



Improving the Lives and Rights of LGBTQ People in America

A Road Map for the Biden Administration

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Introduction and summary

The Trump administration spent the majority of its four years in office launching a barrage of attacks infringing on the rights of LGBTQ people, promoting discriminatory policies, and creating barriers to access critical government services. These actions reflect the Trump administration's blatant disregard for the rights, dignity, and well-being of LGBTQ people, their families, and communities. In particular, the damages promulgated by the administration exacerbated existing inequalities and disparities between LGBTQ and non-LGBTQ people in the realms of health, employment, the justice system and law enforcement interactions, education, housing, and immigration. The real-world consequences of these policies have detrimentally affected the everyday lives of LGBTQ people, particularly LGBTQ people of color living at the intersection of identities that experience multiple forms of systemic and institutional discrimination.

This month, President-elect Joe Biden will inherit a country reeling from the COVID-19 pandemic and the impacts of an executive branch that has spent the past few years sowing chaos and deploying its authority through federal regulations, legal memorandums, and litigation to weaken civil rights protections for LGBTQ people. The Biden administration must waste no time and exert every effort not only to disentangle and dismantle the harms perpetrated by the Trump administration, but also to strategically and proactively promote the rights and well-being of LGBTQ people. While this task will pose a tremendous challenge to the new administration, this new chapter also offers hope for positive changes that affirm the rights and lives of LGBTQ Americans.

This report highlights the urgency of reversing damaging actions of the Trump administration while presenting a thematic vision for what the Biden administration can accomplish through executive actions that prioritize the lives and rights of LGBTQ people. Although by no means exhaustive, the report draws a road map for the incoming administration to systematically dismantle state-sanctioned and government-funded discrimination against LGBTQ people and to take concrete actions that embed the rights of LGBTQ people into the bedrock of the infrastructure of the executive branch. Taken as a whole, adoption of these recommendations will help to restore the U.S. government's commitment to ensuring the respect, dignity, and rights of LGBTQ

people across the country and abroad. Specifically, this report's recommendations are divided into seven critical areas in which a Biden-Harris administration can take meaningful action:

- Create overarching multiagency priorities to improve the well-being of LGBTQ people.
- Increase access to affordable, high-quality, nondiscriminatory health care services and insurance benefits for LGBTQ people.
- Promote the economic security and financial stability of LGBTQ people by fostering inclusive labor practices and workplace policies.
- Protect and strengthen the civil rights of LGBTQ people engaged with the criminal legal system and law enforcement.
- Foster inclusive, safe, welcoming, and affirming schools and educational environments for LGBTQ students.
- Ensure greater access to safe and stable housing for LGBTQ people, as well as support services for those experiencing homelessness.
- Support fair and humane treatment of LGBTQ immigrants, including by promoting the rights of LGBTQ people abroad.

Undoubtedly, it will require determined, thoughtful, and strategic collaboration throughout the Biden administration to successfully implement these recommendations, which will pose a remarkable challenge. The authors look forward to the incoming administration rising to meet this challenge and urge it to collaborate and cooperate with LGBTQ stakeholders as it works to achieve these goals throughout its tenure.

Priorities

To reverse some of the most egregious and far-reaching harms perpetrated by the Trump administration, there are a number of overarching, multiagency actions that the Biden administration should execute to provide meaningful protections for LGBTQ people. These actions require effectively deploying executive authority both to eliminate damaging policies and to proactively advance the rights and interests of LGBTQ people.

Issue executive actions to ensure nondiscrimination in government services, benefits, and programs

In the past year, 1 in 3 LGBTQ people reported experiencing discrimination.¹ These experiences negatively affect the physical, psychological, and financial well-being of LGBTQ people, who then alter their lives in significant ways to avoid discrimination. On June 15, 2020, the U.S. Supreme Court affirmed in *Bostock v. Clayton County* that Title VII of the Civil Rights Act of 1964's prohibition on sex discrimination in employment prohibits discrimination because of sexual orientation and gender identity (SOGI). Prior to the high court's landmark decision, courts across the country were interpreting sex discrimination to also prohibit SOGI discrimination, not just in Title VII but also in other statutes that prohibit sex discrimination, such as Title IX, Section 1557 of the Affordable Care Act (ACA), and the Fair Housing Act (FHA).² Despite the Obama administration's efforts to extend these protections, the Trump administration exercised its authority to erode them—from rescinding guidance protecting transgender students in schools,³ to banning transgender people from openly serving in the armed forces, to erasing protections for LGBTQ people in health care and coverage.⁴ The U.S. Department of Justice (DOJ) even reversed the government's stance on the inclusion of SOGI in sex discrimination under Title VII, opposing its own Equal Employment Opportunity Commission (EEOC).⁵

The Biden-Harris administration has a tremendous opportunity on day one to not simply restore the Obama administration's protections for LGBTQ people but also to ensure that the federal government upholds these rights to the fullest extent of the law. Specifically, President-elect Biden should immediately issue an executive order that directs all federal agencies to review and update relevant regulations, guidance, and policies to reflect that SOGI discrimination is an illegal form of sex discrimination under the law. The president should also direct the U.S. attorney general to rescind discriminatory policies such as the October 4, 2017, memorandum limiting interpreta-

tions of sex under Title VII to biological sex⁶ and to issue guidance on prohibited discrimination because of SOGI in light of the Supreme Court's decision. To ensure that the executive order is properly implemented and the advancement of LGBTQ equality is integrated as a priority throughout the federal government, the president should establish an interagency task force on LGBTQ equality, led by the assistant attorney general for civil rights, to elevate and coordinate efforts across government.

In addition to aligning the federal government's enforcement of prohibitions on discrimination with the Supreme Court's decision in *Bostock v. Clayton County*,⁷ which affirmed that the prohibition on sex discrimination in Title VII of the Civil Rights Act of 1964 extends to discrimination because of SOGI, the new administration should ensure that people are not denied critical services due to their sexual orientation or gender identity.⁸ The federal government awards billions of dollars each year for programs and projects to improve the general welfare of Americans, including education programs, job training, housing and food assistance, and many other critical services. Discriminating against LGBTQ people undermines the effectiveness of these grants. In addition to combating discrimination in federal grants and cooperative agreements, the president should direct agencies to affirmatively address the disparities faced by LGBTQ populations, with a particular focus on people most in need of federal services, such as transgender and nonbinary people; youth; families; and older adults. Indeed, the new administration has a responsibility to ensure that its policies uphold the rights of LGBTQ people both domestically and globally.⁹ Initial recommendations for some of these initiatives are provided later in this report.

Data on experiences of discrimination and disparities are important tools for enforcing civil rights protections. To ensure proper enforcement of these protections, the executive order should also direct agencies to collect necessary information to determine compliance with civil rights protections for LGBTQ people and analyze the data collected to ensure proper compliance. According to the U.S. Commission on Civil Rights, "[T]he Commission has repeatedly found that data collection and reporting are essential to effective civil rights enforcement, and that a lack of effective civil rights data collection is problematic."¹⁰

Issue executive actions to restore and protect religious liberty and civil rights for all Americans

Religious liberty is a fundamental American right¹¹ that the Trump administration distorted and weaponized as a license to discriminate¹² by infringing on the civil rights of others, with adverse impacts being felt most deeply and disproportionately by women,

religious minorities, and LGBTQ people. The federal government has a compelling interest in combating discrimination against LGBTQ people, as well as religious minorities, people with disabilities, and people seeking reproductive health care, when accessing government-funded services. To fulfill its obligation to ensure equal treatment for these communities, it is imperative that the new administration take immediate action to rescind and replace executive order 13798, “Promoting Free Speech and Religious Liberty,”¹³ and executive order 13831, “Establishment of a White House Faith and Opportunity Initiative.”¹⁴ And, in conjunction, the administration should direct all agencies to review and reconsider all rules, guidance,¹⁵ regulations, legal opinions, and other¹⁶ harmful policies perpetuated as a result of these executive actions.

Restoring rules for faith-based providers

The recommendation to rescind executive order 13798 includes rescinding its memorandum¹⁷ and guidance¹⁸, as well as disbanding the Religious Liberty Task Force¹⁹ responsible for implementing the guidance. In the case of executive order 13831, agencies should rescind the series of nine finalized rules²⁰ revising regulations that govern how faith-based, religious organizations function and engage with federally funded services and programs under the jurisdiction of the U.S. Agency for International Development and the U.S. departments of Agriculture (USDA), Education, Health and Human Services (HHS), Homeland Security (DHS), Housing and Urban Development (HUD), Labor (DOL), Veterans Affairs (VA), and the DOJ. These rules²¹ broaden religious exemptions that favor taxpayer-funded organizations and remove crucial safeguards designed to protect people accessing government-funded services at faith-based providers from discrimination on the basis of religion. For example, the HHS rule²² removes the obligation that faith-based providers refer people to alternative providers if they refuse to provide services based on religious grounds; the DOL rule²³ expands exemptions facilitating taxpayer-funded employment discrimination; the Education Department rule enables schools to discriminate against students who are LGBTQ, pregnant or parents, or who make decisions about their reproductive health that the school opposes on religious grounds; and the HUD rule²⁴ permits faith-based organizations funded by HUD to discriminate in employment and relieves such entities of their former obligation to refer people to alternative services if the provider chooses to discriminatorily refuse service. It is imperative that the Biden administration direct the DOJ to lead efforts to engage in notice-and-comment rule-making to rescind these finalized rules across all affected agencies.

Both executive orders and their complementary policies have damaged the foundational separation of church and state; undermined the meaning of religious freedom; and provided employers, service providers, and other organizations with a broad license to discriminate. In order to ensure equal treatment for communities hit hardest by these measures and reverse the many harms perpetuated under the guise of religious liberty, it is essential that a new administration swiftly issue a cross-agency executive order that takes a multipronged approach to tackling this complicated issue. In addition to the above executive actions to ensure nondiscrimination in government services, benefits, and programs, the authors recommend that the executive order:

- Accurately reflect the current state of the law.
- Direct agencies to engage in notice-and-comment rule-making and issue guidance that accurately represents the current state of the law in regard to promoting the government and public interest. The order would need to strike a balance between no-establishment and free-exercise concerns that are the co-guarantors of religious freedom²⁵ in order to institute a transparent and effective process for determining religious exemptions and third-party burdens.
- Direct the DOJ to revise guidance, legal opinions, and its position in litigation to ensure that legal standards for religious exemptions and accommodations accurately reflect the law. Directives should include explicit language stating the agencies' commitment to ensure religious liberty is not used to deny equal treatment under the law; does not outweigh or actively harm the civil rights or nondiscrimination protections of other protected classes; and does not place an inappropriate burden on third parties who do not benefit from them.
- Emphasize the proper role for religious engagement²⁶ by establishing religious outreach roles in the White House Office of Public Engagement (OPE) and reestablishing the Office of Faith-Based and Neighborhood Partnerships within the White House Domestic Policy Council to coordinate the operations of agency-based partnership centers, including those that are faith-based; direct the White House's priorities related to religious freedom; and engage with religious communities in partnership with the OPE.

These actions will help to preserve church-state separation; restore religious liberty to its true purpose without privileging the religious tenets of conservative white evangelical Christians; and ensure nondiscrimination protections for LGBTQ people accessing government-funded and -contracted services at faith-based providers, including those in the realm of health care, education, employment, and housing.

