



September 22, 2020

Docket No. FR-6152-P-01

Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW
Washington DC 20410-0500

Submitted via Federal eRulemaking Portal at www.regulations.gov

Re: Coalition for the Homeless Comments in Response to Proposed Rule, “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs,” RIN 2506-AC53

The Coalition for the Homeless submits these comments on the U.S. Department of Housing and Urban Development’s Proposed Rule entitled “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs,” published in the Federal Register on July 24, 2020 (hereinafter, the “Proposed Rule”). The Proposed Rule would effectively replace the Rule entitled “Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs,” adopted in 2016 (hereinafter, the “Equal Access Rule”).

The Coalition for the Homeless, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless and at-risk New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to the crisis of modern homelessness, which is now in its fourth decade. The Coalition also protects the rights of homeless people through litigation involving the right to emergency shelter, the right to vote, the right to reasonable accommodations for those with disabilities, and life-saving housing and services for homeless people living with mental illness and HIV/AIDS.

The Coalition operates 11 direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers. These programs also demonstrate effective, long-term, scalable solutions and include: Permanent housing for formerly homeless families and individuals living with HIV/AIDS; job-training for homeless and low-income women; and permanent housing for formerly homeless families and individuals. Our summer sleep-away camp and after-school program help hundreds of homeless children each year. The Coalition’s mobile soup kitchen, which usually distributes about 900 nutritious hot meals each night to homeless and hungry New Yorkers on the streets of Manhattan and the Bronx, is now regularly serving more than 1,100 meals per night and distributing PPE and emergency supplies during the COVID-19 pandemic. Finally, our Crisis Services Department assists more than 1,000 homeless and at-risk households each month with eviction prevention, individual advocacy, referrals for shelter and emergency food programs, and assistance with public benefits as well as basic

necessities such as diapers, formula, work uniforms, and money for medications and groceries. In response to the pandemic, we are operating a special Crisis Hotline (212-776-2177) for homeless individuals who need immediate help finding shelter or meeting other critical needs.

The Coalition was founded in concert with landmark right-to-shelter litigation filed on behalf of homeless men and women (*Callahan v. Carey* and *Eldredge v. Koch*) and remains a plaintiff in these now consolidated cases. In 1981, the City and State entered into a consent decree in *Callahan* through which they agreed: “The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter.” The *Eldredge* case extended this legal requirement to homeless single women. The *Callahan* consent decree and the *Eldredge* case also guarantee basic standards for shelters for homeless men and women. Pursuant to the decree, the Coalition serves as court-appointed monitor of municipal shelters for homeless adults, and the City has also authorized the Coalition to monitor other facilities serving homeless families. In 2017, the Coalition, fellow institutional plaintiff Center for Independence of the Disabled – New York, and homeless New Yorkers with disabilities were represented by The Legal Aid Society and pro-bono counsel White & Case in the settlement of *Butler v. City of New York*, which is designed to ensure that the right to shelter includes accessible accommodations for those with disabilities, consistent with Federal, State, and local laws.

Our role as a direct service and advocacy organization, and as the court- and City-appointed monitor of the municipal shelter system, uniquely situates us as the foremost expert on homelessness in New York City, and we are gravely concerned about the impact the Proposed Rule could have on people experiencing homelessness. The Coalition recognizes that the Proposed Rule does not nor cannot, under constitutional principles, preempt New York City laws prohibiting discrimination in shelters on the basis of gender identity and expression. Nevertheless, we feel compelled to voice our objection to this proposed rule, which will put the lives of homeless transgender, gender non-conforming, and non-binary (TGNCNB) individuals across the country at risk. The Proposed Rule enables and promotes violence, harassment, and discrimination against TGNCNB people when attempting to access emergency and temporary shelters, and therefore we urge the Department of Housing and Urban Development (HUD) to leave the Equal Access Rule in place.

