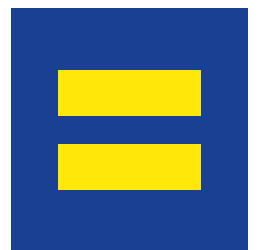


HUMAN RIGHTS CAMPAIGN

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# BLUEPRINT FOR POSITIVE CHANGE 2020

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HUMAN  
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# EXECUTIVE SUMMARY

**Blueprint for Positive Change 2020 is a comprehensive list of 85 individual policy recommendations aimed at improving the lives of LGBTQ people. Recommendations include:**

- Ensure consistent administrative implementation of *Bostock v. Clayton County* across all agencies enforcing civil rights statutes and provisions;
- Revise restrictions on transgender individuals to return to an inclusive policy of military service;
- Establish an interagency working group to address anti-transgender violence;
- Appoint openly-LGBTQ justices, judges, executive officials and ambassadors;
- Establish uniform data collection standards incorporating sexual orientation and gender identity into federal surveys;
- Establish an interagency working group to protect and support LGBTQ rights globally;
- End discrimination against gay and bisexual blood donors;
- Prohibit the practice of conversion therapy as a fraudulent business practice;
- Rescind and replace regulations restricting coverage of Section 1557 of the Affordable Care Act; and
- Eliminate discrimination against beneficiaries in charitable choice and faith-based initiatives.

**In January 2021, the Biden administration will inherit a Presidency and executive branch nearly unrecognizable from the administration he left behind in 2016. As the COVID-19 crisis continues its stranglehold on the nation's health and economy, the Trump administration has continued its coordinated, systemic attack on our nation's most sacred institutions—our courts, our Constitution, and our foundational civil rights statutes. The Biden administration will be tasked with confronting this damage to our nation's civic infrastructure, but must also look to the future. If elected, Joe Biden has an incredible opportunity to advance policies to improve the lives of LGBTQ Americans through the public health lens required by the pandemic. In the Blueprint for Positive Change 2020, the Human Rights Campaign has identified a list of more than 85 individual policy recommendations for the new administration.**

Since taking office, the Trump administration has consistently targeted far reaching regulatory changes that undermine the rights of vulnerable communities, including those who are LGBTQ. The administration consistently mischaracterizes the law in federal regulations, legal memorandums, and litigation actions. These coordinated attacks on civil rights exploit the public's traditionally limited engagement with federal legal actions and administrative developments, violating the public trust. And, with the Trump administration undermining the rights of the LGBTQ community at home, it has made it impossible for the U.S. to lead with authority on protecting the human rights of LGBTQ people abroad. The Biden administration must unravel these harmful regulations across Departments, reinstitute the strong protections championed by President Obama, and put the U.S. back on the path toward equality for all LGBTQ people.

However, we have been here before. When HRC first published the Blueprint for Positive Change in 2008, it contained a collection of 54 individual policy recommendations many of which were so fundamental that they seem to represent a more dire age. Don't Ask, Don't Tell was still on the books; tourists and immigrants living with HIV were categorically excluded from entering the United States; and transgender workers could still be legally fired by the federal government simply because of their gender identity. The Obama administration worked to systematically dismantle this discriminatory infrastructure of federal inequality that has plagued the LGBTQ community since this country's founding. The heart of this work could never be undone. In fact, the Biden administration will have the opportunity to begin enforcement of *Bostock v. Clayton County* in earnest across the federal government. The Blueprint for Positive Change 2020 is designed to offer a road map for the next administration to restore the federal commitment to this critically important work.

The COVID-19 pandemic has exposed the systemic gaps in equality across populations—particularly vulnerable communities especially Black and Latinx communities. We find ourselves at a crossroads. Too many LGBTQ Americans continue to lack explicit legal protections under federal law. State-sanctioned and state-funded discrimination continues to degrade individual dignity and prevents many families from developing the stability and financial security that are essential to success. LGBTQ young people continue to face discrimination and harassment at school and long after classes have let out. As a target for bias-motivated violence, our community has also fallen victim to the epidemic of gun violence that plagues our nation. Too many LGBTQ people continue to pay an unacceptable price for simply being themselves.

The Blueprint for Positive Change 2020 is a comprehensive list of more than 85 individual policy recommendations, reaching across the federal government, aimed at bettering the daily lives of LGBTQ

people at home and abroad. While each would make a demonstrable improvement in the lives of LGBTQ people, here we highlight a few. We believe that it is essential that federal judiciary and executive offices reflect the diversity of the country and the appointment of openly LGBTQ individuals sends a vitally important message to the LGBTQ community, including youth, about their equal ability to serve their country at the highest levels of government. We urge the administration to appoint qualified LGBTQ judges, executive officials, and ambassadors abroad, and to strive to appoint the first-ever openly LGBTQ cabinet secretary. Equally important, all appointed judges must be dedicated to upholding the constitutional principle of equality in order to ensure that the civil rights of all people, including the LGBTQ community, are protected.

We urge the administration to end taxpayer-funded discrimination once and for all and to rescind Trump-backed policies that invite discrimination against LGBTQ people by federally funded grantees and contractors. We call on the federal government to take real, tangible steps to ensure that every patient receiving care through a federally funded health program has access to the respectful, comprehensive care to which they are entitled, including PrEP and transition-related care, and we urge the administration to focus on solutions to finally achieve an AIDS-free generation. Stigma and violence against our community—especially transgender women of color—must be systematically addressed. We also recognize that it is crucial that the United States remain a safe harbor where LGBTQ people can escape persecution abroad.

These are just a few examples of the common sense proposals and recommendations included in the Blueprint for Positive Change 2020. Each one is essential to improving the lives of LGBTQ people and cementing our near decade of progress towards equality. We recognize the tremendous work there is to be done in every corner of this nation and we are ready for the challenge.

# RECOMMENDATIONS

## WHITE HOUSE/EXECUTIVE AND INTERAGENCY ACTIONS

### Ensure Consistent Administrative Implementation of *Bostock v. Clayton County* Across All Agencies Enforcing Civil Rights Statutes and Provisions

On June 15, 2020, the Supreme Court held that Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of sexual orientation, gender identity, and transgender status as unlawful sex discrimination. The White House should ensure a uniform, government-wide implementation of this decision, including by instructing the Department of Justice and other federal agencies to withdraw any guidance or regulations that are inconsistent with the Court's holding.

### Establish an Interagency Working Group to Address Anti-Transgender Violence

Rates of violence against transgender people have reached epidemic proportions. Since 2013, HRC and other advocates have tracked more than 180 cases of anti-transgender fatal violence across more than 33 states, the District of Columbia and Puerto Rico. This epidemic disproportionately impacts Black and Brown transgender women, who comprise approximately 4 in 5 of all anti-transgender homicides. The administration should establish an interagency working group to identify solutions to the root causes of anti-transgender violence and develop a plan to implement policy changes. This working group must listen to and collaborate with Black and Brown transgender women before and during the development of solutions to eradicate violence, and maintain communication to determine

if the solutions are working and what needs to be changed.