Reverse the transgender military service ban and ensure nondiscrimination for people with HIV in the military

In April 2019, the Trump administration's ban on openly transgender military service went into effect.²⁷ As a result, the U.S. Department of Defense (DOD) instituted a dual-track policy that implemented a general ban, while retaining an inclusive policy for the openly transgender military personnel who were already serving, meaning that they had received a diagnosis of gender dysphoria from a military medical provider.²⁸ Under directive-type memorandum 19-004, transgender service members, or the "exempt," had to obtain a gender dysphoria diagnosis before April 12, 2019, to receive grandfathered protection and continue to serve. Alternatively, any service member who did not obtain a diagnosis by that deadline—the "nonexempt"—fell subject to the Trump administration's exclusionary ban.²⁹

The ban on service for openly transgender people in the military is blatantly discriminatory and undermines national security and military readiness by compelling transgender service members to leave the military and dissuading transgender people from openly serving their country.³⁰ The Biden administration should take immediate action to repeal this dehumanizing policy, directing the DOD and any other relevant agencies to eliminate the separate tracks for grandfathered exempt service members subject to the inclusionary policy and nongrandfathered nonexempt service members subject to the exclusionary track. Thus, the federal government would reinstitute a single and consistent military standard, as recommended by Rear Adm. Alan M. Steinman.³¹

In conjunction with these actions, the DOD should adopt a comprehensive approach to eradicating discriminatory policies that disproportionately affect LGBTQ military service members, including people living with HIV. First, the DOD should amend directive 6485.01³² to remove the categorical prohibition of any person who is HIV-positive from appointment, enlistment, pre-appointment, or initial-entry training for military service. Second, the DOD should reverse the Trump administration's "deploy or get out" policy, which directs the Pentagon to identify service members who cannot be deployed to military posts outside the United States for more than 12 consecutive months and process them for administrative separation from military service.³³ Because the current military policy categorizes service members living with HIV as nondeployable, such members are subject to immediate discharge.³⁴ Ultimately, both of these policies perpetuate stigmatization of and discrimination against people living with HIV, including LGBTQ people, and should be reversed immediately. Overall, discriminatory policies regarding military service of transgender people and people

living with HIV undermine military readiness and national security, and adoption of the proposed recommendations would reflect the actions of an administration that respects the dignity and duties of all services members.

Create a federal plan to address rampant and increasing violence against transgender people, particularly Black transgender women

Tragically, in 2020, at least 37 transgender or gender-nonconforming people have been violently killed in the United States—making it the deadliest year on record for these populations in this country.³⁵ Due to conditions created by systemic racism and trans-misogyny, Black transgender women are particularly vulnerable to being subjected to these horrendous, dehumanizing acts of physical and sexual violence.³⁶ In recognition of what the American Medical Association has described as a national epidemic of violence against transgender people,³⁷ the Biden administration should prioritize establishing a cross-agency task force driven by a dual mission to address the killings of and violence against transgender people—especially Black transgender women—by investigating violence and the responses of law enforcement and to prevent violence by addressing enhanced data collection and hate crime reporting, discrimination, economic security, safe and secure housing, trauma-informed care, the criminalization of sex work, police violence against transgender people, and other safety concerns of transgender people. The task force should consist of representatives from DOJ, HHS, HUD, and DOL and should aim to center the voices, experiences, expertise, and long-standing work of transgender advocates and activists, particularly transgender people of color.

Create a task force subgroup to support COVID-19 relief for LGBTQ people

The COVID-19 pandemic is compounding existing disparities LGBTQ people face in the realms of health care access, educational achievement, safe and stable housing, experiences of poverty, and economic opportunities. The public health and ensuing economic crises have magnified the country's systemic inequality,³⁸ with those living at the intersection of multiple identities that are historically discriminated against and underserved—particularly LGBTQ communities of color and people with disabilities—being hit hardest. Mitigating the pandemic's detrimental impact on the lives of LGBTQ people requires a strategically coordinated effort across several executive agencies. The new administration should incorporate into the existing COVID-19 Equity Task Force a subgroup to investigate and issue recommendations to provide COVID-19 relief for LGBTQ populations. In particular, in order to ensure

that LGBTQ people, families, and communities are not left behind by the pandemic response, this group should take action to:

- Explicitly include LGBTQ people in the vaccine distribution plan and ensure that COVID-19 testing and vaccinations are free.
- Prohibit discrimination based on SOGI for service providers that receive federal funding for COVID-19 relief by engaging in notice-and-comment rule-making to rescind the finalized rule on HHS grants regulation,³⁹ including grantees and contractors in the areas of health care, housing and shelters, and employment.
- Withdraw HUD's July 24, 2020, proposed rule⁴⁰ allowing refusal of service to transgender people at single-sex shelters; request increased federal funding for shelters and the LGBTQ Youth Homelessness Prevention Initiative; and implement a national, comprehensive moratorium on evictions and foreclosures for all renters and homeowners for the duration of the COVID-19 pandemic.⁴¹
- Encourage Congress to provide financial stimulus support for low- and middle-income households; ensure that COVID-19 essential workers are well paid and safe at work; expand paid sick leave and paid family and medical leave protections to include chosen family caregiving relationships akin to those for blood or legal relatives; and increase funding and access to subsidized housing assistance and unemployment insurance programs.
- Eliminate onerous work requirements and increase budgeting for the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) and maintain the existing flexibilities implemented in response to COVID-19.
- Ensure that HHS' Office for Civil Rights (OCR) enforces the ACA's statutory nondiscrimination protections in a manner that is consistent with the Supreme Court's decision in *Bostock v. Clayton County* prohibiting discrimination based on SOGI.
- Incentivize Medicaid expansion in states that have failed to do so.
- Revise the existing HHS COVID-19 laboratory data guidance to require the collection and reporting of SOGI data in coronavirus and COVID-19 testing in a manner that is voluntary for individuals and sufficiently protects privacy and confidentiality.⁴²

- Issue guidance on best practices to support LGBTQ students learning remotely in unsafe or hostile home environments while severed from positive social connections, including how teachers and staff can lend support and resources inside and outside the classroom.

Make data collection a top priority

One of the most critical elements in the fight for LGBTQ equality is the access to reliable data on LGBTQ populations. Without a solid understanding of the difficulties faced by this community, it is impossible to create effective policy that targets and addresses their unique needs.⁴³ Furthermore, by treating the LGBTQ community as a monolith, policymakers are ignoring these groups' vast diversity of experiences, particularly among transgender individuals, intersex individuals, and people of color.

Currently, despite impressive efforts from various advocacy groups, there is scant information on the unique experiences of LGBTQ Americans; a number of key federal surveys do not include questions pertaining to SOGI, and there is little guidance for how these questions are asked.⁴⁴ The Trump administration took steps to curtail the number of surveys that include these questions, further limiting the ability of policy advocates to understand and address the needs of LGBTQ Americans.⁴⁵

In order to make meaningful progress in closing the data gap between LGBTQ and cisgender and heterosexual populations, the authors recommend that the new administration reconvene the Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys.⁴⁶ This working group has put out several necessary reports highlighting recommendations⁴⁷ for LGBTQ inclusion in federal surveys and established guidance⁴⁸ for asking questions related to SOGI. Adopting these recommendations and updating assessments of federal surveys is an important step in helping agencies fill the gaps in data collection. While data collection is critical, gender markers on identity documents can lead to the misgendering of transgender people. These requirements should be reviewed to determine if a gender marker is necessary. The primary purpose of an identity document is to ensure that the person presenting the identification is who they say they are. Gender markers can cause harm and are not necessary to establish identity.

One of the largest problems in LGBTQ data collection is the lack of uniformity in both what questions are asked relating to SOGI and how these questions are presented. The Office of Management and Budget must establish data collection standards for SOGI,

using both findings from the federal interagency working group and the recommendations⁴⁹ from the National Academies of Sciences, Engineering, and Medicine on collection procedures as resources in this effort. Prominent among these proposals should be recommendations to:

- Issue guidance that all agencies including SOGI questions in surveys and methodologies utilize the two-step question approach for gender identity, which includes a question about sex assigned at birth and a second question about current gender identity.⁵⁰
- Issue guidance to include a wide range of options related to SOGI that go beyond gay, lesbian, or bisexual, such as those who identify as queer, asexual, or two-spirit.
- Issue guidance on best practices for collection of data for intersex individuals, who are currently the most underrepresented group in federal data collection efforts.

In the several instances where the Trump administration removed questions pertaining to SOGI from federal surveys, the incoming administration should reintroduce these questions in adherence to the above recommendations, including:

- Add previously removed questions from the Annual Program Performance Report for Centers for Independent Living, a survey that highlights the experiences and needs of elderly and disabled Americans in assisted living programs.⁵¹ The two-step gender identity demographic question should also be included in the National Survey of Older Americans Act Participants, according to recommendations by SAGE.⁵²
- Revive the LGBTQ Youth Homelessness Prevention Initiative spearheaded by HUD. Although this program announced⁵³ in 2017 that it was 60 days out from its data collection phase, there has since been no movement toward collecting the data necessary to make recommendations, which was slated to include interviews, focus groups, and surveys. The department should resume a timetable for data collection and report release.
- Resume postponed efforts at the VA to add information on SOGI to online health records. A recent report by the Government Accountability Office established⁵⁴ that the lack of data on LGBTQ veterans—89 percent of veterans have records not listing information on SOGI—makes it impossible to adequately provide for this population, especially transgender veterans.

- The U.S. Census Bureau should conduct tests determining the operational implications and response rates of SOGI questions in the American Community Survey and decennial census, similar to their 2019 test of the census' citizenship question. There was strong consideration in 2016 to add SOGI questions to the surveys that were more recently abandoned, despite assertions from both the DOJ and HUD in 2016 that such data collection would be integral in the fight against employment and housing discrimination.⁵⁵
- The Biden administration must direct the USDA Economic Research Service to collect data on SOGI in the data compiled for the Rural Atlas. Moreover, the USDA should collect data on SOGI of farm operators in the Census of Agriculture.

The White House should convene both public and private funders, in addition to legal advocacy groups and research institutions already engaging in data collection work, to discuss the issues of linking existing datasets to create a comprehensive picture of the difficulties of LGBTQ individuals. These datasets should also be made available on data.gov as a listed topic area.

Health and human services

LGBTQ people face unique challenges, inequities, and disparities both in terms of their physical and mental health as well as their abilities to access health insurance and health care. The physical and mental health of LGBTQ communities is drastically affected by forces such as adverse experiences of discrimination, stigma, violence, and other social, political, and economic determinants of health.⁵⁶ In particular, compared with heterosexual and cisgender people, research demonstrates that certain populations of the LGBTQ community are more vulnerable to suffering from chronic health conditions; see higher prevalence and earlier onset of disabilities; and experience higher rates of illness and health challenges related to HIV/AIDS, substance use, mental illness, and sexual and physical violence.⁵⁷ Moreover, due to racism and social determinants of health, LGBTQ people of color, particularly transgender people of color, face especially significant health disparities and obstacles to accessing insurance coverage and quality, affordable health care.⁵⁸

TABLE 1
LGBTQ Americans face unique barriers accessing quality and affordable health care

Percentage of LGBTQ Americans who postponed medical care or preventative screenings, by reason and demographic group

Type of care	Total across survey	Transgender*	People of color**	Those who reported discrimination in the previous year
Postponed needed medical care due to cost	29%	51%	30%	44%
Postponed preventative screenings due to cost	24%	40%	23%	34%
Postponed preventative screenings to avoid discrimination	16%	40%	19%	29%
Postponed needed medical care to avoid discrimination	15%	28%	17%	25%

* The statistics for transgender individuals include nonbinary, gender-nonconforming, genderqueer, and agender respondents.

** For the purposes of this survey, people of color include Black, Hispanic, Asian, and multiracial individuals, as well as those identifying as "other, non-Hispanic."

Source: Center for American Progress and NORC at the University of Chicago online survey, June 2020, on file with the authors.

For four years, the Trump administration levied a barrage of attacks on the ACA that jeopardized access to insurance coverage, health benefits, and nondiscrimination protections for LGBTQ communities, to devastating effect.⁵⁹ Not only did the

administration repeatedly try to undermine the law's consumer protections, including nondiscrimination safeguards for LGBTQ people and protections for preexisting conditions, but it also made it easier for health insurance companies and providers to deny care and services by providing faith-based providers a license to discriminate against LGBTQ people and people seeking reproductive health care.⁶⁰ As the country continues to grapple with the public health and economic consequences of the coronavirus crisis,⁶¹ the attempts to demolish the ACA and other critical health care policies are most detrimental for LGBTQ people, people with disabilities,⁶² people with preexisting conditions, and communities of color, all of whom have made significant gains under the law's passage⁶³ and deserve particular attention under a new administration that believes that health care is a right for all Americans. This section identifies essential actions to roll back harmful rules, guidance, and policies promulgated under the Trump administration's HHS while also highlighting proactive measures that the Biden administration can take that meaningfully value and prioritize the health, lives, and rights of LGBTQ people. To achieve these aims, an agencywide ongoing commitment to addressing issues affecting LGBTQ populations is imperative.

