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Brad Hoylman-Sigal, Borough President

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U.S. Department of Housing and Urban Development

Via electronic submission

RE: Equal Access to Housing in HUD Programs Revisions
Docket No. FR-6518-P-01; RIN 2501-AE12

I, Brad Hoylman-Sigal, write as Manhattan Borough President, representing a borough of 1.6 million residents, to oppose in the strongest possible terms Proposed Rule No. FR-6518-P-01 (the "Proposed Rule"). I urge HUD to withdraw it in its entirety.

As a New York State Senator, I authored the Gender Expression Non-Discrimination Act (GENDA), which the Legislature enacted in 2019 to prohibit discrimination based on gender identity or expression in housing, employment, and public accommodations.¹ GENDA exists because, in the Legislature's express findings, prejudice on the basis of gender identity or expression had "severely limited or actually prevented access to employment, housing and other basic necessities of life, leading to deprivation and suffering."² The Proposed Rule would codify prejudice as affirmative law. It also raises the specter of HUD withholding federal housing funds from jurisdictions like New York City which enforce protections like GENDA, as HUD declines to say clearly whether the rule would preempt state and local law. Furthermore, the Proposed Rule rests on stereotype rather than evidence, exceeds HUD's lawful authority, and is arbitrary and capricious.

I. The Proposed Rule

The Proposed Rule would (1) redefine "sex" across all of HUD's regulations as an "immutable biological classification," importing the definitions of Executive Order 14168 into 24 C.F.R. § 5.100; (2) delete every reference to "gender identity," "gender," and "sexual orientation" from 30 parts of Title 24, including regulations pertaining to emergency shelters, Section 8, Housing Choice Vouchers, public housing, Federal Housing Administration (FHA) mortgage insurance, the Housing Opportunities for Persons With AIDS (HOPWA) program, the Continuum of Care (CoC) program, and

¹Gender Expression Non-Discrimination Act, S.1047/A.747 (N.Y. 2019) (enacted); see N.Y. Exec. Law §§ 291, 292(35).

²*Id.* § 1 (legislative findings).

housing for the elderly and persons with disabilities; (3) mandate that single-sex shelter placements be made by birth sex (what the rule terms an 'immutable biological classification'), authorize providers to “require reasonable assurances or evidence to establish a person’s sex,” and remove the existing prohibition on intrusive questioning; and (4) provide, in proposed § 5.106(e), that a grantee’s non-compliance arising from “adherence to conflicting local laws or policies” may potentially be treated as a federal violation “subject to ... the withholding or revocation of federal funds.”³

II. The Proposed Rule Would Deepen the Homelessness Crisis and Harm an Already Vulnerable Population

HUD proposes to strip protections from one of the populations most vulnerable to homelessness while offering nothing to address the affordable-housing shortage that drives it. On a single night in 2025, at least 745,652 people experienced homelessness nationally.⁴ Transgender people are dramatically overrepresented.⁵ The 2022 U.S. Transgender Survey found that nearly all transgender respondents who experienced homelessness were harassed, assaulted, or otherwise abused, including while seeking shelter, and that a majority were denied access to shelter because of their gender.⁶

Transgender and gender-nonconforming people are also far more likely to be unsheltered than cisgender people. In 2024, 57.3% of gender-nonconforming people experiencing homelessness were unsheltered, compared with 35.3% of cisgender people.⁷ Among transgender people who experienced homelessness and stayed in a shelter, 70% reported mistreatment such as harassment, assault, or being ejected for being transgender, and more than a quarter avoided shelter altogether for fear of such treatment.⁸ Discrimination across housing markets generally is also well documented, with 22% of LGBTQ+ adults reporting discrimination based on sexual orientation or gender identity when trying to rent or buy a home, and among transgender

³91 Fed. Reg. 22,779, 22,780–81, 22,784 (Apr. 28, 2026).

⁴U.S. Dep't of Housing & Urban Development, *2025 Annual Homelessness Assessment Report (AHAR) to Congress, Part 1*.

⁵Bianca D.M. Wilson et al., *Homelessness Among LGBT Adults in the U.S.*, UCLA School of Law Williams Institute, <https://williamsinstitute.law.ucla.edu/publications/lgbt-homelessness-us/>

⁶Daniel Soucy, *Nationwide Survey Shows Widespread Discrimination Against Gender-Expansive People, Including in Emergency Shelters*, National Alliance to End Homelessness and Advocates for Trans Equality 1,

⁷Daniel Soucy, “Housing Instability Among Gender-Expansive People and Paths Forward,” National Alliance to End Homelessness.

