



LGBT

# The Dire Consequences of the Trump Administration's Attack on Transgender People's Access to Shelters

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A transgender woman and founder of a bilingual LGBTQ organization and shelter in Washington, D.C., tells the story of her fight as a human rights activist, February 2019.

The U.S. Department of Housing and Urban Development's (HUD) [fall 2019 regulatory agenda](#) revealed that the agency is planning to essentially eliminate critical nondiscrimination protections for transgender people seeking safe shelter. This is despite the fact that HUD Secretary Ben Carson assured Rep. Jennifer Wexton (D-VA) [during a congressional hearing](#) that such protections would remain in place. Transgender people face [persistent social, cultural, and economic barriers](#) due to discrimination which lead to high rates of homelessness, including higher rates of unemployment; vulnerability to eviction because of their gender identity; family rejection; and interpersonal violence. In the general population, the lifetime rate of homelessness is around [4 in every 100](#) people. According to the 2015 U.S. Transgender Survey, however, nearly [1 in 3](#) transgender respondents experienced homelessness at some point in their lives. Policies that prohibit discrimination based on gender identity such as [HUD's 2016 Equal Access Rule](#) are necessary to ensure safe and equal access to shelters for people in need. HUD's latest proposal would unnecessarily erode these strong protections, causing confusion for providers and putting transgender people, nonbinary people, and others at risk.

## **Proposed revisions to the Equal Access Rule would undermine protections for transgender people**

Recognizing the need for clear protections against discrimination in housing, HUD promulgated a [rule in 2012](#) to ensure that all HUD-assisted or -insured housing programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. In 2016, HUD issued a [rule](#) to clarify that gender identity nondiscrimination includes equal access to sex-segregated shelters. The rule provides crucial support for transgender people who are unstably housed, chronically homeless, and/or seeking emergency shelter by ensuring equal treatment.

In its [latest attack](#) on transgender people, the Trump administration is [proposing to remove](#) the existing clear and explicit nondiscrimination protections for transgender people seeking shelter. This proposal would transform the Equal Access Rule's strong legal protections into unenforceable guidance by allowing shelter providers to create their own policies for access to single-sex or sex-segregated facilities. This radical change could come with no potentially enforceable requirement other than stating that the policies are consistent with the organization's overall policy as well as local and state law.

HUD's attempt to formalize LGBTQ-exclusionary practices and undermine the Equal Access Rule is additionally evident in the [2019 Continuum of Care Program Notice of Funding Availability](#), the requirements for funding communitywide programs to support individuals and families experiencing homelessness. HUD not only removed additional points awarded to applicants for partnering with

LGBTQ-serving organizations and conducting annual trainings for providers on effectively implementing the 2012 and 2016 Equal Access Rules, but it also removed all mention of LGBTQ people from the notice. While HUD continues to award additional points to communities with anti-discrimination policies, the 2019 notice only listed adherence to the Fair Housing Act and the 2012 Equal Access Rule as required nondiscrimination policies. Because the 2016 Equal Access Rule was a clarification of the 2012 rule and remains the law, it is critical that HUD hold grantees accountable for complying with the Equal Access Rule in its entirety, including protections against discrimination for transgender people seeking shelter.

The administration's pending [proposal](#) cites a number of factors that providers can consider when making determinations about access to sex-segregated spaces that are particularly concerning, including an "individual's sex as reflected in official government documents" and "religious beliefs." An individual's gender identity is listed last in the list of factors. There is no significant evidence that emergency shelters have petitioned the federal government for the kind of changes that HUD is considering. For example, HUD's response to a May 31, 2017, Freedom of Information Act (FOIA) request from the Center for American Progress for information regarding waivers or religious accommodations made under the 2012 and 2016 Equal Access rules from their date of publication to May 31, 2017, failed to locate any waiver requests from service providers. It also turned up no records of complaints from service providers pertaining to the rules under both the Obama and Trump administrations. This indicates that no religious exemptions had been requested under either administration.

