

# United States Senate

WASHINGTON, DC 20510

June 13, 2019

The Honorable Benjamin S. Carson, Sr., M.D.  
Secretary  
United States Department of Housing and Urban Development  
451 Seventh Street S.W.  
Washington, DC 20410

Dear Secretary Carson:

We write to oppose and request additional information about the Department of Housing and Urban Development's ("HUD" or "the Department") recently released proposal weakening discrimination protections in HUD-funded emergency and temporary homeless shelters based on sex, including sexual orientation and gender identity.<sup>1</sup> Transgender individuals in the United States face significant barriers to accessing essential services – including housing. HUD's proposal puts homeless transgender people, a population already facing enormous stigma, at risk of further discrimination. We demand the Department immediately withdraw the proposal and cease any action to reduce protections for transgender individuals.

In its spring 2019 unified regulatory agenda, HUD announced a proposed rule that would allow Shelter Providers to consider an individual's sex assigned at birth, rather than their gender identity, in determining accommodation within shelters and whether to admit an individual at all.<sup>2</sup> This is a significant change from the Department's current policy, set by the 2016 Equal Access Rule. That rule ensures that all shelters receiving HUD funding afford equal access to shelter facilities, programs, benefits, and services to individuals in accordance with their gender identity.<sup>3</sup> This proposed change would weaken protections for transgender people experiencing homelessness and would likely result in federally-funded shelters denying access to transgender people or forcing transgender people into accommodations that do not align with their gender. It also could subject people to invasive inquiries into their gender identity or anatomy – which are barred by the current rule – when they attempt to access shelter services.

Access to shelter is a fundamental human right, and any effort to discriminate against transgender people in federally-funded shelters, housing, and facilities benefits no one. According to the Report of the 2015 U.S. Transgender Survey, nearly one-in-four transgender adults report experiencing some kind of housing discrimination, including being evicted or

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<sup>1</sup> "Revised Requirements Under Community Planning and Development Housing Programs (FR-6152)," <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=2506-AC53>.

<sup>2</sup> *Id.*

<sup>3</sup> Federal Register, "Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs," September 21, 2016, <https://www.federalregister.gov/documents/2016/09/21/2016-22589/equal-access-in-accordance-with-an-individuals-gender-identity-in-community-planning-and-development>.

denied a home.<sup>4</sup> Almost one-third of transgender individuals report experiencing homelessness at some point in their lives, and transgender women of color experience especially high rates of homelessness. Seven-in-ten transgender individuals who accessed shelter services faced mistreatment, including being kicked out, harassed, or assaulted, because of their gender identity.<sup>5</sup>

In developing the 2016 Equal Access Rule, HUD found that transgender and gender nonconforming persons experience “significant violence, harassment, and discrimination in attempting to access programs, benefits, services, and accommodations.”<sup>6</sup> In 2016, HUD reported that transgender persons are often discriminatorily excluded from shelters or face perilous conditions in shelters that correspond to their sex assigned at birth. According to some homeless service providers, if given the choice between a shelter designated for their sex assigned at birth or sleeping on the streets, many transgender individuals without homes will choose to sleep on the street.<sup>7</sup>

Homelessness and discrimination causing a lack of access to shelter have a particularly significant impact on transgender and gender non-conforming youth. Family rejection, discrimination, and violence have contributed to the disproportionately large number of LGBTQ young people who experience homelessness in the United States.<sup>8</sup> LGBTQ youth have a 120% increased risk of experiencing homelessness compared to youth who identify as heterosexual and cisgender.<sup>9</sup> Nearly one in four young Black men, ages 18 to 25, identifying as LGBTQ reported homelessness in the last 12 months.<sup>10</sup> This proposed rule would have a particularly harmful and disproportionate impact on transgender young people who are most in need of safe shelters.

There is broad consensus – voiced by hundreds of national, state, and local service providers and organizations – that full and equal access to shelters for transgender people is critical for their safety and security.<sup>11</sup> This consensus must be backed by strong federal rules. In April, you

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<sup>4</sup> National Center for Transgender Equality, “The Report of the 2015 U.S. Transgender Survey,” December 2016, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> Federal Register, “Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs,” September 21, 2016, <https://www.govinfo.gov/content/pkg/FR-2016-09-21/pdf/2016-22589.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> The Williams Institute, “Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who are Homeless or At Risk of Becoming Homeless,” 2012, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf>.

<sup>9</sup> Morton, M.H., Dworsky, A., & Samuels, G.M. (2017). Missed opportunities: Youth homelessness in America. National estimates. Chicago, IL: Chapin Hall at the University of Chicago. <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf>.

