See *Homelessness Point in Time Count*, THE PLANNING COUNCIL (July 28, 2025), https://data.norfolk.gov/dataset/Homelessness-Point-in-Time-Count/4crf-zrb8/about_data; see also *Winter 2026 Regional Homeless Snapshot*, HOMEWARD VA (2026), <https://www.homewardva.org/point-in-time-count>; *Homelessness by the Numbers*, BLUE RIDGE AREA COALITION FOR THE HOMELESS (May 2026), <https://www.blueridgehomeless.org/>.

⁸ See KENNEY, *supra* at 21.

⁹ See *id.*

¹⁰ See *2021 1st Semiannual Report*, RVA EVICTION LAB (Dec. 2021), <https://rvaevictionlab.org/2021/04/23/1st-quarter-2021-report/>.

¹¹ See *2025 1st Semiannual Report*, RVA EVICTION LAB (Dec. 2025), <https://rvaevictionlab.org/2025/12/03/2025-1st-semiannual-report/>.

This will force many shelters to gather information during the intake process that transgender or nonbinary individuals may be reluctant to share. As a result, many transgender people may be turned away during initial intake or assigned living arrangements that may put their safety at risk.

In Virginia, it is likely that individuals conducting intake procedures for many shelters would make quick judgments about individuals, leading to inaccurate gender-based assignments. An LAJC staff member anonymously contacted many of the shelters in Virginia to inquire about already existing intake policies. Many of the calls directed our staff member to a city social worker or crisis line and swiftly hung up. Furthermore, only one of the shelters contacted ever mentioned transgender or nonbinary individuals (saying “nonbinary folks stay at the site they feel most safe and comfortable”). If these interactions are any indication of how an unhoused individual is treated during the intake process, intake staff will be required to make assessments about an individual’s sex, which will lead to many incorrect assignments.

HUD’s justification for the Proposed Rule notably cites Executive Order 14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”¹² In short, this executive order proposes restrictions against transgender women, arguing they are men in search of “access to intimate single-sex spaces and activities designed for women, from women’s domestic abuse shelters to women’s workplace showers”.¹³ Returning to the data from USTS, nearly a third of respondents who had experienced housing insecurity in their lifetime were facing these struggles *as a result of their gender identity*.¹⁴ Individuals would not go through such lengths to receive gender affirming health care or undergo a socially stigmatizing social transition to receive the accommodations of the opposite sex. It is unclear what, if any, data exists to support HUD’s justification and this executive order.

Ultimately, the Proposed Rule will commit undue harm to already vulnerable transgender and nonbinary populations. On top of an ever-increasing demand for shelter in Virginia, the disproportionate level of transgender and nonbinary individuals who experience homelessness will rise along with it. If the proposed changes are put in place, this population will be at a greater risk of being denied shelter based on their gender or being assigned the wrong accommodations.

b. Subsidized Properties

The Proposed Rule will also negatively impact HUD subsidized housing for transgender and nonbinary individuals, on both the federal and state level. In addition to erasing protections against the discrimination of genderqueer individuals in CPD-funded shelters, the EAR Revision

¹² See *Equal Access to Housing in HUD Programs Revisions*, NAT’L HOUS. L. PROJECT (May 26, 2026), <https://www.nhlp.org/wp-content/uploads/2026.05.12-HJN-EAR-Revisions-Legal-Analysis.pdf>.

¹³ See *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, WHITE HOUSE (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

¹⁴ See JAMES, *supra* at 21.

permits discrimination in subsidized housing based on “gender identity” and perceived sexual orientation. This expansion of federally permitted discrimination can be attributed to the proposed language shifts limiting gender-based/sexual orientation protections to those based only on “sex” and marital status.¹⁵

These proposed language shifts create more confusion than clarity when considering whether sex discrimination, which is protected by the Fair Housing Act (FHA), extends to individuals based on their gender identity and/or sexual orientation. Prior to HUD’s proposed changes, a 2020 employment discrimination case, *Bostock v. Clayton Cnty., Georgia*, established precedent that sex-based discrimination encompassed certain LGBTQ+ identities. In *Bostock*, the Supreme Court held that firing a transgender or queer individual based on their identity is prohibited under Title VII of the Civil Rights Act of 1964.¹⁶ Despite the *Bostock* decision referring solely to employment discrimination, courts have since applied its reasoning to other forms of sex-based discrimination, including housing discrimination prohibited under the FHA.¹⁷