Furthermore, a [June 2019 Reuters poll](#) revealed that most Americans do not support religious objections as a legitimate reason to deny service to an LGBTQ person in the arenas of business (57 percent opposed), health care (64 percent opposed), or employment (62 percent opposed). While housing was outside of the scope of the poll, these findings highlight an overall trend that Americans are against using religious exemptions as a license to discriminate.

## **Discrimination is a major barrier for transgender people to access shelter**

Access and safety are significant concerns for transgender people when seeking shelter. According to the 2015 U.S. Transgender Survey, 70 percent of respondents who were homeless in the year prior to the survey reported mistreatment in shelters due to their gender identity, and 52 percent experienced verbal, physical, and/or sexual harassment and/or assault during their stay. Ultimately, 44 percent left the shelter due to poor treatment or unsafe conditions, despite having nowhere else

to go. Nearly 1 in 10 respondents who stayed in a shelter in the year prior to the survey were thrown out when staff found out they were transgender.

Without strong and clear protections, transgender people seeking shelter are vulnerable to mistreatment, abuse, and refusals of service. [In a 2016 matched-pair test](#) of shelters, conducted by CAP and the Equal Rights Center, trained callers reached out to homeless shelters across four states in order to measure the degree to which transgender women could access shelter in accordance with their gender identity. As [published in a previous CAP report](#), of the 100 shelters contacted, only 30 percent were willing to properly accommodate transgender women in accordance with their gender identity and 1 in 5 outright refused to serve transgender women. Shelters in states with explicit gender identity nondiscrimination protections were twice as likely to accommodate a transgender client with appropriate shelter, indicating that clear nondiscrimination laws may increase access to shelters, and policies such as the Equal Access Rule are important tools for improving treatment of transgender people in public services.

Lack of access to services such as emergency shelters is one consequence of discrimination. The CAP and Equal Rights Center research also demonstrated that transgender testers were often subjected to other forms of discrimination and harassment by shelter employees. These ranged from invasive questions on the state of their genitals to deliberate misgendering and other comments designed to discredit the caller's identity and humanity.

## **Examples from Virginia shelters**

The shelter employee initially told the test caller to call the assessment center but gave the wrong phone number. On a second follow-up call with the same shelter employee, the test caller asked if the employee was able to answer some questions about accommodation. The shelter employee replied, "Yeah, I'd like to know that too, sir. Call the number I gave you and they can answer your questions. That's their job." Then the shelter employee hung up.

The test caller was told that she would be housed with the men—even if she could provide documentation of female status.

The shelter employee initially told the test caller that she would be housed with the women in a suite-style room. After speaking with her supervisor, however, the employee said that the shelter puts "transgenderers" up in motels and that the test caller would not be allowed to stay in the shelter.

## **Examples from Tennessee shelters**

The shelter employee stated that they are a Christian shelter and not obliged to her accommodate her but would try to “in keeping with good Christian nature.” The shelter employee then told the test caller that it would not be easy for her there, and perhaps she should consider going somewhere else. The test caller asked if she could be considered for placement as a woman if she provided documentation of hormone therapy. The shelter employee asked what her “real gender” was and said that the shelter would ultimately rely on her genitalia when deciding where to house her.

The shelter employee told the test caller that she could only stay at the shelter if she had surgery because the shelter was only for “full women” and the employee could not accommodate her if she had “man parts.” When the test caller asked if staying at the men’s shelter would be an option, the employee said, “I guess so, but I wouldn’t recommend that because I’d be concerned for your safety there.”

The test caller was told that she could only be housed alone in a family room, but it was currently taken, and they would not house her with men or women.

The shelter employee said that the test caller could not stay at the shelter because it only accepts “straight-up women,” and they have a waiting list.

## **Example from a Connecticut shelter**

When the test caller asked what kind of accommodations the shelter had for transgender women, the shelter employee responded, “We don’t” accommodate. The test caller then asked if she meant that she didn’t know, and employee replied firmly, “No, we cannot accommodate you.” The shelter employee told the test caller to call 211 and ask them what they can do to accommodate test caller’s “special situation.”

