



# The Trump Administration's Latest Attack on Transgender People Facing Homelessness

By Theo Santos, Lindsay Mahowald, and Sharita Gruberg | September 3, 2020

In recognition of the severe barriers that discrimination poses to transgender people accessing housing, the U.S. Department of Housing and Urban Development (HUD) protected transgender individuals from discrimination as part of the agency's mission under the past administration. In 2012, it released the Equal Access Rule, ensuring that all HUD-assisted or -insured programs are open to all eligible individuals and families regardless of gender identity, sexual orientation, or marital status.<sup>1</sup> And in 2016, the department issued its rule "Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs," which clarified that gender identity nondiscrimination includes equal access to sex-segregated shelters. These rules were critical steps toward protecting a population that experiences massive amounts of discrimination; according to the National Alliance to End Homelessness, homelessness among transgender individuals has increased by 88 percent since 2016, and 63 percent of the transgender homeless population is unsheltered—meaning they do not reside in a shelter or in transitional housing.<sup>2</sup> Yet even in the face of this stark reality, the Trump administration has moved to illegally restrict access to homeless shelters for transgender people.

A recently proposed HUD rule attempts to undermine the 2016 Equal Access Rule by allowing sex-segregated shelters to discriminate against transgender people.<sup>3</sup> The proposal allows these shelters to make placement determinations based solely on biological sex and not gender identity, ignoring clear case law for what constitutes gender identity discrimination and the plain meaning of sex and erroneously claiming that such placements are not discriminatory. The proposed rule also eliminates self-identification from its definition of gender identity and puts forward a definition limited to "actual or perceived gender-related characteristics." It also allows shelters to make determinations about biological sex if they have a "good faith belief" that a person seeking access is not of the sex the shelter serves; the preamble uses examples such as height, facial hair, an Adam's apple, and other gender stereotypes as factors that might constitute a good faith belief, allowing shelters to demand evidence of biological sex. Not only will this encourage discrimination against transgender people, but it will also lead to discrimination against anyone who does not conform to the shelter operator's stereotypes of what men and women look like.

Simply put, the new rule would endanger an already vulnerable population and due to the faulty legal ground on which it stands, potentially put shelters' funding at risk.

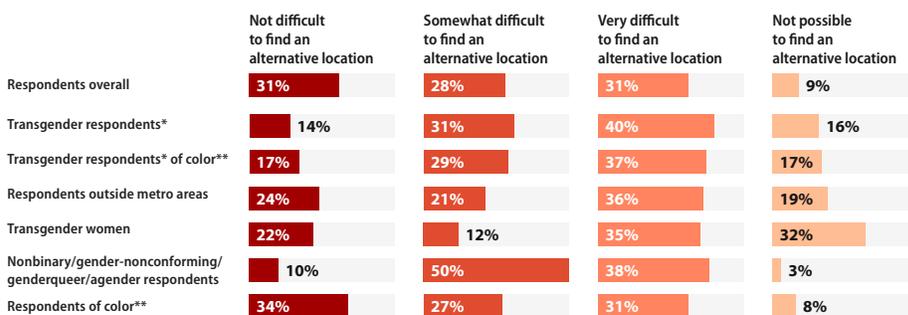
The proposed rule would make it even more difficult for transgender people to access emergency shelter

The Trump administration's recently proposed HUD rule change has the potential to harm transgender individuals immensely in their capacity to seek shelter. While the proposed rule states that individuals denied service must be provided with a transfer recommendation to another location, these recommendations do not guarantee placement in an appropriate shelter,<sup>4</sup> creating situations where transgender individuals are forced to seek their own alternative options—which may be limited at best.

Recent nationally representative survey data from the Center for American Progress examining anti-LGBTQ discrimination paint a stark picture of what would happen to individuals turned away from their nearest shelter location.<sup>5</sup> Overall, 68 percent of LGBTQ respondents said it would be somewhat difficult (28 percent), very difficult (31 percent), or not possible (9 percent) to find an alternative homeless shelter if they were denied access. Among all LGBTQ respondents living outside metropolitan areas, 76 percent said it would be somewhat difficult (21 percent), very difficult (36 percent), or not possible (19 percent) to access an alternative source of shelter. (see Figure 1)

**FIGURE 1**  
**LGBTQ individuals have limited access to alternative shelter options**

How easily survey respondents could find an alternative shelter location if refused, by demographic group



\* Including nonbinary, gender-nonconforming, genderqueer, and agender respondents.