Rescind and replace rules and regulations for Section 1557 of the ACA

The Trump administration promulgated a final rule implementing Section 1557 of the ACA—the health care law's primary civil rights provision—that weakens critical protections issued by a 2016 Obama-era rule.⁶⁴ Among other harms, the final rule attempts to erase specific nondiscrimination protections based on sexual orientation, gender identity, and sex stereotyping; eliminates regulatory prohibitions on transgender-specific exclusions in health insurance coverage and in the provision of services tied to transition-related care; restricts the scope of the regulations such that they only narrowly apply to specific activities that are federally funded or supported and no longer apply to all HHS-administered programs; implements religious exemptions for health care providers that enable discrimination and refusals to provide abortions; obscures the right of private individuals to challenge and report civil rights violations; permits health insurers to vary benefits in discriminatory ways against particular groups, including people living with HIV or LGBTQ people; and eliminates accessibility to services for people with limited English proficiency.⁶⁵ Finally, the rule destroys nondiscrimination protections based on SOGI in 10 other federal health care regulations beyond Section 1557.⁶⁶ The new administration should engage in notice-and-comment rule-making to rescind and replace the existing rule with one that builds on the 2016 rule by explicitly including SOGI within the definition of sex discrimination in the ACA, providing unambiguous protections for LGBTQ people, and ensuring

consistency with the decision in *Bostock v. Clayton County*. Doing so would represent a milestone advancement for LGBTQ people accessing health care services and insurance coverage. Simultaneously, the new administration should reverse the “conforming amendments” that eliminate explicit nondiscrimination protections on the basis of SOGI in 10 Centers for Medicare and Medicaid Services (CMS) regulations, which were implemented as part of the final Section 1557 rule.⁶⁷

Rescind rules and regulations permitting overly broad religious and moral exemptions from providing contraception

The Trump administration issued rules and regulations facilitating religious⁶⁸ and moral⁶⁹ exemptions and accommodations for coverage of certain preventive services under the ACA. These rules exempt and accommodate any employer with religious objections and nearly all employers with moral objections to the ACA’s requirement that employers provide contraceptive coverage in their health insurance plans.⁷⁰ Although these actions are currently under litigation, the Biden administration should immediately engage in notice-and-comment process to rescind these broad-based rules that undermine access to health care and should issue new rules that revert back to the narrower exemptions available under the Obama administration, which uphold the law and ensure that all employees can access the reproductive health coverage they need.

Disband the Conscience and Religious Freedom Division and rescind the denial-of-care rule

In 2019, the Conscience and Religious Freedom Division within the OCR at HHS issued its final denial-of-care rule.⁷¹ By expanding the OCR’s enforcement authority of health care conscience laws, this rule permits hospitals, doctors, insurance companies, and an array of other health institution workers and health providers to opt out of providing care or information that they claim violate their moral or religious beliefs. Absent evidence of any need, this includes denying services related to contraception and abortion, as well as gender-affirming care, under the guise of protecting conscience and free exercise of religion.⁷² The rule has disproportionate, adverse impacts for LGBTQ people, as well as women and religious minorities, seeking care, and the authors recommend that the Biden administration accept the 2019 vacating of the rule by federal courts⁷³ and cease efforts to continue fighting for this rule in court. Additionally, the new administration should disband the Conscience and Religious Freedom Division;⁷⁴ restore enforcement resources for conscience claims to levels that reflect its caseload; and increase resources and budget appropriations to support civil rights enforcement.

Rescind discriminatory HHS grants regulation

The Trump administration's final rule on HHS grants⁷⁵ explicitly strips beneficiaries receiving federally funded services of comprehensive nondiscrimination protections based on SOGI and eliminates the explicit requirement that grantees comply with the Supreme Court's decision in *Obergefell v. Hodges* and treat all marriages equally.⁷⁶ The policy signals a tolerance for discrimination and creates confusion by forcing LGBTQ people to depend on an unreliable and non-LGBTQ inclusive patchwork of program-based nondiscrimination provisions. Because HHS grants total more than \$500 billion annually⁷⁷ and fund a wide array of programs and services that LGBTQ people rely on—including those addressing mental health, homelessness, intimate partner violence, anti-bullying efforts, aging care, and people living with HIV/AIDS—the depth and breadth of harm caused by the current regulation is difficult to overstate.⁷⁸ The authors recommend that the new administration engage in notice-and-comment rulemaking to rescind the final rule and restore protections.

Rescind HHS waiver permitting discrimination in child welfare services

In 2019, HHS granted South Carolina a waiver allowing an exemption from HHS regulations prohibiting discrimination in the state's child welfare system. An investigation by the U.S. House Committee on Ways and Means revealed that the waiver constitutes an improper, unprecedented act that permits discrimination based on religion and sexual orientation; violates the state's statutory mandate to act in the best interest of the child; exacerbates the shortage of foster parents in the state; and disproportionately harms LGBTQ foster youth, who are already overrepresented in the foster care system.⁷⁹ The Biden administration should immediately rescind this waiver to mitigate discrimination in public child welfare services.

Rescind the Title X domestic gag rule

The Title X Family Planning Program is the only domestic federal program exclusively specializing in providing people with reproductive health and family planning services, such as free and low-cost birth control; contraceptive education; sexually transmitted infection tests; breast and cervical cancer screenings; HIV testing and preventive services; and other kinds of preventive reproductive care.⁸⁰ While saving taxpayers money,⁸¹ across the country, nearly 4,000 Title X-funded family planning and reproductive health centers annually service approximately 4 million low-income, under- and uninsured

clients⁸² and play a crucial role in ameliorating health disparities and providing essential health care to LGBTQ people, women of color, and immigrant women.⁸³ The final HHS rule⁸⁴ implemented by the Trump administration prohibits Title X funding recipients from referring patients for abortion care; destroys the promise of unbiased information and comprehensive counseling options for pregnant women; redirects federal funds and expands referral networks to include anti-choice crisis pregnancy centers; and damages the patient-provider relationship by encouraging greater family participation.⁸⁵ This rule has already jeopardized the health care of more than 1 million patients and reduced the network's capacity by nearly 50 percent.⁸⁶ The rule is undoubtedly exacerbating existing health inequities and barriers to care for LGBTQ people and may have a chilling effect for those seeking care. The new administration should immediately rescind this rule in its entirety, support increased Title X funding, and collaborate with the Office of the Assistant Secretary for Health to identify and eliminate anti-abortion language incorporated into foreign and domestic grants.

Restore and enhance critical LGBTQ data collection

The Adoption and Foster Care Analysis and Reporting System (AFCARS) collects case-level information on all children in foster care and those who have been adopted. The data are critical for determining awards, allocating funds, engaging in strategic planning, determining technical assistance, conducting reviews, and issuing reports on the HHS Children's Bureau's programs and services.⁸⁷ The Trump administration's final rule⁸⁸ for AFCARS, among other provisions, eliminates data collection on the sexual orientation of youth in foster care as well as foster and adoptive parents and guardians, which was previously required under a 2016 Obama-era rule.⁸⁹ The most recent rule undermines the safety, permanency, and well-being of LGBTQ children.⁹⁰ The authors recommend that the new administration engage in notice-and-comment rule-making to rescind the final rule, replace it with data collection processes required under the 2016 Obama-era rule, and strengthen that rule by adding gender identity questions for foster youth, foster and adoptive parents, and guardians.

Issue an executive order on the national HIV/AIDS strategy

Due to the historic and monumental failings of the U.S. government to combat the HIV epidemic and eliminate HIV-related stigma, HIV continues to be a significant public health crisis in this country. Recent data reveal that approximately 1.2 million people are living with HIV; gay, bisexual, and other men who have sex with men

(MSM) make up the greatest share of new HIV diagnoses; transgender people have experienced marked increases in HIV diagnoses; and Black and African American and Latino and Hispanic communities continue to be disproportionately affected by HIV.⁹¹ The Trump administration failed to fully fund its plan and continued to undermine its success by leveling attacks against the ACA and the ability of people living with HIV to access affordable care and insurance coverage. The new administration should prioritize issuing an executive order to reestablish the Office of National AIDS Policy and a task force comprising key policy and public health experts to update, enhance, and implement the national strategy to end the HIV epidemic in the United States by 2025.⁹² The mission of these entities should include efforts to amplify resources and enact executive and legislative changes that promote evidence-based treatment, prevention strategies, and coverage of ancillary services for people living with HIV. Possible actions include but are not limited to increasing funding for and supporting enhancements to the Ryan White HIV/AIDS Program in the Health Resources and Services Administration (HRSA); designing outreach and service provision strategies targeting key populations such as MSM of color, transgender people, and older adults; strengthening federal rules, regulations, and policies affecting people living with HIV, including those serving in the DOD or in the custody the Federal Bureau of Prisons; issuing recommendations to repeal HIV criminalization laws; issuing revised guidelines surrounding the Food and Drug Administration's discriminatory and stigmatizing blood ban that are based on an individualized assessment of the risky behavior of the potential donor, rather than sexual orientation;⁹³ and designating LGBTQ older adults and older people living with HIV as a "greatest social need" group in the Older Americans Act reauthorization.⁹⁴

Eliminate transgender exclusions in health care

As mentioned above, the Trump administration's final rule on Section 1557 eliminated critical provisions of a 2016 Obama-era rule that prevented discrimination based on gender identity and eliminated transgender-specific exclusions.⁹⁵ Transgender-specific exclusions have historically been deployed by public and private health insurers to deny transgender people coverage for medically necessary care related to gender-affirming transition, even though the same services are standardly covered for cisgender people.⁹⁶ For example, such services and procedures include hormone therapy, mental health counseling, and surgeries. In addition to the recommendations to ensure that Section 1557 of the ACA's civil rights nondiscrimination protections encompasses SOGI, the new administration should take further action to explicitly eliminate transgender exclusions in health care. In particular, the Biden administration should

finalize and publish the 2016 proposed rule⁹⁷ establishing explicit nondiscrimination protections on the basis of SOGI within the Medicare and Medicaid conditions of participation for health care organizations. This includes clarifying that transgender exclusions—that is, arbitrary exclusion of medically necessary, transition-related care—is out of compliance with federal law.

Issue rules designating LGBTQ people as a medically underserved population and a HPSA population group

Due to the prevalence of discrimination, barriers to accessing health care, and significant health disparities experienced by LGBTQ people, the authors recommend that the HRSA engage in notice-and-comment rule-making to designate the LGBTQ population as a medically underserved population.⁹⁸ Because of the shortage of health care providers with adequate training to provide care in an affirming, nondiscriminatory and culturally competent fashion, it is also recommended that the HRSA engage in notice-and-comment rule-making to designate the LGBTQ population as a health professional shortage area (HPSA) population group.⁹⁹ The adoption of categorizations would complement the status of LGBTQ populations as an National Institutes of Health-designated health disparity population and represent an important step in ameliorating existing health inequities and disparities faced by LGBTQ communities.¹⁰⁰

Strengthen standards related to protecting immigrant youth in HHS custody from sexual violence

Isolated from their parents and guardians, LGBTQ immigrant youth—many of whom already face disturbing rates of violence and trauma in their countries of origin—are particularly vulnerable to sexual abuse and harassment while in federal detention facilities.¹⁰¹ Currently, before being released to their parents or sponsors, unaccompanied children are temporarily housed by HHS' Office of Refugee Resettlement (ORR) in a network of facilities operated by contractors and grantees.¹⁰² In 2014, the ORR submitted an interim final rule regarding standards to prevent, detect, and respond to allegations of sexual abuse and sexual harassment involving unaccompanied children.¹⁰³ Problematically, the interim rule also contains an overextending religious exemption permitting grantees and contractors with religious or moral objects to abstain from complying with components of the sexual assault prevention and response standards.¹⁰⁴ The Biden administration should issue a final rule that adopts comments suggesting mechanisms to enhance protocols to prevent, detect, and respond to sexual

abuse and sexual harassment involving unaccompanied children. The rule should also eliminate the overly broad religious exemption currently in place since there should be no religious exemption to requirements for protecting children from sexual violence.

