



LGBTQ+ Priorities for the Next Presidential Term

INTRODUCTION

This memorandum provides an overview of legislative, budget, regulatory, and administrative priorities to address LGBTQ poverty during the next presidential term. The recommendations were developed by The National LGBTQ Anti-Poverty Action Network (“The Network”), which is a member-based coalition of over 100 national, state, and local organizations working in the LGBTQ, anti-poverty, and anti-hunger movements to increase awareness about and action on LGBTQ poverty.

The LGBTQ community experiences higher rates of poverty and participation in federal anti-poverty programs than the general population.¹ This has been exacerbated by the economic devastation wreaked by the COVID-19 pandemic on all low-income communities. In addition to tackling the priorities outlined in this document, The Network urges the Administration to address the immediate COVID-related needs of low-income people on an emergency basis in the first days of the Administration.

The Network offers this non-exhaustive list of nearly 140 recommendations as a starting point for discussion. The Network is available as a resource and is eager to partner with the Administration to dismantle barriers to social and economic justice for LGBTQ people.

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GENERAL RECOMMENDATIONS

Formally establish an inter-agency task force on LGBTQ poverty. In the first 100 days, the White House should establish via executive order an inter-agency taskforce on LGBTQ poverty that is chaired by a cabinet-level agency. The task force should coordinate efforts throughout the federal government and facilitate information sharing across federal departments on issues impacting low-income LGBTQ people and families. The task force would build on the efforts of the Federal Inter-Agency Working Group on LGBTQ Poverty during the Obama Administration.

¹ See Lourdes Ashley Hunter et al., Social Justice Sexuality Project, *Intersecting Injustice: Addressing LGBTQ Poverty and Economic Justice for All: A National Call to Action* (Mar. 2018), https://static1.squarespace.com/static/5a00c5f2a803bbe2eb0ff14e/t/5aca6f45758d46742a5b8f78/1523216213447/FINAL+PovertyReport_HighRes.pdf.

Prioritize investment in programs that address LGBTQ poverty. A wide range of federal programs are proven to effectively address poverty and issues, including access to healthcare, hunger, and homelessness. Federal spending priorities have often left these programs underfunded, while providing tax relief to the wealthiest Americans and corporations and prioritizing defense, law enforcement, and homeland security funding. The President’s Budget should demonstrate a commitment to new investment in non-defense, discretionary anti-poverty programs, and the Administration should reverse the Tax Cuts and Jobs Act to provide much-needed revenue for the federal budget. The White House should issue an all-agency memo directing agency heads to prioritize funding recommendations related to improving the well-being of LGBTQ children, families, elders, and adults and addressing LGBTQ poverty in their budgets.

Strengthen nondiscrimination protections across federal programs. The White House should direct each federal program through an all-agency memo to adopt a nondiscrimination statement that is inclusive of sexual orientation and gender identity. The Supreme Court’s landmark decision in *Bostock v. Clayton County* confirms that Title VII’s prohibition of discrimination “because of . . . sex” forbids discrimination on the basis of sexual orientation and gender identity.² Because the same analysis applies to law and policies prohibiting sex discrimination in areas beyond employment, the White House should take swift steps to implement that decision across the full range of federal sex discrimination laws and policies. The Administration should also endorse and prioritize passage of the Equality Act. Despite the broad scope of the Court’s analysis in *Bostock*, which will apply to discrimination in a wide range of fields including education, housing, and healthcare, robust executive action and additional legislation is crucial to confront discrimination, solidify legal protections, and create a more inclusive society.

The Administration should revoke relevant sections of Executive Order 13831 on faith-based exemptions and rescind the nine associated rulemakings that would remove the obligations of faith-based organizations to serve LGBTQ people.³ These proposed rules would put the religious beliefs of taxpayer-funded faith-based organizations ahead of the needs of LGBTQ people seeking access to healthcare,⁴ food,⁵ shelter,⁶ education,⁷ and

² *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

³ Establishment of a White House Faith and Opportunity Initiative, Exec. Order No. 13831, 83 Fed. Reg. 20715 (May 3, 2018).

⁴ Ensuring Equal Treatment of Faith-Based Organizations, 85 Fed. Reg. 2974 (proposed Jan. 17, 2020), <https://www.federalregister.gov/documents/2020/01/17/2019-26923/ensuring-equal-treatment-of-faith-based-organizations>. There were over 23,000 comments submitted in response to this Notice of Proposed Rule Making, the vast majority of which were opposed to the rule. See Department of Health and Human Services, *Proposed Rule: Ensuring Equal Treatment of Faith-Based Organizations*, REGULATIONS.GOV, <https://www.regulations.gov/document?D=HHS-OS-2020-0001-0001> (click “Browse Comments”).

⁵ Equal Opportunity for Religious Organizations in U.S. Department of Agriculture Programs: Implementation of Executive Order 13831, 85 Fed. Reg. 2897 (proposed Jan. 17, 2020), <https://www.federalregister.gov/documents/2020/01/17/2019-28541/equal-opportunity-for-religious-organizations-in-us-department-of-agriculture-programs>.

⁶ Equal Participation of Faith-Based Organizations in HUD Programs and Activities: Implementation of Executive Order 13831, 85 Fed. Reg. 8215 (proposed Feb. 13, 2020), <https://www.federalregister.gov/documents/2020/02/13/2020-02495/equal-participation-of-faith-based-organizations-in-hud-programs-and-activities-implementation-of>.

⁷ Notice of Proposed Rulemaking, Uniform Administrative Requirements, Cost Principles, and Audit Requirements, 85 Fed. Reg. 3190 (proposed Jan. 17, 2020), <https://www.federalregister.gov/documents/2020/01/17/2019-26937/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards-direct>.

other services⁸ to meet their basic needs. The White House must also take a strong stance against any attempts to broaden or create new religious exemptions to LGBTQ discrimination protections.

The federal government should also proactively seek opportunities to leverage existing programs to address disparities for the LGBTQ community, including by expanding definitions of “vulnerable populations” or “underserved communities” to better target funding and services to LGBTQ people with low incomes. These steps—taken at the agency or department level—would help focus existing efforts to combat facets of poverty, whether it be health disparities, hunger, homelessness, unemployment, or other forms of need, while also delivering targeted assistance to LGBTQ people and families. Additional steps to proactively issue guidance and require data collection and training on sexual orientation and gender identity (SOGI) could help mitigate discriminatory behaviors by federal employees or grantees.

Enhance LGBTQ data collection and research. The Administration should direct all federal agencies, contractors, grant recipients, and other stakeholders to add measures of sexual orientation, gender identity, and intersex status to all data collection efforts and instruments,⁹ consistent with recommendations from the National Academies of Sciences.¹⁰ These data instruments include population-based surveys, administrative records, clinical records, and forms used to collect demographic data. Wherever possible, programs should allow for voluntary self-identification in demographic data to allow for a broader assessment of benefits utilization by the LGBTQ community. The Office of Management and Budget (OMB) should reconvene the Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys to routinely (every two years) issue best practices and standards for the collection of data, including standards for preserving individual privacy and maintaining confidentiality of collected data. The Working Group should explore methods to collect data for disaggregation to the extent feasible, for evaluating subpopulations with multiple intersecting identities. Federal statistical agencies should prioritize research into the development, implementation, and evaluation of evidence-based services, programs, and interventions that promote the well-being of LGBTQ populations.

Implement diversity training across federal programs. The White House should revoke Executive Order 13950 (“Combating Race and Sex Stereotyping”)¹¹ and institute diversity training that is inclusive of LGBTQ cultural competency (as well as anti-racism, gender justice, and disability justice) for all federal program staff and recipients of federal

⁸ The other five proposed rules are: Equal Participation of Faith-Based Organizations in Department of Justice’s Programs and Activities, 85 Fed. Reg. 2921 (proposed Jan. 17, 2020); Equal Participation of Faith-Based Organizations in DHS’s Programs and Activities, 85 Fed. Reg. 2889 (proposed Jan. 17, 2020); Equal Participation of Faith-Based Organizations in Department of Labor’s Programs and Activities, 85 Fed. Reg. 2929 (proposed Jan. 17, 2020); Equal Participation of Faith-Based Organizations in Veterans Affairs Programs, 85 Fed. Reg. 2938 (proposed Jan. 17, 2020); and Equal Participation of Faith-Based Organizations in USAID’s Programs and Activities, 85 Fed. Reg. 2916 (proposed Jan. 17, 2020).

⁹ See Kellen Baker & Laura E. Durso, *Filling In the Map: The Need for LGBTQ Data Collection*, Ctr. for Am. Progress (Sept. 16, 2015), <https://www.americanprogress.org/issues/lgbtq-rights/news/2015/09/16/121128/filling-in-the-map-the-need-for-lgbt-data-collection/>.

¹⁰ Nat’l Academies. of Sciences., Eng’g, & Med., *Understanding the Well-Being of LGBTQI+ Populations* (2020), <https://doi.org/10.17226/25877>.

¹¹ Combating Race and Sex Stereotyping, Exec. Order No. 13950, 85 Fed. Reg. 60,683 (Sept. 22, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-09-28/pdf/2020-21534.pdf>.

grants or funds. The cultural competency trainings should contain programming to foster inclusive environments for LGBTQ program participants and their families. Fear of bias alone is often a deterrent to seeking assistance, and federal departments should do more to educate providers and the public about their rights. Federal departments should partner with LGBTQ organizations and community stakeholders to train local providers of federal services.

Evaluate the Federal Poverty Guidelines. In 2019 and early 2020, the Office of Management and Budget (OMB) requested comments related to measuring poverty. The Administration should consider a significant overhaul of the Official Poverty Measure (OPM), which informs the Federal Poverty Guidelines that quantify who qualifies for certain federal assistance. The OPM is based on an incomplete and outdated formula, “three times the cost of a minimum food diet in 1963,”¹² that does not reflect current spending patterns on expenses like housing, child care, health care, and other spending on basic goods and services, nor is it adjusted annually based on an accurate measure of inflation for people with low incomes. The administration should support a new, official measure of poverty and family income adequacy at a decent standard of living above the current official poverty line, with input from the public, those with lived experiences, and guidance from the National Academy of Sciences. The measure should also be overhauled within two years to ensure continuity of coverage and any new measurement should consider more real-time, frequent estimates of poverty and income data.

JOBS AND THE WORKPLACE

Unemployment, underemployment, and workplace discrimination are among of the most notorious outcomes that anti-LGBTQ attitudes have had upon the LGBTQ community, especially among transgender and gender non-binary people. This is a long-standing issue. LGBTQ people face not only disproportionate unemployment rates, but also pay gaps and anti-LGBTQ harassment.¹³ The 2015 U.S. Trans Survey showed that respondents reported a 15% unemployment rate, which was “three times higher than the unemployment rate in the U.S. population at the time of the survey (5%).”¹⁴ McKinsey and Company explained in June 2020, “a growing business case for inclusion has not translated into solid gains for the LGBTQ community within the workplace itself.”¹⁵

A 2020 The Williams Institute report explained that discrimination in employment toward LGBTQ youth “could compound into greater financial and social vulnerability in later years,” and thus argued for use of government funds to “develop and implement

¹² Liana Fox, U.S. Census Bureau, U.S. Dep’t of Commerce, *The Supplemental Poverty Measure: 2018* (Oct. 2019) available at <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-268.pdf>.

¹³ See Brief for the Human Rights Campaign et al. as Amici Curiae Supporting Respondents, *Janus v. American Federation of State, Local, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018) (No. 16-1466), https://www.lamdalegal.org/sites/default/files/legal-docs/downloads/janus_v_american_federation_amicus_final_to_be_filed.pdf.

¹⁴ Sandy E. James et al., Nat’l Ctr. for Transgender Equal, *The Report of the 2015 U.S. Transgender Survey* (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹⁵ Diana Ellsworth et al., *How the LGBTQ+ Community Fares in the Workplace*, MCKINSEY & CO. (June 23, 2020), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/how-the-lgbtq-plus-community-fares-in-the-workplace>.

evidence-based programs to reduce stigma and discrimination faced by LGBT youth and adults”—including employment discrimination.¹⁶

In June 2020, the U.S. Supreme Court confirmed that Title VII’s prohibition of sex discrimination in employment protects against discrimination on the basis of sexual orientation and gender identity in *Bostock v. Clayton County*, which will provide employment protections to 3.6 million LGBTQ people whose state nondiscrimination laws do not provide explicit sexual orientation and gender identity protections.¹⁷ Nevertheless, LGBTQ people do not merely need nondiscrimination protections to improve their economic well-being. LGBTQ people are affected by unemployment due to the COVID crisis, stagnation of wages and decline in union power over the last several decades,¹⁸ work requirements in social programs such as cash assistance and Medicaid,¹⁹ lack of representation in management,²⁰ and overall need for deeper investments in empowering models of worker management and ownership such as worker cooperatives, and in workforce programming.

ENFORCE PROHIBITIONS ON LGBTQ EMPLOYMENT DISCRIMINATION

Advance nondiscrimination protections. The White House should take immediate action to strengthen nondiscrimination protections in federal programs and for recipients of federal funds, including by restoring Executive Order 13673 (“Fair Pay and Safe Workplaces”), which governs federal contractors.²¹ The Administration should prioritize passing the Equality Act.

Fully fund civil rights investigatory needs. The President’s Budget should increase funding for the Equal Employment Opportunity Commission (EEOC) by at least \$20 million in FY 2022 in order to meet its investigatory burden.²² As members of Congress have noted,²³ and has been reflected by needs of local civil rights agencies,²⁴ there are ever-higher needs for civil rights investigators on both the federal and local levels due to

¹⁶ Adam P. Romero et al., Williams Inst., U.C.L.A. Sch. of Law, *LGBT People and Housing Affordability, Discrimination, and Homelessness* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

¹⁷ Christy Mallory et al., Williams Inst., U.C.L.A. Sch. of Law, *Legal Protections for LGBT People After Bostock v. Clayton County* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Bostock-State-Laws-Jul-2020.pdf>.

¹⁸ See Brief of the Human Rights Campaign et al. as Amici Curiae, *supra* note 13.

¹⁹ Matt J. Barnett, Note, *Queering the Welfare State: Paradigmatic Heteronormativity After Obergefell*, 93 N.Y.U. L. Rev. 1633, 1633-67 (2018), <https://www.nyulawreview.org/wp-content/uploads/2018/12/NYULawReview-93-6-Barnett.pdf>.

²⁰ Ellsworth et al., *supra* note 15.

²¹ Fair Pay and Safe Workplaces, Exec. Order No. 13673, 79 Fed. Reg. 45,309 (July 31, 2014), <https://www.govinfo.gov/content/pkg/FR-2014-08-05/pdf/2014-18561.pdf>. This order was subsequently revoked. Revocation of Federal Contracting Executive Orders, Exec. Order No. 13782, 82 Fed. Reg. 15,607 (Mar. 27, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-03-30/pdf/2017-06382.pdf>.

²² Letter from Mary Jo Hoeksema & Howard Feinberg, Co-Dirs., The Census Project, to Hon. Jose Serrano, Chairman & Hon. Robert Aderholt, Ranking Member, Subcomm. on Commerce, Justice, & Sci. of the House Appropriations Comm. (May 20, 2019), <https://censusproject.files.wordpress.com/2019/05/census-project-letter-of-support-for-fy2020-cjs-full-committee-5-19.pdf>.

²³ Letter from Hon. Lois Frankel et al., Members of U.S. Congress, to Hon. Jose Serrano, Chairman & Hon. Robert Aderholt, Ranking Member, Subcomm. on Commerce, Justice, & Sci. of the House Appropriations Comm. (April 1, 2019), https://frankel.house.gov/uploadedfiles/eeoc_fy20_appropriations_request_letter.pdf.