### Appoint Openly-LGBTQ Justices, Judges, Executive Officials, and Ambassadors

The federal judiciary, executive offices, and ambassadorships should reflect the diversity of the country. The appointment of openly-LGBTQ individuals sends a vitally important message to the LGBTQ community, including youth, about their equal ability to serve their country at the highest levels of government. The administration should appoint a diverse array of qualified judges, executive officials, and ambassadors, including LGBTQ people and people from other marginalized communities. The administration should strive to appoint the first-ever openly-LGBTQ cabinet secretary and the first openly lesbian, bisexual, or transgender Ambassador.

### Commit to Diversity in Hiring Across the Federal Government

Government employees should reflect the diversity of the country. The administration should commit sufficient resources and efforts to hire, retain, and promote a diverse workforce, including LGBTQ people and people from other marginalized communities. This commitment should be inclusive of all agencies and all positions.

### Establish Uniform Data Collection Standards Incorporating Sexual Orientation and Gender Identity into Federal Surveys

The collection of accurate, complete data is essential to ensure that federal programs and policies are meeting the unique needs of the LGBTQ community. However, there are currently no uniform standards for data collection based on sexual orien-

tation and gender identity across federal agencies. In the absence of accurate data, policy makers do not have information needed to create the appropriate policies and services LGBTQ people need. The White House should require federal agencies to develop and incorporate uniform demographic data forms designed to gather data based on sexual orientation and gender identity.

### **Ensure that Providers Participating in Federal Health Programs Provide Information Regarding PrEP and Other HIV and STI Prevention Tools**

Although federal health programs including TRICARE, Medicare, and Medicaid cover preventive care, many healthcare providers fail to consistently identify patients at the highest risk of contracting HIV. The Departments of Health and Human Services, Defense, and Veterans Affairs, which administer federal health programs, must ensure that providers are aware of their obligation to provide complete information regarding preventive care including PrEP and other proven HIV and STI prevention tools.

### **End the Global Gag Rule**

The Global Gag Rule, also known as the Mexico City Policy, bars any U.S. aid to foreign non-governmental organizations (NGOs) that provide abortion information, referrals, or services even when the NGO provides those services with alternate funds. Prior iterations of the Global Gag Rule were limited to U.S. funding for family planning services. Under the Trump administration, it now affects all U.S. international health funding, including funding for children's health, HIV/AIDS, malaria, and tuberculosis. The Global Gag Rule must be ended in all forms.

### **Eliminate discrimination against beneficiaries in charitable choice and faith-based initiatives**

In recent years, the federal government has increasingly turned to religious organizations to provide vi-

tal services to vulnerable populations. These include substance abuse treatment, early childhood education, food and nutrition assistance, job training, and homeless shelters. Faith-based groups often have expertise in these areas as well as strong ties to the communities they serve. The Charitable Choice regulations guide how religious organizations operate and engage with federally funded services and programs. Initially adopted in 2004, these regulations were revised in 2015 to provide greater protections for beneficiaries from discrimination on the basis of religion, including requiring organizations to notify beneficiaries of their rights. The Trump administration revised these regulations across nine agencies, stripping away these safeguards and notice requirements for beneficiaries. These regulations must be rescinded and revised to ensure that the government does not discriminate on the basis of religion, religious affiliation, or lack of religious affiliation in making government grants or contracts and that grants and contracts continue to be issued based on merit. The administration should also affirmatively clarify that the statutes containing charitable choice provisions in no way preempt federal, state, or local laws preventing discrimination on the basis of sexual orientation or gender identity.

### **Establish an Interagency Working Group to Protect and Support LGBTQ Rights Globally**

Support for LGBTQ rights globally has suffered under the Trump administration. The administration should recreate an interagency working group to coordinate efforts aimed at building upon and implementing the 2011 Presidential Memorandum "International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons." In addition, the working group should provide support for enactment of a policy directing that LGBTQ rights be included consistently and deliberately in public diplomacy.

### **Promote and Protect the Rights of LGBTQ People in U.S. Foreign Assistance Programs**

U.S. foreign assistance programs provide vital support and resources to combat HIV and other diseases and work to promote human rights for all people. The U.S. government should enact a comprehensive, consistent policy preventing foreign assistance from going to contractors, subcontractors, or grantees that advocate against the human rights of LGBTQ people, or that discriminate against LGBTQ people in the provision of services and in their employment practices. This should apply to all U.S. agencies funding international development work, including USAID, the Departments of State, Agriculture, Treasury, and others.

### **Ensure Elimination Barriers and Improve Systems to Support LGBTQ Refugees and Asylum Seekers**

The Trump administration has made gaining asylum nearly impossible and has vastly reduced the number of refugees provided resettlement in the U.S., from over 100,000 in 2016 to less than 20,000 today. These changes leave countless lives vulnerable to violence, persecution and even death. In 69 countries, same-sex sexual activity is a criminal act that results in isolation, imprisonment, and in some countries even the death penalty. In addition, transgender individuals encounter additional obstacles. The administration should take steps to restore the asylum process in the U.S. and restore our nation's commitment to resettle refugees from around the world.

### **Modernize the Gender Marker Update Process for Federal Records and Identification Documents**

Most federal agencies that maintain records on individuals or issue identification documents have unnecessarily restrictive requirements for updating one's gender marker. Unmatched federal records and identification documents can out transgender

individuals and increase their risk of discrimination, harassment, and violence. Inaccurate agency records can also impede transgender individuals' ability to participate in vital federal programs. For instance, Medicare or Medicaid coverage may be automatically denied for services that appear inconsistent with an individual's Social Security Administration gender marker records, and incorrect Department of Education student aid records can lead to loan servicer issues that impede a borrower's ability to consolidate loans, enter repayment, and start earning Public Service Loan Forgiveness credit. It is also crucial for federal employees to be able to easily update their Office of Personnel Management employee records so they can bring their full authentic selves to work. Furthermore, agencies that issue important federal identification documents, including passports, green cards, and naturalization certificates, have differing and restrictive processes for correcting gender markers. The administration should ensure that every relevant federal agency has a gender marker update process in place that is streamlined, free from unnecessary barriers, and includes a non-binary gender marker designation.

### **Include Sexual Orientation and Gender Identity Data in Federal Injury Surveillance Systems**

Most national death and injury surveillance systems lack metrics on both sexual orientation and gender identity, making it incredibly difficult to ascertain the full extent of the impacts of gun violence on LGBTQ people. The lack of this data also impedes the development and implementation of evidence-based interventions to address gun violence affecting LGBTQ communities. The administration should ensure that all existing national injury data systems collect detailed firearm involvement information as well as data on the sexual orientation and gender identity of victims and suspects. This includes, for instance, the Department of Health and Human Services's National Vital Statistics System, National

Intimate Partner and Sexual Violence Survey, and Healthcare Cost and Utilization Project; the Department of Justice's National Incident Based Reporting System and Supplementary Homicide Reports; and the Department of Transportation's National EMS Information System.

## DEPARTMENT OF AGRICULTURE

### **Prohibit Discrimination Against LGBTQ Participants in Assisted USDA Programs and Services Including Nutrition Support Programs**

Federal programs serve millions of people nationwide and across the economic-spectrum. Nondiscrimination provisions are crucial to ensuring equal access to federally funded services. The Department of Agriculture (USDA) administers critical programs such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and the Supplemental Nutrition Assistance Program (SNAP), commonly known as “food stamps.” USDA should implement rules and provide guidance to ensure that discrimination against LGBTQ participants is prohibited in programs and services that receive assistance from USDA.

