

# Summary of HUD's Proposal to Weaken the Equal Access Rule

The Equal Access Rule (EAR) ensures that the U.S. Department of Housing and Urban Development's (HUD) housing programs are open to all eligible individuals and families, regardless of sexual orientation, gender identity, or marital status. The EAR requires that individuals be placed and accommodated in many HUD programs, including temporary emergency shelters, in accordance with their self-identified gender identity. On April 28th, HUD released a proposal to eliminate the EAR, and remove the existing protections against discrimination based on sexual orientation and gender identity in HUD programs. Critically, the proposal will require that HUD-funded shelters and other homelessness programs turn away many in need based on their gender identity.

## WHAT IS HUD PROPOSING?

**A new regulatory definition of "sex":** The proposal removes all references to "gender," "gender identity," and "actual or perceived sexual orientation" throughout HUD programs. It replaces these terms with a new definition of "sex" which it defines as an "individual's immutable biological classification as either male or female." The proposal also includes subsidiary definitions of "female," "male," "woman," "man," "girl," "boy," "mother," and "father." This change applies across nondiscrimination, reporting, recordkeeping, and other regulatory provisions.

**Requirement that HUD-funded shelters discriminate against transgender people:** Requires all admissions, placement, and accommodation in temporary emergency shelters and other facilities with shared sleeping quarters or bathing facilities to be made in accordance with an individual's HUD-defined biological sex, rather than self-identified gender identity. Requires grantees to follow the new definitions or risk the loss of federal funds. This would be enforced even if state and local laws conflict with the new guidance and grantees are faced with a loss of state or local funding.

**Permission for providers to require evidence of sex:** Removes prohibitions on inquiries into gender identity and allows providers to "require reasonable assurances or evidence to establish a person's sex."

**Removal of protections across HUD programs:** Removes protections against discrimination based on gender identity and sexual orientation across HUD programs.



# WHAT ARE HUD'S JUSTIFICATIONS FOR WEAKENING THE EQUAL ACCESS RULE?

**White House Directive:** HUD cites Executive Order 14168, titled "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" as specifically directing the agency to prepare rulemaking to rescind the 2016 Rule and remove any references to "gender identity" from agency regulations.

**Reality:** The Executive Order was clear in its opposition to the EAR, but it does not provide sufficient legal authority to change the definition of words and eliminate civil rights protections.

**Lack of Authority:** HUD asserts that the agency does not have the authority to issue the Equal Access Rule. It relies on the rationale that the agency is not authorized to expand fair housing protections based on gender identity.

**Reality:** The Bostock Supreme Court ruling combined with the Fair Housing Act provides the Congressional and judicial direction required for HUD to issue the EAR, in addition to HUD's general rulemaking authority.

**Defense of Women:** HUD claims that the Rule has increased the risk of sexual harassment and assault for women seeking shelter by requiring providers to house transgender women in shared spaces.

**Reality:** HUD does not back up this assertion with any findings that the EAR resulted in women experiencing sexual harassment or assault. Nor does it provide any data showing that transgender women present any threat to cisgender women in shelters. The last time HUD attempted to roll back these protections, over 300 domestic violence shelter providers signed onto a National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community.

**Defense of Religious Liberty:** HUD claims that the Rule violated the rights of faith-based service providers by requiring them to serve individuals against their religious beliefs.

**Reality:** HUD does not back up this claim with any evidence. Numerous faith-based organizations opposed the effort to repeal the EAR in 2020 and continue to affirm the rights of LGBTQ+ people seeking shelter. There are no records of complaints from service providers pertaining to the EAR, and HUD has not responded to Freedom of Information Act requests seeking documentation of any service providers requesting a waiver. If HUD's concern is the objections of a small number of religious objectors, it is unclear why they are proposing every provider be forced to adhere to these beliefs, instead of granting limited waivers or exceptions.