²⁴ N.Y.C. Comm’n on Human Rights, *Finance Division Briefing Paper* (2020), <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/03/226-CCHR.pdf>.

deeper action and awareness nationwide of – and challenges in adequately addressing – various forms of discrimination, hate violence, and sexual harassment.

Enhance state civil rights investigatory capacity. The President’s Budget should provide restricted funding for the purpose of providing state and local civil rights investigatory offices with more investigatory staff lines, on the condition that such investigators use such funds toward the end of civil rights protections including those for sexual orientation and gender identity. The specific dollar amount should follow a survey of state civil rights investigatory offices to determine the specific need.

STRENGTHEN WAGES AND POWER FOR WORKERS

Raise the federal minimum wage. Congress should pass the Raise the Wage Act, establishing a federal minimum wage that is more reflective of a living wage and repealing the subminimum wage for tipped workers and people with disabilities.

Strengthen union protections via statute. Congress should advance legislation similar to the PRO Act to empower workers through stronger unions. Several LGBTQ organizations argued to the Supreme Court in 2018 that collective bargaining agreements provide “protections beyond the scope of available statutory protections,” and that unions were early adopters among nondiscrimination provisions on the basis of both sexual orientation and gender identity.²⁵ Right-to-Work laws, made possible by the Taft-Hartley Act, and forms of chipping at union protection via court actions, should be reversed with an intensive strengthening of union protections.

Foster worker cooperatives. The President’s Budget should recommend funding for worker cooperatives, including funding for localities to establish worker cooperatives. The coronavirus crisis has shown the need to strengthen local economies, particularly in Black, Indigenous and people of color (BIPOC) communities deeply impacted by COVID. Furthermore, insofar as LGBTQ people, especially transgender and gender non-binary people are so frequently denied access to high-paying jobs and the formal economy, it is an LGBTQ community imperative to fund models for employment, such as worker cooperatives, that empower marginalized workers to create their own businesses.²⁶ Accordingly, the federal government should follow New York’s successful model of worker cooperative creation, the Worker Cooperative Business Development Initiative (WCBDI), and provide funding for localities to create similar initiatives such as the WCBDI.

Provide workers rights’ education in high school. The Departments of Labor and Education should collaborate on recommending and developing curricular materials for public secondary school students about workers’ rights. Workers’ rights are not typically a part of civic education, and yet to the extent that youth are facing an economy with

²⁵ See Brief of the Human Rights Campaign et al. as Amici Curiae Supporting Respondents, *Janus v. American Federation of State, Local, & National Employees, Council 31*, 138 S. Ct. 2448 (2018) (No. 16-1466), https://www.lamdalegal.org/sites/default/files/legal-docs/downloads/janus_v_american_federation_amicus_final_to_be_filed.pdf.

²⁶ See Cooperative Econ. Alliance of N.Y.C., *LGBTQ Accessibility in Co-ops*. (Dec. 12, 2017), <https://gocoopnyc.com/2017/12/lgbtq-accessibility-in-co-ops/>.

shrinking wages, ever-greater employer control, and exacerbated circumstances in the working world for LGBTQ youth, it would be a sensible national policy to start teaching workers' rights within civics curricula nationwide.

Support paid leave. The White House should support a comprehensive federal paid family and medical leave law that includes an inclusive family definition (including domestic partners and chosen family), full job protection, universal coverage, and adequate and progressive wage replacement. The Administration should also support the Healthy Families Act to guarantee workers paid sick days and the extension and expansion of emergency paid leave for COVID-19 purposes.

Additionally, the Department of Labor Wage & Hour Division should review federal contracts for compliance with Executive Order 13706 ("Establishing Paid Sick Leave for Federal Contractors").

WORKFORCE PROGRAMMING

Evaluate Existing LGBTQ-Focused Workforce Programs. The President's Budget should invest in formal evaluation of existing LGBTQ-focused workforce programs. While there are several workforce programs nationwide for LGBTQ (especially transgender and gender non-binary people, many, including some of the oldest, have not been formally evaluated.

Fund workforce programming geared toward LGBTQ people. Following from the approximate cost of workforce programs for LGBTQ and transgender and gender non-binary youth created by local governments in New York City and the District of Columbia in the past two years, the President's Budget should include annual grants of between \$500,000 and \$900,000 to cities in all 50 states to establish workforce programs that center LGBTQ populations by being LGBTQ-specific or affirming and actively recruit from the population. Insofar as there is evidence that transgender and gender non-binary people are not accessing workforce programs at rates commensurate to either need or LGBTQ-peers' utilization of such programs, the federal government should begin investing in workforce programs focused on LGBTQ- and transgender and non-binary people nationwide to build up the evidence base and provide services to this deeply underserved population.²⁷

Issue guidance to support placement at LGBTQ-affirming employers. The Department of Labor should specify in guidance that federally funded workforce programs should implement a reliable and validated screening instrument or screening process to determine whether employers are LGBTQ affirming. Workforce programming relies upon ensuring quality matches between program participants and employers. The

²⁷ Somjen Frazer & Erin Howe, N.Y. State Aids Initiative & The LGBT Health & Human Servs. Network, *Transgender Health and Economic Survey: A Report from the 2015 LGBT Health and Human Services Needs Assessment Survey* (2015), <http://strengthennumbersconsulting.com/wp-content/uploads/2017/06/TG-health-and-economic-insecurity-report-FINAL.pdf>; Audacia Ray et al., Anti-Violence Project, Individual Struggles, *Widespread Injustice: Trans and Gender Non-Conforming Peoples' Experiences of Systemic Employment Discrimination in New York City* (Dec. 2018), https://avp.org/wp-content/uploads/2018/12/AVP_EmploymentDiscrimination.pdf.

federal government should promulgate a consistently applied screening instrument or process to determine the extent to which employers are LGBTQ affirming.

REPEAL WORK REQUIREMENTS IN BENEFIT PROGRAMS

Pursue repeal of work requirements across federal programs. The White House should evaluate the existence of work requirements across federal departments and pursue a repeal of work requirements through legislative and administrative actions. As is laid out in a 2018 NYU law review article, work requirements in public benefits programs such as TANF, Medicaid, and SNAP deleteriously impact the LGBTQ community, providing the argument that, in states where sexual orientation and gender identity are not protected by nondiscrimination law, TANF recipients who refuse “to report to the worksites after experiencing orientation-based harassment or discrimination would likely have a difficult time convincing their Local Workforce Development Board that their refusal was based on a valid ground for noncooperation.”²⁸

Continue suspension of TANF work requirement rules throughout COVID-19. As a short-term step to lessening the deleterious impact of work requirements, the Administration for Children and Families (ACF) should use its authority to provide relief to states from facing penalties due to being unable to meet the work participation rate during the COVID-19 pandemic, as described in TANF-ACF-PI-2020-01.²⁹ The guidance states: “While ACF has no authority to waive the work participation rate requirement itself, it does have authority to grant relief from the resulting penalty in the face of natural disasters and other calamities. ACF will exercise this authority to the maximum extent possible.” Because COVID-19 may continue to be endemic, it is justifiable to maintain COVID-related reprieves from work requirements into the foreseeable future, even after the availability of a vaccine.

HEALTH AND WELLNESS

LGBTQ people experience unique health care disparities, especially LGBTQ people of color.³⁰ These disparities often lead to long term negative health care and economic outcomes.

Health care and wellness means being able to obtain preventive and immediate culturally competent quality care in a timely manner. There are numerous ways this Administration can meaningfully improve the health and wellness of the LGBTQ community. This memorandum identifies the extensive rollbacks we’ve experienced as a community over the last four years and recommends action steps. It also identifies opportunities to proactively effect change.

²⁸ Barnett, *supra* note 19, at 1655 (while this article does not directly address gender identity expression discrimination, the analogy applies to gender identity discrimination as it does to sexual orientation discrimination).

²⁹ Dep’t of Health and Human Servs., Questions and Answers about TANF and the Coronavirus Disease 2019 (COVID19) Pandemic (March 24, 2020), <https://www.acf.hhs.gov/ofa/resource/tanf-acf-pi-2020-01>.

³⁰ See Hudaisha Hafeez et al., *Health Care Disparities Among Lesbian, Gay, Bisexual, and Transgender Youth: A Literature Review*, 9 CUREUS 1184 (Apr. 20, 2017), <https://www.cureus.com/articles/6744-health-care-disparities-among-lesbian-gay-bisexual-and-transgender-youth-a-literature-review>.

Although all of these policy recommendations are necessary and will save lives, it is critical and time-sensitive to advance policy initiatives centered on data collection and research. In most cases, it will take years before the data is actually gathered that will help identify health care disparities that will guide resource allocations and public policy decision-making. In order to avoid prolonging that process, it is critical to prioritize these action items through the administrative process so that surveys can be updated and academic research can be started as quickly as possible.

In addition, the principle of nondiscrimination should undergird policymaking. LGBTQ people are not seeking special or different health care treatment, we are simply asking for the same treatment that everyone else experiences and deserves. Data collection, anti-discrimination protections, and certain treatments (such as fertility treatments for same-sex couples, or transition-related care for transgender people) should be grounded in the principle of equality.

ENSURE ACCESS TO HEALTHCARE

Provide universal coverage for all. Healthcare is a human right that should not be denied to anyone in this country. The Administration should work with Congress to pass legislation that guarantees universal healthcare coverage, such as, the [Medicare for All Act](#) (HR 1384).

Revise the Final Rule entitled, “Nondiscrimination in Health and Health Education Programs or Activities.” The Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services Agency (HHS) issued an Proposed Rule on June 14, 2019, that would eliminate the Obama Era rule that interpreted the ACA’s ban on sex discrimination in healthcare to encompass discrimination based on gender identity and stereotyping.³¹ Despite receiving nearly 156,000 comments (the vast majority of which opposed the elimination of this interpretation, plus the U.S. Supreme Court’s ruling in the rule) and the *Bostock v. Clayton County, Ga.*, HHS ruling, CMS issued a Final Rule that was substantially similar to the proposed rule change, which eliminated gender identity and sex stereotyping from the regulatory definition of discrimination based on “sex.”³² That rule change was enjoined, in part, by two courts because of HHS’s failure to comply with the procedural and substantive requirements of the Administrative Procedures Act.

Among the many harmful aspects of the Final Rule:

- Eliminates clarification that the Affordable Care Act’s Nondiscrimination provision prohibits discrimination on the basis of gender identity and sex stereotyping.
- Attempts to erase protections in unrelated regulations such as a regulation governing the marketing or benefit design practices of health issuers under the ACA.³³

³¹ Nondiscrimination in Health and Health Education Programs or Activities, 84 Fed. Reg. 27846 (proposed June 14, 2019), <https://www.federalregister.gov/documents/2019/06/14/2019-11512/nondiscrimination-in-health-and-health-education-programs-or-activities>.

³² There were 155,966 public comments. See Proposed Rule: Nondiscrimination in Health and Health Education Programs or Activities, REGULATIONS.GOV, <https://www.regulations.gov/document?D=HHS-OCR-2019-0007-0001> (click “Browse Comments”).

³³ The Final Rule updated 45 C.F.R. 147.104(e) as a “conforming amendment” in order to eliminate protections for LGBTQ people. Nondiscrimination in Health and Health Education Programs or Activities, *supra* note 31.

- Imports a Title IX religious exemption.
- Makes enforcement more difficult by resorting to a patchwork of enforcement laws.
- Improperly limits the scope of the ACA's nondiscrimination provision.
- Eliminates tagline requirements and notice standards.

CMS should move forward with rulemaking that strikes the content of this rule, and at minimum, clarify that based on existing case law, that the ACA's nondiscrimination statute prohibiting discrimination on the basis of sex encompasses sexual orientation and gender identity.

Repeal the “Denial of Care Rule.” HHS should repeal the Final Rule, “Protecting Statutory Conscience Rights in Health Care; Delegations of authority” (aka, the “Denial of Care” Rule) that was issued on May 21, 2019.³⁴ The statutory provisions cited in the rule have been weaponized to provide health care providers with a license to discriminate against LGBTQ patients. For example, the Final Rule was written to significantly expand the existing health care provider conscience laws in a way that could allow almost anyone remotely affiliated with a health care provider to deny services and to allow them to deny care under almost any circumstance, including the provision of transition-related health care treatment.³⁵ Although enjoined by several courts, those decisions are currently under appeal in the Ninth and Second Circuits. The regulations significantly expand conscience provider laws in ways that give health care providers a virtual license to discriminate. The rule should be rescinded.

Strike the Provisions in HHS's Grants Regulation eliminating explicit protections for LGBTQ people.³⁶ HHS's proposed rule erases explicit protections against discrimination based on “sexual orientation” and “gender identity” and other protected characteristics, forcing victims of discrimination to resort to a patchwork of program-based nondiscrimination provisions, almost all of which do not explicitly protect LGBTQ people.

The impact of this rule is enormous. HHS grants over 500 billion dollars each year to programs ranging from runaway youth to food services to emergency housing. The rule would strip protections from LGBTQ people across the country seeking to use these services. It is well-documented that many LGBTQ people often forego essential services if they believe they will experience discrimination and this rule will exacerbate this problem as well as provide recipients of HHS funding with a license to discriminate against them.

³⁴ Protecting Statutory Conscience Rights in Healthcare, 84 Fed. Reg. 23170 (May 21, 2019), <https://www.federalregister.gov/documents/2019/05/21/2019-09667/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>.

³⁵ The Final Rule repeatedly cites a case involving a transgender person seeking health care (*Minton v. Dignity Health*) as an example of religious health care personnel that “have been targeted for their religious beliefs.” See Protecting Statutory Conscience Rights in Healthcare, *supra* note 34.

³⁶ Health and Human Services Grants Regulation, 84 Fed. Reg. 63831 (proposed Nov. 19, 2019), <https://www.federalregister.gov/documents/2019/11/19/2019-24385/office-of-the-assistant-secretary-for-financial-resources-health-and-human-services-grants>.

The Proposed Rule also strikes clarification that HHS funding recipients are required to provide services in accordance with the Supreme Court decisions in *United States v. Windsor* and *Obergefell v. Hodges* and that recipients must treat as valid the marriages of same-sex couples.³⁷ Although over 120,000 comments have been submitted, the vast majority of which oppose the rule, it is likely the Final Rule will mirror the Proposed Rule.³⁸

HHS should promulgate regulations clarifying that discrimination based on sexual orientation and gender identity in HHS programs and services is prohibited and language should be included that HHS funded programs must treat same-sex marriages as valid.

Rescind the waiver to the Grants Regulation HHS granted to South Carolina. HHS should also rescind the waiver granted to the Governor of South Carolina on January 23, 2019³⁹ granting an exception to faith-based foster care agencies receiving federal funding to the portion of the Grants Rule 45 CFR 75.300(c) barring discrimination based on religion. While that waiver did not grant an exception to nondiscrimination requirements based on sexual orientation and gender identity (later eliminated under the Grants Regulation below), South Carolina foster care agencies have used it to justify turning away qualified LGBTQ foster parents as well as those who are Jewish, Catholic, secular, and of other faiths than born-again Protestant.

Close the Conscience and Religious Freedom Division. In 2018, HHS created this Division to address unsubstantiated assertions of religious discrimination.⁴⁰ Millions of dollars have been invested into this Division, despite the fact that HHS historically has received a small number of complaints that would fall within its jurisdictions.⁴¹ The Division handled 784 complaints in Fiscal Year 2018 and only 6% were closed, while at the same time civil rights complaints have skyrocketed.⁴² The allocation of millions of dollars to the Division creates an opportunity cost for civil rights enforcement—especially for LGBTQ people who experience discrimination at higher rates.

Amend FDA’s Blood Donation Policies. The FDA should amend its policy that defers blood donations for three months when applied to men who acknowledge sexual activity with other men. The FDA should adopt an individualized assessment with a shorter deferral period.