Expand mental health support services and training related to LGBTQ youth and adults

Myriad factors adversely affect the mental health of LGBTQ youth, including family rejection, stigmatization, discrimination, minority stress, as well as bullying, harassment, and assault at school that foster hostile environments for education and socialization.¹⁰⁵ Indeed, compared with their heterosexual and cisgender counterparts, LGBTQ youth and adults are significantly more likely to experience depression, anxiety, suicidality, and substance use.¹⁰⁶ Unfortunately, LGBTQ populations are often unable to receive the health services they require due to a dearth of training on LGBTQ-specific cultural competencies for health providers; limited access to mental health counseling services; lack of financial incentives for treating mental health issues; failures to integrate mental health and substance use care; and lack of awareness about the specific health needs of LGBTQ people.¹⁰⁷ Recognizing these crucial problems, the new administration should take action to expand mental health support services and training for LGBTQ populations. Such actions include efforts to: direct HHS' Substance Abuse and Mental Health Services Administration to develop and disseminate cultural competency curricula and training on LGBTQ patients in federally funded medical facilities, medical training programs, and providers participating in Medicaid; encourage and incentivize states to expand the reimbursement and utilization of telemedicine mental health services to reach LGBTQ youth in underserved, rural areas through Medicaid and the Children's Health Insurance Program (CHIP); and request increased federal funding to support mental health and substance use disorder prevention targeting services for LGBTQ communities.¹⁰⁸

Prohibit medically unnecessary surgery on intersex children

Intersex is an umbrella term used to describe someone with internal or external sex characteristics or reproductive anatomy that do not fit the standard binary definitions of female or male.¹⁰⁹ Currently, intersex children are regularly subjected to medically unnecessary, cosmetic procedures to alter their natural variations in genital appearance or reproductive anatomy. These invasive operations are often performed on infants younger than age 2 and can have serious, lifelong mental health and physical consequences, high

complication rates, adverse impacts on fertility, and reduced sexual function.¹¹⁰ Absent the full, free, and informed consent of the intersex individual, these procedures violate their human rights.¹¹¹ The new administration should support efforts to protect intersex children from medically unnecessary surgeries, as recommended by the American Academy of Family Physicians¹¹² and the World Health Organization.¹¹³

Protect LGBTQ older adults by fully implementing the 2020 Older Americans Act

Many LGBTQ older adults have experienced stigma and discrimination throughout their lives and encounter unique challenges to healthy aging.¹¹⁴ The COVID-19 pandemic has exacerbated existing health and housing disparities among LGBTQ older adults, who are at increased risk of the virus' harms and in need of access to quality, culturally competent care. The authors recommend that the Biden administration direct HHS' Administration for Community Living, which is charged with maximizing the independence, well-being, and health of older adults and people with disabilities, to robustly implement the language and policies of the 2020 Older Americans Act reauthorization.¹¹⁵ This legislation requires that state and local departments of aging are held accountable for engaging in outreach to LGBTQ older people who are in need of services, as well as for participating in data collection and reporting on the needs of this population.

Create a senior position at the CMS to coordinate and enforce policies promoting the health and rights of LGBTQ people

Within HHS, the CMS maintains a broad array of responsibilities, including administering Medicare, partnering with state governments to administer Medicaid and CHIP, administering health insurance portability standards, and overseeing HealthCare.gov. The authors recommend establishing a senior position at the CMS responsible for overseeing, coordinating, and enforcing policies that incorporate the health and rights of LGBTQ people across all CMS programs. Duties may include addressing problems with nondiscrimination policies and compliance with conditions of participation, ensuring data collection and research support, monitoring implementation of Medicare benefits, and enhancing transgender-related clinical decision support, among other responsibilities.

Labor and economic stability

Evidence reveals that LGBTQ people are more likely than cisgender and heterosexual people to experience poverty and economic insecurity, although disparities in income, individual earnings, and poverty rates vary depending on the LGBTQ subpopulation in question.¹¹⁶ For example, lesbian and bisexual women earn more than heterosexual women but less than heterosexual men, who earn more than gay and bisexual men.¹¹⁷ Historic institutional and systemic discrimination such as failures to legally recognize same-sex partnerships broadly and in employment and government benefits has also negatively contributed to the financial well-being of LGBTQ families. Other critical problems LGBTQ people encounter include disproportionate unemployment rates, wage disparities, discrimination and harassment, overrepresentation in low-income jobs, and underrepresentation in high-wage, high-quality jobs. All of these problems adversely affect workforce experiences, serve as barriers to workforce entry, and narrow critical pathways to economic advancement for LGBTQ people, their families, and communities.¹¹⁸ For LGBTQ people living at the intersection of multiple identities, such as LGBTQ people of color, these challenges are even greater.

TABLE 2

One-third of LGBTQ Americans reported that discrimination moderately or significantly affected their ability to be hired

Percentage of LGBTQ Americans who reported the effect of discrimination on their employment, by demographic group

Barrier	Degree of impact	Total across survey	Transgender*	People of color**	Income below \$25,000
Ability to be hired	To a significant degree	18%	43%	19%	25%
	Moderately	17%	10%	16%	22%
	Slightly	24%	30%	26%	24%
	Not at all	42%	17%	39%	30%
Salary or ability to be promoted	To a significant degree	14%	24%	14%	16%
	Moderately	17%	13%	14%	17%
	Slightly	23%	20%	24%	27%
	Not at all	47%	42%	48%	39%
Ability to retain employment	To a significant degree	13%	29%	14%	25%
	Moderately	14%	18%	11%	17%
	Slightly	19%	12%	23%	18%
	Not at all	53%	41%	52%	40%

* The statistics for transgender individuals include nonbinary, gender-nonconforming, genderqueer, and agender respondents.

** For the purposes of this survey, people of color include Black, Hispanic, Asian, and multiracial individuals, as well as those identifying as "other, non-Hispanic."

Source: Center for American Progress and NORC at the University of Chicago online survey, June 2020, on file with the authors.

Such discriminatory experiences are damaging to the health and well-being of LGBTQ people, worsening the disproportionate rate of economic insecurity they face.¹¹⁹ In addition to enforcing nondiscrimination protections secured in the Supreme Court's decision in *Bostock v. Clayton County*, there are many broad-based labor and workforce policies that could be adopted to improve the financial stability of LGBTQ workers, particularly during the COVID-19 pandemic that has had inordinately detrimental impacts on historically marginalized communities.¹²⁰ Such sweeping policies could include actions by the new administration to: address wage stagnation by raising the federal minimum wage; ensure that COVID-19 essential workers are well paid and safe at work; strengthen unions and worker cooperatives; support paid family leave and medical leave that adopts a broader definition of family; and repeal work requirements for public benefits programs. Beyond these robust policy recommendations to promote more widespread economic prosperity, there are specific actions the Biden administration should take to roll back harmful anti-worker policies adopted by the Trump administration, as well as proactive policies to improve the financial well-being of LGBTQ workers and all employees more broadly.¹²¹

Repeal discriminatory religious exemptions for federal contractors and subcontractors

The DOL's Office of Federal Contract Compliance Programs under the Trump administration issued a 2018 directive¹²² and a 2020 final rule¹²³ that aim to expand the number of federal contractors eligible for religious exemptions. In effect, the rule would provide taxpayer-funded federal contractors and subcontractors with a broad license to discriminate against people who do not share the employer's religious beliefs.¹²⁴ Moreover, the rule would significantly weaken the nondiscrimination protections available under executive order 13672¹²⁵ and executive order 11246,¹²⁶ which safeguard employees of federal contractors and subcontractors from discrimination based on protected classes, including SOGI.¹²⁷ The new rule's language grants organizations, including for-profit corporations, claiming a religious affiliation the ability to be granted an exemption for engaging in discriminatory behavior. As such, the new administration should engage in notice-and-comment rule-making to rescind the final rule, as well as its implementing directive.

Strengthen LGBTQ-inclusive policies among contractors and small businesses

LGBTQ employees have suffered at the hands of the Trump administration's anti-worker agenda, which has enabled corporate wage theft, limited worker powers, fought against unions, revoked nondiscrimination and civil rights protections, and weakened workplace safety conditions and enforcement mechanisms.¹²⁸ The next administration should take comprehensive actions to foster LGBTQ-inclusive policies, improve working conditions, and proactively engage in quality job creation in the labor market. Broadly speaking, this means closing legal loopholes and rescinding rollbacks permitting contractors to damage work site stability and workers' collective bargaining rights, and engaging in partnerships with community and workers organizations to ensure that workers are aware of their rights and feel comfortable taking action.¹²⁹ For LGBTQ workers specifically, the Biden administration should direct the creation of a new reporting requirement that contractors disclose plans for inclusive recruiting and subcontracting; revive the Interagency Task Force on Federal Contracting Opportunities for Small Businesses;¹³⁰ establish a new, equity-focused Federal Procurement Center to consolidate and strengthen support for minority and disadvantaged firms; annually report to the Monitoring Business Development Agency on the state of minority and disadvantaged business contracting; explicitly include LGBTQ identity in the Small Business Administration's definition of minority-owned businesses; and take steps to affirmatively account for contractors utilizing religious exemptions.

Revoke fallacious restrictions on training for federal contractors

In 2020, the Trump administration issued executive order 13950, "Combating Race and Sex Stereotyping"¹³¹ which prohibits federal contractors, federal agencies, certain federal grant recipients and the military from conducting training related to critical race theory, implicit bias, and diversity and sensitivity trainings on "divisive concepts," which include any form of race or sex stereotyping or sex scapegoating. The action reflects how the administration has actively undermined efforts to combat discrimination by using civil rights laws to target entities with inclusive policies. In a similar vein, the Office of Management and Budget's memorandum on critical race theory in federal government training calls for agencies to cease and desist from trainings that include divisive concepts on critical race theory and "anti-American propaganda."¹³² Both actions appear to be driven by the fallacious belief that workplaces with exclusionary and discriminatory practices are in need of greater protections, while those with inclusive trainings are creating hostile work environments. The Biden administration should revoke the executive order,

memorandum, and all accompanying policies, and it should issue a new executive order promoting anti-racism and LGBTQ cultural competency training for federal program staff, as well as those receiving federal grants or funds.

Affirmatively promote employment opportunities for LGBTQ people

To address multidimensional barriers to entry and increase access to workforce participation, the next administration should prioritize issuing an executive order affirmatively promoting quality employment opportunities for LGBTQ people. The order may include actions including but not limited to: 1) establishing an interagency task force to promote economic opportunity for LGBTQ people, coordinate information sharing, and investigate and promote solutions to challenges facing low-income LGBTQ people and families; 2) designing and implementing an evidence-based pilot program with the aim of increasing workforce participation and access to higher-wage jobs for LGBTQ people, particularly transgender people, which should be accompanied by testing evaluation and a publicly available national report; 3) issuing guidance to clarify that transgender people are eligible for DOL programs for disadvantaged workers, Women's Bureau programs, Small Business Administration women and disadvantaged workers programs, and U.S. Department of Commerce programs, including the Minority Business Development Agency programs; 4) evaluating, updating, and strengthening existing LGBTQ-focused workforce policies including those from the DOL Employment and Training Administration (ETA), Job Corps program, and Civil Rights Center's internal enforcement gender identity guidance; and 5) conducting an audit on the accessibility of and equal opportunity complaints in one-stop career centers and ETA programs to ensure that LGBTQ people have full access to services provided by the public workforce system, which should be paired with incentives to reach LGBTQ populations through ETA programs, as well as other workforce and small-business grants.

Ensure the occupational safety and health of transgender employees

A new administration should update the DOL Occupational Safety and Health Administration guidance on sanitation standards to affirm protections for transgender employees and ensure access to toilet facilities consistent with the interpretation of the Supreme Court in *Bostock v. Clayton County*.¹³³ In particular, the new standards should require all single-occupancy toilet facilities to be available without regard to sex; ensure that all employees have access to toilet facilities consistent with their gender

identity; and permit employers to provide multiuser toilet facilities available without regard to sex, provided that the employer also provides the required number of sex-specific toilets. The adoption of such policies will ensure greater protections for transgender employees, while fostering a more inclusive and affirming work environment.