Overwhelming data demonstrate that TGNCNB people face dangerous conditions or are excluded from shelter when they are not treated in a way that is consistent with their gender identity. Nothing in the Proposed Rule contests this evidence or justifies the withdrawal of the Equal Access Rule, particularly during a global pandemic exacerbating housing crises across the United States. Furthermore, the rule sends a harmful message to homeless TGNCNB people, and may deter many from seeking life-saving shelter due to fear of discrimination should they attempt to access shelter services. By pushing TGNCNB people away from shelters and supports, the Proposed Rule could do irreparable harm to an already vulnerable community.

The Equal Access Rule should be maintained because its protections against discrimination are critical to ensure safe access to shelters for TGNCNB people experiencing homelessness or who are survivors of violence. In contrast, the Proposed Rule utilizes a problematic and incorrect concept of “biological sex,” a concept that is inconsistent both with people’s lived experiences and with leading medical and mental health authorities. Furthermore,

the Proposed Rule permits discrimination on the basis of sex by permitting shelters to house people on the basis of “biological sex” regardless of their gender identity.

Our lengthy experience as the monitor of the municipal shelter system and as an organization serving thousands of homeless people every day leaves us confident that the current Equal Access rule and New York City’s protections do not infringe upon the rights of cisgender people, contrary to the assertions in the Proposed Rule. These current protections ensure that TGNCNB New Yorkers are treated with dignity, without jeopardizing the safety of cisgender people experiencing homelessness. New York City law operates consistently with the Equal Access Rule by requiring New York City shelters to house people in gender-segregated facilities that most closely align with their self-identified gender identity unless the individual would feel safer in another placement. As with any disputes or concerns that arise amongst people housed in shelters, including privacy concerns, applicable policy provides guidance on mediating these disputes without targeting people based on protected characteristics.

Since 2002, the New York City Human Rights Law has explicitly protected against discrimination on the basis of gender identity in employment, housing, and public accommodations. Currently, the law prohibits discrimination on the basis of gender, defined to include “actual or perceived sex, gender identity and gender expression, including a person’s actual or perceived gender-related self-image, appearance, behavior, expression or other gender-related characteristic, regardless of the sex assigned to that person at birth.” [N.Y.C. Admin Code § 8-102]. The Human Rights Law requires housing providers to permit people to access gender-segregated facilities most closely aligned with their gender. [47 N.Y.C.R.R. § 2-06(b)].

Therefore, New York City permits gender-segregated shelters while also requiring that people have access to those facilities most closely aligned with their self-identified gender. The Department of Homeless Services, the central agency for addressing homelessness in New York City, has adopted a detailed policy that operationalizes these provisions to ensure equal access for TGNCNB people. [Department of Homeless Services, Transgender, Non-binary, and Intersex Clients, DHS-PB-2019-015 (July 15, 2019)]. This policy specifically provides that clients are not required to provide proof of gender and prohibits denying access to a gender-affirming facility or program because of a person’s sex assigned at birth. [Id. at 1, 6, 8.] At the same time, the policy ensures placement based on where a person feels safest in recognition that a person may prefer to be housed consistent with their sex assigned at birth in some circumstances. [Id. at 9, 11, 13.] These policies are reinforced by the policies of New York City’s Department of Social Services, which oversees the Department of Homeless Services. New York City law and policy is consistent with both the Equal Access Rule and available data, and it functions without infringing on the rights of other shelter clients. Notably, we are not aware of any harm caused to a cisgender person by New York City’s affirming policies.

Lastly, respecting an individual’s self-identification of gender as provided in the Equal Access Rule is essential because of the difficulties many low-income TGNCNB people experience accessing correct government-issued identification and medical interventions. Our staff spend many hours helping homeless clients obtain government documents and health care access, and witness the many bureaucratic barriers low-income people encounter. Imposing any standard other than self-identification would be an overwhelming barrier for the very people most likely to be in need of temporary or emergency shelter.

For the reasons stated above, the Coalition for the Homeless strongly objects to adoption of the Proposed Rule and recommends that the Department of Housing and Urban Development maintain the Equal Access Rule.

Sincerely,

Dave Giffen
Executive Director
Coalition for the Homeless