## DEPARTMENT OF COMMERCE

### **Add LGBTQ Questions on the American Community Survey and next U.S. Census**

Currently, there are no questions regarding sexual orientation or gender identity on the United State's two largest demographic data collection efforts: the ongoing American Community Survey and the decennial U.S. Census. Demographic data from these surveys is used to direct hundreds of billions of dollars in federal funding annually. The absence of information regarding LGBTQ people negatively impacts support for the LGBTQ community. The Census Bureau should add sexual orientation and gender identity questions to both the American Community Survey and next U.S. Census.

## DEPARTMENT OF DEFENSE

### **End Discrimination Against HIV-Positive Individuals From Enlistment, Appointment, and Deployment**

Currently, the Department of Defense (DOD) Directive 6485.01 prohibits any person who is HIV positive from enlistment, appointment, or deployment in the military. This bar on service is severely outdated and grounded in medically inaccurate information that does not reflect the standard of care utilized by the medical community. DOD should amend Directive 6485.01 removing the categorical ban.

### **Revise Restrictions on Transgender Individuals to Return to an Inclusive Policy of Military Service**

In June 2016, the Department of Defense (DOD) announced that transgender individuals would finally be able to serve openly in the U.S. military, lifting the decades-old discriminatory ban preventing them from doing so. However under the Trump administration, DOD halted this policy, disallowing transgender servicemembers from serving in the military. Under this ban a medically designated need to transition gender is a basis for discharge and denial of accession even if the servicemember can still meet general standards for readiness and deployment. The administration should revise the regulations implementing this ban to again allow transgender servicemembers to serve openly in the military.

### **Ensure All LGBTQ Military Personnel Have Access to PrEP Without Jeopardizing Job Status**

The Department of Defense (DOD) must ensure military personnel have access to PrEP without fear of discrimination or retaliation. DOD should amend its existing guidance to ensure that discrimination against LGBTQ military personnel is prohibited and ensure access to and confidentiality of personnel who choose to use PrEP and other HIV/STI prevention tools.

### **Ensure Active Duty Servicemembers Have Equal Access to Spousal Housing**

The Department of Defense (DOD) Instruction 1100.16 provides DOD's Equal Opportunity in Off-Base Housing policy, which ensures equal opportunity housing for off-base personnel consistent with federal law. The Fair Housing Act prohibits discrimination on the basis of sex, which includes discrimination on the basis of sexual orientation and gender identity. DOD should issue a new instruction adding a definition of "sex discrimination" to include discrimination on the basis of sexual orientation and gender identity to be consistent with the Fair Housing Act.

### **Ensure Access to Comprehensive Transition-Related Care for Dependents of Military Personnel**

The Department of Defense (DOD) provides healthcare via TRICARE to all military personnel and their dependents. TRICARE policy includes transition-related care for military family members and retirees. Military medical facilities provide hormone treatment and counseling for transgender military personnel and their dependents; however, medically necessary gender affirming surgery is explicitly prohibited in TRICARE's new policy. To ensure that every dependent has equal access to the services funded by DOD, including medically necessary gender affirming surgery, DOD must amend the current policy to remove the categorical prohibition of coverage for gender affirming surgery.

## **DEPARTMENT OF EDUCATION**

### **Ensure Nondiscrimination Policies and Science Based Curricula Are Not Undermined by Religious Exemptions to Accreditation Standards**

Language regarding accreditation of religious institutions of higher education in the Higher Education Opportunity Act could be interpreted to require

accrediting bodies to accredit religious institutions that discriminate or that do not meet science based curricula standards. The Department of Education should issue a regulation clarifying that this provision, which requires accreditation agencies to "respect the stated mission" of religious institutions, does not require the accreditation of religious institutions that do not meet neutral accreditation standards including nondiscrimination policies and scientific curriculum requirements.

### **Ensure the Enforcement LGBTQ Students' Rights Under Title IX**

Title IX of the Education Amendments Act of 1972 prohibits discrimination based on sex in federally funded education programs. The scope of Title IX's sex discrimination provisions have traditionally been interpreted in accordance with Title VII, which the Supreme Court has held includes sexual orientation and gender identity. However, the Departments of Education and Justice eliminated Obama-era guidance clarifying that schools must treat transgender students consistent with their identity. This encourages schools officials to permit harassment of transgender students, deny access to facilities consistent with gender identity, and refuse to use correct names and pronouns—all inflicting untold emotional harm. The Departments should take affirmative steps to ensure that schools understand their obligations to LGBTQ students with a particular focus on transgender students. The Department of Education should encourage students who have experienced sexual orientation or gender identity discrimination to file complaints, then investigate and resolve complaints through all appropriate channels.

### **Ensure Student Survivors of Sexual Harassment and Assault are Protected**

The Trump administration issued a regulation making it more difficult for student survivors of sexual harassment and assault to report their abuse and promoting policies that favor their abusers. LGBTQ



people are disproportionately affected by sexual assault and harassment, and the stigma that many LGBTQ people face can make it more difficult for survivors to report. The Department of Education should issue a revised regulation to ensure students who have experienced sexual harassment assault are fully supported and protected by educational institutions, and that regulation should be fully inclusive of LGBTQ students.

### **Prohibit Pupil Services Personnel from Engaging in Conversion Therapy or Referring Students to Conversion Therapy**

Conversion therapy includes a range of harmful and discredited practices that seek to change a person's sexual orientation or gender identity. Currently, there is no federal law or regulation that prohibits pupil services personnel, including school counselors, social workers, and other school-based mental health professionals, from providing or referring students to providers of conversion therapy. The Department of Education (ED) should issue rules clarifying that pupil services personnel in federally funded schools who directly provide or refer students to providers of conversion therapy are engaging in discrimination on the basis of sex in violation of Title IX of the Education Amendments of 1972. Further, ED should prescribe rules requiring schools that receive ED grants for the direct or indirect support of pupil services personnel to implement policies prohibiting student services staff from providing or referring students to providers of conversion therapy.

### **Mandate Public Notice for Receipt of Title IX Religious Exemptions by Colleges and Universities**

Title IX of the Education Amendments of 1972 allows religious colleges and universities to be exempted from nondiscrimination requirements on the basis of sex. Until recently, the college or university had to affirmatively seek an exemption from the Department of Education (ED). Some religious col-

leges and universities have requested an exemption from Title IX with regards to LGBTQ students. Students should have the ability to know which schools have claimed a right to discriminate against them in advance of applying for admission. ED should issue a regulation mandating that colleges and universities once again request exemptions, and provide public notice of their request for and receipt of a religious exemption. In addition, ED should provide a publicly available list of colleges and universities that have received religious exemptions.

### **Restore Gender Identity as Enumerated Characteristic for Purposes of Tracking Bullying**

Transgender youth experience bullying at higher rates than their cisgender peers as demonstrated by the Department of Education (ED) conducted Civil Rights Data Collection (CRDC) for the years that gender identity data were collected. The Trump administration revised the CRDC to eliminate gender identity, gender expression, and nonconformity with gender stereotypes. Consistent with the Boston decision, ED should restore inclusion of gender identity, gender expression, and nonconformity with gender stereotypes for purposes of collecting data related to bullying

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Reinstate Regulation Prohibiting Discrimination Against LGBTQ Beneficiaries of HHS Grants and Programs**

Federal programs serve millions of people nationwide and across the economic spectrum. Nondiscrimination provisions are crucial to ensuring equal access to federally funded services. The Department of Health and Human Services (HHS) oversees a wide range of programs from the Low Income Home Energy Assistance Program to the Public Health Preparedness and Response Pro-

gram. HHS should begin enforcement of the 2016 regulation prohibiting discrimination in all HHS programs on the basis of sexual orientation and gender identity and rescind the revisions proposed in 2019 by the Trump administration.

