

Ann Oliva
Director, Office of Special Needs Assistance Programs
U.S. Department of Housing and Urban Development
451 7th St SW
Washington, DC 20410

May 9, 2014

Re: Ensuring Equal Access to HUD-funded Emergency Shelters for Transgender Individuals

Dear Ms. Oliva,

On behalf of the undersigned organizations I write to express concern regarding the impact of current implementation of the Equal Access to Housing Rule (Equal Access Rule) on transgender individuals seeking services from HUD grantees. We urge the Department to issue clarifying guidance on the application of the Equal Access Rule to gender-specific housing, especially temporary emergency shelters. Although many emergency shelters do provide gender-appropriate housing for transgender individuals in compliance with the Equal Access Rule and the Fair Housing Act, many still routinely engage in discriminatory exclusion of transgender individuals seeking safe housing.

To date, HUD has refused to recognize that the Equal Access Rule and the Fair Housing Act prohibit the exclusion of transgender people from sex-segregated shelters that are consistent with their gender identity. This has resulted in many shelters continuing to turn homeless transgender people away, or to limit them to accessing housing based on their sex assigned at birth—often putting them at danger. This practice is clearly inconsistent with both the text and intent of the Equal Access Rule, which guarantees equal access to shelter and shelter services to all people.¹

Among transgender people who have had to seek emergency shelter, nearly half have reported that they had been forced to be housed with the wrong gender in order to obtain shelter.² In many cases, these respondents were transgender women who found themselves to be the only

¹ See, *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity* 77 FR 5359 (Feb. 3, 2012).

² J.M. Grant, L.A. Mottet, J. Tanis, J. Harrison, J.L. Herman, M. Keisling, *Injustice at Every Turn: A Report on the National Transgender Discrimination Survey*, 118 (2011).

woman in a men's shelter. Unsurprisingly, among those who stayed in a shelter, 25% reported being physically assaulted in a shelter, and nearly as many (22%) reported being sexually assaulted by either another resident or a shelter staff member.³ Nearly half of these respondents left an emergency shelter because of the treatment they experienced there—choosing to return to the street rather than remain in the shelter.⁴ Allowing these policies to remain in place is a clear violation of the Equal Access Rule's prohibition of discrimination based on gender identity—ensuring equal access to all prospective beneficiaries.

Since the Equal Access Rule was finalized in 2012, it has only become clearer that gender identity nondiscrimination cannot be a reality unless all individuals have the right to access housing and services consistent with their gender identity. State courts and administrative agencies have continued to interpret gender identity protections consistent with this principle.⁵ The U.S. Departments of Justice and Education have sought and in 2013 obtained a resolution agreement on behalf of a transgender student under Title IX, securing the student's right to be treated according to his gender identity at school.⁶ Most recently, the Justice Department's Office on Violence Against Women has issued guidance interpreting the Violence Against Women Act's nondiscrimination provision to require access to sex-segregated shelters and services on the basis of an individual's self-identified gender.⁷

Therefore, we urge the Department to engage this issue and to develop meaningful guidance to end these harmful practices and ensure real access to all LGBT people in need. This guidance should make clear that each individual has the right to equal access to housing consistent with the individual's gender identity, and that programs should neither ask invasive questions about gender nor deny housing based on other clients' discomfort with transgender people. HUD should also clarify, consistent with the Department of Justice's Office of Violence Against Women VAWA guidance, that while every person has the right to equal access consistent with their self-identified gender, programs may and are encouraged to provide other accommodations requested by any individual for their safety or privacy.

We acknowledge the Department's clear commitment to improving access to housing for all LGBT people, and we urge the adoption of this guidance to ensure that this commitment is made a reality for every individual in need of safe emergency shelter. We appreciate the opportunity

³ Id. at 117-18.

⁴ Id. at 116.

⁵ See, e.g., *Doe v. Regional School Unit 26*, 86 A.3d 600 (Me. 2014); *Mathis v. Fountain-Fort Carson Sch. Dist. 8*, Charge No. P20130034X (Col. Div. Civ. Rts. Jun. 17, 2013); *Jones v. Johnson County Sheriff's Department*, CP # 12-11-61830, Finding of Probable Cause (Iowa Ct. Rts. Comm'n Feb. 11, 2013).

⁶ Letter from Anurima Bhargava, Chief of Educ. Opportunities Section of Civil Rights Div. of U.S. Dept. of Justice, & Arthur Zeidman, Director of San Francisco Reg'l Office of Office for Civil Rights of U.S. Dept. of Educ., to Joel Shawn, Arcadia Unified Sch. Dist. (July 24, 2013).

⁷ U.S. Dept. of Justice, Office on Violence Against Women, Frequently Asked Questions: Nondiscrimination Grant Condition of the Violence Against Women Reauthorization Act of 2013 (Apr. 9, 2014), available at: <http://www.ovw.usdoj.gov/docs/faqs-ngc-vawa.pdf>.

to provide this letter and would welcome the opportunity to discuss this issue with you and your staff further.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Warbelow".

Sarah Warbelow

Legal Director
Human Rights Campaign

Family Equality Council
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition for the Homeless
National Fair Housing Alliance
National Gay and Lesbian Taskforce
True Colors Fund