

Written Testimony: National LGBTQ Task Force – Kierra Johnson

House Financial Services Committee

The Fair Housing Act: Reviewing Efforts to Eliminate Discrimination and Promote Opportunity in Housing

LGBTQ People and the Fair Housing Act: Current State of the Law

Although the Fair Housing Act does not explicitly protect LGBTQ people from discrimination, the Department of Housing and Urban Development (HUD) released the Equal Access Rule in 2012, which requires HUD-funded providers to make housing available to people regardless of perceived or actual gender identity or sexual orientation.ⁱ Several courts across the country nationwide have agreed with HUD's determination, laid out in the Equal Access Rule, that the Fair Housing Act's protections against discrimination based on sex include a bar against discrimination based on sexual orientation and gender identity.

Despite the existence of the Equal Access Rule and positive rulings in the courts, housing discrimination against LGBTQ people is pervasive. In 2015, approximately one in four transgender people in the U.S. experienced some form of housing discrimination because of their gender identity.ⁱⁱ Research conducted by the Department of Housing and Urban Development itself indicates that same-sex couple are treated less favorably than heterosexual couples in the online rental housing market.ⁱⁱⁱ Year after year, in study after study, findings indicate that discrimination against LGBTQ people in housing is a consistent and ubiquitous issue. Recent studies have shown:

- In states that prohibit discrimination against LGBTQ people in housing, discrimination complaints are filed by LGBTQ people at a rate similar to race discrimination complaints filed by people of color^{iv}
- In a recent paired testing study conducted by the Urban Institute, gay men and transgender people experienced discrimination in the early stages of the rental process^v
- 48% of older LGB testers experienced adverse, differential treatment in recent matched-pair testing conducted by the Equal Rights Center^{vi}
- 40% of young people experiencing homelessness identify as LGBTQ

Of course, people living at the intersections of multiple marginalized identities, like LGBTQ people of color and LGBTQ people with disabilities, are even more likely to face discrimination in access to housing, and to have an increased need to access public housing supports:

- 49% of Black transgender and gender non-binary respondents to a recent survey experienced housing discrimination in the preceding year; 13% of Black transgender women were denied access to a homeless shelter.^{vii}

- 17.6% of LGBTQ survey respondents with disabilities reported receipt of public housing benefits, compared to 2.5% of non-disabled, non-LGBTQ respondents.^{viii}

In the context of pervasive housing discrimination, it is particularly important to examine the treatment of LGBTQ people in programs designed to support people experiencing homelessness and housing instability. Unfortunately, research indicates that transgender people experiencing homelessness frequently face barriers to accessing safe shelter. In the 2011 National Transgender Discrimination Survey, nearly one in three (29 percent) transgender people who attempted to access a shelter reported being turned away due to their transgender status, and 22 percent of those who stayed at a shelter reported experiencing sexual assault by staff or other residents.^{ix} Forty-two percent of transgender shelter-seekers report having been forced to live as the wrong gender as a condition of access to a shelter.^x Overall, nearly half of transgender shelter-seekers said they ultimately left a shelter due to mistreatment.^{xi}

A more recent study by the Center for American Progress and the Equal Rights Center found that only 30 percent of shelters were willing to house transgender women with non-transgender women.^{xii} The study, which used test callers to inquire into the practices of 100 shelters across four states (Connecticut, Washington, Tennessee and Virginia), found that shelters:

- Refused services outright;
- Misgendered callers;
- Cited genitalia or surgery requirements as prerequisites to placement consistent with gender identity; and
- Cited the discomfort of other shelter residents as a basis for refusing placements consistent with gender identity.

The willingness of a shelter to house transgender women in accordance with their gender identity varied depending on state laws and shelter type. Shelters in states with LGBT protections were twice as likely to be willing to provide appropriate shelter to test callers. Since many states lack explicit gender identity protections in housing, HUD's Equal Access Rule and subsequent guidance is meant to help ensure equal access to shelters for transgender and gender nonconforming individuals. As HUD recognizes in the preamble to the proposed rule and as it has found through its own consultations with service providers, these discriminatory practices are pervasive and deny not only the dignity of transgender shelter-seekers but their basic access to safe shelter.^{xiii}

Alaicia (22), a man of trans experience from Oakland, CA, shared his experience of seeking shelter in a youth shelter and being automatically placed based on his sex assigned at birth:

“They just assumed and I went with it because I didn’t want to cause problems. It tore me up inside and was degrading. If they had asked me about my experience and pronouns when I walked in and placed me based on my gender identity I would have felt respected and validated. While I was in the shelter I had a lot of problems and one particular confrontation with my roommate who was upset that I had male items (soap, deodorant, clothes etc.).