³⁷ The Proposed Rule strikes the protected characteristics listed in 45 CFR 75.300(c) and eliminates the clarifying language in 45 CFR 75.300(d) that funding recipients must treat same-sex marriages as valid. See Health and Human Services Grants Regulation, *supra* note 36.

³⁸ See Proposed Rule: Health and Human Services Grants Regulation, REGULATIONS.GOV, <https://www.regulations.gov/document?D=HHS-OS-2019-0014-0001> (click “Browse Comments”).

³⁹ U.S. Admin. for Children & Families, Letter Granting Waiver of Nondiscrimination Requirements to South Carolina (Jan. 23, 2019), <https://governor.sc.gov/sites/default/files/Documents/newsroom/HHS%20Response%20Letter%20to%20McMaster.pdf>.

⁴⁰ Press Release, U.S. Dep’t of Health & Human Servs., HHS Announces New Conscience and Religious Freedom Department (Jan. 18, 2018), <https://www.hhs.gov/about/news/2018/01/18/hhs-ocr-announces-new-conscience-and-religious-freedom-division.html>.

⁴¹ See Selena Simmons-Duffin, *What’s Behind a Rise in Conscience Complaints for Health Care Workers*, NPR (May 9, 2019), <https://www.npr.org/sections/health-shots/2019/05/09/721532255/whats-behind-a-rise-in-conscience-complaints-for-health-care-workers>.

⁴² Dep’t of Health & Human Servs., *Justifications of Estimates for Appropriations Committee* 11 (2020), <https://www.hhs.gov/sites/default/files/fy-2020-cj-compilation.pdf>.

The U.S. Department of Veterans Affairs (VA) should revise regulations to permit transition-related surgical care for veterans. The VA should move forward with eliminating a rule that categorically excludes transition-related surgical care for transgender veterans. Federal Regulation 38 CFR § 17.38(c)(4) excludes health care for “gender alterations.”⁴³ Although the VA provides hormonal care for veterans, it continues to deny surgical care.⁴⁴ In 2016, a notice of proposed rulemaking to remove the exclusion was published in the regulatory review.⁴⁵ In support of that proposed rulemaking, a cost study concluded that providing surgical care would be negligible. The proposed rule was withdrawn after several members of Congress objected. After the 2016 election and as a result of ongoing litigation, the VA issued a notice seeking comment to assist in determining whether to amend the medical benefits package.⁴⁶ It is irrational for the VA to cover hormonal care and exclude surgical care—especially when the cost was determined to be insignificant according to the VA’s own analysis.

The U.S. Department of Defense (DoD) should issue guidance on transition-related health care for servicemembers. In addition to removing the ban on open transgender military service, the DoD should issue immediate guidance that transition-related health care must not be categorically denied to servicemembers. The DoD should also eliminate discriminatory policies that prevent service or accessions for people who are living with HIV who are currently serving or seeking to enlist.⁴⁷

The U.S. Department of Justice, Federal Bureau of Prisons (BOP) should update the “Transgender Offender Manual” to clarify that transgender prisoners have access to medically necessary health care. BOP should expressly clarify that categorical bans of health care targeting transgender prisoners are prohibited. Health care decisions should be made in accordance with the consensus in the medical and mental health communities about the necessity and efficacy of care and not outdated personal opinions about the necessity of care. The Manual should be updated to revise the changes made by the Federal Bureau of Prisons on May 11, 2018 that added the word “necessary” without further clarification, and that impose “biological sex” for determining initial housing designations.[1] We recommend the BOP clarify in the Transgender Offender Manual that categorical/blanket exclusions of care—including surgical care—targeting transgender prisoners are prohibited because they are inconsistent with medicine and law. In addition, the term “biological sex” used to refer to housing determinations is not defined or grounded in law or science and should be struck. We recommend the Department consult with the World Professional Association of Transgender Health (WPATH), the American Medical Association, the American

⁴³ 38 C.F.R. § 17.38(c)(4).

⁴⁴ See VHAU.S. Dep’t of Veterans Affairs, Veterans Health Administration Directive 1341: Providing Health Care for Transgender and Intersex Veterans 1 (2018) (“VA does not provide gender confirming/affirming surgeries because VA regulation excludes them from the medical benefits package.”), https://www.patientcare.va.gov/LGBT/VA_LGBT_Policies.asp.

⁴⁵ Off. of Info. & Regul. Affs., Removing Gender Alterations Restriction From the Medical Benefits Package (Sept. 2016) (to be codified at 38 C.F.R. § 17.38), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201604&RIN=2900-AP69>.

⁴⁶ Exclusion of Gender Alterations from the Medical Benefits Package, 83 Fed. Reg. 31711 (proposed July 9, 2018) (to be codified at 38 C.F.R. § 17), <https://www.federalregister.gov/documents/2018/07/09/2018-14629/exclusion-of-gender-alterations-from-the-medical-benefits-package>.

⁴⁷ See Lambda Legal, *Lambda Legal Argues in Court to Halt Pentagon Discrimination Against People Living with HIV* (Sept. 14, 2020), https://www.lambdalegal.org/blog/20200915_argument-pentagon-discrimination-hiv-servicemembers.

Psychological Association, the American Psychiatric Association or the Endocrinology Society for further information and guidance.⁴⁸

Issue a Carrier Letter addressing Exclusions in the Federal Health Employee Benefits Program. The Office of Personnel and Management should issue a clarifying carrier letter to eliminate all categorical health care exclusions. On June 23, 2015, the Director of the Office of Personnel Management’s Healthcare and Insurance program issued a Carrier Letter stating that effective January 1, 2016, no carrier would be able to include categorical exclusions of services for “sex transformations.”⁴⁹ Unfortunately, despite this letter, many transgender federal employees continue to be denied care because the Office of Personnel Management continues to allow some health care providers to maintain exclusions. A subsequent letter is needed to address treatments that insurance carriers continue to improperly deny as “cosmetic” or unnecessary.

ENHANCE HEALTHCARE ACCESS FOR LGBTQ NON-CITIZENS

Replace entirely the 2019 Public Charge Rule. The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services issued a Final Rule on August 14, 2019 entitled, “Inadmissibility on Public Charge Grounds” that, among other things, expands the use of non-cash health care benefits (including use of the Children’s Health Insurance Program) as a basis for inadmissibility on public charge grounds.⁵⁰ The Rule expands the grounds for inadmissibility on public charge grounds to include “non-cash” use of public benefits such as the use of public healthcare, the Supplemental Nutrition Assistance Program (SNAP), and housing benefits. The Department of State (DOS) issued conforming regulations for the Foreign Affairs Manual (FAM) governing visa application processing in consular offices.

These rules will lead to long-term negative health care outcomes. Medicaid is the largest source of HIV care in this country. Incentivizing immigrants to not enroll or encouraging them to drop out of health care programs causes dangerous disruptions in treatment and is harmful to their health and has negative on the community at large. In addition, the expanded disability and health care status factors is dangerous and discriminatory. Such a move undermines sound science and it will impose a chilling effect that undermines public health principles. LGBTQ immigrants and immigrants living with HIV are more likely to live in poverty and to rely on public benefits and this rule disproportionately impacts them. DHS and DOS should undergo rulemaking to replace the rules and to eliminate the public charge admissibility analysis.

Extend Medicaid to Asylum Seekers Nationwide. DHS should take regulatory action to ensure all asylum seekers are covered by the Medicaid Program. While eligibility for Medicaid varies by state, DHS could issue guidance recommending that states expand

⁴⁸ U.S. Dep’t of Just., Federal Bureau of Prisons Transgender Offender Manual Change Notice (May 11, 2018), <https://www.bop.gov/policy/progstat/5200-04-cn-1.pdf>.

⁴⁹ U.S. Off. of Personnel Mgmt., Healthcare and Insurance FEHB Program Carrier Letter No.: Covered Benefits for Gender Transition Services, Letter No. 2015-12 (June 23, 2015), <https://www.opm.gov/healthcare-insurance/healthcare/carriers/2015/2015-12.pdf>.

⁵⁰ Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug 14, 2019), <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>.

Medicaid to extend coverage for asylum seekers. Several jurisdictions provide Medicaid to asylum seekers as “Permanent Residents Under Color of Law (PRUCOL).”⁵¹

The U.S. Immigrations and Customs Enforcement (ICE) agency should update the Transgender Care Memorandum issued on June 19, 2015.⁵² If extraordinary circumstances require detaining a transgender person, it is imperative that ICE policy recognize the health care needs of transgender people in custody. Transgender people within ICE custody frequently report experiencing delays in receiving transition-related health care. The Memo should be updated to clarify that continuity of care is essential and that no medically necessary, including surgical care, should be categorically excluded. Some transgender people report being detained by ICE for long periods of time and they should not be denied any medically necessary care while in custody.

ENHANCE DATA COLLECTION AND RESEARCH ON LGBTQ HEALTH OUTCOMES

The Community Living Administration should amend the Elder’s Survey to obtain data collection on transgender elders. The U.S. Health and Human Services Agency, Community Living Administration eliminated data collection on behalf of transgender elders in the National Survey of Older Americans Act Participants (NSOAAP) on September 26, 2017.⁵³ The NSOAAP should be revised to include data collection on behalf of transgender elders. Transgender elders rely heavily on aging services. If transgender seniors are absent in the process of shaping federally funded aging programs, they will be reluctant to access them and the information gathered from the survey will be to inform future program development and to support budget requests.

Replace the Adoption and Foster Care Analysis and Reporting System (AFCARS) Rule. The Health and Human Services Agency, Administration for Children and Families (ACF) issued a Final Rule entitled, “Adoption and Foster Care Analysis and Reporting System” that was issued on May 12, 2020.⁵⁴ The Rule eliminated data collection for LGBTQ foster youth and LGBTQ prospective parents. The NPRM eliminates data collection based on an unsubstantiated assertion that the data would be inaccurate and lead to breaches of confidentiality. Many public agencies already gather information about sexual orientation and gender identity without experiencing those harms, and the absence of such data will prove harmful in order to measure and improve outcomes for

⁵¹ See Nat’l Immigration Law Ctr., *Medical Assistance Programs for Immigrants in Various States* (July 2020), <https://www.nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states.pdf>.

⁵² The Memo defers to “existing ICE detention Standards” to clarify that transgender detainees who were already receiving hormone therapy will continue to have access but that those who have not yet begun must be assessed.” U.S. Immigration & Customs Enforcement, Memorandum: Further Guidance Regarding Transgender Detainees (June 19, 2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.

⁵³ Agency Information Collection Activities; Public Comment Request; Redesign of Existing Data Collection; National Survey of Older Americans Act Participants, 82 Fed. Reg. 44800 (Sept. 26, 2017), <https://www.federalregister.gov/documents/2017/09/26/2017-20460/agency-information-collection-activities-public-comment-request-redesign-of-existing-data-collection>; Administration for Community Living, *Proposed Changes to Survey Instrument: National Survey of Older Americans Act Participants (NSOAAP)* (data collection materials), <https://acl.gov/about-acl/public-input> (last visited Dec. 1, 2020).

⁵⁴ Adoption and Foster Care Analysis and Reporting System, 85 Fed. Reg. 28410 (July 13, 2020) (codified at 45 C.F.R. § 1355), <https://www.federalregister.gov/documents/2020/05/12/2020-09817/adoption-and-foster-care-analysis-and-reporting-system>.

LGBTQ foster youth and families. HHS should issue a new AFCARS rule requiring voluntary sexual orientation and gender identity data collection for foster youth, parents, and guardians, and should reinstate Indian Child Welfare Act data elements removed from the Final Rule above to benefit all tribal families and children, including those living at the intersection of tribal and LGBTQ and Two Spirit identities.

The National Institute for Health (NIH) should conduct longitudinal studies on the clinical effectiveness of transition-related health care and other issue areas related to the LGBTQ community. NIH should conduct studies similar to the study they funded regarding the impact of early medical treatment for transgender youth and should conduct studies examining the longitudinal clinical efficacy of surgical and hormonal care treatments.⁵⁵ The NIH should also conduct research into the impact of minority stress as a result of discrimination and harassment on the LGBTQ community and people living with HIV.

The Office of Disease Prevention and Health Promotion (ODPHP) should assess their success with the Healthy People 2020 campaign on behalf of LGBTQ people.⁵⁶ A “report card” addressing the success of the campaign would be helpful to better understand the barriers to success and what aspects of the campaign were successful. ODPHP should consider moving forward another Health People campaign with similar objectives.

The Substance Abuse and Mental Health Services Administration (SAMHSA) should conduct a National Survey on Behavioral Health in LGBTQ community.⁵⁷ The LGBTQ community experiences mental health disparities and SAMHSA should conduct a national survey to better understand the scope of those disparities that will help guide policy solutions. SAMHSA should also consider creating resources to improve mental health and well-being for LGBTQ people that addresses mental health conditions such as Clinical Depression and other mental health conditions.

Strengthen elements of the CDC’s Youth Behavior Surveillance System. CDC could incorporate specific survey measures on gender identity to more accurately capture the experience of LGBTQ students in data collection.

Update Websites Erasures. LGBTQ-related language and content has been erased or changed by the Trump Administration (within a number of agencies). For example, a link was removed from the Office of Civil Rights Complaint page from Healthcare.gov’s “Transgender health care page.” According to a watchdog report, the link was replaced

⁵⁵ See, e.g., Johanna Olson-Kennedy et al., *Impact of Early Medical Treatment for Transgender Youth: Protocol for the Longitudinal, Observational Trans Youth Care Study*, 8 JMIR 14434 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6647755/>.

⁵⁶ Off. of Disease Prevention & Health Promotion, *Lesbian, Gay, Bisexual, and Transgender Health* (last visited Dec. 1, 2020), <https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health/objectives>.

⁵⁷ U.S. Dep’t of Health and Human Servs., Substance Abuse and Mental Servs. Admin., *LGBT Resources Page*, <https://www.samhsa.gov/behavioral-health-equity/lgbt> (last visited Dec. 1, 2020).

with contact information for the Centers for Medicare & Medicaid Services.⁵⁸ Another example includes the removal of three pages of information on LGBTQ populations on the SAMHSA website.⁵⁹

HUNGER AND FOOD INSECURITY

Even before the COVID-19 pandemic, LGBTQ Americans were more likely to experience food insecurity than their non-LGBTQ peers. According to the Williams Institute at UCLA, nearly 27% of LGBTQ Americans experienced food insecurity in 2017.⁶⁰ This rate is over two times higher than USDA's estimate for food insecurity among all Americans for 2017 (11.8%).⁶¹

Just as with Americans at large, significant disparities emerge when examining food insecurity among LGBTQ Americans. Women who identify as LGBTQ experience food insecurity at a rate 43% higher than those who identify as men (30.7% versus 21.4% respectively). Women who identify as a lesbian or bisexual are significantly more likely than their heterosexual counterparts to experience food insecurity, and lesbian women were significantly more likely to use emergency food assistance when compared to both their bisexual and heterosexual peers.⁶²

According to the Williams Institute, Non-Hispanic Black LGBTQ Americans experience food insecurity at a rate 68% higher than their Non-Hispanic White peers (37.3% versus 22.2%, respectively), and Latinx/Hispanic LGBTQ Americans experience food insecurity at rates 43% higher than their Non-Hispanic White peers (31.8% versus 22.2%, respectively). When comparing to USDA figures, Non-Hispanic Black LGBTQ households had food insecurity rates 71.1% higher than non-LGBTQ Non-Hispanic Black households, and Hispanic/Latinx LGBTQ households experienced food insecurity at a rate 76.7% higher than the rest of the Hispanic/Latinx population. Among women there are also significant racial disparities in the prevalence of food insecurity; one study using data from the National Health and Nutrition Examination Survey (NHANES) found that while 1 in 6 White women of a sexual minority were food insecure, while 1 in 4 Black sexual minority women experienced it in the same time period.⁶³ Additionally, LGBTQ people living with disabilities face many obstacles that often lead to food insecurity, including their ability to work for income, physical limitations related to shopping and cooking, and

⁵⁸ Web Integrity Project, Sunlight Foundation, *Identity, Protections, and Data Coverage: How LGBTQ-related language and content has changed under the Trump Administration* 24 (2019), https://sunlightfoundation.com/wp-content/uploads/2019/11/Trend_3_LGBTQ_Under_Trump_Administration.pdf.