Amplify access to and investments in public benefits to protect basic living standards and support economic security

In addition to health care settings, LGBTQ people also experience discrimination and disparities in the areas of employment and housing, all of which create substantial barriers to attaining and maintaining economic security and adequate living standards. To help meet their basic needs in these areas, LGBTQ people and their families seek access to and are more likely than non-LGBTQ people to rely on public programs and federal benefits,¹³⁴ including SNAP, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), school meal nutrition, TANF, subsidized housing assistance, and unemployment insurance. Due to systemic and institutionalized racism, transphobia, and ableism, higher benefit usage rates are reported among LGBTQ people of color, transgender people, and LGBTQ people with disabilities. The public health and economic wreckage created by the COVID-19 pandemic has magnified the need to expand access to these crucial supports for LGBTQ people,¹³⁵ who already face disproportionate economic hardships, higher rates of poverty and unemployment, and greater vulnerability to homelessness and food insecurity compared with the general population. Improving access to these crucial public benefit programs is a cross-cutting endeavor that requires coordination among different agencies and state actors; however, the new administration can amplify supports for LGBTQ people and their families who rely on these programs by: eliminating onerous and ineffective work requirements or qualifying training programs; expanding access to and increasing funding for these programs, while supporting broad-based policies to improve wages and working conditions; and investing in greater data collection to more fully capture and understand the receipt of public benefits.¹³⁶ Regarding SNAP in particular, the new administration should withdraw the 2019 proposed rule restricting “categorical eligibility” to SNAP for families receiving another government benefit¹³⁷ and engage in notice-and-comment rule-making process to rescind the December 2019 final rule that tightens criteria for time limit waivers obtained by states related to eligibility and work requirements for able-bodied adults without dependents participating in SNAP.¹³⁸

Justice and law enforcement

Under the Trump administration, the DOJ's resources were misused to undermine civil rights more broadly and LGBTQ equality in particular. The DOJ pushed for the elimination of explicit protections for LGBTQ people, undermined these protections through overly broad religious exemptions, and adopted an adversarial position in litigation to interpret civil rights laws to exclude LGBTQ people. Through then-Attorney General Jeff Sessions' memos instructing the agency and the rest of the government to prioritize a narrow interpretation of religious liberty over other rights and the establishment of a clandestine Religious Liberty Task Force, when the DOJ upheld civil rights, they were primarily focused on elevating the rights of individuals who held certain Christian beliefs over the rights of others. The DOJ spearheaded efforts to roll back the Obama-era protections for transgender people across the government, endangering their rights and lives. Its commitment to undermining nondiscrimination protections for LGBTQ people was so central that it opposed the EEOC before the Supreme Court in the *Bostock v. Clayton County* case, and it submitted briefs in support of discrimination against LGBTQ teachers in cases before state courts based on state law where the DOJ had no jurisdiction. The DOJ's role in upholding the law and advancing civil rights for everyone must be restored.

In 2020, America experienced a renewed national reckoning with anti-Black racist state violence, yet rather than positively confronting these issues, the Trump administration undid much of the previous administration's work to address racial disparities in the nation's criminal justice system. It is past time for the government to begin seriously and sincerely considering fundamental change in the construction of criminality and the ways it is used to enact violence against marginalized people, especially Black people, but including LGBTQ people.

LGBTQ people, especially Black LGBTQ people, transgender people, and LGBTQ people experiencing poverty, have long served as objects of violence at the hands of law enforcement and the carceral system. As the DOJ itself has acknowledged, police have a history of intentionally targeting and harassing LGBTQ people in diverse and creative ways.¹³⁹ This history is ongoing: 2020 survey data from the Center for American Progress show that 15 percent of LGBTQ people, 21 percent of transgender people, and 25 percent of Black LGBTQ people have experienced mistreatment or discrimination interacting with law enforcement just in the past year. The 2015 U.S. Transgender Survey found that the incarceration rate of transgender Americans was more than twice that of the general population.¹⁴⁰ The same study found that the incar-

ceration rate of Black transgender women was more than 10 times that of the general population. While U.S. policies explicitly criminalizing LGBTQ identities—through the regulation of sexual conduct, for example—have largely been dispensed with,¹⁴¹ the systematic criminalization of race, poverty, homelessness, HIV status, and survival economies such as sex work continues to serve as a means of perpetrating state violence against LGBTQ people at all levels of the criminal justice system. The Biden-Harris administration must act to ensure that the DOJ upholds the rights of LGBTQ individuals.

Prioritize civil rights enforcement

Despite its critical role in upholding the nation's civil rights laws, funding for the DOJ Civil Rights Division has not kept up with the need, and staffing has declined since 2016.¹⁴² In its budget request, the next administration should increase funding and staffing for each section of the Civil Rights Division. The division should lead a whole-of-government effort to restore civil rights enforcement. It should uphold protections for LGBTQ people and cease the weaponization of religious liberty to undermine civil rights. The Special Litigation Section, which, among other things, upholds the rights of people in jails and prisons and in police interactions, must have sufficient funding and staffing to protect LGBTQ people from illegal and unconstitutional policing practices and conditions of confinement. The authors also recommend that the DOJ request greater resources for its Office of the Inspector General specifically to address civil rights violations within federal facilities.

Reauthorize the Violence Against Women Act

LGBTQ people are at high risk of violence, and there has been a horrifying increase in killings of transgender people, particularly Black transgender women, in recent years. The Violence Against Women Act (VAWA) must be reauthorized to ensure that critical funding supports culturally competent services and reaches people in need of assistance.¹⁴³ To ensure that VAWA grants are serving LGBTQ people, the DOJ Office on Violence Against Women should award technical assistance grants to organizations with expertise in combating violence against transgender people and serving transgender people, including those who are incarcerated. It should also increase its allocation of grant money overall to support organizations serving transgender people and structure grant allocation to incentivize compliance with VAWA's nondiscrimination requirements.

Ensure greater support for LGBTQ people subject to hate crimes

Anti-LGBTQ crimes detrimentally affect the physical, psychological, and emotional well-being of direct survivors, as well as the larger LGBTQ community, exacerbating stigmatization, minority stress, and existing health disparities. 2017 data adjusted for relative population size reveal that LGBTQ people represent the most targeted demographic group subjected to reported hate crimes.¹⁴⁴ However, due to historic failures of courts and law enforcement to protect the targets of such violence, as well as distrust, fear of stigma, reprisal, and re-traumatization by law enforcement, widespread underreporting of anti-LGBTQ hate crimes prevail, and those statistics should be interpreted as lower-bound estimates. The Biden administration should incentivize states to improve their hate crime statistics processes and work with Congress to pass federal legislation eliminating the LGBTQ so-called panic defense.¹⁴⁵ This legal tactic asks a jury to find that a survivor's sexual orientation or gender identity explains the defendant's loss of self-control and subsequent act of violence.¹⁴⁶ The authors recommend that the next administration pair those efforts with guidance to agencies on how to create funding opportunities to support collaborative, restorative justice and community-centered consortiums. This includes structuring grant allocations to support community-based civil rights and social justice organizations united in their aim of building a national database on hate crimes; offering third-party reporting through hotlines or websites; anonymizing data collection; and providing survivors with support services and resources.

Undo the revision of the Transgender Offender Manual to properly enact PREA standards

One of the Trump administration's most egregious changes in federal criminal justice policy targeting LGBTQ people was the 2018 revision of the Federal Bureau of Prisons' Transgender Offender Manual, which is used to inform the placement and treatment of transgender incarcerated people.¹⁴⁷ The Prison Rape Elimination Act of 2003 (PREA) mandated the development of standards to eliminate sexual abuse in custody.¹⁴⁸ In response to shocking data from the 2014 National Inmate Survey¹⁴⁹ showing that transgender incarcerated people were roughly 10 times more likely than the general population to experience sexual victimization in custody, the DOJ issued guidance in 2016 that called for case-by-case determinations in housing transgender incarcerated people in sex-segregated facilities; taking into account factors including an individual's self-identified gender identity and personal perception of safety; and explicitly forbidding policies that require housing transgender and intersex incarcerated people based exclusively on exter-

nal genital anatomy.¹⁵⁰ The 2018 changes to the Transgender Offender Manual maintain the required practice of case-by-case determinations, but the revision specifies that “biological sex” will be used “as the initial determination for designation” and removes any reference to gender identity. This revision places transgender inmates at increased, direct risk of sexual assault, including by or at the direction of correctional staff, and runs counter to the Bureau of Prisons’ own data on the safety of transgender incarcerated people. Under the new administration, the DOJ should promptly restore pre-2018 standards of housing transgender incarcerated people.

Additionally, standards for housing incarcerated youth should be structured similarly. As with transgender and gender-nonconforming adults, transgender and gender-nonconforming youth are at greater risk of victimization if they are housed primarily based on external genital anatomy. Determinations of the placement of transgender and gender-nonconforming people should be made on a case-by-case basis with special attention given to the gender identity and personal perceptions of safety of the individual. This should be accomplished by means of DOJ-issued guidance on PREA standards.

Implement recommendations from the LGBT Subcommittee of the Federal Advisory Committee on Juvenile Justice

LGBTQ youth are more likely to experience family rejection, victimization in schools, homelessness, police mistreatment, and drug use.¹⁵¹ Consequently, they are over-represented in the justice system, including in juvenile detention facilities, with some research suggesting that 40 percent of incarcerated girls are LGBTQ.¹⁵² The DOJ Office of Juvenile Justice and Delinquency Prevention (OJJDP) is well aware of this disparity: In fact, in January 2017, its Federal Advisory Committee on Juvenile Justice issued the final recommendations of its LGBT Subcommittee—a detailed list including recommendations for funding, data collection, training, and federal coordination.¹⁵³ However, little has been done to implement the recommendations of the report. Under the new administration, the OJJDP should work to adopt the committee’s recommendations and meet with stakeholders to determine how best to implement them.

Issue guidance to ensure that formerly incarcerated transgender people obtain accurate ID

Reentry is a challenging process, which for many formerly incarcerated transgender people is made more difficult by the inability to obtain ID documents accurately

matching their gender identity. Issuing guidance to facilities on how to assist transgender incarcerated people in obtaining accurate ID well before release would aid them in accessing necessary services upon reentry.

Initiate a LGBTQ- and HIV-targeted reentry pilot project

Reentry services in general lack sufficient resourcing, and providers that assist returning people with jobs, housing, health care, and education are often unaware of the specific needs of LGBTQ people and people living with HIV/AIDS. The authors recommend that the DOJ initiate a pilot project to create LGBTQ- and HIV-specific reentry services in one to three communities with a high need for directed services. Such a project would involve working with existing community organizations, health care providers, local governments, and stakeholders to develop strategies that address the needs of formerly incarcerated LGBTQ people, including safe and affirming housing, support for those experiencing discrimination in hiring and other areas, and inclusive sexual health services.

Use specific federal mechanisms to intervene in abuses by state and local law enforcement and institute LGBTQ-attentive policies

While federal authority over state and local law enforcement is rather limited, the DOJ retains mechanisms to hold law enforcement accountable for constitutional violations, including civil rights investigations and consent decrees. These mechanisms offer the federal government rare opportunities to influence departmental policies. Notably, consent decrees have been used to specifically address abuses of LGBTQ people by police.¹⁵⁴ While consent decrees are only intended to address constitutional violations and by no means guarantee an end to police misconduct and brutality, they are one available form of intervention. The DOJ under former Attorney General Sessions issued a memorandum imposing strict new requirements to enact consent decrees, which must be corrected.¹⁵⁵

In addition to intervening in cases of constitutional violations, the DOJ has the ability to implement and enforce reporting requirements for instances of potential law enforcement abuses. The Death in Custody Reporting Act of 2013 (DCRA) requires state and federal law enforcement agencies to report information regarding the death of any detained, arrested, or incarcerated person.¹⁵⁶ The DOJ, by its own evaluation, has failed to implement the law in some federal agencies and all state agencies, having abandoned

three different data collection proposals since 2016.¹⁵⁷ While DCRA data collection has begun under the DOJ's latest implementation plan,¹⁵⁸ the plan requires much less detailed reporting than was initially proposed, and the data collected will not be publicly available. Data are needed to expose the extent of law enforcement abuses, and the DOJ is failing to meet its legally mandated obligation to collect them. Under a new administration, the authors recommend that the DOJ structure Bureau of Justice Assistance grants to incentivize implementation and enforcement of DCRA requirements, including by establishing strong and uniform requirements for states to report on subgrant activities and, within statutory limitations, responding to violations by withholding some grant funding to mandate compliance with reporting requirements.