⁸Id.

respondents, 6% reporting they were denied a home and 5% that they were evicted because of their gender identity.⁹

New York City operates one of the nation's largest shelter systems, with an average daily shelter population exceeding 45,000 in fiscal year 2022.¹⁰ Transgender and gender-nonconforming youth make up an estimated 40% of all homeless youth in the City.¹¹ A 2017 Comptroller survey of LGBTQ New Yorkers found that 18% of respondents had experienced homelessness, and roughly 30% of those had relied on the City's shelter system.¹² New York City built its shelter policies to address this crisis: the Department of Social Services places clients in accordance with gender identity, operates dedicated beds for transgender and gender-nonconforming residents, and is bound by a 2021 settlement in *Lopez v. The New York City Department of Homeless Services* to maintain those beds, train staff, and protect transgender residents from discrimination and violence.¹³

The Proposed Rule could force HUD-funded providers to reverse the very practices that decades of evidence show keep people safe and housed. When transgender people are turned away from or mistreated in shelters, they do not disappear; they are pushed into unsheltered homelessness, raising public costs and straining systems already at capacity. Yet HUD offers no estimate of how many people its rule would displace, and no explanation of how erasing protections from mortgage, voucher, and public-housing programs serves any housing purpose at all.

Worse still, the "reasonable assurances or evidence" provision would license shelters and other housing providers to demand documentary or physical proof of sex from people fleeing homelessness and domestic violence, many of whom lack identity documents by the very nature of their circumstances. The predictable result is humiliating, intrusive screening that harms cisgender and transgender people alike and drives the most vulnerable away from shelter and housing entirely.

⁹Adam Romero, Shoshana K. Goldberg, and Luis A. Vasquez, "LGBT People and Housing Affordability, Discrimination, and Homelessness" *UCLA School of Law Williams Institute*.

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>

¹⁰Office of the N.Y.C. Comptroller, *Review of the New York City Department of Homeless Services' Programs and Services*, MD22-105S.

¹¹The Center, "The Coalition for Radical Advocacy and Empowerment's (CRAE) Public Statement on Homeless LGBTQ+ Youth and Young Adults in New York City". [Public Statement on Homeless LGBTQ+ Youth and Young Adults in New York City](#)

¹²Office of the New York City Comptroller "Results of a Survey of LGBTQ New Yorkers".

https://comptroller.nyc.gov/wp-content/uploads/documents/Results_of_a_Survey_of_LGBTQ.pdf

¹³Stipulation of Settlement, "Lopez v. The New York City Department of Homeless Services et. al.," (Nov. 2021).

https://ccrjustice.org/sites/default/files/attach/2021/11/Stipulation-of-Settlement_11-23-21_Executed-Final-for-Circulation_w.pdf.

III. The Proposed Rule Contradicts New York's Civil Rights Law and Threatens New York City's Funding for Following Those Laws

The Proposed Rule does not squarely preempt state and local law, but instead threateningly leaves the door open to defunding programs that comply with contradicting state and local laws. HUD's position is internally inconsistent three times over. At one point the preamble states that the new "requirements preempt any conflicting state or local laws"; elsewhere it says only that HUD "is considering preempting" such laws; and the rule's Federalism certification represents that the rule "would not ... preempt state law."¹⁴ Proposed § 5.106(e) provides that a grantee's non-compliance "due to adherence to conflicting local laws or policies may be considered a violation of federal requirements, subject to appropriate enforcement actions, including but not limited to the withholding or revocation of federal funds."¹⁵

In effect, HUD holds the threat of defunding over jurisdictions like New York City without ever deciding whether, when, or how it would act, leaving the City to guess whether enforcing its own civil-rights laws will cost it millions in federal housing funds.

GENDA amended New York State's Human Rights Law to make it a civil right to obtain housing "without discrimination because of ... gender identity or expression," defined to mean a person's "actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including ... the status of being transgender."¹⁶ The New York City Human Rights Law similarly requires that shelter clients be placed according to their gender identity and that no person be denied a gender-affirming placement because of their birth sex.¹⁷ The *Lopez v. New York City Department of Homeless Services* settlement imposes parallel, court-enforced obligations. If HUD attempts to act on § 5.106(e), it would be subject to a court challenge, because HUD lacks the authority to preempt New York law. And if HUD were to somehow prevail on a preemption argument (and it will not), HUD would place the City in an impossible position: violate well-established and well-founded state and local laws and a federal settlement, or risk forfeiting Community Planning and Development (CPD) funding that sustains shelter and services for thousands of vulnerable residents. My office estimates that hundreds of millions of dollars in annual federal funding could be exposed citywide on the strongest

¹⁴Compare 91 Fed. Reg. at 22,780-81 (preamble: requirements "preempt any conflicting state or local laws"), and id. at 22,781 (HUD "is considering preempting local laws"), with id. at 22,782 (Federalism certification: rule "would not . . . preempt state law").