⁵⁹ *Id.* at 53.

⁶⁰ B. M. D. Wilson & K. Conron, Williams Inst., U.C.L.A. Sch. of Law, *National Rates of Food Insecurity: LGBT People and Covid-19* (April, 2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-COVID19-Apr-2020.pdf>.

⁶¹ Alisha Coleman-Jensen et al., U.S. Dep't of Agric., Econ. Rsch. Serv., *Household Food Security in the United States in 2017* (Sept. 2018), <https://www.ers.usda.gov/webdocs/publications/90023/err-256.pdf?v=3982.8>.

⁶² J. G. Patterson et al., *Sexual Orientation Disparities in Food Insecurity and Food Assistance Use in US Adult Women: National Health and Nutrition Examination Survey, 2005–2014* 20 BMC PUBLIC HEALTH 1155, tbl. 3 (2020), <https://link.springer.com/article/10.1186/s12889-020-09261-9/tables/3>.

⁶³ J. G. Patterson et al., *Disparities in Food Insecurity at the Intersection of Race and Sexual Orientation: A Population-Based Study of Adult Women in the United States*, 12 SSM POPULATION HEALTH 100655 (2020).

other limitations of activities of daily living, on top of potential discrimination because of their sexual orientation and gender identity.⁶⁴

In 2019, it was estimated that 10.5% of Americans experienced food insecurity; however, given the COVID-19 pandemic there is reason to believe that there are significant spikes in food insecurity, especially among communities that have been disproportionately impacted by the pandemic and the subsequent economic downturn.⁶⁵ Feeding America's preliminary estimates show that an additional 3.3 million to 17.1 million Americans will experience food insecurity as a result of the COVID-19 pandemic. This is due primarily to job losses, individuals leaving the workforce to take on childcare and caregiving roles, and the overall economic downturn; however, inability to access food through programs administered within schools, day care centers, senior centers, and other sites, as well as supply chain issues, have also contributed to food hardship throughout the country.⁶⁶

The COVID-19 pandemic has shone a brighter light on the interconnection between social determinants, social risk factors, and how they drive adverse health outcomes and exacerbate health inequality, especially in communities where food insecurity is more prevalent, including LGBTQ communities, people of color, disabled individuals, and at the intersections of these identities.⁶⁷ Evidence continues to show that higher levels of food insecurity are associated with higher healthcare costs and adverse outcomes, with one 2018 study finding that food insecurity increased healthcare costs by \$77.5 billion annually in the U.S. alone.⁶⁸ LGBTQ individuals are more likely to experience health disparities, both in access to care and health outcomes, than the population at large, and food insecurity only exacerbates these disparities.⁶⁹ Food insecurity is also associated with negative outcomes for people living with HIV/AIDS.⁷⁰

While economic circumstances are driving spikes in food security, there are also significant barriers to LGBTQ people getting services they need. Adults in same-sex

⁶⁴ Alisha Coleman-Jensen & Mark Nord, U.S. Dep't of Agric., Econ. Rsch. Serv., *Disability Is an Important Risk Factor for Food Insecurity* (2020), <https://www.ers.usda.gov/amber-waves/2013/may/disability-is-an-important-risk-factor-for-food-insecurity>; Colleen M. Heflin, Claire E. Altman CE & Laura L. Rodriguez, *Food Insecurity and Disability in the United States*, 12 DISABILITY & HEALTH J. 200, 220-226 (2019).

⁶⁵ Alisha Coleman-Jensen et al., U.S. Dep't of Agric., Econ. Rsch. Serv., *Household Food Security in the United States in 2019* 4 (2020), <https://www.ers.usda.gov/webdocs/publications/99282/err-275.pdf?v=3001.7>.

⁶⁶ Feeding America, *The Impact of the Coronavirus on Food Insecurity* (2020), https://www.feedingamerica.org/sites/default/files/2020-04/Brief_Impact%20of%20Covid%20on%20Food%20Insecurity%204.22%20%28002%29.pdf.

⁶⁷ Anna M. Leddy et al., *A Conceptual Model for Understanding the Rapid COVID-19 Related Increase in Food Insecurity and Its Impact on Health and Healthcare* 112 AM. J. OF CLINICAL NUTRITION 1162 (2020); Mathew Belanger et al., *Covid-19 and disparities in nutrition and obesity*, 383 NEW ENGLAND J. OF MEDICINE 1 (2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2021264>; Subhanker Chatterjee et al., *LGBTQ Care at the Time of COVID-19*, 14 DIABETES & METABOLIC SYNDROME 1757 (2020).

⁶⁸ Seth A. Berkowitz et al., *Food Insecurity and Health Care Expenditures in the United States, 2011–2013*, 53 HEALTH SERVS. RSCH. 1600 (2018); Seth A. Berkowitz et al., *Food Insecurity, Healthcare Utilization, and High Cost: a Longitudinal Cohort Study*, 24 AM. J. OF MANAGED CARE 399 (2018); Seth A. Berkowitz et al., *State-Level and County-Level Estimates of Health Care Costs Associated with Food Insecurity*, 16 PREVENTING CHRONIC DISEASE 180549 (2019); Sandra P. Garcia et al., *Incremental Health Care Costs Associated With Food Insecurity and Chronic Conditions Among Older Adults*, 15 PREVENTING CHRONIC DISEASE 180058 (2018).

⁶⁹ Mitchell R. Lunn et al., *Sociodemographic Characteristics and Health Outcomes Among Lesbian, Gay, and Bisexual US Adults using Healthy People 2020 Leading Health Indicators*, 4 LGBT HEALTH 283 (2017); Charles A. Emlet et al., *Social, Economic, and Health Disparities Among LGBT Older Adults*, 40 GENERATIONS 16 (2017).

⁷⁰ Sheri D. Weiser et al., *Food Insecurity Among Homeless and Marginally Housed Individuals Living with HIV/AIDS in San Francisco*, 13 AIDS & BEHAVIOR 841(2009); Kartika Palar et al., *Comprehensive and medically appropriate food support is associated with improved HIV and diabetes health*, 94 J. COMPREHENSIVE AND MEDICALLY APPROPRIATE FOOD SUPPORT IS ASSOCIATED WITH IMPROVED HIV AND DIABETES HEALTH, 94 J. OF URBAN HEALTH 87 (2017).

couples are 1.58 times more likely to have participated in SNAP compared to different-sex couples, and LGB adults between the ages of 18-44 are 1.36 times more likely to participate in SNAP compared to their heterosexual peers.⁷¹ Data from the Center for American Progress also show that LGBTQ people are more likely to participate in the Supplemental Nutrition Assistance Program (SNAP), with nearly 22.7% of respondents indicating they received SNAP in 2018.⁷² The same study found that LGBTQ people with a disability are 1.6 times more likely to participate in SNAP than their non-disabled LGBTQ peers.⁷³ LGBTQ individuals report difficulties accessing the traditional food safety net through programs such as the SNAP and through the emergency food network because of bias, stigma, and red tape, among other factors.⁷⁴ Studies of transgender and gender nonconforming individuals found that not only did these individuals face discrimination in the workplace that caused food insecurity, but that they also experienced discrimination when trying to access food assistance.⁷⁵ More research is needed to understand the specific nutritional needs of transgender individuals within the clinical setting, as well.⁷⁶

Increase SNAP benefits by using the Low-Cost Food Plan. Congress should adopt the use of the USDA's Low-Cost Food Plan, rather than the Thrifty Food Plan, when calculating SNAP benefits, as proposed in [H.R. 1368](#), the Closing the Meal Gap Act of 2019. While SNAP effectively brings millions of Americans out of poverty, benefits remain low. Raising SNAP benefits would reduce food insecurity and potentially improve the health of participants.⁷⁷

Maintain flexibilities in federal nutrition programs due to COVID-19. Due to the pandemic, Congress and USDA should continue flexibilities that make it easier for states to enroll qualified individuals and provide food or benefits in SNAP, the school meals and child nutrition programs, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and the Child and Adult Care Food Program (CACFP) by extend recertification periods, waiving interviews, scaling up online purchasing, and embracing telehealth services or alternative food delivery models.⁷⁸ Where possible,

⁷¹ Taylor N. T. Brown et al., Williams Inst., U.C.L.A. Sch. of Law, *Food Insecurity and SNAP Participation in the LGBT Community* 3 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>.

⁷² Caitlyn Rooney et al., Ctr. for Am. Progress, *Protecting Basic Living Standards for LGBTQ People* (2018), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>.

⁷³ *Id.*

⁷⁴ Bianca D. M. Wilson et al., Williams Inst., U.C.L.A. Sch. of Law, *We're Still Hungry: Lived Experiences with Food Insecurity and Food Programs Among LGBTQ People* (2020), <https://escholarship.org/content/qt2h26v9m9/qt2h26v9m9.pdf>.

⁷⁵ Transgender individuals report facing significant barriers not only to income through employment, which drive food insecurity, but also face discrimination when trying to access the food safety net. Jennifer Russomanno et al., *Food Insecurity Among Transgender and Gender Nonconforming Individuals in the Southeast United States: A Qualitative Study*, 4 TRANSGENDER HEALTH 89 (2019), <https://www.liebertpub.com/doi/pdfplus/10.1089/trgh.2018.0024>; Jennifer Russomanno & Jennifer M. Jabson Tree, *Food Insecurity and Food Pantry Use Among Transgender and Gender Non-Binary People in the Southeast United States*, 20 BMC PUBLIC HEALTH 590 (2020).

⁷⁶ Rabia Rahman & Whitney R. Linsenmeyer, *Caring for Transgender Patients and Clients: Nutrition-Related Clinical and Psychosocial Considerations*, 119 J. OF THE ACAD. OF NUTRITION & DIETETICS 727 (2019).

⁷⁷ Craig Gundersen et al., *An Examination of the Adequacy of Supplemental Nutrition Assistance Program (SNAP) Benefit Levels: Impacts on Food Insecurity*, 48 AGRIC. AND RES. ECON. REV. 433 (2019).

⁷⁸ Ctr. on Budget & Pol'y Priorities, *States Are Using Much-Needed Temporary Flexibility in SNAP to Respond to COVID-19 Challenges* (2020), <https://www.cbpp.org/sites/default/files/atoms/files/3-31-20fa.pdf>.

USDA should consider making these flexibilities permanent in order to reduce administrative burden. USDA should continue to leverage the Pandemic-EBT program, which delivered cash assistance directly to families whose children qualify for free and reduced-price lunch. P-EBT is estimated to have reduced post-pandemic food insecurity significantly, targeting over 30 million children, and has been extended through FY 2021.⁷⁹ The Administration and Congress should consider boosting P-EBT benefits. According to the Williams Institute, as of 2018, 114,000 same-sex couples in the United States were raising children.⁸⁰

Reverse harmful rules that restrict SNAP access. Congress should eliminate the time limits that reduce eligibility for able-bodied adults without dependents (ABAWDs) participating in SNAP, as proposed in H.R. 2809 in order to permanently reverse the 2019 rule from the Trump Administration eliminating ABAWD rule flexibilities. These time limits are consistently harmful to LGBTQ and working individuals.⁸¹ A harmful final rule was struck down in October 2020 by the U.S. District Court in the District of Columbia.

The Administration should also reverse the Trump Administration's proposals on SNAP Broad-Based Categorical Eligibility and Standard Utility Allowances. These policies have been shown to reduce benefits and reduce SNAP participation among eligible individuals, with one Urban Institute Analysis finding that they could impact 3.7 million individuals in 2.1 million households.⁸² Eliminating BBCE was estimated to kick 3.1 million individuals off of SNAP, with a disproportionate impact on the elderly, working participants, and households with children.⁸³

Continue efforts to enhance SNAP accessibility unrelated to the pandemic. Congress and the Administration should bolster efforts to simplify SNAP application and recertification. Including the Elderly Simplified Application Project, the Combined Application Project, and state-based efforts to combine Medicaid, SNAP, and WIC applications.⁸⁴ These projects can help reduce the potential of adverse experiences for LGBTQ people, and have been shown to improve program participation rates and raise benefit levels for some participants.⁸⁵ USDA should continue to leverage waiver authority to provide flexibility with respect to hot food purchases, online applications, mobile apps, and other steps to reduce burden on children and families.

⁷⁹ Zoe Neuberger et al., Ctr. on Budget & Pol'y Priorities, *Lessons From Early Implementation of Pandemic-EBT: Opportunities to Strengthen Rollout for School Year 2020-2021* (2020), <https://frac.org/wp-content/uploads/FCLessonsLearned.pdf>.

⁸⁰ Shoshana K. Goldberg & Kerith J. Conron, Williams Inst., U.C.L.A. Sch. of Law, *How Many Same-Sex Couples in the U.S. are Raising Children?* (July 2018), <https://williamsinstitute.law.ucla.edu/publications/same-sex-parents-us/>.

⁸¹ District of Columbia v. Bread for the City, No. 20-cv-00119 (D.C.C. Oct. 18, 2020), https://ag.ny.gov/sites/default/files/sj_opinion.pdf.

⁸² Laura Wheaton, Urban Inst., *Estimated Effect of Recent Proposed Changes to SNAP Regulations* 18 (Nov. 2019), <https://www.urban.org/research/publication/estimated-effect-recent-proposed-changes-snap-regulations>.

⁸³ Congressional Rsch. Serv., *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility* 18 (Oct. 2019), <https://fas.org/sgp/crs/misc/R42054.pdf>.

⁸⁴ See Jennifer Wagner & Alicia Huguelet, Ctr. on Budget & Pol'y Priorities, *Opportunities for States to Coordinate Medicaid and SNAP Renewals* (Feb. 2016), <https://www.cbpp.org/research/health/opportunities-for-states-to-coordinate-medicaid-and-snap-renewals>.

⁸⁵ Madeline Levin et al., Social Pol'y Rsch Assocs., Mathematica, *Evaluation of Alternatives to Improve Elderly Access* (May 2020), <https://www.spra.com/wordpress2/wp-content/uploads/2020/05/Elder-SNAP-Full-Report.pdf>.

Increase access to SNAP among college students. The Administration should allow flexibilities for states who wish to waive eligibility rules and work requirements for college students. Congress should repeal these requirements. College students consistently face high rates of food insecurity, leading to negative outcomes both in their academic and personal lives, and SNAP participation among college students is low in part because of the various work and study requirements mandated to stay on SNAP.⁸⁶

Allow for individuals to apply for SNAP and WIC using a gender-neutral marker. The Administration should pursue options to standardize the inclusion of a gender-neutral marker on SNAP and WIC applications.⁸⁷ In WIC, participation categories such as “pregnant woman” should be re-designated as “pregnant person” to be inclusive of transgender and non-binary participants.

The Administration should research and address barriers to accessing SNAP caused by efforts to navigate identification laws at the state level. Currently, transgender and gender non-binary individuals applying to SNAP have to first navigate their [state’s regulations regarding gender-affirming identifications](#) in order to successfully apply for SNAP. USDA should exert resources to research and address this gap in services to the transgender and gender non-binary population.