\*\* For the purposes of this survey, people of color include Black, Hispanic, Asian, and multiracial individuals, as well as those identifying as "other, non-Hispanic."

Source: Survey conducted in June 2020 as a collaboration between the Center for American Progress and NORC at the University of Chicago. Survey results are on file with the authors.

Within the transgender community, access is even more limited. Eighty-seven percent of respondents who identify as transgender, nonbinary, agender, genderqueer, or gender nonconforming (GNC) said that it would be somewhat difficult (31 percent), very difficult (40 percent), or impossible (16 percent) for them to find an

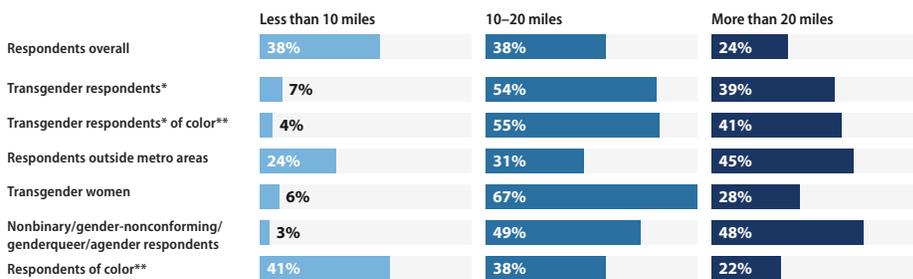
alternative homeless shelter if they were refused. Among respondents who specifically identify as nonbinary, GNC, genderqueer, or agender, 91 percent said that it would be somewhat difficult (50 percent), very difficult (38 percent), or impossible (3 percent) to find an alternative shelter option.

When looking solely at respondents who are people of color—those who are Black, Hispanic, Asian, or multiracial—66 percent indicated that it would be somewhat difficult (27 percent), very difficult (31 percent), or impossible (8 percent) to access alternative shelter options if they were turned away. Among respondents who are people of color and identify as transgender, nonbinary, agender, genderqueer, or GNC, 83 percent said it would be somewhat difficult (29 percent), very difficult (37 percent), or impossible (17 percent) to access alternative options.

Even when alternative options are present, they are often not within an accessible distance. CAP data show that a majority of individuals who are aware of alternative shelter options would have to travel more than 10 miles to reach them—a problem compounded when the data are broken down by race, ethnicity, and gender identity. (see Figure 2) Given that for individuals experiencing homelessness, the availability and cost of public transit is often a significant barrier, traveling many miles to reach another shelter would be extremely difficult.

**FIGURE 2**  
**For LGBTQ individuals, few alternative shelter options exist within a 10-mile radius**

How far survey respondents would need to travel to reach an alternative shelter location if refused, by demographic group



\* Including nonbinary, gender-nonconforming, genderqueer, and agender respondents.

\*\* For the purposes of this survey, people of color include Black, Hispanic, Asian, and multiracial individuals, as well as those identifying as "other, non-Hispanic."

Source: Survey conducted in June 2020 as a collaboration between the Center for American Progress and NORC at the University of Chicago. Survey results are on file with the authors.

In all, there seem to be few—if any—alternative options for LGBTQ individuals who are refused access to their nearest homeless shelter. Should shelters use the proposed rule change to deny access, many transgender individuals will find themselves at risk of being unsheltered.

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## Shelters could lose funding if they comply with the proposed rule

On top of the obvious harms that the proposed rule would create for transgender people experiencing homelessness, its tenuous legal standing could put shelters' funding at risk. The proposed rule's egregious misinterpretations of basic legal concepts indicate that its authors either have never engaged with sex discrimination laws or are willfully ignoring long-established legal precedent in order to allow discrimination. Either way, if shelters comply with the proposed rule, their funding could be put in jeopardy due to the rule's conflicts with numerous other statutes.