### **End Discrimination Against Gay and Bisexual Blood Donors**

Largely in response to the COVID-19 pandemic, the Department of Health and Human Services (HHS) amended the deferral on blood donation for gay and bisexual men from one-year to three months. This change, however, continues to effectively bar the vast majority of gay and bisexual men from becoming blood donors irrespective of their risk for HIV. Neither the current nor pending policy treats persons with like risks in a similar way. Rather, donors are deferred based on their membership in a group—in this case, all men who have sex with men—rather than engagement in risky behavior, such as unprotected sex. HHS should adopt a policy based in sound science that assesses all potential donors based on their engagement in risky behavior, not on sexual orientation.

### **End Discrimination Against Gay and Bisexual Tissue and Cornea Donors**

The Department of Health and Human Services (HHS) requires a deferral tissue and cornea donation for gay and bisexual men for five years. This policy effectively bars the vast majority of gay and bisexual men from becoming blood donors irrespective of their risk for HIV. Neither the current nor pending policy treats persons with like risks in a similar way. Rather, donors are deferred based on their membership in a group—in this case, all men who have sex with men—rather than engagement in risky behavior, such as unprotected sex. HHS should adopt a policy based in sound science that assesses all potential donors based on their engagement in risky behavior, not on sexual orientation.

### **Revise Conditions of Participation to Include Nondiscrimination Requirements for All Hospitals, Nursing Homes, and Assisted Living Facilities Participating in Medicaid**

Currently, there are limited federal requirements prohibiting discrimination on the basis of sexual orientation or gender identity by healthcare organizations participating in Medicare and Medicaid. This lack of uniform federal protection damages the quality of care patients receive across the country. The Centers for Medicare and Medicaid Services within the Department of Health and Human Services should publish final regulations incorporating explicit nondiscrimination protections for LGBTQ people within the Conditions of Participation (CoPs) that healthcare organizations must meet in order to begin and continue participating in Medicare and Medicaid.

### **Create an Inclusive Federal Definition of Bullying**

HRC's Growing Up LGBT in America, a groundbreaking survey of more than 10,000 LGBTQ-identified youth ages 13 to 17, found that LGBTQ youth are more than twice as likely as their straight and cisgender peers to experience verbal bullying in school. Unfortunately, not all teachers or youth recognize bullying of LGBTQ youth as a problem. The Substance Abuse and Mental Health Services Administration (SAMHSA) provides well-respected resources on the subject of bullying that reach a wide audience. The Department of Health and Human Services should direct SAMHSA to create a federal definition of bullying that explicitly includes sexual orientation and gender identity.

### **Ensure That Youth Shelters Are Inclusive and Welcoming**

LGBTQ youth are overrepresented among the homeless youth population with approximately 40 percent of homeless youth identify as LGBTQ. The Department of Health and Human Services (HHS) Administration for Children and Families should

issue guidance to assist service providers in understanding their obligations to LGBTQ youth including ensuring that transgender youth have access to gender-specific clothing, programing, and housing consistent with their gender identity.

### **Protect LGBTQ Foster Youth from Discrimination in Foster Homes and Out-of-Home Care Placements**

LGBTQ youth are overrepresented in the foster care system and are vulnerable to discrimination and mistreatment. The Department of Health and Human Services should issue guidance for foster care systems and out-of-home care services to ensure the safety and well-being of LGBTQ youth, as well as explicitly providing nondiscrimination protections. That guidance must ensure that transgender youth have access to gender-specific clothing, programing, and housing consistent with their gender identity.

### **Ensure Confidentiality of Sensitive Health Services for Dependents in Public and Private Health Insurance Plans**

Young people who seek sensitive health services, including HIV prevention/treatment or transition-related care, have difficulty protecting the confidentiality of these services when insurance companies send explanations of benefits (EOBs) detailing these services to the primary policyholder, usually a parent or guardian. The Department of Health and Human Services should promulgate regulations to protect the confidentiality of young people who are dependents from unwanted disclosures by requiring insurance companies mail EOBs to the person receiving care.

### **End Use of Explanation of Benefits (EOBs) for Medicaid to Ensure Confidentiality of Health Services for Dependents**

Young people who seek sensitive health services, including HIV prevention or treatment and transition-related care, have difficulty protecting the con-

fidentiality of these services when Medicaid sends explanations of benefits (EOBs) to their parents or guardians. The Centers for Medicare and Medicaid Services (CMS) should bar state Medicaid programs from issuing EOBs. EOBs are unnecessary for Medicaid since the recipient of services does not owe the provider for care.

### **Prohibit Mental Health Professionals in Federally Funded Foster Care Institutions and Programs from Engaging in Conversion Therapy or Referring Minors to Conversion Therapy**

Currently, there are no federal regulations that expressly prohibit mental health professionals in federally funded foster care institutions or programs from directly providing or referring minors to providers of conversion therapy, which includes a range of harmful and discredited practices that seek to change a person's sexual orientation or gender identity. The Department of Health and Human Services (HHS) should prescribe rules requiring any foster care institution or program that receives HHS funding to implement policies that prohibit mental health professional staff from engaging in or referring minors to providers of conversion therapy.

### **Restore Conscience Protections in Healthcare with Nondiscrimination Safeguards**

In January 2018, the Department of Health and Human Services (HHS) formally published a regulation in coordination with the creation of a new division within the Office of Civil Rights tasked explicitly with enforcing federal conscience and religious liberty laws. This new division and the accompanying regulation raise serious concerns regarding access to critical care for some of the most vulnerable patients—including those who are LGBTQ. The rule purports to implement existing conscience regulations, but also provides sweeping exemptions for anyone working in a healthcare setting from providing a range of medical services. It also reinstates

the 2008 Bush HHS Conscience Rule that allowed refusal of medical care for any reason by doctors, nurses, medical technicians, and even receptionists. The administration should immediately rescind this rule and evaluate the efficacy and impact of the separate conscience division within the Office of Civil Rights.

### **Rescind and replace regulations restricting coverage of Section 1557 of the Affordable Care Act**

The Department of Health and Human Services published revised implementing regulations for Section 1557 of the Affordable Care Act (ACA). These revisions remove all explicit protections in healthcare for LGBTQ people. More specifically, it eliminates the explicit inclusion of discrimination on the basis of “gender identity” within the regulation’s sex nondiscrimination protections. Section 1557 and the original 2016 implementing regulations were a sea change for LGBTQ patients accessing healthcare services and insurance coverage. The revisions are unnecessary, unwarranted, and undermine the public health. They also fail to reflect the incorporation of sexual orientation and gender identity within the scope of sex discrimination protections as provided by Bostock. The administration should rescind this regulation and replace it with a policy that explicitly includes sexual orientation and gender identity within the definition of sex discrimination under the ACA.