Increase funding for programs that promote healthier eating for those utilizing the food assistance safety net, such as SNAP-Ed, GusNIP, the Healthy Food Financing Initiative (HFFI), produce prescriptions, and online purchasing for SNAP and WIC. Congress should increase funding and allowances for programs that promote healthier eating through nutrition education and financial incentives, as well as online shopping. These programs have been shown to improve dietary patterns among SNAP recipients.⁸⁸

Add LGBTQ individuals and People Living with HIV/AIDS to the “greatest social need” targeting framework within the Older Americans Act. The Administration should endorse adding LGBTQ older adults and older adults living with HIV/AIDS to the “greatest social need” targeting language during the Older Americans Act reauthorization, and Congress should add these groups when the Older Americans Act is reauthorized. These populations face additional, significant barriers to accessing services under the Older Americans Act when compared to their peers and need specific resources to age in place. Adding these groups to the “greatest social need” targeting language would require the Administration for Community Living and SUAs to consider the needs of these populations. Several states, including Massachusetts, California, and the District of Columbia, have adopted legislation adding these groups to the targeting language when administering Older Americans Act programs. According to the CDC, over half of Americans living with HIV are over the age of 50, and 1 in 6 HIV diagnoses in the US were

⁸⁶ Nicholas Freudenberg et al., *College Students and SNAP: The New Face of Food Insecurity in the United States*, 109 AM. J. OF PUBLIC HEALTH 1652 (2019).

⁸⁷ Currently, there is a bill that would allow for gender neutral designations on passports. H.R. 5962, 116th Cong. (2020).

⁸⁸ K. Engel & E. H. Ruder, *Fruit and Vegetable Incentive Programs for Supplemental Nutrition Assistance Program (SNAP) Participants: A Scoping Review of Program Structure*, 12 NUTRIENTS 1676 (2020).

among people 50 and older.⁸⁹ As people living with HIV live longer, healthier lives, specific supports will be needed to address their specific social and medical needs.

Increase funding for Older Americans Act programs. The Administration and Congress should continue to increase funding for Older Americans Act programs. Data show significant unmet needs, despite participation in Older Americans Act programs being associated with better health outcomes and even reduced mortality.⁹⁰

Maintain medically tailored meals and food bank services in the Ryan White Care Act. Congress and the Administration should maintain the nutrition assistance programs in the Ryan White Care Act. Receipt of these services is associated with better viral suppression and health for people living with HIV.⁹¹

Support efforts to expand Medicare coverage of nutrition based interventions, such as medically tailored meals. The Administration should support Congressional efforts to improve outcomes and reduce costs through evidence-based interventions for Medicare patients with chronic illnesses, such as H.R. 6774, the Medically Tailored Home-Delivered Meals Demonstration Pilot Act of 2020.⁹²

Support efforts to expand Medicaid coverage of nutrition services. The Administration and Congress should promote efforts to cover clinical nutrition services and nutrition-based interventions for individuals participating in Medicaid, such as 1915(c) and 1115 waivers, which have been used to improve nutrition services to targeted populations, and combined applications for SNAP and Medicaid.⁹³

EDUCATION

All students should have access to a quality education and be free from barriers to achieving their full potential, even during this period of mass disruption and trauma that has put further strain on K-12 learning communities and widened the equity gap for disadvantaged students. LGBTQ students, especially those who are transgender, nonbinary, Black, Indigenous, people of color (BIPOC), and/or people with disabilities experience multiple intersecting forms of discrimination that are exacerbated by the twin pandemics of COVID-19 and systemic racism. Many LGBTQ students who are sheltered in place are self-isolating with unsupportive families.⁹⁴ Remote learning has disrupted

⁸⁹ Ctrs. For Disease Control & Prevention, *HIV and Older Americans*, CDC.GOV, <https://www.cdc.gov/hiv/group/age/olderamericans/index.html> (last visited Dec. 2, 2020).

⁹⁰ M. J. Lepore & H. Rochford, *Addressing Food Insecurity and Malnourishment Among Older Adults: the Critical Role of Older Americans Act Nutrition Programs*, 29 PUBLIC POL'Y & AGING REP. 56 (2019); K. Kowlessar et al., Admin. on Aging, Admin for Cmty. Living, Dep't of Health & Human Servs., *Older Americans Benefit From Older Americans Act Nutrition Programs* (2015), https://nutritionandaging.org/wp-content/uploads/2015/10/2015_0928_AoA_Brief_September.pdf; A. M. Gum et al., *Longitudinal Analysis of Mortality for Older Adults Receiving or Waiting for Aging Network Services*, 68 J. OF THE AM. GERIATRICS SOC'Y 519 (2020).

⁹¹ Emily Alexy et al., *Food Insecurity and Viral Suppression in a Cross-Sectional Study of People Living with HIV Accessing Ryan White Food and Nutrition Services in New York City*, 382 LANCET S15 (2013).

⁹² H.R. 6774, 116th Cong. (2020), <https://www.congress.gov/116/bills/hr6774/BILLS-116hr6774ih.pdf>.

⁹³ Am. Heart Assoc., *Expanding Access to Healthy Food for Medicaid Beneficiaries* (Jan. 2019), <https://www.heart.org/-/media/files/about-us/policy-research/policy-positions/access-to-healthy-food/expanding-access-to-healthy-food-for-medicaid-beneficiaries--policy-statement-2019.pdf?la=en>.

⁹⁴ Sakshi Venkatraman, *For LGBTQ Youth, Home Might Not Be a Safe Place to Self-Isolate*, NBC NEWS (May 3, 2020), <https://www.nbcnews.com/feature/nbc-out/lgbtq-youth-home-might-not-be-safe-place-self-isolate-n1181721>.

student access to peer networks of support, including GSAs (Gay Straight Alliances or Gender and Sexuality Alliances). LGBTQ youth are still more than twice as likely as their non-LGBTQ peers to experience homelessness.⁹⁵ The higher risk to LGBTQ youth of experiencing depression, anxiety, and other mental health concerns is now even greater.⁹⁶ Poverty has further exacerbated these problems due to a lack of access to technology, including laptops and internet.

Amid this crisis, the U.S. Department of Education has escalated its attacks on LGBTQ students and worsened existing barriers to educational opportunity for LGBTQ students as they have done over the past four years. Most recently the Department issued three letters where they again express their unwillingness to affirm students' gender identity and gender expression (including making specific and pointed references to "biological sex") and seek to prohibit transgender and nonbinary students from participating in athletics.⁹⁷ These most recent attacks fail to align with the U.S. Supreme Court's recent decision in *Bostock v. Clayton County, Ga.* where the Court found that discrimination against LGBTQ people "necessarily entails discrimination based on sex; the first cannot happen without the second."⁹⁸ The Department's proposed changes to the Civil Rights Data Collection also disregard this landmark case by retaining survey measures on gender identity and sexual orientation that do not reflect the Court's decision or enable the Department to track incidents of discrimination that harm students.⁹⁹

These most recent actions by the Department of Education follow numerous other discriminatory policies that put LGBTQ students at greater risk. The Department rescinded guidance on the treatment of transgender students¹⁰⁰ and failed to adequately enforce protections for LGBTQ students.¹⁰¹ The Department expanded the existing religious exemption for Title IX, making it more likely that LGBTQ students and educators will experience discrimination.¹⁰² The Department issued a final rule on Title IX sexual harassment that weakened protections,¹⁰³ a decision that impacts LGBTQ

⁹⁵ Silberman Ctr. for Sexuality & Gender, True Colors United and Advocs. for Richmond Youth, *The National LGBTQ+ Youth Homelessness Research Agenda* (2020), <https://truecolorsunited.org/wp-content/uploads/2020/01/LGBTQ-Youth-Homelessness-Research-Agenda--Final.pdf>.

⁹⁶ Trevor Project, *Implications of COVID-19 for LGBTQ Youth Mental Health and Suicide Prevention* (Apr. 2020), <https://www.thetrevorproject.org/2020/04/03/implications-of-covid-19-for-lgbtq-youth-mental-health-and-suicide-prevention/>.

⁹⁷ U.S. Dep't of Education, OCR Complaint No. 04-20-1409, Letter of Notification (August 31, 2020); U.S. Dep't of Education, RE: Case Nos. 01-19-4025, 01-19-1252, 01-20-1003, 01-20-1004, 01-20-1005, 01-20-1006, and 01-20-1007 (August 31, 2020); U.S. Dep't of Education, RE: Concerned Women for America (September 1, 2020).

⁹⁸ 140 S. Ct. at 1747 (2020).

⁹⁹ Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Mandatory Civil Rights Data Collection, 85 Fed. Reg. 40628 (proposed July 7, 2020).

¹⁰⁰ *Bonamici Leads Effort to Call on Devos to Reinstate Protections for Transgender Students; Joined by 44 Colleagues*, BONAMICI.HOUSE.GOV (May 13, 2019), <https://bonamici.house.gov/media/press-releases/bonamici-leads-effort-call-devos-reinstate-protections-transgender-students/>.

¹⁰¹ *Bonamici Leads 58 Lawmakers in Demanding Devos Protect Civil Rights of LGBTQ Students*, BONAMICI.HOUSE.GOV (October 22, 2019), <https://bonamici.house.gov/media/press-releases/bonamici-leads-58-lawmakers-demanding-devos-protect-civil-rights-lgbtq-students>.

¹⁰² Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program and Strengthening Institutions Program, 85 Fed. Reg. 3190 (proposed on Jan. 17, 2020).

¹⁰³ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 83 Fed. Reg. 61462 (proposed on Nov. 29, 2018) (to be codified at 34 C.F.R. § 106).

students who disproportionately experience these types of harms.¹⁰⁴ The final rule allows schools to discriminate without first requesting to be exempt from the Department, reducing transparency to students and their families. In a letter of impending enforcement action to the Connecticut Interscholastic Athletic Conference (CIAC), the Department took the unprecedented step of threatening loss of federal funding due to the claim that CIAC's inclusive policy on transgender and nonbinary student athletics participation somehow violated Title IX protections.¹⁰⁵

On February 20, 2020 GLSEN submitted a letter for the record to the U.S. House Committee on Oversight and Reform thanking the Committee staff for speaking with Darid Prom, a member of GLSEN's National Student Council, about their concerns about the Administration's discriminatory policies. Prom shared their experiences of discrimination from educators, bullying from other students, and how the tone that has been set at the federal level encourages rather than alleviates more of the same harmful behaviors. During that conversation, they also lifted up the need for additional student voices to be heard in these important conversations. The following are examples of some of the experiences from members of GLSEN's student networks:

- A student from Wisconsin shared that he was not allowed to use the bathroom that aligned with his gender and experienced such severe violence that he had to be treated in the nurse's office.
- In Massachusetts, school staff would not acknowledge a student's gender identity and that made him feel unsafe. This behavior set an example that encouraged students to also mis-gender and exclude him.
- After being bullied and harassed by peers, a student in North Carolina reported the incidents to adult school staff, some of whom not only failed to make sure she was safe, but also refused to refer to her by her name that accurately reflected her gender identity.

The lived experiences of these students reflect what GLSEN has learned over the past 20 years from findings in the National School Climate Survey (NSCS). From 2007-2015, NSCS documented significant improvements. That progress slowed dramatically in 2017, when there was an increase in youth reporting negative remarks about transgender people and an upward trend in the frequency of staff making negative remarks about gender expression.¹⁰⁶ Survey responses from LGBTQ students of color continue to surface the impacts of intersecting discrimination based on race, gender identity, and sexual orientation.¹⁰⁷ LGBTQ students with disabilities are also additionally impacted by

¹⁰⁴ Emily A. Greytak et al., GLSEN, *From Teasing to Torment: School Climate Revisited, A Survey of U.S. Secondary School Students and Teachers* (2016).

¹⁰⁵ U.S. Dep't of Education, Letter of Impending Enforcement Action, RE: Case Nos. 01-19-4025, 01-19-1252, 01-20-1003, 01-20-1004, 01-20-1005, 01-20-1006, and 01-20-1007 (May 15, 2020).

¹⁰⁶ Joseph G. Kosciw et al., GLSEN, *The 2017 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* 19-20 (2018).

¹⁰⁷ Adrian D. Zongrone et al., GLSEN, *Erasure and Resilience: The Experiences of LGBTQ Students of Color, Black LGBTQ Youth in U.S. Schools* (2020); Adrian D. Zongrone et al., GLSEN, *Erasure and Resilience: The Experiences of LGBTQ Students of Color, Native American, American Indian, and Alaska Native LGBTQ Youth in U.S. Schools* (2020); Adrian D. Zongrone et al., GLSEN, *Erasure and Resilience: The Experiences of LGBTQ Students of Color, Asian American and Pacific Islander LGBTQ Youth in U.S. Schools* (2020); Adrian D. Zongrone et al., GLSEN, *Erasure and Resilience: The Experiences of LGBTQ Students of Color, Latinx LGBTQ Youth in U.S. Schools* (2020);

the intersection of ableism with discrimination based on gender identity and sexual orientation.¹⁰⁸

Directing funds to the most disadvantaged students, the majority who attend public schools, should always be a priority, but under the effects of the COVID-19 pandemic it is particularly urgent that these funds not be diverted away from these purposes. Nationwide, at least 16.9 million students do not have access to remote learning. One out of three Black, Latino, and American Indian/Alaska Native households are not able to access virtual classrooms. The strain caused by the pandemic combined with an increased awareness of systemic racist police violence have increased the number of students who have social-emotional learning and mental health needs that create barriers to learning. Providing adequate services for students with disabilities is an ongoing challenge for educators and families. Educational attainment projections for the duration of the COVID-19 pandemic anticipate declining proficiency across multiple areas of study, including reading and mathematics. At the same time state and local governments face significant budget deficits that reduce these agencies' capacity to provide emergency support.

REMOVE BARRIERS FOR LGBTQ STUDENTS

Prioritize enforcement of protections for LGBTQ students. Direct the U.S. Department of Education Office of Civil Rights and the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section to make enforcement of civil rights protections for LGBTQ students, including rights for transgender and nonbinary youth and the affirmation of students' gender identities and expression, an enforcement priority, including filing *amicus* briefs or Statements of Interest in appropriate cases, and initiating enforcement actions against statewide laws or policies that single out LGBTQ students (such as Idaho HB500 and disciplinary policies and practices that disproportionately impact LGBTQ, transgender and nonbinary students, BIPOC students of color, and students with disabilities), and undoing existing discriminatory policies such as the enforcement decision in Connecticut on trans and nonbinary participation in athletics.¹⁰⁹

Issue updated guidance on transgender and nonbinary students. Immediately reinstate the 2016 U.S. Department of Education and U.S. Department of Justice joint guidance related to the protections of Title IX rights for transgender and nonbinary students as interim guidance, pending revision to reflect the *Bostock* decision and other legal developments.

Issue new guidance on GSAs and other school programs. Issue new, comprehensive guidance on the nondiscrimination and privacy rights of LGBTQ students under Title IX, FERPA, the Equal Access Act, and other relevant laws, including students' right to participate in all school programs and activities consistent with their gender identity.

¹⁰⁸ Neal A. Palmer, GLSEN, *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth* (2016); Kosciw, *supra* note 106.

¹⁰⁹ U.S. Dep't of Educ., Letter of Impending Enforcement Action RE: Case Nos. 01-19-4025, 01-19-1252, 01-20-1003, 01-20-1004, 01-20-1005, 01-20-1006, and 01-20-1007 (May 15, 2020).

Update and reaffirm guidance related to the Equal Access Act¹¹⁰ so that local educational agencies do not actively prevent and instead proactively support¹¹¹ the creation and maintenance of Gay-Straight Alliances or Gender & Sexuality Alliances (GSAs).

Reinforce worker's rights for LGBTQ educators. Coordinate with Equal Employment Opportunity Commission to increase awareness and enforcement of the employment rights of LGBTQ educators, including a public education campaign.

