

ENSURING EQUAL ACCESS TO SHELTER ACT OF 2019

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AUGUST 13, 2019.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed
—————

Ms. WATERS, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3018]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3018) to prohibit the Secretary of Housing and Urban Development from implementing a proposed rule regarding requirements under Community Planning and Development housing programs, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ensuring Equal Access to Shelter Act of 2019”.

SEC. 2. PROHIBITION ON IMPLEMENTATION OF RULE.

The Secretary of Housing and Urban Development may not implement, administer, enforce, or in any manner make effective the proposed rule entitled “Revised Requirements Under Community Planning and Development Housing Programs”, published by the Department of Housing and Urban Development in Spring 2019 (Docket No. FR-6152; RIN: 2506-AC53), or any final rule based substantially on such proposed rule.

PURPOSE AND SUMMARY

On May 23, 2019, Rep. Jennifer Wexton introduced H.R. 3018, the “Ensuring Equal Access to Shelter Act of 2019,” which would prohibit the Secretary of HUD from implementing a proposed rule that would allow shelter providers to deny transgender and gender non-conforming people equal access to homeless shelters.

BACKGROUND AND NEED FOR LEGISLATION

HUD’s “Equal Access Rule” requires shelter providers to ensure that their operations and policies support equal access to shelter and services “in accordance with an individual’s gender identity.”¹ This includes ensuring that individuals are placed, served and accommodated in accordance with the gender with which they identify regardless of the sex assigned to them at birth and regardless of their perceived gender identity. It also includes ensuring that an individual is not subjected to intrusive questioning or asked to provide anatomical information or documentary, physical or medical evidence of their gender identity.

Despite the protections in the Equal Access Rule, LGBTQ individuals experiencing homelessness continue to have difficulty gaining equal access to shelters and services. Transgender youth in particular are often turned away from shelters or are placed without regard to their gender identity, which can lead to isolation and even unsafe situations.² Today, research indicates that more than half of transgender people experiencing homelessness are unsheltered³ and LGBTQ youth are 120 percent more likely to experience homelessness than non-LGBTQ youth,⁴ accounting for 40 percent of the homeless youth population, based on a survey of a sample population.⁵

In response to continued concerns, the Obama Administration issued guidance to owners and operators of HUD-funded shelters on how to comply with the Equal Access Rule and best serve transgender people experiencing homelessness. However, the Trump Administration withdrew this guidance in March 2017. While testifying in front of Congress on May 21, 2019, Secretary Carson assured Congresswoman Wexton that he was “not currently

¹24 CFR Part 5 <https://files.hudexchange.info/resources/documents/Equal-Access-Final-Rule-2016.pdf>.

²Chapin Hall at the University of Chicago, “Missed Opportunities: Youth Homelessness in America.”

³National Alliance to End Homelessness, “The Alliance’s Statement on Proposed Changes to HUD’s Equal Access Rule.” May 2019.

⁴Chapin Hall at the University of Chicago, “Missed Opportunities: Youth Homelessness in America.”

⁵Durso, Laura E. and Gates, Gary J., “Serving Our Youth Report.” July 2012.

anticipating changing the [Equal Access Rule].” However, HUD announced the following day that it will propose a forthcoming rule that would allow shelter providers to establish policies without regard to the gender that a person identifies. The proposal would permit intrusive questioning and documentation requirements, which may also serve as a barrier to access.⁶

H.R. 3018 would prohibit HUD from implementing, administering, enforcing, or in any manner making effective this proposed rule, or any final rule based substantially on the May 22, 2019 proposed rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states that the title of the bill is the Ensuring Equal Access to Shelter Act of 2019.

Section 2. Prohibition

This section prohibits the Secretary of HUD from implementing, administering, enforcing, or in any manner making effective the proposed rule entitled “Revised Requirements Under Community Planning and Development Housing Programs,” published by HUD in Spring 2019 (Docket No. FR-6152) or any final rule based substantially on such proposed rule.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress, the Committee on Financial Services held a hearing, from which H.R. 3018 was developed, entitled, “Housing in America: Oversight of the U.S. Department of Housing and Urban Development” on May 16, 2019. Testifying before the Committee was Dr. Ben Carson, Secretary of HUD.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 11, 2019 and ordered H.R. 3018 to be reported favorably to the House with an amendment in the nature of a substitute by a vote of 33 yeas and 26 nays, a quorum being present.

COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee’s consideration of H.R. 3018.

⁶ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=2506-AC53>.

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>	X	
	Mrs. Maloney	X	
	Ms. Velázquez	X	
	Mr. Sherman	X	
	Mr. Meeks	X	
	Mr. Clay	X	
	Mr. Scott	X	
	Mr. Green	X	
	Mr. Cleaver	X	
	Mr. Perlmutter	X	
	Mr. Himes	X	
	Mr. Foster	X	
	Mrs. Beatty	X	
	Mr. Heck	X	
	Mr. Vargas	X	
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)	X	
	Mr. Lawson	X	
	Mr. San Nicolas		
	Ms. Tlaib	X	
	Ms. Porter	X	
	Ms. Axne	X	
	Mr. Casten	X	
	Ms. Pressley	X	
	Mr. McAdams	X	
	Ms. Ocasio-Cortez	X	
	Ms. Wexton	X	
	Mr. Lynch	X	
	Ms. Gabbard	X	
	Ms. Adams	X	
	Ms. Dean	X	
	Mr. Garcia (IL)	X	
	Ms. Garcia (TX)	X	
	Mr. Phillips	X	
34			
	Mr. McHenry, <i>Ranking Member</i>		X
	Ms. Wagner		X
	Mr. King	X	
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman	X	
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: _____ 6/12/2019

Measure __ Final passage of H.R. 3018, as amended

Amendment No. _____

Offered by: _____

Agreed To	Yes	No	Prsnt	Wdrn
Voice Vote	Ayes		Nays	

Record Vote	FC
	33 Ayes-26 Noes

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS
OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 3018 are to prohibit discrimination against transgender and gender-nonconforming people when accessing assistance at homeless shelters.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 3018 from the Director of the Congressional Budget Office:

H.R. 3018, Ensuring Equal Access to Shelter Act of 2019			
As ordered reported by the House Committee on Financial Services on June 11, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 3018 would prevent the Secretary of Housing and Urban Development (HUD) from implementing a rule that the agency included in the Unified Agenda of Federal Regulatory and Deregulatory Actions in Spring 2019. The agenda item is entitled "Revised Requirements Under Community Planning and Development Housing Programs" (Docket No. FR-6152; RIN: 2506-AC53) and indicates that HUD will propose the rule in September 2019. The agency had not issued a notice of proposed rulemaking nor the rule itself by the time CBO transmitted this estimate; therefore, CBO's baseline does not incorporate any effects from the rule. Accordingly, CBO estimates that implementing H.R. 3018 would have no effect on the federal budget.

The CBO staff contact for this estimate is Elizabeth Cove Delisle. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 3018. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104-4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 3018, as amended, prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104-1, H.R. 3018, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3018 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 3018 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CHANGES TO EXISTING LAW

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no changes to existing law.

MINORITY VIEWS

Committee Republicans believe all Americans should have access to shelters when needed. However, H.R. 3018, the *Ensuring Equal Access to Shelter Act of 2019*, is premature. H.R. 3018 prohibits the implementation of a rule that has yet to be published or even issued for public comment by the U.S. Department of Housing and Urban Development (HUD).

On May 22, 2019, the Office of Management and Budget's (OMB) 2019 Spring Regulatory Agenda announced that HUD would consider changes to the previous administration's Equal Access rule published in 2016. In the announcement, HUD signaled its intent to end the policy prohibiting shelters from establishing their own procedures with regard to facilities and operations. Rather, HUD shared its view that local shelters should have the flexibility to set their own policies, consistent with local law and practical concerns, when considering a person's sex during admission to a unisex or same-sex homeless facility. HUD views this potential change as essential to creating a welcoming and safe space for all individuals in a shelter that is best suited to attend to their individual needs. Committee Republicans believe that HUD is justified in opening this regulation up for a public comment period, so the on the ground service providers will have the chance to weigh in.

Committee Republicans are fully committed to the fair treatment of all individuals under the Fair Housing Act. To be clear, HUD's proposed changes would neither repeal the rule nor remove fair housing protections for the most vulnerable. Instead, Committee Republicans believe local agencies are best positioned to conduct reviews of their regulations. Doing so will allow this type of policy to be crafted at the local level, by the professionals who have experience in dealing with the particular circumstances of their local population and community needs.

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