Although the Proposed Rule does not address *Bostock* directly, Executive Order 14168, which is used as the primary justification for HUD’s changes, rejects the *Bostock* decision and its prior application. Executive Order 14168 argues that “the prior Administration[‘s] [application of] . . . *Bostock* . . . requires gender-based access to single-sex spaces” and that “[t]his position is legally untenable and has harmed women.”¹⁸ But neither the Executive Order nor the Proposed Rule offers any evidence to substantiate the assertion that applying *Bostock* to protect transgender and nonbinary people has harmed women or compromised women’s safety in shelters, housing programs, or other single-sex spaces. HUD therefore relies on an unsupported safety rationale while failing to engage with the documented risks that transgender and nonbinary people face when they are denied equal access to housing and shelter consistent with their gender identity. Because the Proposed Rule indirectly addresses this issue through the Order rather than explicitly grappling with its application as Supreme Court precedent, interpretation of the Proposed Rule on the application of *Bostock* will be left up to the courts. Therefore, if HUD’s Proposed Rule were to be implemented, cases involving housing discrimination based on gender identity as an extension of the FHA’s protections on the basis of sex would fall on judges’ willingness to treat Executive Order 14168 as narrowing (or not narrowing) the current understanding of sex discrimination precedent, including under the FHA. These gaps between the Proposed Rule and

¹⁵ 91 Fed. Reg. 22779.

¹⁶ See *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644 (2020).

¹⁷ See, e.g., *L.B. v. Premera Blue Cross*, 781 F. Supp. 3d 1128 (2025) (holding Premera’s medical policy violated the Affordable Care Act and discriminated on the basis of sex when denying a transgender male insurance coverage for gender-affirming surgery); *Bostock*, 590 U.S. at 728 (“Similar claims may be brought under the Fair Housing Act”).

¹⁸ See *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, WHITE HOUSE (Jan. 20, 2025).

existing governing law are deeply troubling and become even more consequential to LAJC's client communities when turning to existing *Virginia* law.

c. Tensions Between the Proposed Rule and VFHL

The Proposed Rule, and specifically its changes to the EAR, creates serious tension with the Virginia Fair Housing Law ("VFHL"), which expressly protects Virginians from housing discrimination based on sexual orientation and gender identity. The VFHL requires federally funded facilities in the Commonwealth to provide fair housing to all of its citizens "regardless of race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, *gender identity*, military status, or disability" (emphasis added).¹⁹ The VFHL defines "gender identity" as "the gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth."²⁰ These protections reflect Virginia's clear statutory judgment that transgender and nonbinary people must be able to access housing and shelter without discrimination based on gender identity.

HUD's Proposed Rule points in the opposite direction. It would eliminate any and all references to "gender" and "gender identity" from the EAR, substituting a definition of "sex" limited to "an individual's immutable biological classification as male or female."²¹ In doing so, HUD has not simply redefined a term; it has implemented a floor where Virginia intends to be a ceiling. HUD appears to recognize this conflict. In the preamble, HUD appears to assert that the Proposed Rule would preempt conflicting state or local requirements. The proposed regulatory text then heightens this conflict in subsection (e), which provides that "[n]on-compliance with these regulations by state or local entities due to adherence to conflicting local laws or policies may be considered a violation of federal requirements," subject to enforcement actions including "the withholding or revocation of federal funds" from covered CPD programs.²²

This tension is deeply problematic. First, this framework creates a serious potential preemption problem. But even setting aside how courts may ultimately resolve that issue, the immediate practical consequence is clear: federally funded shelters and emergency housing providers in Virginia would be placed in an impossible position. If they comply with Virginia law by allowing transgender and nonbinary people to access shelter or housing consistent with their gender identity, they could be treated as noncompliant with federal requirements and risk enforcement action or loss of federal funding. If they instead follow HUD's Proposed Rule by denying, restricting, or altering access based on a person's sex assigned at birth rather than gender identity, they may violate the VFHL and become subject to state enforcement or private legal

¹⁹ Va. Code Ann. § 36-96.1 *et seq.*

²⁰ *Id.*

²¹ 90 Fed. Reg. 8615.

²² See *Generally Equal Access to Housing in HUD Programs Revisions: Legal Analysis*, NAT'L HOUS. L. PROJECT (May 26, 2026), <https://www.nhlp.org/wp-content/uploads/2026.05.12-HJN-EAR-Revisions-Legal-Analysis.pdf> (offering an in-depth analysis on the tensions between HUD's Proposed Rule and the Virginia Fair Housing Law).

action. In either direction, the Proposed Rule creates legal uncertainty, operational instability, and significant risk for the very providers tasked with serving people in crisis.