FUND KEY PRIORITIES TO CLOSE EQUITY GAP FOR LGBTQ STUDENTS

- Include LGBTQ youth and educators, especially those with intersecting marginalized identities, in continued response to the coronavirus pandemic. This public health crisis has illuminated the known disparate impacts on communities of color and marginalized identities; therefore, the federal government should keep these communities front of mind when supporting the country's healing from this pandemic, including the inclusion of a maintenance of equity provision¹¹² in future federal education funding. Specific allocations should support:
 - Equitable access to technology (including devices and high-speed internet), with a primary focus on students from low-income and rural communities;
 - The virtual continuation of afterschool programs, including GSAs (Gay-Straight Alliances or Gender and Sexuality Alliances), during distance learning;
 - Ensure focused outreach and follow-up to address the unique needs of LGBTQ students who are also low-income, students with disabilities, English language learners, experience homelessness, or who have been placed in foster care;
 - Retain, hire, and contract as needed with additional school counselors and psychologists to address the heightened level of mental and behavioral health needs of students;
 - Provide high-quality, culturally affirming, and accessible professional development for educators and mental health providers to address heightened traumas that students, including LGBTQ and other marginalized students, may be facing because of the pandemic, and barriers they may face in distance learning and returning to school buildings. This should include how educators can ensure positive, culturally affirming experiences for young people; how educators can identify signs of abuse, cyberbullying, and mental health needs of students; how to identify currently available resources to support students; and how to connect students to resource providers during distance learning; and

¹¹⁰ Memorandum from U.S. Dep't of Education, Legal Guidelines Regarding the Equal Access Act and the Recognition of Student-led Noncurricular Groups, <https://www2.ed.gov/policy/elsec/guid/secletter/groupsguide.doc>.

¹¹¹ Mass. Dep't of Elementary & Secondary Educ., *Massachusetts Gender and Sexuality Alliance (GSA) Leadership Council*, <http://www.doe.mass.edu/sfs/lgbtq/GSALcouncil.html> (last visited Dec. 3, 2020).

¹¹² Emma Vadehra & Ary Amerikaner, *COVID-19 Cuts Are Hitting Schools That Serve Low-Income Students the Hardest. Congress Can and Should Change That.*, NEXT 100 (July 8, 2020), <https://thenext100.org/covid-19-cuts-are-hitting-schools-that-serve-low-income-students-the-hardest-congress-can-and-should-change-that/>.

- The sharing of high-quality resources and practices across state and local education agencies, especially those practices and resources related to social, emotional, and academic development of students, addressing cyberbullying, and maintaining connectivity to peer student support networks.
- Discontinue any efforts to support the privatization of public school through federally funded school voucher, student scholarship, and tax-credit programs that divert essential funding from public schools, as public schools provide the highest level of protection for LGBTQ youth under federal civil rights laws.
- Support and increase funding for Title IV, Part A of the Every Student Succeeds Act (ESSA) to support efforts to create and sustain positive school conditions for all students, which we know – if designed intentionally and implemented genuinely – can help foster environments that LGBTQ youth can be affirmed in their identities, supported in their social-emotional development, and find safety in communities through school-sponsored Gay-Straight Alliances or Gender & Sexuality Alliances (GSAs).
- Support and increase funding for Title II, Part A of the Higher Education Act (HEA) to support K-12 teacher and school leader development programs, with express grant priority for teacher diversity (including focus on LGBTQ educators) programs that emphasize the importance of culturally responsive and affirming teaching practices, which are supportive of LGBTQ students.
- Significantly increase funding for federal education programs for marginalized students by at least tripling Title I and fully funding the Individuals with Disabilities Education Act (IDEA) within five years so that students in our most marginalized schools and students with disabilities have truly equitable and adequate financial resources.
- Increase funding for the Centers for Disease Control and Prevention (CDC) Division of Adolescent and School Health Programs, which provide school-based support services such as mental and physical health supports; nutrition programs; and other critical services that support the entirety of a student's needs.
- Increase funding for the Full-Service Community Schools Program, which provides comprehensive support services – including critical mental and emotional health programs – for students and their families. Guidance and technical assistance for grantees should include content on the unique experiences and needs of LGBTQ students.

PURSUE LEGISLATIVE SOLUTIONS TO REMOVE ADDITIONAL BARRIERS TO EDUCATION AND OTHER OPPORTUNITY

- Fully and actively support passage of the Safe Schools Improvement Act (SSIA)¹¹³ so that LGBTQ youth are protected from bullying and harassment based on their sexual orientation and gender identity, which is critical in combination with the Equality Act so that students are protected from bullying and harassment as these are not included in civil rights protections.
- Fully and actively support passage of the Every Child Deserves a Family Act¹¹⁴ to bar discrimination in child welfare and family services; ensure affirming care to the 30% of foster youth who identify as LGBTQ¹¹⁵ and LGBTQ families, including youth and families with intersectional identities; bar conversion therapy of foster youth; and required sexual orientation and gender identity data collection for foster youth, parents, and guardians.
- Fully and actively support passage of the Counseling Not Criminalization in Schools Act¹¹⁶ to reduce local educational agencies' reliance on school resource officers (SROs), which has disparately and negatively impacted students of color.
- Fully and actively support legislation supported by the civil rights education community, including abiding by all school climate principles¹¹⁷, so that all students – regardless of their identities – are afforded equal and equitable opportunities in all public schools.
- Establish an advisory committee and hold biennial meetings for the Administration of Children and Families made up of older youth in out of home care, including groups who are overrepresented in care (including LGBTQ youth, BIPOC youth, and youth with disabilities), those who were formerly in care, and LGBTQ foster and adoptive parents, tribal parents, parents of color, and parents with disabilities. Ensure that the committee addresses the specific needs of transgender and gender non-binary foster youth.

HOUSING AND HOMELESSNESS

In 2018, a group of LGBTQ criminal and economic justice advocates published *Intersecting Injustice: A National Call to Action*,¹¹⁸ providing a roadmap to enact change and address centuries of systematic injustices rooted in agencies across all levels of

¹¹³ Safe Schools Improvement Act of 2019, S. 2448, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/2548>.

¹¹⁴ Every Child Deserves a Family Act, H.R. 3114, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/3114/>.

¹¹⁵ Laura Baams et al., *LGBTQ Youth in Unstable Housing and Foster Care*, 143 PEDIATRICS 1 (2019), <https://pediatrics.aappublications.org/content/pediatrics/early/2019/02/07/peds.2017-4211.full.pdf>.

¹¹⁶ Counseling Not Criminalization in Schools Act, S. 4360 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/senate-bill/4360?q=%7B%22search%22%3A%5B%22murphy%22%5D%7D&s=4&r=5>.

¹¹⁷ Alliance for Educational Justice et al., *Civil Rights Principles for Safe, Healthy, and Inclusive School Climates* (2020), <http://civilrightsdocs.info/pdf/education/School-Climate-Principles.pdf>.

¹¹⁸ Hunter et al., *supra* note 1.

government. Research for that report was conducted throughout 2016, and though many of the recommendations found in the report are still applicable today, widespread policy changes enacted in the past four years that are particularly harmful and life-threatening for LGBTQ people must also be reversed. These changes include attacks that are both LGBTQ-specific and attacks that have a disparate impact on LGBTQ people.

For example, the Trump Administration's proposed revisions to the Equal Access Rule (EAR) would allow temporary and emergency housing providers to refuse to admit people to single-sex facilities based on a provider's belief that that individual's sex does not correspond to that facility, subjecting transgender and gender non-binary people to discrimination, barriers, and trauma. The Administration has also rolled back a series of rules and protections making it even more difficult for people to access housing services and prove occurrences of discrimination. This is particularly harmful for LGBTQ people who experience homelessness and housing issues at disproportionate rates and are discriminated against based on a multitude of intersecting identities, including LGBTQ people of color, LGBTQ women, and LGBTQ people with disabilities.

According to a 2020 Williams Institute study, 8.3% of transgender people reported having recent experiences with homelessness compared to 1.4% of non-LGBTQ people.¹¹⁹ 30% of transgender people reported having experienced homelessness at some point in their lives and are four times less likely to own a home compared to the population as a whole, the 2015 U.S. Transgender Survey (USTS) found. An even higher percentage of transgender women of color – 59% of American Indian trans women, 51% of Black trans women, 51% of multiracial trans women, and 49% of Middle Eastern trans women – reported having experienced homelessness at some point in their lives.¹²⁰ The negative impacts on LGBTQ people of color are exacerbated under the Trump Administration's new rules.

The Administration's rollbacks have further endangered the lives of many LGBTQ people of color who cannot access or fear accessing housing and homelessness services. To continue advocating for the safety of LGBTQ people experiencing homelessness or housing issues, the new Administration should include robust housing assistance in a COVID-19 relief package, address the harm from policies and practices implemented in the past four years, adopt a framework of housing as a human right, and reinvest in the ending of homelessness.

Prioritize housing assistance in a COVID-19 relief package. The COVID-19 pandemic and resulting recession has exacerbated this nation's housing crisis. Millions of people, including LGBTQ people, have lost income from losing jobs or reduced hours, resulting in millions of people being behind on their rent. In addition, this pandemic has a harsh impact on LGBTQ people experiencing homelessness, who, like other people experiencing homelessness, face a higher risk of contracting the virus, being hospitalized,

¹¹⁹ Bianca D.M. Wilson et al., Williams Inst., U.C.L.A. Sch. of Law, *Homelessness Among LGBT Adults in the US* 3 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Homelessness-May-2020.pdf>.

¹²⁰ James et al., *supra* note 14, at 178.

needing critical care, and death.¹²¹ Consequently, the Administration should include \$100 billion in emergency rental assistance and a universal eviction moratorium in their COVID-19 relief package to prevent even more people from experiencing homelessness. The Administration should also include \$11.5 billion in Emergency Solutions Grant funding for homelessness assistance, such as providing medical respite care, helping communities house people experiencing homelessness in space such as hotels where they can isolate, and conducting outreach and street medicine.

Enforce and strengthen the HUD Equal Access Rule. The U.S. Department of Housing and Urban Development (HUD) should enforce and strengthen the current HUD Equal Access Rule (EAR) to ensure LGBTQ people, especially transgender and gender non-binary people, are not endangered while accessing housing and homelessness services. The July 2020 shelter proposed rule would result in the exclusion of transgender and gender non-binary people from the shelter system, the promotion of sex discrimination against LGBTQ people, and trauma that would decimate LGBTQ people's trust in shelters. According to the 2015 USTS, 26% of respondents who had recently experienced homelessness reported that they did not stay in a shelter for fear of mistreatment and 70% of those who did reported being harassed, sexually or physically assaulted, or kicked out because of their transgender identity.¹²² HUD should rescind the proposed rule in its entirety, restore the requirement that shelters post notice of EAR at their sites, and return to using the 2015 HUD guidance for service providers on interpreting and implementing EAR.

Rescind proposed rule requiring verification of eligibility status. HUD should rescind the proposed rule requiring verification of eligibility for HUD housing assistance. This would not only force 108,000 individuals in 25,000 families receiving prorated assistance for eligible family members to either separate or lose their housing assistance, but it would also create onerous documentation requirements for the over 9.4 million people currently receiving HUD assistance and future applicants. This would detrimentally affect LGBTQ immigrants, including thousands of bi-national same-sex couples, as well as LGBTQ people more generally who lack easy access to documentation or do not have documentation reflecting their gender identity. A 2017 Center for American Progress (CAP) report found that LGBTQ individuals and their families rely on public housing assistance at 2.5 times the rate of non-LGBTQ individuals.¹²³ LGBTQ people of color, transgender people, and LGBTQ people with disabilities would be more heavily impacted – LGBTQ people of color reported receiving housing assistance at a rate of 12.5% compared to 3.8% of white LGBTQ people; 14.3% of transgender people reported receiving housing assistance compared to 2.7% of cisgender people; and 17.6% of LGBTQ people with disabilities reported receiving housing assistance, as compared to 2.2% of non-disabled LGBTQ people.¹²⁴ If finalized and implemented, this proposed rule would spend taxpayer funds to evict families and would reduce housing assistance. When

¹²¹ Dennis Culhane et al., *Estimated Emergency and Observational/Quarantine Capacity Need for the US Homeless Population Related to COVID-19 Exposure by County; Projected Hospitalizations, Intensive Care Units and Mortality* 3–4 (2020), https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper_clean-636pm.pdf.

¹²² James et al., *supra* note 14, at 13.

¹²³ Rooney, *supra* note 72.

¹²⁴ *Id.*

there has only been enough funding to provide vouchers to 1 out of 4 eligible households, this proposed rule is a gross misuse of taxpayer funds and should be rescinded.

Reverse rollbacks of the Fair Housing rules. HUD should reverse the rollback of Fair Housing Act (FHA) rules, including the Affirmatively Furthering Fair Housing (AFFH) and the Disparate Impact rules. These rollbacks severely hinder access to justice. The rollback of the AFFH rule impedes access to stable housing by LGBTQ communities and communities of color and the rollback of the Disparate Impact rule imposes an even more significant burden on people who are experiencing discrimination to prove the occurrence of discrimination. These coordinated attacks on LGBTQ communities, communities of color, and other protected classes under the FHA have devastating impact on the lives of LGBTQ people facing multiple barriers to accessing stable housing.

Issue an Executive Order framing housing as a human right. The President should issue an executive order framing housing as a human right and declaring an end to homelessness a compelling government issue and priority. LGBTQ people, especially young LGBTQ people of color, experience high rates of homelessness and are often forced into the criminal legal systems in part due to discrimination and family and community rejection, leading to engagement in work that is often criminalized. The President could begin to address this cycle of poverty and criminalization, which results in homelessness across the country, by framing housing as a human right and ensuring all people are housed.

Return to “housing first” priorities. HUD should re-center and implement a “housing first” model,¹²⁵ which focuses on providing housing to people experiencing homelessness regardless of substance use or employment status. Housing instability often leads to other emotional, health, and physical consequences that are especially detrimental to LGBTQ communities, who experience higher rates of substance use, homelessness, and poverty as compared to the population as a whole.

Adopt new Fair Housing Act rules. HUD should adopt new Fair Housing Act (FHA) rules to implement the *Bostock* ruling and make explicit that the prohibition of discrimination based on “sex” protects against discrimination based on sexual orientation and gender identity. This will ensure that the protections granted under FHA are clear and that housing providers across the country have further guidance on how to adhere to the law.

Reinvest in ending homelessness. The U.S. executive branch should reinvest in the U.S. Interagency Council on Homelessness (USICH) “housing first” priorities, increase funding for important existing programs, and make bold investments in new programs that would expand affordable and permanent supportive housing. USICH is an effective tool for advancing innovative housing and homelessness strategies, but it has been decimated in the last four years. A return to addressing the root causes of homelessness rather than its manifestations will help invest in a future where fewer people experience homelessness and more people have access to permanent housing. This will be

¹²⁵ See U.S. Dep’t of Hous. and Urban Dev., *Housing First in Permanent Supportive Housing* (2014), <https://files.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf>.

particularly impactful for LGBTQ people who experience homelessness at higher rates and own houses at lower rates compared to the population as a whole.

PUBLIC BENEFITS

Contrary to common misperception, lesbian, gay, bisexual, and transgender (LGBTQ) Americans experience higher rates of poverty, disability, and isolation than their straight and cisgender counterparts and are therefore more likely to need federal cash support programs. Because of the disproportionate impact of poverty and disability on the LGBTQ community, (particularly on its elders, 50 and over) compared to the straight and cisgender community, we recommend indexing to inflation the income and asset tests for means-tested federal cash benefits, particularly Supplemental Security Income (SSI), in order to bring the asset and income tests current in real-dollar terms, and to keep them current with inflation on an ongoing, annual basis. Further, because the means-testing of such programs often traps beneficiaries in the consequences of poverty, we recommend liberalizing or eliminating asset tests, such as through an expansion of the ABLE Act, to allow beneficiaries to acquire and save assets in order to overcome poverty-imposed limitations. Finally, we recommend eliminating unnecessary procedural hurdles to keeping need-based benefits, hurdles such as the current proposal to conduct continuing disability reviews for AIDS-based Social Security disability benefits every two years—rather than every five or seven years, as has historically been the case. A review of the statistical evidence of poverty, disability, and isolation in the LGBTQ community demonstrates why these reforms are urgently needed.

