



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410-0001

THE SECRETARY

Chairwoman Maxine Waters  
2221 Rayburn House Office Building  
Washington, D.C. 20515

Congresswoman Jennifer Wexton  
1217 Longworth House Office Building  
Washington, D.C. 20515

July 13, 2020

Dear Chairwoman Waters and Congresswoman Wexton:

Thank you for your letter of June 29 regarding the U.S. Department of Housing and Urban Development's ("HUD" or "the Department") proposed rule entitled "Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs". In that letter, you urge the Department to revise the proposed rule in light of the U.S. Supreme Court's opinion in *Bostock v. Clayton County, Georgia*, and which you assert raises "potential contradictions", "call[ing] the text of th[e] regulation into question."

The Supreme Court's ruling in *Bostock* has no impact on the Department's proposed rule. *Bostock*'s holding is specific to employment discrimination under Title VII where "an individual employee's sex is 'not relevant to the selection, evaluation, or compensation of employees.'" In contrast, an individual's sex is relevant in the specific category of cases covered by the Department's proposed rule, which is concerned with single-sex temporary or emergency shelters. These facilities, by virtue of their temporary nature, are not deemed "housing", do not fall within the purview of the Fair Housing Act. Therefore they may lawfully elect to serve only one sex. We note that the *Bostock* decision assumed that "sex" referred "only to biological distinctions between male and female." These shelters may, under the proposed rule, consider the needs of their program residents, in many cases females who are victims of domestic violence, dating violence, sexual assault, and stalking. For these individuals, the biological sex of those using shared facilities such as bathrooms, changing rooms, sleeping quarters and the like is sometimes a significant consideration for their mental wellbeing. The current HUD rule permits any man, simply by asserting that his gender is female, to obtain access to women's shelters and even precludes the shelter from asking for identification.

I, and the entire Department, remain fully committed to the fair treatment of all individuals participating in HUD programs. Our proposed rule prohibits discrimination based on transgender status as such. Everyone deserves equal rights, but in ensuring such is received, we must



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consider the whole picture. We must not place the rights of one group over another so as to diminish the rights of those we are seeking to serve. We believe local shelters are in the best position to determine the sex of persons they are committed to serve on a single sex basis. I would urge both of you to use your positions of influence as Congresswomen to advocate for the many homeless women for whom single-sex shelters are their best refuge.

Sincerely,

A handwritten signature in black ink, appearing to be "B. Carson", with a long horizontal flourish extending to the right.

Secretary Carson