¹⁵91 Fed. Reg. at 22,784 (proposed 24 C.F.R. § 5.106(e)).

¹⁶N.Y. Exec. Law § 291(2) (housing civil right); id. § 292(35) (defining "gender identity or expression").

¹⁷NYC Commission on Human Rights, "Protections Against Discrimination for LGBTQIA+ New Yorkers," (n.d.) available at: <https://www.nyc.gov/site/cchr/media/pride.page>

reading of the rule. This would be an untenable outcome and an unwarranted assault on New York's sovereignty.

IV. The Proposed Rule Is Arbitrary and Capricious and Contrary to Law

The Proposed Rule cannot survive review under the Administrative Procedure Act, which requires a court to set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”¹⁸

Under *FCC v. Fox Television Stations*, an agency reversing course “must show that there are good reasons for the new policy” and must provide a “more detailed justification” when the new policy “rests upon factual findings that contradict those which underlay its prior policy or when its prior policy has engendered serious reliance interests.”¹⁹ HUD does neither. It contradicts its own 2016 finding that transgender people can be safely accommodated by gender identity, on a record that has not materially changed,²⁰ and it ignores the serious reliance interests of jurisdictions, providers, and residents who built their shelter and housing systems around the Equal Access Rule.²¹

Under *Bostock v. Clayton County*, it is “impossible to discriminate against a person for being ... transgender without discriminating against that individual based on sex,” and courts have applied that reasoning to the Fair Housing Act's prohibition on sex discrimination.²² HUD now claims it lacked authority to issue the 2016 Rule because the Fair Housing Act's sex-discrimination prohibition does not reach emergency shelters. Yet the Proposed Rule does far more than withdraw from shelters; it deletes “sexual orientation” and “gender identity” from programs squarely governed by the Fair Housing Act, including FHA-insured mortgages and federally assisted dwellings.²³

Under *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, an agency may not offer “an explanation for its decision that runs counter to the evidence before the agency,” nor rest a rule on “speculation” or on a “factual premise that is unsupported by substantial evidence,” and it must respond to the contrary empirical data before it.²⁴ HUD justifies the rule in part by asserting that “[h]omeless women are at increased risk

¹⁸5 U.S.C. § 706(2)(A).

¹⁹*FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009).

²⁰*Cf. Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956 (9th Cir. 2015).

²¹*Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016); *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 33 (2020).

²²*Bostock v. Clayton County*, 590 U.S. 644 (2020); e.g., *Petricca v. Saxony Condo. Ass'n*; *Larocque v. Spring Green Corp.*; *Levy v. Lawrence Gardens Apartments*.

²³91 Fed. Reg. at 22,780; 42 U.S.C. § 3604.

²⁴*Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Genuine Parts Co. v. EPA*, 890 F.3d 304 (D.C. Cir. 2018); *Comcast Corp. v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009).

of sexual assault by biological males,” citing a 2006 research paper.²⁵ But that paper says nothing about transgender women or “biological males” in shelters; it concerns sexual violence against homeless women generally. **HUD points to no evidence that the 2016 Equal Access Rule led to a even a single instance of a transgender woman harming another shelter resident.** To the contrary, in October 2024 the National Task Force to End Sexual and Domestic Violence and more than 200 anti-violence organizations confirmed that claims that transgender access to sex-aligned spaces threatens women’s safety are “false,” and that across the 18 states and 200-plus municipalities with such protections, no jurisdiction had experienced a rise in sexual violence.²⁶

Conclusion

Manhattan is home to one of the largest and most vibrant LGBTQ+ communities in the world, and to a shelter and housing system built on the principle that every person deserves safe refuge. The Proposed Rule threatens to override that system and endangers thousands of vulnerable New Yorkers. Furthermore, by affirmatively promoting discrimination, the Proposed Rule conflicts with HUD’s independent statutory duty to affirmatively further fair housing, and with HUD’s own foundational mission to provide “a decent home and a suitable living environment for every American family.”²⁷ I urge HUD to withdraw the Proposed Rule in its entirety and to return to its statutory mission.

²⁵91 Fed. Reg. at 22,781 (citing Lisa Goodman, Katya Fels & Catherine Glen, *No Safe Place: Sexual Assault in the Lives of Homeless Women* (2006)).

²⁶Nat’l Task Force to End Sexual & Domestic Violence, *National Statement in Support of Full and Equal Access for the Transgender Community* (Oct. 30, 2024).

²⁷42 U.S.C. §§ 3608(e)(5), 1441; *N.A.A.C.P. v. HUD*, 817 F.2d 149, 155 (1st Cir. 1987).