That is a central problem. The Proposed Rule does not provide clarity for providers; it forces them to choose between federal funding and compliance with state civil rights law. For emergency shelters and housing providers operating with limited resources, the threat of losing federal funds is not abstract. It could reduce shelter capacity, destabilize services, and harm all people who rely on those programs. At the same time, preserving federal funding by following the Proposed Rule would require providers to expose transgender and nonbinary Virginians to discriminatory treatment that Virginia law expressly prohibits.

Second, the proposal will eliminate federal enforcement of gender-based housing discrimination claims. By removing gender identity from the EAR, HUD would shift much of the responsibility for enforcing those rights onto state agencies and state courts. In Virginia, litigants who experience discrimination may increasingly rely on the VFHL because it expressly protects gender identity, rather than pursuing claims through a federal framework that no longer clearly recognizes those protections. This shift could increase the volume of state-level complaints and litigation while reducing the benefit of a uniform federal enforcement mechanism. The result may be slower resolution of claims and greater variability in outcomes as courts across different jurisdictions interpret and apply state-level protections on a case-by-case basis. Rather than promoting clarity and uniformity, the Proposed Rule may generate greater uncertainty for both housing providers and residents seeking to vindicate their rights.

Third, federally funded facilities across the Commonwealth would bear the operational burden. HUD itself acknowledges that “it cannot provide the exact number of entities” that would be impacted. However, it estimates that approximately 2,350 emergency shelters receive HUD funding.²³ Each of these facilities would need to reconcile the tension between state and federal law and, worse, risk losing federal funds by choosing the wrong side.

Finally, and most critically, these changes would compromise the housing security of those most in need. As of 2026, 40% of homeless and low-income residents in Virginia identify as members of the LGBTQ+ community.²⁴ Among that group, Black LGBTQ+ youth and transgender individuals face the highest risk of homelessness in their lifetime.²⁵ Eliminating the EAR’s protections for LGBTQ+ community members would likely lead to increased scrutiny of their identities, resulting in higher rates of rejection, eviction, and/or hostile living environments for an already vulnerable population. In other words, federally funded facilities like subsidized housing

²³ *Id.*

²⁴ *Advocacy Opportunity: Help Protect the Equal Access Rule*, VA. HOUS. ALL. (June 6, 2026), <https://vahousingalliance.org/equal-access-rule/>; see also *307,000 LGBTQ people in Virginia are Vulnerable to Discrimination*, WILLIAMS INST. SCH. OF L. (Jan. 9, 2020), <https://williamsinstitute.law.ucla.edu/press/307000-lgbt-people-in-virginia-are-vulnerable-to-discrimination/>.

²⁵ *Id.*

and emergency shelters are often the last line of protection between safety and sleeping on the street for these individuals. HUD's proposed changes would therefore undermine that protection at precisely the moment it is needed most.

III. Conclusion

We respectfully urge HUD to withdraw the Proposed Rule and retain the Equal Access Rule's existing protections. The Proposed Rule would not merely revise terminology; it would fundamentally alter the framework governing access to federally funded housing and shelter programs by eliminating longstanding protections for transgender and nonbinary individuals and replacing them with a standard that conflicts with the legal protections recognized in Virginia and many other jurisdictions.

The Proposed Rule also creates significant uncertainty for federally funded housing providers. By establishing federal requirements that may conflict with state civil-rights laws, the proposal places providers in the untenable position of choosing between compliance with state law and the risk of federal enforcement consequences, including the potential loss of critical funding. Rather than promoting consistency and clarity, the Proposed Rule is likely to generate confusion, increase administrative burdens, and create instability for programs serving individuals and families in crisis. Most importantly, the Proposed Rule threatens to reduce access to safe housing and shelter for some of the Commonwealth's most vulnerable residents.

We therefore urge HUD to maintain protections that ensure all individuals, including transgender and nonbinary persons, can access federally funded housing and shelter programs without discrimination, while preserving regulatory consistency for providers and respecting the fair-housing protections established under Virginia law.

Sincerely,

Housing Opportunities Made Equal of Virginia, Inc.

The Legal Aid Justice Center²⁶

The Legal Aid Society of Roanoke Valley

Legal Aid Works

The University of Richmond School of Law Access to Justice Clinic

Virginia Poverty Law Center

²⁶ The following LAJC staff drafted and edited this comment letter: Zhue Azuaje, *Staff Attorney*; Katelyn Bennett, *Law Clerk*; Catherine Cone, *Legal Director, Housing and Consumer Justice Program*; Lauren King, *Senior Supervising Attorney*; Ella Sher, *Law Clerk*.