In 2019, the poverty threshold for a single person was \$13,300.¹²⁶ That's just over \$1,000 a month to cover housing, food, utilities, medical expenses, and transportation, not to mention any spending money. Collectively, lesbian, gay, bisexual, and transgender people in the United States have a poverty rate of 21.6% — almost 6% higher than the poverty rate of cisgender straight people.¹²⁷ Transgender people and cisgender bisexual women have the highest rates of poverty: 29.4%.¹²⁸ Transgender individuals 25 and older have higher rates of poverty than cisgender straight, gay, lesbian, and bisexual individuals.¹²⁹ In the 18-24 age range, cisgender bisexual women have the highest rate of poverty: 37.3%.¹³⁰

When race and ethnicity intersect with sexual orientation and gender identity/expression minorities, there are greater poverty disparities. Nearly 31% of Black LGBTQ Americans were poor, compared to 25% of cisgender Black straight Americans.¹³¹ Nearly 23% of LGBTQ Asian Americans were poor, compared to nearly 15% of cisgender Asian straight Americans.¹³²

¹²⁶ See U.S. Dep't of Health and Human Servs., *HHS Poverty Guidelines for 2020* (Jan. 8, 2020), <https://aspe.hhs.gov/poverty-guidelines>.

¹²⁷ M.V. Lee Badgett et al., Williams Inst., U.C.L.A. Sch. of Law, *LGBT Poverty in the United States: A Study of Differences Between Sexual Orientation and Gender Identity Groups 2* (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>.

¹²⁸ *Id.* at 8.

¹²⁹ *Id.* at 15, tbl. 7.

¹³⁰ *Id.*

¹³¹ *Id.* at 13, fig. 6.

¹³² *Id.*

The poverty rate for Americans with disabilities (29%) is nearly three times that of Americans who do not have a disability (11%).¹³³ LGBTQ Americans, especially older LGBTQ Americans, are more likely than their straight counterparts to have a disability. Of lesbian and bisexual women, and transgender individuals, 35% had a disability, compared to 24% of cisgender straight women.¹³⁴ Among gay and bisexual men and transgender people, 28% had a disability, compared to nearly 20% of cisgender straight men.¹³⁵ For the LGBTQ community fifty years of age or older the rate of disability is even greater: 40-50%.¹³⁶

LGBTQ elders face unique challenges in aging — arising in part from pervasive stigma and discrimination — and experience higher risks of isolation and disability than their heterosexual peers, which results in poorer health outcomes. This can mean that older LGBTQ individuals tend to need more help yet have fewer — or no — helpmates, compared to heterosexual individuals the same age.

LGBTQ people are less likely to have a traditional family structure, which impacts them as they age: LGBTQ older people are twice as likely to live alone, twice as likely to be single, and three to four times less likely to have children.¹³⁷ Also, they are more likely to be alienated from their extended families of origin. As a result, older LGBTQ individuals face a much higher risk of isolation than their heterosexual counterparts. Further, since more than 200,000 gay men died of AIDS in the 1980s and '90s — lovers, partners, and friends — older LGBTQ individuals, especially gay men, find their social networks reduced. Thus, given the comparatively heavier burden of poverty borne by the LGBTQ community and the frayed social supports of its older population, we make the following specific recommendations to improve the financial security of those in need.

Remove barriers to the TANF program and increase the TANF block grant. The Temporary Assistance for Needy Families (TANF) program is our nation's primary cash assistance program for families with children living in poverty. Over the years, the program has reached fewer of the families who need it. In 2018, for every 100 families with children living in poverty, only 22 received TANF cash assistance.¹³⁸ Congress should remove barriers to the program like mandatory orientation, work requirements, and time limits. Instead of burdensome work requirements, Congress should implement an outcomes-based measure focused on the outcomes of TANF recipients.¹³⁹ Finally, Congress should increase the TANF block grant and adjust it to inflation. The block grant has not been increased since it was created in 1996. In every state, TANF benefits are at

¹³³ Nat'l Council on Disability, *National Disability Policy: A Progress Report* 21 (2017), https://ncd.gov/sites/default/files/NCD_A%20Progress%20Report_508.pdf.

¹³⁴ Badgett et al., *supra* note 127, at 22.

¹³⁵ *Id.*

¹³⁶ Karen I. Fredriksen-Goldsen, *Resilience and Disparities Among Lesbian, Gay, Bisexual, and Transgender Older Adults*, 21 Pub. Pol'y & Aging Rep. 3, 4 (2011) ("[A]lmost half of the lesbian, gay, bisexual, and transgender older adults [have] a disability.").

¹³⁷ SAGE, *Major National Report Highlights Social Isolation and Loneliness Impacting Older Adults* (Feb. 28, 2020), <https://www.sageusa.org/news-posts/major-national-report-highlights-social-isolation-and-loneliness-impacting-older-adults/>.

¹³⁸ Laura Meyer & Ife Floyd, Ctr. on Budget and Policy Priorities, *Cash Assistance Should Reach Millions More Families* 20, tbl. 2 (2020), <https://www.cbpp.org/sites/default/files/atoms/files/6-16-15tanf.pdf>.

¹³⁹ Elizabeth Lower-Basch & Ashley Burnside, Ctr. for Law and Soc. Policy, *TANF 101: Work Participation Rate* 2 (2020), <https://www.clasp.org/publications/report/brief/tanf-101-work-participation-rate>.

or below 60 percent of the federal poverty line – this does not provide families with enough to pay rent, put food on the table, and afford other necessary expenses.¹⁴⁰

Adjust to inflation the income and asset tests for Supplemental Security Income (SSI). The Administration should pursue legislative solutions to adjust the income and asset tests for means-tested federal benefit programs, in particular SSI, to account for inflation, and to index those tests to inflation on an ongoing, annual basis. The SSI program was enacted in 1972 to provide a cash benefit to very low-income and low-asset individuals who are aged, blind, or disabled. Congress has made few changes to SSI since then.¹⁴¹ Most critically, since it was enacted in 1972, the income and asset qualifications have not been adjusted for inflation. While impoverished applicants are expected to live on 2020 dollars, the SSI program still measures their financial need based on the value of the dollar in 1972. As a result, a far smaller number of aged, blind, or disabled individuals living in poverty (including LGBTQ individuals) qualify for the benefit than Congress originally intended. We therefore recommend that the Administration work with Congress to pass an amendment to the SSI statute similar to the Supplemental Security Income Restoration Act of 2019 (S.2753/H.R.4280) in order to simply bring the original income and asset limits current with inflation, and index them to inflation on an annual basis going forward.

Eliminate the asset limit for certain anti-poverty purposes. The Administration should pursue legislative solutions to raise the age of eligibility for tax-exempt, excludable savings accounts for SSI beneficiaries. The SSI asset limit (\$2,000) makes it virtually impossible for an SSI beneficiary to remain eligible for SSI while also accumulating and holding the assets necessary to improve her life, e.g., to take out a student loan, or save money for tuition in order to improve work skills, or simply to save the security deposit, first month's rent, and moving expenses required to move to a better living arrangement. Several years ago, Congress passed legislation (the ABLE Act) that waives the asset limit for bank accounts created for certain specific anti-poverty purposes, yet it limited this benefit to adults who became disabled at age 26 or younger. The Administration should work with Congress to pass legislation similar to the Achieving a Better Life Experience (ABLE) Age Adjustment Act (S.651/H.R.1814), also introduced in Congress in 2019, in order to eliminate the age limit for ABLE Accounts.

Abandon or rescind the new rule requiring the Social Security Administration to conduct Continuing Disability Reviews of HIV/AIDS disability every two years. The Social Security Administration should reverse its proposed new rule requiring that it review every *two* years the ongoing medical qualification for benefits based on AIDS disability, rather than every *five* or *seven* years, as it has in the past.¹⁴² Social Security periodically conducts reviews of disability beneficiaries—including those disabled because of AIDS—to determine if they continue to be disabled and therefore still eligible for benefits. The Administration recently proposed to conduct such reviews for AIDS-

¹⁴⁰ Ali Safawi & Ife Floyd, Ctr. on Budget and Policy Priorities, *TANF Benefits Still Too Low to Help Families, Especially Black Families, Avoid Increased Hardship* 1 (2020), <https://www.cbpp.org/sites/default/files/atoms/files/10-30-14tanf.pdf>.

¹⁴¹ Emma Ayers, *SSI Restoration Act of 2015 Fights Senior Poverty*, Justice in Aging (May 19, 2015), <https://www.justiceinaging.org/our-work/economic-security/ssi-restoration-act/>.

¹⁴² See Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. 63588, 653890 (proposed November 18, 2019) (to be codified at 20 C.F.R. 404, 416).

based cases every two years, rather than every five or seven. Yet, under other related rules, Social Security is required to evaluate the cases of AIDS beneficiaries under the standard by which it originally approved their claims—a standard under which the vast majority of AIDS beneficiaries continue to remain qualified anyway. As a result, all that an every-two-year review schedule creates is additional *administrative* hurdles over which otherwise qualifying beneficiaries can stumble and lose their benefits, e.g., by not receiving notices of reviews because they have moved, resulting in failure to respond, and thereby having their benefits ceased for failure to respond. Since there is virtually no substantive benefit to be gained by every-two-year reviews of AIDS-based disability cases, the Administration should return to evaluating AIDS-based disability cases every five to seven years.

Invest in legal services. The Administration and Congress should support funding the Legal Services Corporation (LSC) at the level it requests. Each year, LSC-funded legal aid programs help struggling Americans have access to basic living standards by preventing seniors from having their homes taken away, obtaining earned benefits for veterans, and helping people who have been impacted by domestic violence. In total, LSC grantees served over 1.7 million people.¹⁴³ According to a 2017 LSC report, LSC grantees are forced to turn away 50% of the individuals who come to them for legal help due to a lack of resources.¹⁴⁴ In fact, 86% of the civil legal needs of low-income Americans received inadequate or no legal help.¹⁴⁵ Without increased funding for LSC, millions of low-income people, including those who are LGBTQ, will continue to be unable to seek justice.

End harmful restrictions for LSC grantees. Congress should repeal restrictions placed on LSC grantees that prevent them from performing certain activities and from representing specific categories of clients.¹⁴⁶ These harmful restrictions keep LSC grantees from fully serving the needs of low-income people.

Expand broadband access in rural communities. Congress and the Administration should pass legislation and promulgate rules through various agencies including the FCC and HHS to improve infrastructure, including broadband internet, and healthcare access for people in rural communities. The current pandemic has highlighted the vital importance and necessity of reliable broadband internet access and access to healthcare. For many LGBTQ people, particularly LGBTQ youth, in rural areas, the internet is an indispensable tool for finding and staying connected to community and support. In addition, many LGBTQ people in rural areas, like their non-LGBTQ neighbors, have difficulty accessing healthcare at all, let alone culturally competent healthcare. Many rural transgender patients in particular have to travel long distances to urban centers to access trans-affirming health care.

¹⁴³ Legal Servs. Corp., *Grantee Client Demographics*, <https://www.lsc.gov/state-data-grantee-client-characteristics> (last visited Dec. 3, 2020).

¹⁴⁴ Legal Servs. Corp., *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* 10 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

¹⁴⁵ *Id.* at 30.

¹⁴⁶ See Legal Servs. Corp., *LSC Restrictions and Other Funding Sources*, <https://www.lsc.gov/lsc-restrictions-and-funding-sources> (last visited Dec. 3, 2020).

Advance reparations for Black Americans. The Administration should support the [Commission to Study and Develop Reparation Proposals for African-Americans Act](#) (HR 40), which establishes a commission to study the brutality and inhumanity of slavery, its legacy, and its ongoing impacts, as well as develop proposals for redress and repair.

CRIMINALIZATION OF POVERTY

When it comes to LGBTQ people, especially Black, indigenous, people of color; the likelihood of experiencing poverty is significantly influenced by discrimination and contact with the criminal punishment system. Research from the Williams Institute indicates that LGBTQ people experience poverty at a rate of 21.6%, while the rate for cisgender straight people is 15.7%.¹⁴⁷ 12% of transgender people report a household income of less than \$10,000 annually, a rate three times higher than the general population in the same income bracket.¹⁴⁸ 36% of respondents in a national survey of currently incarcerated people reported being unemployed prior to incarceration and 20% reported housing instability.¹⁴⁹

Income and housing instability result in increased police abuse and profiling of LGBTQ people. This increased targeting of LGBTQ people, especially trans women of color, results from engaging in underground economies, such as sex work and drug use, to survive and rampant police bias against transgender people. In a 2015 survey of transgender people, 19% reported doing some type of sex work for food, money, or a place to sleep.¹⁵⁰ In a 2011 survey of transgender people, of those engaged in sex work, 69% had experienced a negative job outcome such as being fired or denied a job because of being transgender, nearly half (48%) had experienced homelessness, and nearly a third (31%) lived on less than \$10,000 a year.¹⁵¹ Transgender people engage in sex work at a rate ten times that of cisgender women.

In a 2015 survey of transgender people throughout the United States, 58% of respondents reporting police interaction experienced mistreatment and 20% reported verbal harassment. Among LGBTQ identified people in prisons and jails surveyed by Black and Pink, 39% of LGBTQ individuals reported trading sex for survival and over half reported selling drugs for money.¹⁵² Coupled with pervasive discrimination, these factors contribute to LGBTQ people being three times as likely to experience incarceration than heterosexual people.

Seventy-four percent of respondents lack the economic means to secure bail so they are forced to either accept a guilty plea to avoid incarceration or they remain inside.¹⁵³ Once incarcerated, LGBTQ people experience disproportionate sexual violence and

¹⁴⁷ Badgett et al., *supra* note 127, at 2.

¹⁴⁸ James, et al., *supra* note 14, at 140 (2015).

¹⁴⁹ Jason Lydon et al., *Coming Out of Concrete Closets: A Report on Black & Pink's LGBTQ Prisoner Survey* 20–21, (2015), <https://www.issuelab.org/resources/23129/23129.pdf>.

¹⁵⁰ James, *supra* note 14, at 162.

¹⁵¹ Erin Fitzgerald et al., Best Practices Policy, Red Umbrella Project and Nat'l Ctr. for Transgender Equal., *Meaningful Work: Transgender Experiences in the Sex Trade* 5 (2015), https://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf.

¹⁵² Lydon et al., *supra* note 149, at 3.

¹⁵³ *Id.* at 24.

discrimination. Gay and bisexual men are more than six times as likely to be sexually assaulted than straight men.¹⁵⁴ Incarcerated transgender people are nearly ten times more likely to experience sexual assault, with about 40% reporting a sexual assault.¹⁵⁵

In addition, many incarcerated LGBTQ people must often choose between medical care, purchasing toiletries, or contact with loved ones due to a lack of available funds. 43% of incarcerated respondents were prevented from accessing necessary health care due to medical fees.¹⁵⁶ Trans people, in particular, face challenges with access to adequate care inside. Trans women are frequently placed in men's facilities, and trans men in women facilities, placing them at a risk for their safety among other concerns. Placing trans people in facilities incongruent with their gender identity presents challenges with accessing personal hygiene products, such as tampons; gender specific clothing, such as bras; and medical care, such as hormone therapy. Many of these individuals would have had access to these products prior to incarceration, and losing access results in severe negative mental health impacts. Regaining access to these products is challenging given the gendered nature of carceral facilities.