### **Restore Data Collection Requirements for LGBTQ Youth in Foster Care**

In 2020 the Department of Health and Human Services (HHS) published a final regulation abandoning data collection on the sexual orientation of youth in foster care as well as foster and adoptive parents and guardians in the Adoption and Foster Care Analysis and Reporting System (AFCARS). The data from AFCARS provides states, the Children’s Bureau, and foster care and adoption providers with valuable information to ensure safety and security

to children in need of homes and families who will care for them. The administration should restore the sexual orientation data collection and add gender identity data collection.

### **Revoke Waiver to South Carolina**

In 2019, the Department of Health and Human Services (HHS) granted a waiver from federal nondiscrimination requirements to South Carolina’s Foster Care Program, which has contracted with a child welfare provider who seeks permission to refuse to serve prospective parents who do not share their religious beliefs, but who wants to continue to receive federal funding to provide those services. South Carolina requested the waiver to allow federal funds to go to a child welfare agency that refused to place children with Jewish families. By granting that waiver, HHS opened the door to federally funded discrimination justified by religious belief against any number of prospective parents, including single parents, LGBTQ individuals or same-sex couples, parents who may previously have been divorced, interfaith couples, or people of deep faith that happens to be of another religion. The administration should revoke this waiver immediately and take steps to ensure that discrimination has no place in federally funded foster care and adoption services.

## **DEPARTMENT OF HOMELAND SECURITY**

### **Release Detainees and Ensure Humane Treatment for Transgender Detainees who Cannot be Released**

The U.S. Immigration and Customs Enforcement (ICE), a division of the Department of Homeland Security, should release detainees who are not a threat to the public. LGBTQ people are particularly vulnerable to abuse when they enter institutionalized settings. In the rare instances in which a transgender person poses a clear and imminent threat to public safety, ICE should establish and enforce

clearer standards of humane treatment for transgender detainees including appropriate housing and prevention of sexual abuse and assault.

### **Release Detainees and Provide Proper Medical Treatment for Transgender Detainees who Cannot be Released**

The Department of Homeland Security (DHS) does not consistently provide proper medical treatment to transgender inmates who wish to begin or to continue medical treatment in the course of their gender transition process. DHS should direct U.S. Immigration and Customs Enforcement (ICE) to release detainees who are not a threat to the public. In the rare instances in which a transgender person poses a clear and imminent threat to public safety, ICE should ensure that the transgender detainee is allowed to begin, to continue, and to progress with all necessary psychological and medical transition-related care.

### **Release Detainees and Ensure Appropriate Healthcare Standards for HIV-Positive Detainees who Cannot be Released**

Current standards for the treatment of HIV-positive detainees established by the U.S. Immigration and Customs Enforcement, a division of the Department of Homeland Security (DHS), fail to provide adequate medical care to detainees with HIV. Despite the vast assortment of policies and standards, DHS guidelines are overly broad and do not provide any direction for detention officials on how to treat and care for detainees with HIV. DHS should direct U.S. Immigration and Customs Enforcement (ICE) to release detainees who are not a threat to the public. In the rare instances in which an HIV-positive person poses a clear and imminent threat to public safety, DHS should revise standards to address counseling, consultation and/or supervision of HIV-related clinicians with expertise in HIV care, and procedures to ensure maintenance of confidentiality. In addition, DHS should ensure that all detainees receive HIV pre-

vention education.

### **Ensure Equal Access to Federal Disaster Relief Benefits**

Experiencing a disaster is traumatic and disruptive for any individual; unfortunately for LGBTQ people, this negative experience is often compounded by discrimination. Same-sex couples often face having their families split apart because their relationships are not recognized by the relief workers, and transgender people are too often denied access to safe, gender-appropriate facilities. The Federal Emergency Management Agency (FEMA) should issue guidance clarifying that LGBTQ people and their families shall have equal access to federal funding and recovery support to which they are entitled. In addition, the Department of Homeland Security should update all nondiscrimination provisions pertaining to disaster services to protect on the basis of sexual orientation and gender identity to reflect the decision in *Bostock*.

## **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

### **Expand Outreach to Homeless LGBTQ Veterans**

Long-term discrimination by the federal government against LGBTQ servicemembers has left many LGBTQ veterans reluctant to seek the federal assistance they are entitled to. The Department of Housing and Urban Development should expand their homeless population outreach to be actively inclusive of LGBTQ veterans.

### **Outreach to LGBTQ Youth Centers to Connect Youth to HUD Services**

Through programs such as the Family Unification Program and the Youth Services Bureau, the Department of Housing and Urban Development (HUD) provides resources to youth who are struggling with access to housing. LGBTQ youth are overrepresented in the foster care system

and among homeless youth. Serving as a critical resource, LGBTQ youth centers frequently have the ability to direct LGBTQ youth to programs designed to meet many of the challenges they regularly face. HUD should reach out to LGBTQ youth centers to provide them with information regarding HUD services for youth and to encourage them to connect the youth in their programs to HUD services.

### **Restore Inclusive Implementation of the Equal Access Rule**

HUD has proposed revisions to the Equal Access regulation—a landmark housing protection that prohibits discrimination in all HUD funded programs including rental assistance, emergency shelters, and FHA loan programs. Secretary Carson’s revisions specifically target transgender people seeking critical emergency shelter. These revisions would allow shelters receiving taxpayer dollars to turn transgender people away entirely or provide unsafe housing. The administration should rescind this proposal immediately and return to vigorous enforcement of this meaningful regulation.

### **Restore Affirmatively Furthering Fair Housing Regulation**

In 2020, the Department of Housing and Urban Development withdrew the 2015 Affirmatively Furthering Fair Housing (AFFH) rule implementing a section of the Fair Housing Act that directs jurisdictions accepting federal funds to take significant actions to promote equality and to “affirmatively further fair housing.” This 2015 rule required communities to conduct an “Assessment of Fair Housing” to scrutinize their current patterns of integration and segregation, evaluate areas of poverty, and identify disparities in equal access and disproportionate housing. Once that assessment is complete, the community must set goals to improve their housing patterns. By identifying continued housing inequality, these AFFH provisions were a critical step towards ensuring that everyone has access to homes in communities that provide opportunities

and resources for themselves and their families—including those who are LGBTQ. The administration should restore the AFFH regulation immediately.

### **Restore Disparate Impact Regulation**

In 2020, the Department of Housing and Urban Development (HUD) rescinded the 2013 Disparate Effects Rule that implemented and formalized the discriminatory effects standard and the burden-shifting test used by HUD to determine liability under the Fair Housing Act. Disparate impact claims under the Fair Housing Act are critical to addressing systemic housing discrimination and segregation in the United States. In practice, this regulation protected individuals from discrimination emerging from facially neutral policies and practices with disparate effects. The Disparate Effects Rule protected individuals against particularly pernicious aspects of discrimination that may be overlooked at first by nondiscrimination efforts due to the lack of—at least visible—discriminatory intent. Regardless of intent, policies and practices with a disparate effect further limit housing access for historically marginalized people, including LGBTQ individuals. This clear regulatory standard promoted consistency in enforcement of the Fair Housing Act which is essential to both the public and property owners seeking to comply with the law. The administration should reinstate this standard.