<sup>10</sup> Morton, M.H., Samuels, G.M., Dworsky, A., & Patel, S. (2018). Missed opportunities: LGBTQ youth homelessness in America. Chicago, IL: Chapin Hall at the University of Chicago. <https://www.chapinhall.org/wp-content/uploads/VoYC-LGBTQ-Brief-FINAL.pdf>.

<sup>11</sup> The National Task Force to End Sexual and Domestic Violence, “National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community,” April 13, 2018, <http://www.4vawa.org/ntf-action-alerts-and-news/2018/4/12/national-consensus-statement-of-anti-sexual-assault-and-domestic-violence-organizations-in-support-of-full-and-equal-access-for-the-transgender-community>.

pointed to the Equal Access Rule as evidence that HUD takes seriously the discrimination and harassment transgender people face in shelters.<sup>12</sup> Even more troubling, the day before the Department released its proposal, you told Congress: “I’m not currently anticipating changing the rule” and explained, “the rules from 2012 and 2016 adequately provide fairness for all communities.”<sup>13</sup> Yet despite the national consensus and your previous statements, HUD announced its proposal to gut the rule and undermine critical protections for transgender people on May 22, 2019.

HUD’s announcement is also just one piece of the Administration’s ongoing and extensive efforts to undermine the civil rights of transgender individuals. The Departments of Justice and Education have retracted guidance protecting transgender students under Title IX.<sup>14</sup> The Department of Health and Human Services is currently working to roll back a rule barring discrimination against transgender individuals in health care settings.<sup>15</sup> The Administration has put into effect a policy of discrimination against transgender service members.<sup>16</sup> And HUD itself has removed LGBTQ resources from its website and impeded research into housing discrimination and homelessness among LGBTQ individuals.<sup>17</sup>

This effort to reverse the Equal Access Rule and its enforcement mechanisms is cruel and unacceptable. It will essentially give HUD’s backing to shelters that willfully discriminate against transgender individuals – putting thousands of homeless youth and adults at risk. We urge you to rescind the proposed rule and maintain the necessary protections to keep safe the many transgender individuals who are experiencing homelessness. To help us understand HUD’s inexplicable actions on this issue, and the clear disparity between your stated intention not to disturb the Equal Access Rule and HUD’s action the next day to undermine that rule, we ask that you provide written answers to the following questions no later than June 27, 2019. We also ask that you provide us with a briefing for Congressional staff no later than July 11, 2019, and that this briefing be conducted by David Woll, Principal Deputy Assistant Secretary for Community Planning and Development.

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<sup>12</sup> NBC News, “Ben Carson questioned on HUD’s lack of LGBTQ nondiscrimination guidance,” Eileen Street, April 4, 2019, <https://www.nbcnews.com/feature/nbc-out/ben-carson-questioned-hud-s-lack-lgbtq-nondiscrimination-guidance-n990821>.

<sup>13</sup> Washington Post, “Rep. Jennifer Wexton says ‘inept’ Ben Carson should resign as HUD secretary,” Justin Wm. Moyer, May 23, 2019, [https://www.washingtonpost.com/local/virginia-politics/rep-jennifer-wexton-says-inept-ben-carson-should-resign-as-hud-secretary/2019/05/23/45f8d9f0-7d84-11e9-a3dd-d481bcdabfe6\\_story.html?utm\\_term=.dcac512a80c2](https://www.washingtonpost.com/local/virginia-politics/rep-jennifer-wexton-says-inept-ben-carson-should-resign-as-hud-secretary/2019/05/23/45f8d9f0-7d84-11e9-a3dd-d481bcdabfe6_story.html?utm_term=.dcac512a80c2); House Committee on Financial Services, “Housing and Urban Development Department Oversight Hearing,” May 21, 2019, <https://www.c-span.org/video/?460930-1/housing-urban-development-department-oversight-hearing&start=0>.

<sup>14</sup> Sandra Battle, Acting Assistant Secretary for Civil Rights, U.S. Dep’t of Ed., and T.E. Wheeler, II, Acting Assistant Attorney General for Civil Rights, U.S. Dep’t of Justice, Dear Colleague Letter, Feb. 22, 2017, <https://www.justice.gov/opa/press-release/file/941551/download>.

<sup>15</sup> New York Times, “Trump Administration Proposes Rollback of Transgender Protections,” Abby Goodnough, Erica L. Green and Margot Sanger-Katz, May 24, 2019, <https://www.nytimes.com/2019/05/24/us/politics/donald-trump-transgender-protections.html?rref=collection%2Ftimestopic%2FHealth%20and%20Human%20Services%20Department>.