The proposed rule comes in the wake of a recent U.S. Supreme Court decision that maintained that employment discrimination on the basis of gender identity constitutes Title VII sex discrimination.<sup>6</sup> As Reps. Maxine Waters (D-CA) and Jennifer Wexton (D-VA) have recently argued, this decision has deep implications for the proposed HUD rule under the Fair Housing Act's prohibition against sex discrimination.<sup>7</sup> However, the administration is blatantly ignoring the nation's highest court and explicitly encouraging discrimination on the basis of sex due to the proposed rule's reliance on sex stereotyping and gender identity discrimination.

While the extent of the Fair Housing Act's coverage of shelters is under debate,<sup>8</sup> the proposed rule's categorical claim that sex-segregated shelters are not covered is false. In fact, as recently as January 2020, HUD affirmed in its guidance "Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act": "For purposes of this guidance, the term 'housing' refers to all housing covered by the Fair Housing Act, including apartments, condominiums, cooperatives, single family homes, nursing homes, assisted living facilities, group homes, domestic violence shelters, emergency shelters, homeless shelters, dormitories, and other types of housing covered by the FHA."<sup>9</sup>

HUD's decision to ignore nondiscrimination protections conflicts with the requirements of other funding programs. For example, the Violence Against Women Reauthorization Act of 2013 (VAWA) explicitly prohibits discrimination on the basis of gender identity, among other protected traits, by VAWA recipients—who have access to half a billion dollars in appropriated funds for VAWA programs.<sup>10</sup> Moreover, in addition to federal nondiscrimination protections, 22 states and Washington, D.C., as well as hundreds of local jurisdictions, prohibit discrimination in housing based on gender identity.<sup>11</sup>

These conflicting laws can be costly for shelters. HUD's Emergency Solutions Grants program only provided \$290 million in funding fiscal year 2019,<sup>12</sup> but that is a fraction of the overall spending on emergency shelters, which HUD estimates in its preamble to cost "several billion dollars per year."<sup>13</sup> The rest comes either from other federal sources or, more commonly, from state and local sources. HUD's new proposed rule is illegal and, for reasons outlined above, is unlikely to

withstand a lawsuit. Yet it is still dangerously misinforming shelters and thereby jeopardizing their funding, since many of them are bound by nondiscrimination protections on the basis of sexual orientation and gender identity.

## Response to FOIA request shows dozens of shelters' funding could be put at risk

Since VAWA's reauthorization in 2013, VAWA-funded programs have been bound by nondiscrimination protections on the basis of sexual orientation and gender identity. The compliance period for the reauthorization was one year, meaning that nondiscrimination has been required since 2014.

On September 3, 2019, CAP submitted a Freedom of Information Act (FOIA) request to the Office on Violence Against Women at the U.S. Department of Justice for successful fiscal year 2018 grant applications for VAWA funding from organizations also receiving funding from HUD. In January 2020, the authors received a response to the FOIA request providing successful fiscal year 2019 applications, and they analyzed the applications to determine funding status, geographical spread, and presence of nondiscrimination protections.

The FOIA response showed that at least 75 domestic violence programs received funding both from HUD and from Office of Violence Against Women grants. Programs used this VAWA funding for shelters, outreach, legal assistance, and other services. If VAWA-funded shelters follow the proposed HUD rule and reject transgender women from women's shelters, they will be jeopardizing funding for all these services.

Among the shelters in the 2019 FOIA sample, 35 are bound by state-level protections, and 13 are bound by municipal sexual orientation and gender identity protections. This means that these shelters could also lose state and local funding if they were to follow the proposed rule.

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## The administration is pushing the false narrative that transgender rights conflict with women's rights and religious liberty

Furthermore, HUD's justification for the proposed rule is fallacious at best. The administration raises several arguments in favor of the rule, two of which are especially objectionable and blatantly transmisogynistic. First, it claims that the presence of transgender women in shelters threatens the safety of cisgender women. Second, the administration justifies the proposal by claiming it will unburden shelters with deeply held religious beliefs by allowing them to discriminate.