As state and local governments consider demands for systemic change, the DOJ must use whatever means are within its power, including civil rights investigations and consent decrees, to address abuses by law enforcement agencies. The authors further recommend that consent decree implementations explicitly address not only systemic anti-Black racism but also the particular vulnerabilities of LGBTQ people and people experiencing homelessness.

Protect LGBTQ people from criminalization in trafficking enforcement

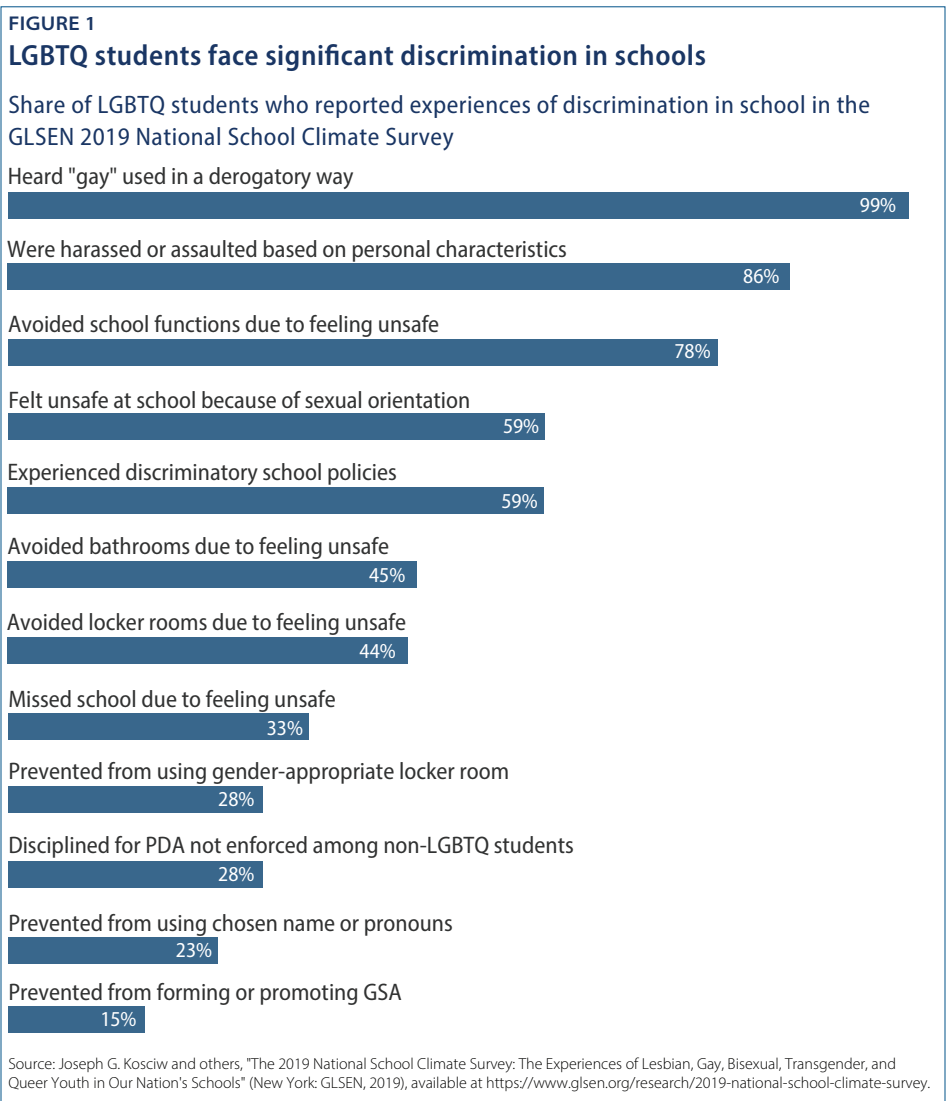
Due to the prevalence of homelessness, family rejection, and discrimination, LGBTQ people, especially LGBTQ youth, are at high risk of sex trafficking.¹⁵⁹ Moreover, greater involvement of LGBTQ people, especially transgender women of color, in survival economies such as sex work—due to discrimination and exclusion from broader labor markets—has led to systematic profiling and harassment of such groups by law enforcement.¹⁶⁰ The conflation of sex trafficking and sex work, and the overall criminalization of many forms of sex work, has resulted in further abuses upon trafficking survivors, such as victimization in sting operations and incarceration.¹⁶¹ This conflation is entrenched in federal policies such as the 2003 National Security Presidential Directive 22¹⁶² and the Global AIDS Act of 2003's so-called Anti-Prostitution Pledge,¹⁶³ which, although found by the Supreme Court to be unconstitutional as applied to U.S. entities, continues to hamper the effectiveness of in-country partner organizations' efforts in responding to the HIV crisis.¹⁶⁴ This entanglement has led to further dangers for both sex workers and survivors of trafficking, including incarceration and decreased access to health care and other critical services.¹⁶⁵ There is much to be done to deconstruct these complex and intersecting issues; as such, the authors recommend that the administration consult with advocates

and develop strategies to disentangle trafficking enforcement and sex work criminalization in federal law enforcement activities to the end of increasing anti-trafficking efficacy and avoiding additional criminalization of LGBTQ people.

Additionally, steps must be taken to restructure sex trafficking enforcement to center the needs of survivors and avoid criminalization. Developing DOJ-funded efforts through the Office for Victims of Crime and Bureau of Justice Assistance to combat human trafficking involves the creation of task forces, partnering federal agencies with state and local law enforcement and nongovernmental organizations or individuals.¹⁶⁶ Due to the history of law enforcement abuses against survivors of trafficking, especially in the use of sting operations,¹⁶⁷ the authors recommend that greater resourcing be given to task force entities such as state departments of labor, health agencies, and nongovernmental entities providing services to survivors to center their needs and avoid further victimization. To prevent further abuses, the administration must also ban federal law enforcement from engaging in sex acts within investigations. Finally, the authors recommend that the administration be proactive in protecting and supporting LGBTQ people from the dangers that criminalization of sex work poses for them. The DOL must consult with community organizations and advocates to develop programs and strategies aimed at increasing access to housing, employment, and health care for LGBTQ people engaged in survival economies.

Education

LGBTQ youth often struggle to navigate the complicated feelings and interpersonal challenges associated with coming out. During the pandemic, struggles related to mental health and well-being are magnified, particularly for youth of color and youth with disabilities. Despite increased acceptance, LGBTQ youth still experience rejection from parents at high rates and are often overrepresented in homeless¹⁶⁸ and foster care¹⁶⁹ populations. According to a 2019 survey from the Trevor Project, 71 percent of LGBTQ youth experienced discrimination in the last year, with 2 in 3 reporting that someone had tried to convince them to change their sexual orientation or gender identity.¹⁷⁰ These challenges make it increasingly difficult to succeed in an academic environment and often lead to higher rates of absence, lower GPAs, and poorer educational outcomes.



Given these factors, it is critical that U.S. schools provide safety and stability for LGBTQ students. There are, however, still high levels of discrimination and a number of noninclusive policies that hinder these students' success. Data from GLSEN's 2019 National School Climate Survey¹⁷¹ show that 3 in 5 LGBTQ students felt unsafe at their school as a result of their sexual orientation, with 1 in 3 reporting missing school due to these feelings. (see Figure 1) However, the current Education Department has severely neglected complaints of LGBTQ students, particularly transgender students. CAP examined complaints filed to the Education Department's Office for Civil Rights and found that complaints filed by LGBTQ students were nine times less likely to result in corrective action under the Trump administration than under the prior administration and that fewer complaints overall proceeded to a formal investigation.¹⁷²

In order to make a meaningful impact on the experiences of LGBTQ youth, it is essential to adopt policies that codify the rights of students, ensuring that legislation and legal rulings be applied thoroughly and previous guidance limiting the efficacy of nondiscrimination protections be revised.

Restore students' rights under Title IX

Due to the disproportionate¹⁷³ discrimination and harassment faced by transgender students in educational settings, it is critical to clarify federal protections. Federal guidance from 2016 clarified protections for transgender students under Title IX of the Education Amendments of 1972, including the right to access sex-segregated spaces and activities based on their gender identity.¹⁷⁴ However, guidance published in 2017 significantly limited the scope of Title IX, claiming—with little in the way of legal justification—that the law only applies to an individual's "biological sex."¹⁷⁵ As recently as this past year, the Education Department has argued—with equally dubious legal justification—that allowing transgender students to participate in sex-segregated sports consistent with their gender identity is an act of sex segregation against cisgender students.¹⁷⁶ A growing number of federal courts have affirmed¹⁷⁷ that transgender students are protected under Title IX. This has been bolstered¹⁷⁸ by the recent *Bostock v. Clayton County* decision, which held that Title VII protections against discrimination based on sex applied equally to an individual's sexual orientation and gender identity—especially relevant given that many courts have already used Title VII case law to interpret Title IX.¹⁷⁹ Under a new administration:

1. The Education Department should ensure that Title IX is applied to protect against discrimination based on pregnancy, sex stereotypes, gender identity, and sexual orientation, as discussed above. It should ensure that educational institutions are

aware of their responsibility under the law and that LGBTQ students know they are protected. This is consistent with prior litigation and interpretation of the word “sex” in the context of federal nondiscrimination protections, most recently clarified by the *Bostock* ruling.

2. In order to allow for increased investigative capacity and ensure oversight and enforcement of nondiscrimination protections for LGBTQ students, the Education Department’s Office for Civil Rights should request increased appropriations from Congress in their annual budget
3. The Education Department’s Office for Civil Rights should resume¹⁸⁰ the investigation of complaints related to transgender students’ ability to access all appropriate facilities—including bathrooms and locker rooms. Because many complaints to the Office for Civil Rights have been closed prematurely, the office should request that individuals resubmit rejected complaints for additional review. The Education Department should reopen the recent finding that Connecticut’s inclusive transgender youth policy violates Title IX.¹⁸¹
4. The Education Department’s Office for Civil Rights should restore the May 13, 2016, guidance, which has been rescinded, ensuring that the Family Educational Rights and Privacy Act applies to students’ legal or birth names and genders.¹⁸²

LGBTQ students are also at particular risk of experiencing sexual harassment in schools—with 73 percent of LGBTQ college students reporting at least one experience of sexual harassment.¹⁸³ Steps must be taken to codify protections for victims of gender and sexuality discrimination, as well as sexual harassment:

1. The Education Department should engage in notice-and-comment rule-making to narrow the current definition of what constitutes as being “controlled by religious organizations” under Title IX exemption rules. Currently, any school or department of divinity qualifies as exempt, and this should be narrowed significantly to reflect the law.¹⁸⁴ It should also clarify that although proactively notifying the Education Department’s assistant secretary to receive assurance on the validity of an exemption prior to such a request is not required, doing so shall be considered evidence of sincerity of a religious belief.
2. The Education Department should engage in notice-and-comment rule-making to restore strong standards for what constitutes sexual harassment and the circumstances under which harassment must be reported. Specifically, the current

guidelines state that there must be direct notice given to a “Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school,” which significantly limits the scope of reporting for survivors.

Additionally, under Title IX, and in accordance with prior rulings affirming that students being treated unequally based on their sexual orientation violates the 14th Amendment, it is illegal under federal law for school administration or staff to unequally enforce any school rules related to public displays of affection in ways that single out LGBTQ students.¹⁸⁵ Under the new administration, the Education Department and the DOJ should jointly release guidance that explicitly states that the enforcement of school rules pertaining to appearance, public displays of affection, and school events in ways that specifically target LGBTQ students is illegal.