“I didn’t feel safe coming out in the shelter, to the staff or the residents because of some of the severe harassment and bullying my gay friends had faced based on their sexual orientation, I felt so uncomfortable. There was one staff member that I was very close with who I felt safe coming out to and they were super supportive, I’m still in contact with them to this day. I think there needs to be staff training around LGBT issues and that they need to ask questions about pronouns and names during intake, this would have made me feel safer in the shelter.”

D’Angelo (23), a gay man from Richmond, VA, shared how discriminatory policies often result in people avoiding shelters for their own safety:

“My sexual orientation played a huge role in why I did not seek emergency shelter services. The one shelter I had seen before was like everyone in one room with very little staff members, if any at all, I don’t remember seeing any staff members while I was there. I’m not too comfortable in crowds and so I just didn’t think this was an option for me. I was also scared about what would happen if they found out I was gay, maybe the other residents would judge me or harass me. I ended up staying in an abandoned building with friends because it seemed easier and safer.”

Ben (20), a man of trans experience from Montana, explained how safety is situationally specific, and what would make him feel more safe:

“When someone is homeless and seeking emergency shelter I feel like their main priority is getting a bed for the night. If the intake worker says we are going to place you with the women and I identify as a man, I’m just thankful to have a bed. My level of safety would depend on a number of different factors: (a) What does the boarding situation look like? Before hormones I would have preferred to be housed with the women, because I could pass as a woman. (b) It also depends on the boarding situation whether I would be housed with a bunch of folks or just like 1 or 2 people. (c) It also depends on who has to know? Are the other residents being informed that I’m trans, other staff members? What is the policy around that? This is especially important for folks who pass a little more.

“It also depends on how the trans person identifies, every person’s identity lies somewhere on the spectrum and that is also true from trans folks as well. I think something that could make things safer for folks in emergency shelter situations

would be a check in policy both before and after folks are housed to assess comfort and safety and also allow for reporting any incidents that might have happened. I say this while also knowing that folks aren't always willing to report incidents because they might be afraid to lose whatever housing they have in that situation. I think it is also important for trans folks to be placed where they feel most comfortable (this may not align with gender identity but rather with sex assigned at birth), I would rather be safe than stealth."

Service providers expressed hearing similar concerns from shelter guests, talked about how the Equal Access Rule has been implemented to date, and addressed their varied responses:

From a Nashville provider: "Within Launch Pad, we have an open floor plan so everyone is sleeping in the same room. The same goes with Oasis in the Drop In Center. No other shelters in Nashville abide by identity but rather biology – which is one of the reasons that our young people do not choose to go to the shelters....they feel more comfortable with being in space that coincides with their identity – especially the MTF young people."

From a Phoenix provider: "The youth in our Promise of a New Day Housing Program are all placed in single-occupancy rooms so we never have to deal with this issue."

From a Cincinnati provider: "A side note but I feel is important and something I take as a source of pride for our team. Over two years ago we had a client who by birth was female but he was living as a male. He came to our facility and at that time we had the traditional gender based wings in the shelter. The male wing was full but we had female beds. Under that former mindset he wasn't offered a bed as they were full. I happened to walk by and heard him say 'I'll dress as a female if I have to, I just need a bed.' This was the impetus for us to reconsider these traditional system processes. That day we did away with that philosophy. We put him in a bed under the gender he identified with."

Among transgender people who have had to seek emergency shelter, a disturbing 42% said that at some point they had been forced to be housed with the wrong gender in order to obtain shelter.^{xiv} In many cases these respondents were transgender women who because of this discriminatory treatment found themselves the only 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.^{xv} Nearly half (47%) of all transgender respondents who accessed shelters left because of the treatment they experienced there—choosing the street over the danger, abuse, and indignity of the way they were treated in the shelter.^{xvi}

The denial of equal access to housing consistent with one's gender identity constitutes a form of prohibited discrimination based on gender identity, and therefore also on the basis of sex. Such

practices therefore legally violate both the Fair Housing Act and HUD's Equal Access Rule. This discrimination is not only unlawful—it also leaves transgender shelter-seekers, particularly transgender women, effectively excluded from shelter and vulnerable to mistreatment and violence.