<sup>16</sup> Associated Press, “New Pentagon Transgender Rule Sets Limits for Troops,” Lolita C. Baldor, March 12, 2019, <https://apnews.com/ae07308b29c342429c3c627b7fc0b404>.

<sup>17</sup> ProPublica and New York Magazine, “Is Anybody Home at HUD?”, Alec MacGillis, August 22, 2017, <https://www.propublica.org/article/is-anybody-home-at-hud-secretary-ben-carson>.

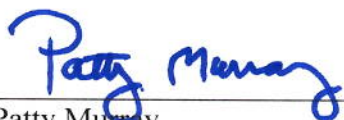
1. When did HUD begin discussions regarding the “Revised Requirements Under Community Planning and Development Housing Program” announced in its spring 2019 unified regulatory agenda? Which specific political appointees have been involved in drafting and directing the drafting of this proposed rule?
2. When did you first become aware of this proposal? If you were aware of this proposal before May 21, 2019, why did you – in your testimony before the House Financial Services Committee on May 21, 2019 – say that HUD is “not currently anticipating changing” the Equal Access Rules?
3. Did HUD staff conduct any analysis to assess the impact of the proposal on LGBTQ individuals, including youth and individuals of color? If so, what did these analyses find? Please provide copies of all such analyses.
4. Did HUD contract an independent analysis to assess the impact of the proposal on LGBTQ individuals, including youth and individuals of color? If so, what did these analyses find? Please provide copies of all such analyses.
5. Following an intensive, years-long study of the issue, HUD concluded in 2016 that “all individuals, including transgender persons and other gender nonconforming persons, can be safely accommodated in shelters and other buildings and facilities in accordance with their gender identity,” and that “[p]rivacy concerns can be addressed through policy adjustments.”<sup>18</sup> Does HUD now dispute these findings? If so, what new evidence leads it to do so?
6. Did HUD consult with any outside entities either before or during the drafting and publishing of this proposal? If so, please provide the list of all outside entities or consulted.
7. Please provide all documents and communications referring or relating to HUD’s deliberations for the “Revised Requirements Under Community Planning and Development Housing Program” announced in its spring 2019 unified regulatory agenda.

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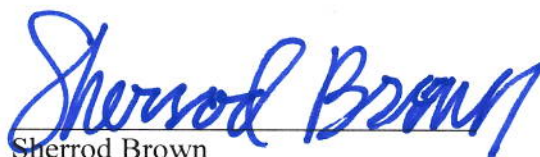
<sup>18</sup> Federal Register, “Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs,” September 21, 2016, <https://www.govinfo.gov/content/pkg/FR-2016-09-21/pdf/2016-22589.pdf>.

Thank you in advance for your attention to this matter. If you have any questions, or would like to further discuss this issue, then please contact Michael Huggins, Democratic staff for the Committee on Health, Education, Labor, and Pensions at (202) 224-0767, or Beth Cooper, Democratic staff for the Committee on Banking, Housing, and Urban Affairs at (202) 224-2336.

Sincerely,



Patty Murray  
United States Senator



Sherrod Brown  
United States Senator




Elizabeth Warren  
United States Senator



Robert Menendez  
United States Senator



Catherine Cortez Masto  
United States Senator



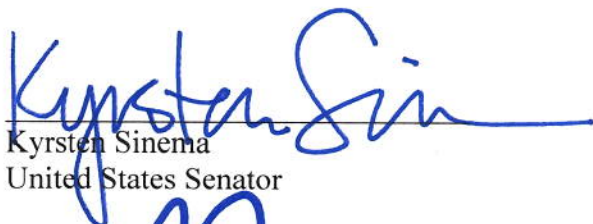
Brian Schatz  
United States Senator



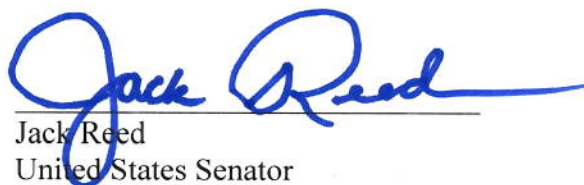
Tina Smith  
United States Senator



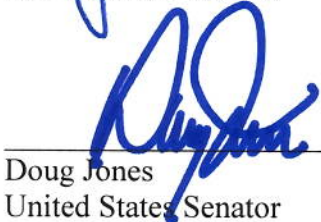
Tammy Baldwin  
United States Senator



Kyrsten Sinema  
United States Senator



Jack Reed  
United States Senator



Doug Jones  
United States Senator



Chris Van Hollen  
United States Senator