Reverse guidance that gives license to discriminate

The Biden administration should revoke executive order 13798, “Guidance Regarding Department of Education Grants,”¹⁸⁶ which allows religious organizations and providers to secure Education Department funds while maintaining their “religious character.” This is one of many recent efforts to broaden religious exemptions in a way that permits discrimination, in this case ensuring that entities that discriminate will be able to retain public funding.¹⁸⁷ Further examples include guidance¹⁸⁸ that reaffirms that colleges and universities receiving federal funding must comply with the First Amendment and uphold “free and open exchange of ideas” on their campuses. In an effort to increase the number of exemptions that could be requested under Title IV, this rule broadly defines the definition of a school “controlled by a religious organization” and removes the need to affirmatively notify the OCR if they are claiming a religious exemption. The guidance in both orders should be rescinded, and guidance codifying the limitations of religious exemptions under existing law should be released.

Issue guidance to ensure supportive staff

Significant research and evidence reveal the immense importance of supportive staff and positive LGBTQ representation, some of the strongest¹⁸⁹ indicators for LGBTQ student success in education. In acknowledgement of this, the Education Department should:

1. Establish an initiative specifically geared toward investigating and disseminating best practices for school policy and staff training to create supportive and inclusive environments for LGBTQ students, particularly through use of funding from Student Support and Academic Enrichment grants.¹⁹⁰
2. Provide resources for teachers and staff on creating positive environments for LGBTQ students, including examples of inclusive state and local policies and resources for professional and curricular development, building on the 2016 Education Department report “Examples of Policies and Emerging Practices” issued alongside new Title IX guidance.¹⁹¹

Promote LGBTQ awareness and history in the classroom

To make it increasingly possible for LGBTQ students to receive positive instruction on the history of the LGBTQ community and the civil rights icons involved in pushing for equality, the National Endowment for the Humanities (NEH) should include information highlighting LGBTQ history and experiences on its EDSITEment!¹⁹² website, which includes both lesson plans and teachers’ guides. The new administration should also request increased appropriations through the NEH to support states and districts so they can incorporate these resources and critical conversations about LGBTQ history and civil rights activism into relevant courses.

Protect the creation of LGBTQ-friendly spaces

In recognition of the difficulties that LGBTQ students have in finding supportive and affirming spaces in school, as well as the many restrictive policies limiting their ability to create and promote gender-sexuality alliances/gay-straight alliances (GSAs), the Education Department should issue new guidance affirming students’ rights to create and maintain GSAs. These rights are in accordance¹⁹³ with the Equal Access Act, which clearly establishes that public schools cannot deny students the right to meet, regardless of the content of speech at such meetings.

Housing and homelessness

With regard to housing access generally, discrimination remains a major barrier to LGBTQ housing security. CAP survey data show that 28 percent of LGBTQ people and 45 percent of Black LGBTQ people reported that discrimination negatively affected, either moderately or significantly, their ability to rent or buy a home in the past year. Fifty-one percent of LGBTQ people and 63 percent of transgender people reported that it would be at least somewhat difficult to find an alternative apartment if refused due to discrimination.¹⁹⁴ Higher rates of poverty among LGBTQ demographic groups also contribute to housing insecurity, leading to a situation where many face intersecting barriers to safe and stable housing.

Additionally, the social and economic marginalization of LGBTQ people has led to a crisis of LGBTQ homelessness, especially for transgender people and LGBTQ youth. While limited data exist to measure the true extent of transgender homelessness, the number of transgender adults experiencing homelessness is estimated to have increased 88 percent since 2016,¹⁹⁵ and a disproportionate amount of transgender people experiencing homelessness are unsheltered.¹⁹⁶ Furthermore, 20 percent to 40 percent of homeless youth in the United States identify as LGBTQ.¹⁹⁷ However, HUD has spent the past several years limiting access to shelters for transgender people and has slowed efforts to address LGBTQ youth homelessness.

As in other areas, there are recent regulatory actions that need to be reversed and proactive solutions that a new administration could institute.

Strengthen equal access protections

The most recent high-profile attack on LGBTQ housing access is HUD's 2020 proposed rule¹⁹⁸ allowing federally funded single-sex shelters to deny service to transgender individuals seeking shelter. This threatens the safety of transgender people experiencing homelessness and endangers funding for shelters due to conflicts of laws.¹⁹⁹ Withdrawing the proposal is crucial for the protection of transgender people experiencing homelessness.

In March 2017, HUD withdrew a proposed rule²⁰⁰ requiring federally funded shelters to hang a poster notifying residents of their right to equal access, regardless of sexual orientation, gender identity, or marital status. Dissemination of information on residents'

rights is important: Not only does it notify residents of their protections and increase access to recourse in the case of discrimination, but it also discourages shelters from discriminating in the first place. In addition to withdrawing the Equal Access Rule rollback, it should be a priority for HUD to move forward with the withdrawn poster proposal in order to ensure that the 2012 and 2016 rules are effectively enforced.

In addition to restoring previously planned enforcement mechanisms for the Equal Access Rule, efforts must be made to ensure compliance and effectiveness. The authors recommend that the new administration allocate sufficient resources to inform people of their rights and enforce Equal Access Rule compliance.

Restore Housing First incentives and Equal Access Rule compliance in the 2021 HUD CoC NOFA

The 2019 Notice of Funding Availability (NOFA) for HUD's Continuum of Care (CoC) program included several changes dangerous for housing-insecure LGBTQ people.²⁰¹ The NOFA removed incentives for program participants to use the Housing First model, under which housing is provided to people experiencing homelessness without mandatory participation in supportive services.²⁰² Research has shown that Housing First is both cost-effective and successful, especially for disabled people and those experiencing chronic homelessness.²⁰³ Additionally, the NOFA excluded incentives encouraging program participants to comply with the 2016 Equal Access Rule. This means that shelters are less likely to appropriately and affirmatively serve transgender people. Reinstating Housing First and Equal Access Rule compliance incentives in the 2021 NOFA would encourage service providers to treat people experiencing homelessness effectively and with dignity. These changes should be prioritized under a new administration.

Restart implementation of the Affirmatively Furthering Fair Housing regulation

Another of the Trump administration's rollbacks in housing was the January 2018 suspension²⁰⁴ of HUD's 2015 Affirmatively Furthering Fair Housing regulation.²⁰⁵ The 2015 regulation was intended to implement the Affirmatively Furthering Fair Housing provision of the Fair Housing Act. The provision forbids discrimination in FHA-funded programs through processes to increase project transparency and accountability, including through assessments of fair housing to determine the extent to which

program participants are complying. The 2018 regulation delayed the submission of assessments of fair housing by program participants, meaning that most program participants would not need to demonstrate compliance until 2024 or 2025. The authors recommend that a new administration undo this rollback by reinstituting an accelerated timeline for the assessment of fair housing process.

Reinterpret the disparate impact standard to prevent discrimination

An especially concerning regulatory change in the area of housing is the September 2020 final rule issued regarding the disparate impact standard under the FHA.²⁰⁶ The FHA prohibits disparate impact discrimination, which is conduct that, while not necessarily intentionally discriminatory, has discriminatory effects. The rule increases the burden of proof for disparate impact claims: Claims must show that a policy not only has a disparate impact on a protected class, but that, among other requirements, the policy is “arbitrary” and that the disparity is a direct cause of the policy. The rule makes it significantly more difficult for discriminatory housing policies to be challenged and amended and endangers people belonging to any protected class, including LGBTQ people. As such, the authors recommend that the Biden administration rescind the 2020 rule, restore the previous interpretation of the disparate impact standard of the FHA such that a lower burden of proof is needed for disparate impact claims, and remove requirements for proving arbitrariness and direct causation when policies disparately affect protected classes.

Evaluate and expand the LGBTQ Youth Homelessness Prevention Initiative

LGBTQ youth are 120 percent more likely than non-LGBTQ youth to experience homelessness due to a combination of factors, including family rejection, aging out of foster care, poverty, and abuse.²⁰⁷ Efforts by the federal government to address this crisis are currently narrow and underfunded. HUD’s LGBTQ Youth Homelessness Prevention Initiative serves just two pilot communities, in Houston and Cincinnati.²⁰⁸ Furthermore, a 2016 proposal to collect information assessing the efficacy of the program was withdrawn in early 2017.²⁰⁹ One action a new administration could take to support LGBTQ youth is to restore the evaluation and expand the initiative. Funding for the Runaway and Homeless Youth Act should be increased, and the administration should ensure that LGBTQ youth have access to transitional living programs.

Initiate a pilot housing program for LGBTQ older adults

Affordable and welcoming housing for LGBTQ older adults remains an issue as well.²¹⁰ Many LGBTQ older adults have fewer savings and lack friends and family to care for them.²¹¹ Furthermore, they face discrimination when trying to access available housing: A 2014 matched-pair study found that 48 percent of same-sex couples experienced at least one time of adverse and differential treatment.²¹² While organizations are undertaking isolated efforts to provide housing and community to LGBTQ older adults, these efforts lack federal support and coordination.²¹³ In addition to nondiscrimination policy, enforcement, and education, the new administration should make proactive efforts to address these issues. An initiative similar to HUD's LGBTQ Youth Homelessness Prevention Initiative, targeted instead for LGBTQ older adults, could begin to build resourcing and research to combat isolation, financial hardship, and discrimination.

Immigration and foreign policy

Since entering office, the Trump administration waged a campaign to decimate the U.S. immigration system. The Migration Policy Institute estimates the Trump administration made more than 400 immigration policy changes.²¹⁴ These attacks have disproportionately harmed LGBTQ immigrants. Among the changes are cutting refugee admissions from 84,994 in fiscal year 2016 to 11,814 in fiscal year 2018;²¹⁵ essentially ending the ability to seek asylum;²¹⁶ attempting to eliminate and now undermining protections under the Deferred Action for Childhood Arrivals (DACA) program; undermining Temporary Protected Status; and creating a wealth test for immigration through its public charge rule. Furthermore, the administration expanded the number of people caged in detention to unprecedented numbers while ignoring basic health and safety standards—actions that have resulted in tragedies such as the deaths of transgender women Roxsana Hernandez and Johana Medina Leon. This is particularly concerning, as LGBTQ immigrants in detention are 97 times more likely than the general detained population to report being survivors of sexual abuse.²¹⁷

A new administration must also work to improve conditions for LGBTQ people wherever they live. On the global stage, the Trump administration has abdicated U.S. leadership in human rights, compromising international efforts to promote LGBTQ equality. The administration's demonstrated animus against LGBTQ people in domestic policy has been accompanied by tacit acceptance of anti-LGBTQ abuses worldwide. The United States gave up its seat on the U.N. Human Rights Council in 2018²¹⁸ and has repeatedly missed opportunities to participate in U.N. deliberations about LGBTQ rights.²¹⁹ The administration has also failed to fill the position of U.S. special envoy for the human rights of LGBTI persons, bringing targeted U.S. efforts to advance equality to a standstill.

Instead of actually participating in international human rights work, the United States has focused on rhetorically justifying its own abuses through the U.S. Department of State's Commission on Unalienable Rights, which in 2020 released a final report prioritizing religious rights and property rights over others,²²⁰ in brash defiance of the established international understanding that human rights are “universal, indivisible and interdependent and interrelated.”²²¹ However, rescinding the report and resuming participation in international human rights efforts would only begin to address the global crisis of anti-LGBTQ persecution. Proactive steps must be taken to support civil society organizations and human rights defenders abroad.²²² CAP presents full recommendations for an LGBTI-affirming foreign policy agenda in its report “Transforming U.S. Foreign Policy To Ensure Dignity and Rights for LGBTI People.”²²³

Enact agencywide measures to ensure fair treatment of LGBTQ immigrants

DHS should enact SOGI-inclusive nondiscrimination protections that apply to all of the agency's activities and personnel. The 2014 DOJ profiling guidance should be expanded to include DHS.²²⁴ The secretary of homeland security should issue a directive requiring DHS components to fully cooperate with the DHS Office for Civil Rights and Civil Liberties.²²⁵ To prevent discrimination against travelers, DHS should dramatically reform Transportation Security Administration airport passenger screening by requiring completely gender-neutral procedures and technology; minimizing the frequency and extent of pat-downs to the maximum extent possible; and prohibiting techniques or procedures that have the purpose or effect of singling out travelers based on race, religion, gender, or disability. LGBTQ immigrants are at high risk of trafficking, but unfortunately, rather than receive protection, they are frequently criminalized. Under the new administration, DHS should issue guidance prohibiting the use of criminal convictions related to trafficking to disqualify people from immigration benefits.