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## **DEPARTMENT OF JUSTICE**

### **Prohibit Mental Health Professionals in Federally Funded Juvenile Justice Institutions and Programs from Engaging in Conversion Therapy or Referring Minors to Conversion Therapy**

Currently, there are no federal regulations that expressly prohibit mental health professionals in federally funded juvenile justice institutions and programs from directly providing or referring minors to providers of conversion therapy, which includes

a range of harmful and discredited practices that seek to change a person's sexual orientation or gender identity. The Department of Justice (DOJ) should prescribe rules requiring any juvenile justice institution or program that receives DOJ funding to implement policies that prohibit mental health professional staff from engaging in or referring minors to providers of conversion therapy.

### **Ensure Incarcerated Transgender Individuals are Housed Safely**

The Federal Bureau of Prisons has rolled back a policy that allowed incarcerated transgender people to be housed consistent with their gender identity. With transgender people experiencing sexual assault at dramatically higher rates than average, this decision only puts them at further risk of assault. The Attorney General should direct the Bureau of Prisons to take steps to ensure that incarcerated transgender people are housed safely and in accordance with their gender identity.

### **Provide Proper Medical Treatment for Transgender Individuals in Federal Prison Facilities**

The Bureau of Prisons denies proper medical treatment to incarcerated transgender people who wish to begin or to continue medical treatment in the course of their gender transition process by prohibiting them from initiating any new treatment. The Bureau of Prisons should direct the Office of National Policy Review to issue a Change Notice to the Program Statement regarding Patient Care to ensure that transition-related care is considered medically necessary care, and that all incarcerated transgender people are allowed to begin, to continue, and to progress with psychological and medical transition-related care.

### **Provide Access to Comprehensive HIV Prevention in Federal Prison Facilities**

Rates of transmission for HIV in prisons remain a consistent concern for the LGBTQ community.

The Bureau of Justice Statistics found that HIV transmission is several times higher in prison than in the general population. The best way to ensure that prisons do not become a prime environment for transmission is appropriate education and prevention. The Bureau of Prisons (BOP) should issue guidelines for comprehensive HIV prevention in BOP facilities, which should include education about HIV transmission and information and access to PrEP and other proven HIV and STI prevention tools.

### **Ensure Implementation of the Matthew Shepard and James Byrd, Jr. Hate Crime Prevention Act and Appropriate Collections of Statistics**

Hate crimes affect not only the victims and their families, but generate fear and insecurity for the entire community they target. The Federal Bureau of Investigation's (FBI) 2018 Hate Crimes Statistics report indicated that nearly one in five of all hate crimes reported to the FBI were motivated by anti-LGBTQ bias, an overall increase from the year prior. The incidence of anti-transgender crimes increased by 34 percent since 2017. Because this voluntary data is far from complete, the Department of Justice (DOJ) should intensify efforts to encourage local law enforcement to report hate crimes statistics annually. In addition, DOJ should expand educational and training initiatives to address discrimination in communities and expand the convening of hate crimes forums across the country to engage community leaders and citizens in ways to effectively prevent and respond to hate crimes.

### **Rescind the 2007 Office of Legal Counsel Memo Allowing Discrimination Against Beneficiaries by Religiously Affiliated Grantees**

In a 2007 memo, the Office of Legal Counsel (OLC) at the Department of Justice (DOJ) stated that a religiously affiliated employer could discriminate against employees on the basis of religion under the

protections of the Religious Freedom Restoration Act (RFRA). This opinion is far reaching and has opened the door to more expansive discrimination under the guise of religious liberty since its publication more than a decade ago. DOJ should rescind this opinion and any subsequent guidance applying the opinion to specific federal programs.

### **Address LGBTQ Policing Challenges in Investigations and Consent Decrees**

During the Obama administration, the Civil Rights Division of the Department of Justice (DOJ) had addressed LGBTQ policing challenges in investigations and consent decrees. DOJ investigations have found police departments to engage in patterns and practices of unconstitutional discrimination against members of the community, including LGBTQ community members. Consent decrees are court-approved agreements between DOJ and the police department under investigation. One goal of most consent decrees is «bias-free policing» provisions, which call for creating a policy to guide officers' interactions with LGBTQ residents. DOJ should actively re-engage with local LGBTQ communities and police departments to ensure these goals are achieved.

### **Prohibit Discrimination in Jury Selection**

The right to an impartial jury of one's peers and the right to serve on a jury are foundational to the fairness that Americans expect and deserve from our legal system. The LGBTQ community has a history of discrimination when being considered for jury service, and routine exclusion of LGBTQ people often results in a miscarriage of justice. The Department of Justice should issue guidance clarifying that the Jury Service and Selection Act prohibition on exclusion from jury service based on sex includes a prohibition on exclusion based on sexual orientation and gender identity.

### **Restore Collection of Data on LGBTQ Youth Impacted by Violence**

In 2018, the Department of Justice restricted data

collection on LGBTQ youth who are subjected to violence, raising the age in respondents from 16 to 18. Respondents voluntarily and confidentially give information about their sexual orientation and gender identity as part of the National Crime Victimization Survey (NCVS). The increase in minimum age for respondents to 18 will result in the loss of critical data on the prevalence of violence, bullying, and harassment experienced by LGBTQ youth. The administration should return to collecting more complete data on this population.

### **Ensure Uniform and Full Implementation of *Bostock v. Clayton County* Across Federal Agencies**

In the consolidated cases *Bostock v. Clayton County*, *Altitude Express v. Zarda* and *R.G. & G.R. Harris Funeral Homes v. EEOC*, the Supreme Court held that Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of sexual orientation, gender identity, and transgender status as unlawful sex discrimination. The Attorney General should begin coordinating full implementation of this decision, including by publishing guidance confirming that discrimination on the basis of sexual orientation, gender identity, and transgender status is unlawful sex discrimination under all federal statutory and regulatory provisions.

## **DEPARTMENT OF LABOR**

### **Ensure Treatments Relating to Gender Transition Qualify for FMLA Leave**

The lack of guidance from the Department of Labor (DOL) in defining «serious medical conditions» under the Family and Medical Leave Act (FMLA) may result in the unfair denial of leave under FMLA for transgender individuals undergoing medical or psychological treatments associated with gender transition. DOL should issue an official ruling stating that medical or psychological treatments associated with gender dysphoria are not «cosmetic» proce-



dures under FMLA regulations and that hormone therapy as part of gender transition constitutes a “regimen of continued treatment.” Furthermore, DOL should provide guidance for leave for mental health conditions under FMLA, including an example of an individual who would qualify for leave for psychotherapy for gender dysphoria and for all subsequent medical and psychological treatment.

### **Restore Nondiscrimination Standards for Government Contractors**

The Department of Labor published a proposed rule incorporating an expansive religious exemption for businesses and organizations contracting with the federal government that are covered under Executive Order 11,246—which explicitly prohibits discrimination on the basis of race, creed, color, religion, sex, national origin, sexual orientation, and gender identity. Under the proposed regulation, businesses and organizations receiving taxpayer dollars, could present religious belief as a defense to a claim of employment discrimination to OFCCP, which will then not enforce the nondiscrimination provisions. The administration should rescind this proposal and ensure that taxpayer dollars are not used to facilitate discrimination.