We know – from these stories and thousands of others like them – that LGBTQ people face discrimination in housing, in access to credit, and in access to shelter services. Yet the Fair Housing Act still does not explicitly name sexual orientation and gender identity as protected classes. That means that access to the protections of the FHA is inconsistent, and enforcement is reliant on prioritization by the Department of Housing and Urban Development. Passing legislation like the Equality Act, which would codify protections for LGBTQ people in housing is one way to make the law and its application more consistent for LGBTQ people.

Source of Income Protections

Millions of low-income people and families receive rent subsidies to help defray the high cost of housing. Landlords frequently discriminate against low-income families by refusing to accept these subsidies. Laws that prohibit discrimination against voucher holders, like source of income non-discrimination laws, have a significant impact on the number of landlords that engage in voucher discrimination, and even help to dismantle the legacy of redlining that has kept our communities segregated decades after Fair Housing laws were enacted.

LGBTQ people are significantly more likely to receive public housing assistance than the general population. According to a recent survey fielded by the Center for American Progress, **LGBTQ people are 2.5 times more likely to rely on public housing benefits than their non-LGBTQ counterparts**. While all people in the LGBTQ community receive public housing assistance more than the general population, the rates are particularly high for transgender people, LGBTQ people with disabilities, and LGBTQ people of color.

We encourage members of this committee to explore the impacts of legislation that would codify a ban on discrimination on the basis of a person's source of income.

ⁱ Mindy Mitchell, *LGBT Discrimination is Real*, Department of Housing and Urban Development, 2015, <http://www.endhomelessness.org/blog/entry/lgbt-housing-discrimination-is-real#.WB4IJiOrLIV>.

ⁱⁱ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality, 2016, 13, <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

ⁱⁱⁱ Department of Housing and Urban Development, Office of Policy Development and Research, *An Estimate of Housing Discrimination against Same-Sex Couples: An Executive Summary*, 2013, 1,

https://www.huduser.gov/portal/Publications/pdf/Hsg_Disc_against_SameSexCpls_exec_summ_v2.pdf.

^{iv} Mallory and Sears, “Evidence of Housing Discrimination Based on Sexual Orientation and Gender Identity” (Feb. 2016), available at: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Housing-Discrimination-Complaints-2008-2014.pdf>.

^v Urban Institute, “A Paired-Testing Pilot Study of Housing Discrimination against Same-Sex Couples and Transgender Individuals” (2017), available at https://www.urban.org/sites/default/files/publication/91486/2017.06.27_hds_lgt_final_report_report_finalized_0.pdf.

^{vi} Types of adverse treatment included being given fewer options, being quoted higher fees or rental prices, being shown only 2-bedroom options when seeking a 1-bedroom apartment. Equal Rights Center, “Opening Doors: An Investigation of Barriers to Senior Housing for Same-Sex Couples” (2014), available at https://equalrightscenter.org/wp-content/uploads/senior_housing_report.pdf.

^{vii} James, Herman, Rankin, Keisling, Mottet, and Anafi, “The Report of the 2015 U.S. Transgender Survey” (Washington, DC, 2016), available at: <https://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

^{viii} Rooney, Whittington, and Durso, Protecting Basic Living Standards for LGBTQ People, August 2018, available at: <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>

^{ix} Nat’l LGBTQ Task Force & Nat’l Ctr. for Transgender Equality, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 116-18 (2011), http://endtransdiscrimination.org/PDFs/NTDS_Report.pdf.

^x *Id.* at 118.

^{xi} *Id.* at 116.

^{xii} Ctr. for Am. Progress and the Equal Rights Ctr., *Discrimination Against Transgender Women Seeking Access to Homeless Shelters* (2016), <https://www.americanprogress.org/issues/lgbt/report/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>.

^{xiii} Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs, Proposed Rule, 80 Fed. Reg. 72542, 72644 (Nov. 20, 2015).

^{xiv} J.M. Grant, L.A. Mottet, J. Tanis, J. Harrison, J.L. Herman, M. Keisling, “Injustice at Every Turn: A Report of the National Transgender Discrimination Survey,” 118 (2011).

^{xv} *Id.* at 117-18.

^{xvi} *Id.* at 116.