Poverty and incarceration create and reinforce a perpetual cycle of disadvantage. This enduring cycle impedes access to employment by reducing income potential and creating economic insecurity through criminal debt; preventing access to public benefits and destabilizing the communities that formerly incarcerated people return home to. Enacting policies to reduce poverty and allow for increased access to stable housing and employment, education and job training opportunities, adequate housing, and harm reduction strategies would also reduce the rates of LGBTQ policing and criminalization. In fact, poverty rates would have decreased by 20%, between 1980 and 2004, if not for mass incarceration.¹⁵⁷

REFORM AND ACCOUNTABILITY IN POLICING

Divest from policing, incarceration, and anti-immigrant enforcement. Far too often, federal dollars are also used to increase the policing and imprisoning of communities of color, which exacerbates the violence Black and brown LGBTQ people regularly experience by the criminal legal system. The White House should prioritize investing new funding into domestic programs, including community-based programs and services to address the needs of LGBTQ people and families with low incomes. Within domestic spending, the White House should deprioritize spending on anti-immigrant enforcement, policing, and incarceration.

Require comprehensive SOGI training for law enforcement agencies. Congress should condition federal grant-making to law enforcement agencies through The Office of Community Oriented Policing Services (COPS Office) on adoption and enforcement of

¹⁵⁴ Ilan H. Meyer et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012*, 107 AM. J. PUB. HEALTH 267, 271 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227944/pdf/AJPH.2016.303576.pdf>.

¹⁵⁵ Nat'l Ctr. for Transgender Equality, *LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights* 6 (2018), <https://transequality.org/transpeoplebehindbars>.

¹⁵⁶ Lydon, *supra* note 149, at 46.

¹⁵⁷ Robert DeFina & Lance Hannon, *The Impact of Mass Incarceration on Poverty*, 59 CRIME AND DELINQ. 562, 581 (2013).

anti-profiling and nondiscrimination provisions inclusive of sexual orientation and gender identity, and upon strategies for enforcing these grant conditions.

Employ consent decrees for police departments nationwide. The Trump Administration has not issued a consent decree since 2016. DOJ should reinvigorate the use of consent decrees to provide oversight, and recommend and enforce mandatory changes and benchmarks for police departments that have violated people's constitutional rights. They should prohibit discrimination in policing and meaningfully hold officers who violate these laws accountable.

ADDRESS EFFECTS OF MASS INCARCERATION

Establish oversight board for Federal Bureau of Prisons (BOP). Congress should create an independent bipartisan board to oversee and advise the BOP. This board shall be composed of criminal justice stakeholders, including community organizations. The board will be granted the authority to review and evaluate *all* BOP policies, procedures, and practices.

Issue Federal Bureau of Prisons guidance on placement of incarcerated transgender people. The Department of Justice, Bureau of Prisons should update the Transgender Offender Manual to eliminate the changes made by the Federal Bureau of Prisons on May 11, 2018 that added the word “necessary” without further explanation, and that impose “biological sex” for determining initial housing designations.¹⁵⁸

Expand Prison Rape Elimination Act (PREA) regulations. Congress should expand the Prison Rape Elimination Act (PREA) mandates/audits to police lockups and expand regulations beyond brick-and-mortar facilities to other places of detention, such as law enforcement vehicles.

ELIMINATE THE CRIMINALIZATION OF POVERTY

Stop the criminalization of poverty and its related arrests. People with limited to no income often turn to underground economies to afford housing, mental health services, or harm reduction services. As a result, many of these people are frequently arrested on charges related to homelessness, sex work, and drug use. Unable to afford bail or the fines or fees related to their arrest, they often are remanded to incarceration.

- Congress should eliminate mandatory minimum sentencing laws for all drug-related crimes.
- Congress should leverage funding for HUD to discourage state and local governments from policing and criminalizing activities such as begging, sitting, or lying on sidewalks, loitering, and so-called vagrancy laws.
- Redirect federal funds allocated for jail/prison expansion to community-based housing, harm reduction, and mental health services.

Support sex workers. In 2018, Congress passed the Stop Enabling Sex Traffickers Act (SESTA) and Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA). The law expanded criminal and civil liability for online platforms for content related to sex

¹⁵⁸ U.S. Dep't of Just., *supra* note 48.

trafficking and prostitution. Consequently, platforms removed online spaces that sex workers used for work. Without these spaces, sex workers are forced to street-based sex work, which is more dangerous and provides less economic stability for sex workers and their families. Congress should pass the “SESTA and FOSTA Examination of Secondary Effects for Sex Workers Study Act (“SAFE SEX Workers Study Act”) to study the impact of losing access to internet platforms on the health and safety of sex workers.

Support access to healthcare for incarcerated people. End the “inmate exclusion policy” that prohibits currently incarcerated people from accessing Medicaid. Abolish all fees for doctor visits and over-the-counter medication.

Reduce communications fees. Incentivize state and local jurisdictions to subsidize the cost of phone calls and emails so currently incarcerated people can remain connected to their community.

Restore Pell Grants for currently incarcerated people. Congress should restore Pell Grants to currently incarcerated people, including those individuals in civil commitment facilities, and fully fund educational opportunities, including obtaining a GED or college degree and access to vocational training.

Ease and expedite access to social safety net programs for people with criminal convictions. Certain criminal convictions prohibit some people from receiving social safety net benefits. Congress should end all bans on access to SNAP, welfare, and other social safety net benefits for all people with criminal convictions.

Expand public housing access. Congress should increase resources available for housing assistance and support for low-income individuals and families. HUD should provide stable funding for and expand access to safe and affordable housing for all people, including those with criminal records.

End the regulations on felon association. Formerly incarcerated people rely on those who have also experienced the harms of the system to provide mentorship and guidance when navigating the process of reintegrating with their communities. End the restriction that prohibits formerly incarcerated people from associating with one another while under community supervision.

Eliminate sex offense registries. Congress should eliminate sex offense registries by repealing the Adam Walsh Act and other post-conviction penalties that create barriers to reentry for people with sex offense convictions. Limitations placed on those on the registry cause significant economic hardship on them and their families¹⁵⁹ and are not

¹⁵⁹ Jason Rydberg, *Employment and Housing Challenges Experienced by Sex Offenders During Reentry on Parole*, 3 POL’Y, PRAC. & RES. 15 (2017).

effective tools for preventing and addressing sexual harm¹⁶⁰. Data also indicates that men of color¹⁶¹ and LGBTQ people¹⁶² are disproportionately impacted by these laws.

Absent the repeal of AWA, DOJ should limit information collection on those convicted of qualifying sex offenses to information mandated by Congress, and it should rescind its policy requiring retroactive application of AWA.

ENSURE SAFETY OF LGBTQ NON-CITIZENS

Protect immigrant detainees. Congress should restore discretion to immigration judges so they can consider a wider range of factors that may warrant a person not being removed. Congress should ban the federal government from using for-profit companies to run immigration detention facilities and alternatives to detention. Congress should end contracts with any facility that creates unsafe conditions for detainees. Congress should also pass the Dignity for Detained Immigrants Act, which protects LGBTQ people from arbitrary detention and violence within facilities and ensures their right to seek protection within the United States.

Issue ICE guidance seeking community placement for transgender non-citizens in custody. Transgender people should not be held in ICE custody. ICE has demonstrated repeatedly that they are unable to house transgender people safely and the Department should consider other alternatives. LGBTQ immigrants are 97 times more likely to be sexually assaulted in detention and at least two transgender women have died in ICE custody.¹⁶³

Review and rescind recently finalized and pending anti-asylum rules at DOJ and DHS. DHS and DOJ have proposed several rules restricting access to asylum relief, which may still be pending under a new Administration. Several rules have also been finalized within the last year of the current Administration that dramatically undermine protections for asylum-seekers. This is despite popular support for admitting refugees at the same or greater levels. LGBTQ people face violence and other persecution based on their sexual orientation and gender identity, and many of them seek safety in the United States. The Administration should immediately rescind all pending rules and reverse recently finalized rules restricting access to asylum.

FINANCIAL INCLUSION

LGBTQ people suffer from significant economic disparities compared to non-LGBTQ people. One primary reason is that when LGBTQ people come out, they may be thrown out of their homes and are forced to start off life early without critical economic support.

¹⁶⁰ Elizabeth J. Letourneau et al., *Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence Against Women* (2010).

¹⁶¹ Trevor Hoppe, *Punishing Sex: Sex Offenders and the Missing Punitive Turn in Sexuality Studies*, 41 Law & Soc. Inquiry, 573, 583 (2016).

¹⁶² Nat'l Ctr. for Lesbian Rts. et al., *On the Margins: LGBTQ People and Sex Offense Registry Reform*, <http://www.nclrights.org/wp-content/uploads/2019/08/On-The-Margins.pdf>.

¹⁶³ See *Quigley Leads House Letter Calling for End to Transgender Migrant Detention*, Congressman Mike Quigley (Jan. 14, 2020), <https://quigley.house.gov/media-center/press-releases/quigley-leads-house-letter-calling-end-transgender-migrant-detention>.

This early lack of economic security gets worse if they are unable to continue their education. In addition, the LGBTQ community, which is millennial-heavy, has taken on more student debt than previous generations, which denies us the ability to buy a home, save for retirement, and build up wealth.

Systemic racism plays a driving factor in financial insecurity, especially for LGBTQ people. As a country, Black and brown people make less than their white counterparts, hold less wealth, and owe more in student debt. This makes it even more challenging for Black LGBTQ and LGBTQ people of color to climb the economic ladder. For example, approximately a third of both [Black](#) and [Latino/a](#) LGBTQ people make less than \$25,000 per year, compared to just 21% percent of [white](#) LGBTQ people. And the largest segment of LGBTQ people—nearly [one third](#)—live in the South, where LGBTQ people have fewer state and local legal protections.

Financial security starts with strong antidiscrimination laws that protect LGBTQ people and policies that seek to lift up Black and brown people, including those in the LGBTQ community, who have been denied that security due to continuing systemic racism throughout all facets of society.

Protect LGBTQ people from discrimination in credit. Overall, LGBTQ people are [45 percent](#) more likely to earn less than \$24,000 a year, but even more shockingly, trans people are “[nearly four times](#) more likely to have a household income less than \$10,000/year compared to the general population.” And according to latest [data](#), “One-fourth (25%) of LGBTQ respondents in the 25-34 age group, and 18% of LGBTQ respondents overall have no credit cards in their names.” All of this leaves LGBTQ people susceptible to predatory practices such as payday lending that often impose astronomical interest rates on customers, sometimes as high as [400 percent](#).

Congress should pass the Equality Act, which protects LGBTQ people against discrimination in credit.

The Obama-Biden Administration clearly [stated](#) that prohibitions on discrimination on the basis of sex in the Equal Credit Opportunity Act (ECOA) and Regulation B protected individuals from discrimination in credit on the basis of sexual orientation and gender identity. The Trump Administration does not hold the same view. Until the Equality Act is passed, the CFPB is urged to adhere to this previous Obama-Biden Administration policy position.

Cancel student debt. Forty-five million Americans hold a whopping \$1.6 trillion in student loan debt. Eight million of those individuals have defaulted on their loans. Before the coronavirus economic and health crisis, a person defaulted on their student loans every 26 seconds. And if Congress or the Trump Administration do not continue the current moratorium on student loan payments that is scheduled to cease at the end of the year, that default rate could balloon, threatening the economic security of borrowers, especially LGBTQ borrowers who already make less than non-LGBTQ people. Notably, sixty percent of LGBTQ people say they [regret](#) taking out student loans.

Recently, Minority Leader Chuck Schumer and Senator Elizabeth Warren introduced a [resolution](#) urging Donald Trump to cancel \$50,000 of student loan debt. This action would provide immediate relief to struggling borrowers, inject an economic boost to the economy, and go a long way to ensuring that people don't have to make a heartbreaking choice between paying their student loans or feeding, clothing, and housing them or their families.

Prohibit predatory lending. Payday lending can be the only lifeline for individuals who are barely making enough to survive. Predatory lending is especially problematic in Black and brown communities, where predatory lending companies seek to profit off of a community's misfortune. This practice also helps to [widen](#) the racial wealth gap. The Administration should support legislation that prohibits payday lending with an interest rate above 36 percent.

TAXES

When the precursor to The LGBTQ Anti-Poverty Action Network conducted the convenings that provided the basis for the *Intersecting Injustice* report in 2016, the tax code was already performing the function of exacerbating income and wealth disparities very effectively. Over the last four years, that trend has continued; that function became more pronounced with the passage of the Tax Cuts and Jobs Act of 2017 (TCJA). The TCJA was billed by its proponents as a tax cut for everyone – and it was, to some extent. Most taxpayers saw some reduction in their taxes, but those tax cuts were small for most lower-income people, and much larger for wealthy taxpayers. In fact, the top 20% of earners received more than 60% of the total tax benefit. TCJA also drastically cut taxes for corporations. The 40% reduction in tax rates for corporations saved companies a total of \$135 billion in the first year after passage of the bill – almost \$40 billion more than the benefit to individual taxpayers. All of these changes to the tax code have served to increase the income and wealth gaps between the wealthy and low-income people.

COVID has amplified the impacts of economic disparities, shining a spotlight on the many wealthy people who are profiting during the pandemic while millions of people in the United States remain unemployed, facing eviction and housing insecurity, food scarcity, and difficulty paying for usual household expenses. As of August, billionaires had increased their net worth by \$637 billion during the pandemic; over the same period, more than 40 million people filed for unemployment. COVID relief bills have helped some low-income people stave off economic crisis, but for many the 'relief' is a temporary one – the impacts of this recession will be felt by people living in poverty for years to come.

In prior recessions, the tax code has often functioned as a tool to repair our economy. Political parties have approached tax changes in polarized ways – progressives often focus tax changes on getting more money into the hands of lower- and middle-income people through tax credits like the Earned Income Tax Credit and Making Work Pay credit; conservatives often focus their tax changes on getting more money into the hands of wealthy people and corporations, arguing that that money will 'trickle down' to lower- and middle-income people eventually.

Our communities can't wait for an eventuality of scraps 'trickling down' – an economic strategy that has arguably failed for decades. Our communities need those solutions that help us pay for our immediate needs, like food, shelter, and other necessities. That is why now more than ever, we need to use the tax code as a tool for wealth redistribution. The recommendations below would increase tax rates on the wealthiest Americans and place that money back in the hands of people who need it most.

Prioritize progressive revenue. Congress must institute significantly higher tax rates on the highest earners, to both reduce inequality and raise revenues for the investments we need. The IRS should improve tax data collection, including by providing analysis of the relative share of taxes paid by income level, demographic analysis of income and wealth disparities, and analysis of enforcement activities.

Invest in refundable tax credits. In response to the economic crises associated with COVID-19, Congress must institute significantly higher tax rates on the highest earners, and temporarily increase the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC) into a permanent, monthly child allowance to assist low-income families through the economic crisis. Congress should permanently increase the EITC, especially for people without dependents who currently receive a very small credit compared to people with dependents, and expand eligibility by removing or expanding the age requirements. Congress should also increase the CTC and make it fully refundable to provide financial support to families with the lowest incomes. Congress should also allow families with Individual Taxpayer Identification Numbers (ITINs) to receive the CTC. The 2017 TCJA tax law prohibited children with ITINs from receiving the credit, which largely impacted Dreamers.

Evaluate the tax code's reliance on family-focused reporting. The IRS should conduct a robust study on how households with members that are not legally related benefit from or are harmed by the family-focused reporting structure of the current tax return. The IRS should report to Congress on strategies to ensure that our tax reporting more accurately reflects the realities of our households.

Empower and educate taxpayers. The IRS and state departments of revenue should host free sessions to teach people how the tax system impacts them, including content on credits and deductions that specifically impact LGBTQ people, like deduction of transition-related medical health expenses, deduction of abortion and other reproductive health expenses, and the adoption credit.