### **Restore Civil Rights Obligations of TRICARE Providers Under OFCCP**

The Department of Labor published a proposed rule removing OFCCP authority to enforce non-discrimination and affirmative action requirements under numerous statues including the Vietnam Era Veterans’ Readjustment Assistance Act, the Rehabilitation Act of 1973, and EO 11246 for TRICARE providers. The exclusion of TRICARE providers from the employment discrimination rules applicable to federal contractors not only has a detrimental impact on the workforces affected, but sends a disturbing message that ensuring fair treatment for women, people of color, LGBTQ people, veterans, and people with disabilities is unnecessary and inconsequential. It sets a precedent for future

carve-outs and represents the Trump administration’s consistent abandonment of equal opportunity. This is a stark reversal of OFCCP policy and legal arguments for the past decade. It also exceeds the Congressional carve out created by Section 715 of the National Defense Authorization Act. The administration should rescind this proposal.

### **Eliminate Discrimination Against LGBTQ Beneficiaries by Department of Labor Grantees**

Federal grantees operate as an extension of the federal government by utilizing taxpayer funds. Nondiscrimination provisions are crucial to ensuring equal access to federally funded services. The Department of Labor (DOL) provides grants to programs in areas such as occupational safety training and assisting workers affected by mass layoffs, plant closures, and disasters. DOL should implement rules and provide guidance to ensure that discrimination against LGBTQ beneficiaries is prohibited by recipients of DOL grants.

### **Revise Religious Exemption Reporting Process for Grantees**

The Department of Labor (DOL) has an established process for providing exemptions from the religious nondiscrimination provision in the Workplace Investment Act for faith-based organizations. In order to ensure that the exemption is not used to permit broader discrimination based on a recipient’s religious tenets, DOL should clarify the scope of this exemption through informal guidance to program administrators. DOL should also create an additional reporting requirement for organizations that receive the exemption.

### **Include LGBTQ Questions on Current Population Survey**

Currently, there are no questions regarding sexual orientation or gender identity in the demographics section of the United States Census Bureau and Department of Labor’s Current Popula-

tion Survey. More complete data is essential to ensuring that federal programs and services are meeting the unique and diverse needs of the LGBTQ community. The Census Bureau should add questions to the demographics section of the Current Population Survey about gender identity and sexual orientation.

## DEPARTMENT OF STATE

### **Include a Non-Binary Gender Marker and Modernize Existing Requirements for Updating Gender Markers on United States Passports**

The Department of State currently only allows passport applicants to choose between gender marker designations of either «male» or «female.» This prevents non-binary citizens, or those who identify as neither male nor female, from obtaining a passport that accurately reflects their gender. The resulting incongruence of identity documents increases non-binary individuals' risk of discrimination, harassment, and violence. A growing number of states and other countries recognize non-binary individuals on official identity documents. The Department of State should make the administrative changes necessary to allow non-binary citizens to obtain passports and other travel documents that accurately reflect their gender. Additionally, while transgender citizens who identify as either male or female are currently allowed to update the gender designation on their passports, the current rules are unnecessarily burdensome. The Department of State should modernize these requirements by allowing for self-attestation of one's gender identity; recognizing official state-issued identity documents with corrected gender markers for purposes of updating gender markers on passports; and removing the two-year provisional passport requirement for transgender individuals who are in the process of transitioning.

### **Rejoin and Re-engage With the United Nations and Other Global Efforts to Advance LGBTQ Human Rights**

The United States' reputation for being a leader on global human rights issues has been tarnished under the Trump administration. The new administration should, without delay, make clear its commitment to human rights, and re-engage in the relevant bodies of the United Nations, including the Human Rights Council, and leverage its relationships in order to advance equality around the world. In addition, it needs to live up to its commitments as a member of the UN LGBTI Core Group, the Equal Rights Coalition, the LGBTI Core Group of the OAS, and more. The U.S. should maintain its commitment to the Global Equality Fund.

### **Leverage Relationships in Multilateral Forums and Utilize Existing Mechanisms to Encourage Changes to Anti-LGBTQ Policies**

While the United States and many other nations move towards full equality for LGBTQ people, other nations, at times encouraged by anti-LGBTQ Americans, have taken actions and enacted legislation that violate the human rights of LGBTQ people. The Department of State should leverage its relationships in multilateral forums to encourage changes to other nations' anti-LGBTQ policies and policies that fall short of full equality for LGBTQ people. In addition, the Department of State should utilize existing mechanisms, such as the Global Magnitsky Act, to penalize egregious human rights offenders.

### **Create a Panel of Human Rights Experts to Review the Conclusion of the Commission on Unalienable Rights and Provide Inclusive Recommendations**

The Department of State created a Commission on Unalienable Rights centered on how "human rights discourse where such discourse has departed from our nation's founding principles of natural law and natural rights." The Commission on Unalienable

Rights was designed to challenge the international consensus with a narrow view of human rights, that among other things would leave LGBTQ people even more vulnerable to violence and discrimination. The administration should create a panel of human rights experts to review the conclusion of the Commission and provide concrete policy recommendations for fully inclusive and principles-based approach to human rights. In addition, the Department of State should empower the Bureau of Democracy, Human Rights, and Labor to fulfill the bureau's mandate to support the human rights of all, including those for LGBTQ people, worldwide.

#### **Provide Visas for Eligible Partners of U.N. Employees and Foreign Diplomats**

The Department of State instituted a new policy denying visas to same-sex partners of U.N. employees and foreign diplomats. It also required those currently in the U.S. to get married by the end of 2018 or be forced to leave the country. This places an extraordinary burden on LGBTQ diplomats and families from countries without marriage equality. Since 2009, the United States had granted diplomatic visas to domestic partners of foreign diplomats and U.N. employees. The administration should return to this policy.

#### **Fill the Position of the Special Envoy for LGBTI Rights**

The Special Envoy for the Human Rights LGBTI Persons was created in 2015 to coordinate the Department of State programs and policies regarding global LGBTI rights. The position has been vacant since November 2017 and is no longer listed on the Department of State website. The administration should restore the position of the Special Envoy for LGBTI Rights and provide sufficient funding to support their work.

#### **Ensure That All Embassies Are Equipped With the Necessary Resources and Training**

#### **to Provide a Detailed Report on LGBTQ Human Rights Violations in the Annual Report on Human Rights Practices**

The Department of State is statutorily required to release an annual report on human rights practices around the world. In recent years, the report has included information on human rights violations against the LGBTQ community. The Department of State should direct the Bureau of Democracy, Human Rights, and Labor to standardize this reporting across all embassies and equip personnel with the necessary tools and training to engage in robust conversations with LGBTQ civil society representatives to inform this reporting.

#### **Improve Processes to Help LGBTQ Refugees Fleeing Violence**

LGBTQ people in many parts of the world have been forced to flee violence targeting them and their families. The United States should once again be a place where LGBTQ people can escape persecution. The Bureau of Populations, Refugees, and Migration should support greater training for United Nations and non-governmental organization staff that work with LGBTQ refugees to ensure they handle those cases as sensitively and quickly as possible, while also ensuring that resettlement organizations in the U.S. are fully informed of their clients' LGBTQ status so that they can resettle them in locations with appropriate resources and communities.

#### **Prioritize Inclusion of LGBTQ People and Communities in the Global Fight Against HIV**

The fight against HIV cannot be won without the robust engagement of the LGBTQ community. Since the disease is often most prevalent among men who have sex with men and transgender women, it is crucial that these "key populations" be a primary focus of efforts to combat HIV globally. The Obama administration took an important step in establishing the Key Populations Investment Fund (KPIF) in 2016 to focus attention and combat the violence

and discrimination that keeps LGBTQ people from seeking much-needed treatment. The new administration should continue the work of the KPIF and continue to ensure the inclusion of LGBTQ people in multilateral fora on HIV, while rejecting efforts to exclude them from such conversations.