Restore and expand DACA

More than 66,825 LGBTQ people have received protection under DACA.²²⁶ The Biden administration should reinstate DACA, expand its protections, and ensure DACA recipients aren't barred from federal benefits they need to thrive—including access to affordable health insurance on the exchanges. To ensure LGBTQ immigrants have access to the program, the administration should establish a support network of LGBTQ-affirming and culturally competent service providers to improve outreach to LGBTQ people eligible for DACA and assist with enrollment. Finally, DHS should screen DACA applicants to determine eligibility for forms of immigration relief that could provide a path to citizenship.

Rebuild the U.S. Refugee Resettlement Program and protect LGBTQ refugees

The Trump administration's attacks on refugee resettlement have been particularly harmful for LGBTQ refugees, who are frequently at heightened risk of violence in camps and cities where they have been forced to remain while they wait for years to be resettled. The United States' cap on the number of refugees allowed for resettlement in the country should be increased from 15,000 to 125,000 in the first year of the new administration. To ensure LGBTQ refugees have access to these slots, the assistant

secretary for the State Department Bureau of Population, Refugees, and Migration (PRM) should request that the Office of the U.N. High Commissioner for Refugees identify LGBTQ refugees for processing and possible resettlement in the United States. In some instances, LGBTQ people are unable to leave their country to seek protection. The assistant secretary for PRM should issue a directive to embassies for in-country processing of LGBTQ people unable to leave their country and ensure that consulate staff are properly trained on processing LGBTQ claims, credibility determinations, LGBTQ cultural competency, and respectful communication. To further streamline in-country referrals, U.S. Citizenship and Immigration Services should note whether LGBTQ people likely qualify as refugees in its country condition memos. To ensure that LGBTQ refugees are not subjected to persecution and mistreatment when they enter the United States and are provided the best opportunity to thrive in their new home, the State Department should collect voluntary SOGI information to ensure LGBTQ refugees are resettled by culturally competent providers and in locations with strong protections for LGBTQ people and access to needed services.

Restore and strengthen asylum protections for LGBTQ people

Policies such as the Migrant Protection Protocols, transit ban, asylum cooperative agreements, and rules that have made it essentially impossible to obtain work authorization and asylum must be rescinded. LGBTQ asylum training for the Refugee, Asylum and International Operations Directorate and asylum officers must be reinstated. These trainings should also be expanded to include U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement officers as well as immigration judges. The attorney general should issue a memo affirming that persecution on the basis of gender identity qualifies as a particular social group for asylum purposes and clarify that persecution from nonstate actors can qualify. DHS and DOJ should collect voluntary data on SOGI from asylum applicants to assess disparities in access to these protections. Since asylum officers are already well-qualified to make asylum determinations, they should be given the authority to make not just credible-fear determinations but also affirmative asylum grants at the border when appropriate. One of the most significant factors affecting a positive immigration case outcome is access to counsel.²²⁷ Under the new administration, the DOJ should recognize a right to counsel in removal proceedings and establish a pilot program providing legal representation to LGBTQ asylum-seekers.

Protect LGBTQ immigrants from abuse in detention

Due to the pandemic, immigration detention is even more unsafe. While DHS has reduced its detained population as a result of a court order to consider for release all immigrants in detention who are at heightened risk of COVID-19-related complications, it has not done nearly enough to deal with the pandemic and continues to detain far more individuals than is appropriate.²²⁸ Even prior to the pandemic, LGBTQ people, particularly transgender and nonbinary people, were extremely unsafe in immigration detention. CAP has documented hundreds of instances of medical neglect, abuse, and mistreatment of LGBTQ immigrants in detention, and DHS' routine failure to follow its own rules has demonstrated that it is incapable of safely housing LGBTQ immigrants and that, when given any amount of discretion over custody decisions, will opt for detention.²²⁹ Under the new administration, the secretary of DHS should continue to decrease its detained population and issue a directive that detention resources should not be used to detain vulnerable populations, including LGBTQ people, and establish a presumption of release for these populations. DHS must make a custody determination within 48 hours for immigrants found to have a credible or reasonable fear of return and release those who can reasonably ensure appearance and will not endanger the safety of others on their own recognizance or into community-based alternatives to detention. To ensure LGBTQ asylum-seekers and others subject to mandatory detention are not exposed to violence in detention, the interpretation of "custody" under INA 236 should be expanded to include alternatives to detention.²³⁰ DHS should also establish a pilot alternative-to-detention project run by LGBTQ community organizations to ensure that LGBTQ asylum-seekers comply with government-imposed requirements. Community-based alternatives to detention have been found to be effective and far less costly than detention.²³¹ To eliminate the profit motive that has expanded the immigration detention system, the use of for-profit prisons should be eliminated.²³² Solitary confinement, which can constitute torture, has no place in civil immigration detention and should be banned. DHS should also prioritize protecting people in its custody from sexual violence and ensuring access to medical care.

Restore immigrant integration efforts

The White House Task Force on New Americans and the Building Welcoming Communities campaign should be reinstated and partner with LGBTQ-serving organizations to ensure that LGBTQ immigrants receive the support they need. The federal government should support cities in providing services that are accessible to

LGBTQ immigrants and offered in a culturally competent manner, including health, employment, housing, language access, and education, and it should ensure that existing services are connected with LGBTQ immigrant communities.

Summary of legislative priorities

In addition to adopting the myriad executive actions recommended in this report, it is imperative that the Biden administration work with members of Congress to advance a legislative agenda that meaningfully strengthens the rights and improves the lives of LGBTQ people. While there are many important pieces of legislation to choose from, this report recommends the following legislative priorities that address some of the most urgent challenges facing LGBTQ communities: expanding nondiscrimination protections, balancing religious liberty and civil rights, expanding data collection on SOGI, and protecting LGBTQ people in detention and LGBTQ students.

Equality Act

Discriminatory experiences have significant adverse impacts on the financial, mental, and physical well-being of LGBTQ people, exacerbating existing disparities in economic stability, workforce participation, housing security, educational attainment, and health.²³³ Original analysis of new, nationally representative data from CAP reveals that more than 1 in 3 LGBTQ Americans faced discrimination of some kind in the past year, including more than 3 in 5 transgender Americans.²³⁴

To guarantee equal protection under the law and concrete nondiscrimination safeguards for LGBTQ people, the Biden administration should prioritize working with Congress to pass the Equality Act,²³⁵ which explicitly prohibits discrimination on the basis of SOGI in the realms of employment, housing, public spaces, goods and services, credit access, jury services, and federal funding. Additionally, the Biden administration should deploy its executive authority to secure the full enforcement of the Equality Act across all relevant federal agencies and departments.

Do No Harm Act

In 1993, Congress passed the Religious Freedom Restoration Act (RFRA) to ensure the government does not “substantially burden religious exercise without compelling justification,” unless doing so is the least restrictive means of advancing a “compelling governmental interest” such as prohibiting discrimination.²³⁶ As exemplified by many of the Trump administration’s executive orders to broaden religious exemptions, since

its passage and the Supreme Court decision in *Burwell v. Hobby Lobby Stores*,²³⁷ RFRA has been distorted to permit discrimination against vulnerable and historically marginalized populations.

As such, the new administration should prioritize working with Congress to pass the Do No Harm Act,²³⁸ which amends RFRA to prohibit granting exemptions to critical civil rights laws that could cause meaningful harm to third parties.²³⁹ Crucially, the legislation upholds religious liberty while legally protecting the civil rights of people disproportionately affected by abusive religious exemptions, including LGBTQ people, people seeking health care, and religious minorities.

LGBTQ Data Inclusion Act

Routine, standardized, and comprehensive data collection and disaggregation are essential to designing and quantifying the impact of evidence-based policies; understanding the conditions and discrimination experienced by LGBTQ people; and enforcing existing legal protections. Unfortunately, there is a dearth of data collection on LGBTQ people in the United States. Currently, only approximately 1 in 6 LGBTQ adults can be identified as LGBTQ from U.S. Census Bureau data,²⁴⁰ and a wide range of government surveys do not collect information on SOGI. The information gathered by these data collection tools shapes major policy decisions and allocations of critical resources²⁴¹ related to health care, housing, employment, education, and other public benefits, thereby affecting the everyday lives of LGBTQ people and making the need for their inclusion even more urgent.²⁴²

The Biden administration should collaborate with Congress to pass the LGBTQ Data Inclusion Act,²⁴³ which requires government agencies to collect voluntary, self-disclosed information on SOGI in all existing surveys that collect demographic data, while preserving privacy and confidentiality.²⁴⁴

Dignity for Detained Immigrants Act

LGBTQ people, particularly youth and transgender people, experience alarmingly high rates of violence, sexual abuse, and harassment while in federal detention facilities and are more likely to be and remain detained, regardless of the flight or public safety risks they pose.²⁴⁵

The Trump administration's cruel, dehumanizing approach to immigration has exacerbated existing weaknesses and failures in the U.S. immigration system, particularly for LGBTQ immigrants in detention. The new administration should prioritize working with Congress to pass the Dignity for Detained Immigrants Act²⁴⁶ to protect the health, safety, and well-being of LGBTQ immigrants in federal detention facilities, many of whom are fleeing life-threatening persecution and violence in their countries of origin. The legislation features many important policies to better protect immigrants, such as a provision establishing a presumption that vulnerable individuals, including LGBTQ people, should be placed in community-based supervision programs rather than detention facilities.

Safe Schools Improvement Act

LGBTQ students face myriad challenges in educational settings, including concerns for their safety; discriminatory school policies; and harassment, bullying, and assault. These experiences of victimization and discrimination are damaging to the physical and mental health of LGBTQ students, foster hostile school climates, and adversely affect students' academic success, leading to worse educational outcomes.

As such, the Biden administration should work with Congress to pass the Safe Schools Improvement Act.²⁴⁷ This bill would require school districts in states that receive funding under the Elementary and Secondary Education Act of 1965 to adopt codes of conduct that prohibit bullying and harassment in K-12 schools on the basis of race, color, national origin, religion, sex, disability, and SOGI.²⁴⁸ Importantly, the legislation also requires states to report data on bullying and harassment to the Education Department.

Conclusion

The Biden-Harris campaign promised to stand up for LGBTQ people, asserting that “As President, Biden will stand with the LGBTQ+ community to ensure America finally lives up to the promise on which it was founded: equality for all. He will provide the moral leadership to champion equal rights for all LGBTQ+ people, fight to ensure our laws and institutions protect and enforce their rights, and advance LGBTQ+ equality globally.”²⁴⁹

The past four years have represented a backslide in federal policy advancing LGBTQ rights. The Biden-Harris administration faces the dual task of undoing the previous administration’s attacks on LGBTQ people and initiating proactive policy solutions. These challenges and barriers to equality are diverse, nuanced, and complex, but a presidential administration has the power to engage in these issues seriously and effectively. In the wake of the Supreme Court’s decision on *Bostock v. Clayton County*, there is much work to be done in implementing nondiscrimination policies throughout the various executive agencies. Nondiscrimination policy alone, however, is insufficient. As this report’s recommendations emphasize, comprehensive efforts to further LGBTQ-inclusive policies must be backed up by substantive and continued funding, effective enforcement, and meaningful engagement with LGBTQ stakeholders to address the assorted crises and disparities faced by these communities. The new administration has an opportunity to work closely with the LGBTQ community on advancing equality, and this report provides a road map for restoring the U.S. government’s leadership in this work.

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The Center for American Progress is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans, through bold, progressive ideas, as well as strong leadership and concerted action. Our aim is not just to change the conversation, but to change the country.

Our Values

As progressives, we believe America should be a land of boundless opportunity, where people can climb the ladder of economic mobility. We believe we owe it to future generations to protect the planet and promote peace and shared global prosperity.

And we believe an effective government can earn the trust of the American people, champion the common good over narrow self-interest, and harness the strength of our diversity.

Our Approach

We develop new policy ideas, challenge the media to cover the issues that truly matter, and shape the national debate. With policy teams in major issue areas, American Progress can think creatively at the cross-section of traditional boundaries to develop ideas for policymakers that lead to real change. By employing an extensive communications and outreach effort that we adapt to a rapidly changing media landscape, we move our ideas aggressively in the national policy debate.

