

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

June 29, 2020

The Honorable Benjamin S. Carson, Sr., M.D.
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Secretary Carson:

On June 15, 2020 the Department of Housing and Urban Development (HUD) sent its proposed rule entitled “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs” to the House Financial Services Committee for review pursuant to the Housing and Urban Development Act (HUD Act).

During our statutorily designated 15-day review period, the Supreme Court issued an opinion in *Bostock v. Clayton County, Georgia*, holding that sexual orientation and gender identity discrimination is included in the definition of “sex” with respect to Title VII, stating clearly that “...it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”

The release of a potentially applicable Supreme Court decision during the period of our regulatory review is unique and raises concerns about the applicability and implementation of the proposed rule.

We recognize HUD’s authority to implement and enforce the law, using statutes and judicial review as the boundaries of its discretion. It is not within our purview to recommend specific changes to the regulation that has been presented to us during the Congressional Review period. However, if the HUD Act review provisions are to have any effect whatsoever, it must be the Committee’s responsibility to appeal to the agency to revise its regulation when a Supreme Court decision calls the text of that regulation into question.

Given the potential contradictions between the language in the *Bostock* decision and the language in the regulation submitted to us for review, we ask the Department of Housing and Urban Development to reconsider publishing this regulation for public comment before conducting additional legal analysis.

If you have any questions about this letter, please contact Mike Lucier with my staff at (202) 225-5136.

Sincerely,



Jennifer Wexton
Member
House Financial Services Committee



Maxine Waters
Chairwoman
House Financial Services Committee

Cc: The Honorable Patrick McHenry, Ranking Member