## **LGBTQ inclusivity does not put public safety at risk**

Shelter employees also indicated concerns over the perceived threat to public safety posed by transgender people staying in shelters. Shelter employees insinuated that the presence of a transgender person would make other shelter residents feel uncomfortable or unsafe and stoke “fears of rape”—even though [federal courts have ruled](#) that it is not a violation of privacy to simply share space with a transgender person. In addition, nondiscrimination protections do not undermine existing prohibitions against sexual violence or harassment. A [2018 peer-reviewed study](#) from the Williams Institute found no link between passing gender-identity-inclusive public accommodations laws and public safety incidents, indicating no correlation between inclusivity and risk. Additionally, a [2016 consensus statement](#) by the National Task Force to End Sexual and

Domestic Violence, endorsed by more than 300 domestic violence and sexual violence organizations across the country, supports access to gender-specific facilities by transgender individuals for the explicit purpose of public safety. Overall, research demonstrates a rampant practice of exclusion, discrimination, and violation of humanity within shelters and highlights a significant need for federal legal protections based on gender identity to protect transgender people's safety.

## **LGBTQ people who experience discrimination have limited alternative shelter options**

Reducing the Equal Access Rule's strong protections to mere guidance with numerous exemptions would enable discrimination to become formalized policy. New analysis of data from a 2017 nationally representative CAP survey show how difficult it is for LGBTQ people to find alternative shelter if they are refused.\* Among all LGBTQ-identified respondents, 61.5 percent said it would be somewhat difficult (24.9 percent), very difficult (22.3 percent), or not possible (14.3 percent) to find an alternative homeless shelter if turned away. Among transgender respondents, 26.1 percent said it would be somewhat difficult to find an alternative, 17.4 percent said that it would be very difficult, and 20.7 percent said that it would not be possible to find an alternative if refused service.

For LGBTQ people who live in nonmetropolitan areas such as rural areas or small towns, 75.7 percent stated it would be somewhat difficult (13.6 percent), very difficult (33 percent), or not possible (29.1 percent) to find alternative homeless shelter if turned away. In comparison, 57.1 percent of metropolitan-residing LGBTQ people reported that it would be at least somewhat difficult to find an alternative if turned away. Nonmetropolitan respondents were approximately 2.5 times more likely than metropolitan respondents to say that finding an alternative would not be possible, at 29.1 percent versus 12 percent, respectively. This research highlights a significant lack of access to alternative shelters by both metropolitan and nonmetropolitan LGBTQ people if they are turned away, with particularly dire conditions for those residing in nonmetropolitan areas.

## **The government must ensure equal protection and access in housing for transgender people**

The transgender community risks further [discrimination, rejection, and violence](#) if the Trump administration undermines the Equal Access Rule's explicit protections. Discrimination can [negatively affect](#) an individual's spiritual, physical, and emotional well-being in addition to their overall safety. Without the Equal Access Rule's clear and explicit protections, many transgender people will be left without safe shelter. Vulnerable individuals who are unstably housed, homeless, or at risk of homelessness maintain finite resources. However, they are unduly [expected to advocate](#)

for themselves and navigate complicated, discriminatory housing systems. In short, the removal of protections ensured under the Equal Access Rule would unduly burden transgender people while further destabilizing and unhousing an already vulnerable population.

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*\*Author's note: Data are from a nationally representative sample of 1,864 individuals, including 857 individuals who identified as LGBTQ, conducted in 2017. Participants were asked to read and respond to the following question: "Thinking about the city or town in which you currently live, please answer the following questions. Below is a list of businesses and services that are typically open to the public. Imagine that you needed the goods or services available from each one and that you went to the nearest place within your city or town to get them. Now imagine that when trying to access each place, you were denied service by the employees or staff. Please rate how difficult it would be for you to find the same type of service at a different location: Homeless shelter." Respondents who refused to answer this item were dropped from the present analysis, leaving 819 total observations. The excerpts included are from notes taken by the test callers and provided to the research team. They have been lightly edited for style and clarity. For further details about the survey, please see Caitlin Rooney and Laura E. Durso, "The Harms of Refusing Service to LGBTQ People and Other Marginalized Communities" (Washington: Center for American Progress, 2017), available at <https://www.americanprogress.org/issues/lgbt/reports/2017/11/29/443392/harms-refusing-service-lgbtq-people-marginalized-communities/>.*

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