### Transgender women present no threat to cisgender women in shelters

All VAWA programs funded in the past six years to seven years have been required to house transgender women in accordance with their gender identity. Despite the intense media scrutiny that transgender women using women's facilities face, no evidence demonstrates that they are a threat to cisgender women's safety in shelters. In fact, transgender people themselves face a disproportionate amount of violence in shelters: 70 percent of transgender people who stayed in a shelter in 2015 reported some form of mistreatment, including harassment, forced removal, or physical violence.<sup>14</sup>

Citing the safety of cisgender women is merely a thinly veiled attempt to present transgender women as dangerous predators. Yet in reality, the rule could endanger cisgender women, who may become unable to access shelters as they are forced to close or limit their hours due to reduced funding. Additionally, cisgender women would be subject to sex stereotyping, meaning that any woman who does not conform to a shelter's preconceptions could be refused service.

### Faith-based organizations have not opposed federal nondiscrimination protections

The administration also suggests that faith-based shelters oppose federal nondiscrimination protections for transgender people. In reality, however, this purported conflict does not reflect the values of most faith-based organizations. HUD's response to CAP's May 31, 2017, FOIA request for information regarding waivers or religious accommodations made under the 2012 and 2016 Equal Access rules—from their dates of publication to May 31, 2017—failed to locate any waiver requests from service providers. Moreover, there are no records of complaints from service providers pertaining to those rules. While HUD acknowledges the existence of a waiver in the preamble, it doesn't mention receiving waiver requests.<sup>15</sup> This indicates that no religious exemptions had been requested under either the Obama administration or the Trump administration.

Because no faith-based shelter made any related complaints or requests to HUD, the department was compelled to fabricate a problem to which this regulation could be seen as the solution. In the section alleging the need for religious accommodation, HUD cites a complaint that one faith-based shelter in Alaska made against a local ordinance, unrelated to any federal regulation.

In fact, some religious shelters have even spoken out on the importance of safely sheltering transgender people. For example, two Texas faith-based shelters—neither of which is funded by HUD and therefore would not be subject to the proposed rule—have publicly stated that they will not change their current affirming and inclusive practices and will continue to house people according to their own self-identification.<sup>16</sup>

The administration is not protecting religious freedom; it is going explicitly against the wishes of many religious organizations.

After reviewing HUD's fallacious justifications for the proposed rule, it is clear that the logic informing these arguments is rooted in transphobia. This is not mere speculation: HUD Secretary Ben Carson has repeatedly made explicitly transphobic comments, including allegedly calling transgender women "big, hairy men" and insinuating that they try to infiltrate women's shelters.<sup>17</sup> Such clear animus toward transgender people provides additional grounds to object to the proposed rule.<sup>18</sup>

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## Conclusion

HUD's proposed rule puts already vulnerable populations at increased risk and seeks to delegitimize their lived experiences. Moreover, its justifications are demonstrably empty: The proposed rule does nothing to protect cisgender women, and there is no conflict between existing nondiscrimination protections and the religious liberty of faith-based providers.

In light of the coronavirus pandemic and resulting economic fallout, this proposed rule is especially concerning. As homelessness and domestic violence increase, it is important to consider that transgender people are more likely to be low income and experience housing insecurity.<sup>19</sup> Moreover, coronavirus-related lockdowns place victims of domestic violence at greater risk, and LGBTQ populations face higher rates of intimate partner violence.<sup>20</sup> For these reasons, transgender people face an unprecedented crisis of housing insecurity due to COVID-19.

Rules like this demonstrate the necessity of federal nondiscrimination protections on the basis of sexual orientation and gender identity. The U.S. Senate must pass the Equality Act and institute protections for transgender people in housing and public accommodations. Especially now, transgender people need access to safe and affirming housing services.

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## Endnotes

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- 14 National Center for Transgender Equality, "U.S. Transgender Survey Executive Summary" (Washington: 2016), available at <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf>.
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