### **Appoint Diverse LGBTQ Ambassadors to Represent Our Nation Abroad**

The Obama administration made historic strides in appointing eight openly gay ambassadors, a record number. However, there has not yet been an openly lesbian, bisexual, or transgender ambassador in the U.S. diplomatic corps. There have also not been any openly LGBTQ people of color appointed to serve as an ambassador to the U.S. The incoming administration should appoint lesbian, bisexual, and transgender ambassadors, including ambassadors from communities of color.

### **Focus U.S. Development Funding on LGBTQ Communities, With Particular Focus on Advocacy**

In order to defend their communities from discrimination, persecution, and violence, LGBTQ organizations around the world are in need of funding to help them professionalize their work so that they can influence the media and policymakers, partner with law enforcement, and work toward the creation of laws and policies that can protect them. In many countries, LGBTQ organizations are barred from raising money internally and in others, the tax structure is unfavorable to non-profit fundraising. U.S. development programs should focus attention on the particular needs of LGBTQ communities and organizations. Often that will mean specifically supporting LGBTQ organizations that focus on influencing their broader communities and governments to become more inclusive and accepting of sexual and gender minorities. At other times, funding may simply provide LGBTQ people with general development resources, whether it is for education programs or healthcare.

### **Increase Trainings for Law Enforcement Agencies Abroad**

Law enforcement agencies around the world often have little understanding of the particular needs of LGBTQ people and often engage with them in ways that range from neglect to outright hostility. There are horrific reports of LGBTQ people seeking police protection from violence in their communities, only to then be tortured or otherwise victimized by the police. The U.S., through the Departments of State and Justice, should continue to invest and expand investment in trainings for law enforcement officials around the world to ensure that they have sufficient background and expertise in working with LGBTQ people and communities. This includes sending LGBTQ trainers abroad to share their experiences.

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## **DEPARTMENT OF THE TREASURY**

### **Provide Extended “Look Back” Period Beyond Standard Three Years for Same-Sex Couples to Amend Income Tax Returns**

The Defense of Marriage Act (DOMA) prohibited the federal government from recognizing the legal marriages of same-sex couples for purposes of federal benefits and obligations. After the Supreme Court struck down Section 3 of DOMA in June 2013, the Internal Revenue Service (IRS) clarified that legally married same-sex couples could utilize the standard three-year “look back” period to amend their income tax returns to file as married. However, same-sex couples began marrying in the United States nine years prior to the Court’s decision. Because DOMA was always unconstitutional, same-sex couples married longer than three years should have the opportunity to amend their tax returns for the entire period of their marriage.

### **Leverage U.S. Investments in Multilateral Development Banks to Strengthen Support for LGBTQ Communities**

Multilateral development banks (MDB) such as the

World Bank can wield enormous influence over the way beneficiary countries treat minority populations. However, because their mandate is primarily economic, they have generally shied away from engaging on human rights issues of any kind, arguing that human rights and economics are two separate spheres of interests. To date, strong nondiscrimination language has not yet been enacted at a number of MDB, the World Bank in particular. MDB can also fund research into the health and well-being of LGBTQ people, using their vast resources and their global reach to compare outcomes across countries and regions. The U.S. government, the largest global investor in a number of MDB, should leverage their investments to demand the creation of—and compliance with—nondiscrimination policies at the MDB. The U.S. should also push MDB to fund research into the economic well-being of LGBTQ people and to have MDB leaders raise LGBTQ issues in their travels to developing countries and in their meetings with leaders there.

## DEPARTMENT OF VETERANS AFFAIRS

### **Provide Increased Cultural Competency Training for Service Providers, Including Education on PrEP and Other Proven HIV/STI Prevention Tools**

Service providers and members of the Department of Veterans Affairs (VA) workforce are required to take part in cultural competency training. However, the current policy only requires biennial cultural competency training that all VA employees and service providers must meet. The Office of Diversity and Inclusion and the Veterans Health Administration should amend their current policies to require annual cultural competency training for all employees and VA service providers. In addition to basic LGBTQ cultural competency, training for service providers should also include education on HIV/STI prevention tools, including information on PrEP.

### **Ensure Transgender Veterans Have Full Access to Transition-Related Care**

The Department of Veterans Affairs (VA), Veterans Health Administration directive on providing healthcare for transgender and intersex veterans (1341(2)) categorically excludes gender affirming surgery, which is critical to the health and well-being of transgender veterans. The VA should amend or repeal the current regulations and issue new regulations expressly extending medical benefits to include gender affirming surgery. This regulation also aligns with the trajectory of the federal courts, federal agencies, and the intent of the nondiscrimination provision in the Affordable Care Act.

### **Ensure Equal Access to VA Secured Loans and Mortgages**

Currently, there are no prohibitions of discrimination on the basis of sexual orientation or gender identity in the distribution and issuance of the Department of Veterans Affairs (VA) programs and benefits. LGBTQ veterans can be denied access to VA secured loans and mortgages on the basis of their sexual orientation or gender identity. The VA should incorporate prohibitions of discrimination on the basis of sexual orientation and gender identity in its nondiscrimination provision and interpret the Fair Housing Act's prohibition against sex discrimination to include sexual orientation and gender identity.

## FEDERAL TRADE COMMISSION

### **Prohibit the Practice of Conversion Therapy as a Fraudulent Business Practice**

Current federal statutes and regulations fail to explicitly protect consumers from the fraudulent, deceptive, and unfair business practice of providing conversion therapy, which includes a range of harmful and discredited practices that seek to change a person's sexual orientation or gender identity. The Federal Trade Commission should implement industry-wide regulations prohibiting the false

and misleading advertising, marketing, and other business practices of any individual or organization that provides conversion therapy. Additionally, the Federal Trade Commission should take administrative enforcement action against individuals and organizations that currently offer conversion therapy in exchange for monetary compensation.

## **OFFICE OF PERSONNEL MANAGEMENT**

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### **Restore and Update Guidance for Agencies Regarding Transgender Employees and Prior Name and Gender Marker Change Policy**

Office of Personnel Management (OPM) previously provided policy guidance for agencies regarding treatment of transgender employees. The guidance addressed a range of issues including privacy, the need to respect transgender employees names and pronouns, and providing access to restrooms and other facilities consistent with gender identity. In 2018, the Trump administration eliminated the guidance and instructed agencies to only change names and gender markers on personnel files after receiving legal documentation without consideration for the previously policy of allowing for changes to email address, name tags, directories, business cards, and other items. OPM should restore the original guidance for agencies related to transgender employees and update the policy where needed to reflect best practices.

## **UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT**

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### **Restore the Office of the USAID LGBTQ Coordinator**

The LGBTQ Coordinator is one of many who are charged with implementing the 2011 Memorandum on International Initiatives to Advance the Human Rights of LGBTQ Persons. The office works to en-

sure that there is ongoing U.S. government engagement with foreign governments, citizens, civil society, and the private sector to build respect for the human rights and development of LGBTQ persons. USAID should restore this office and increase its funding to ensure that it has the staff and resources necessary to support the position's mission.





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