January 19, 2016

Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Re: [Docket No. FR-5863-P-01] Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), we are pleased to offer the following comments in response to the proposed rule (FR-5863-P-01) entitled “Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs,” published in the Federal Register on November 20, 2015. Formed in 1933, NAHRO represents over 20,000 individual and agency members, including housing authorities, community development departments, and redevelopment agencies. In all, NAHRO’s members provide housing for more than 7.9 million low-income people and bring more than $1.5 billion Community Development Block Grant and HOME funding to their communities.

NAHRO appreciates this opportunity to comment on this Notice of Rulemaking and commends HUD for its efforts to ensure all Americans receive equal access to HUD programs. However, NAHRO believes that the proposed rule could greatly benefit from additional guidance and clarification for very specific circumstances in order to ensure the protection of both transgender and cisgender individuals in HUD-funded facilities. Additional guidance (and resources) would help program recipients and sub-recipients achieve a better understanding of how to deescalate potential situations that stem from a resident’s life traumas (i.e., domestic violence).

Address issues related to victims of domestic violence.

NAHRO recommends that the proposed rule be revised so that it takes into greater consideration the special needs of program residents that are victims of domestic violence. NAHRO acknowledges that transgender individuals often face vast physical and mental struggles when they are turned away from shelters or assigned to facilities not in line with their own gender identity. However, what are facilities with shared quarters and facilities in general to do when a transgender individual is admitted into a facility with a resident that is fearful of males (or alternatively, fearful of females)? The proposed rule
does very little to acknowledge this as a possible circumstance, and recipients and sub-recipients of HUD funding (and subsequent owners, operators, and managers of shelters and other buildings and facilities and service providers) would be left with little leeway in their ability to accommodate the needs of domestic violence victims when carrying out the regulations of this proposed rule.

While program residents who express discomfort in sharing quarters with a transgender individual may have their concerns addressed through small and inexpensive changes that increase privacy, NAHRO is concerned that the rule may still marginalize the needs of other residents with deeper psychological issues that prevent them from cohabitating with those of the opposite sex. The proposed rule states that equal access, placement, and accommodations must be provided in accordance with a person’s gender identity (§5.106), and under “narrow circumstances” to ensure health and safety, alternative accommodations should be provided based on the “individual’s own request.” Furthermore, the “complaints” of other clients, beneficiaries, or employees cannot affect the placement or accommodation of an individual when they are based on actual or perceived gender identity (§5.106(c)). Thus, alternative accommodations can only be offered when an individual requests it, and under these proposed regulations, housing providers are likely only left with the option of moving the domestic violence victim resident. This stands in stark contrast with the goals of HUD’s recently proposed rule entitled, “Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs,” a rule that seeks to offer expanded protections to victims of domestic violence, dating violence, sexual assault, and stalking within HUD-assisted and HUD-insured housing.

NAHRO recommends that this Equal Access proposed rule be revised to include reasonable guidance for those operating facilities with shared sleeping quarters on how to offer alternative accommodations to transgender individuals when there are residents that are sensitive to sharing facilities with the opposite sex due to their experiences with domestic violence. It should be emphasized that NAHRO does not recommend transgender individuals be denied placement or accommodations, but that equal consideration should be afforded to the psychological welfare of victim residents when implementing this proposed rule.

Provide additional resources for transgender training

NAHRO believes that the proposed rule will require more time and resources from grantees (and subsequent owners, operators, and managers of shelters, other buildings and facilities, and service providers) than HUD estimates. The proposed rule adopts the requirements outlined in a recent guidance (CPD-15-02) published by HUD’s Office of Community Planning and Development (CPD) titled “Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities.” The CPD guidance directs program recipients and sub-recipients to further comply with HUD’s 2012 final rule entitled “Equal Access Rule to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity” (Equal Access Rule) by training staff members and contractors, particularly those who directly interact with potential clients and current clients, on the new policies laid out within the Equal Access Rule and Notice CPD-15-02.

The training of staff on new policy is necessary because it is the most effective way to provide staff with context around who transgender people are, why the best practice in placement is based on gender identity, and the requirements necessary to avoid discrimination. However, according to the National Center for Transgender Equality1, in order to effectively transition shelters into a safe place for transgender people, shelter staff should also conduct ongoing transgender sensitivity training for

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existing residents. Resident training would be one step further than the training required by HUD, but it is vital in creating a safe environment for transgender individuals.

The Department estimates that only .05 percent of the total facilities that are covered by the proposed rule will need to make a written case-by-case analysis and referral, and estimates it will take an individual 15 minutes to complete such analysis and referral. The Department also estimates the proposed rule would not have a significant effect on a substantial number of small entities. These estimates fail to take into account the time and resources needed to educate residents (and staff) on transgender issues. NAHRO recommends that HUD provide additional resources and tools to program grantees so that proper training can be conducted, particularly for small grantees with limited resources.

NAHRO thanks the Department for the opportunity to submit comments. As always, we remain committed to ensuring the success of federal housing and community development programs in partnership with the Department and our membership.

Sincerely,

Jenny Hsu
Policy Analyst, Community Development Programs